



INFORMATION REPORT

TO:	Chair and Members Audit, Finance and Administration Committee
COMMITTEE DATE:	June 12 th , 2017
SUBJECT/REPORT NO:	Comprehensive Legal Services Report (LS17014) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Nicole Auty 905-546-2424 ext. 4636
SUBMITTED BY:	Nicole Auty City Solicitor Corporate Services
SIGNATURE:	

Council Direction:
None

Information:

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, human rights, privacy law, procurement law, construction law, corporate and commercial law and most recently workplace safety, labour and employment law; the Legal Services Division advises and represents the City and Council, as well as City departments and agencies.

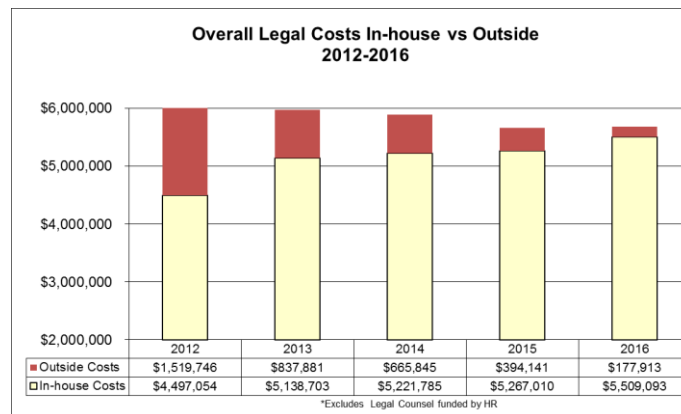
Legal Services Works to Effectively Control the City's Legal Costs

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 under 6M annually.



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



In addition, Legal Services is providing a higher level of service to the City with these funds and supporting more, complicated and strategically focused matters. This is reflected in the increased number of litigation files, the increased number of OMB days, and the increase in the value and nature of the real estate matters, contracts and agreements that we routinely provide advice on.

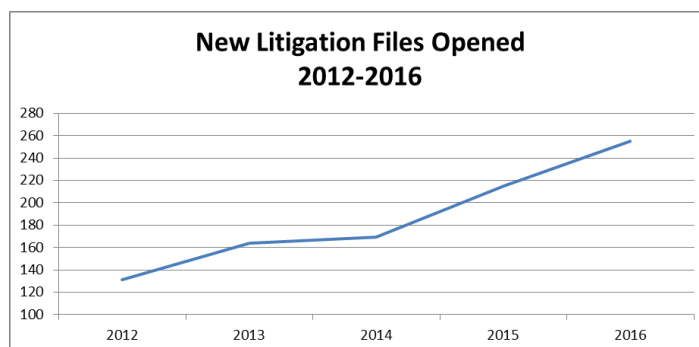
Dispute Resolution Section

The Dispute Resolution Section advances and defends the City's interest in civil and administrative litigation, insurance defence, breach of contract, recovery of debts and damages, human resource employment and workplace 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.

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, human rights, workplace safety, employment and labour, 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

In 2016 there were 255 litigation files of all sorts, with 198 new civil actions started involving the City including, 53 claims started by the City to recover damages and debts, and 57 other administrative litigation, labour and employment matters. Civil claims against the City totalling \$133.7 Million were resolved for \$3.2 Million through trials, mediations and negotiated settlement.



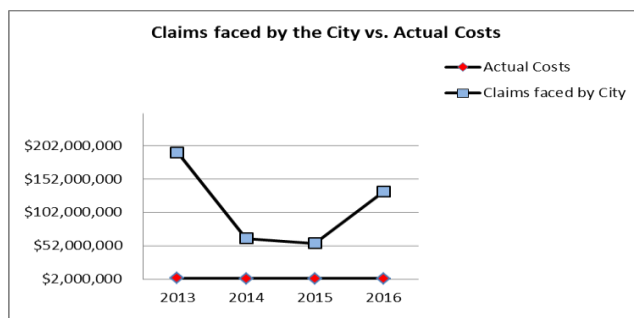
Dispute Resolution staff resolved 145 civil matters during the year in and out of court and gave priority to resolving older claims. Litigation file activities in 2016 included 20 mediations, 34 pre-trials, 34 motions and status hearings, 116 days in examination for discovery, and 32 days in trials and 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 \$790,228 for debts, damages and legal costs in 2016, the majority in one-time payments, and some debts being repaid by instalments. The City also successfully obtained other relief, including injunctions, recovery of property, and defence of bylaws or other administrative action from legal challenges.

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Litigation files were concluded primarily through settlement, including alternative dispute resolution such as by mediation. As a result 2016 was an active year for settlements. Settlements achieve certainty of results 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.



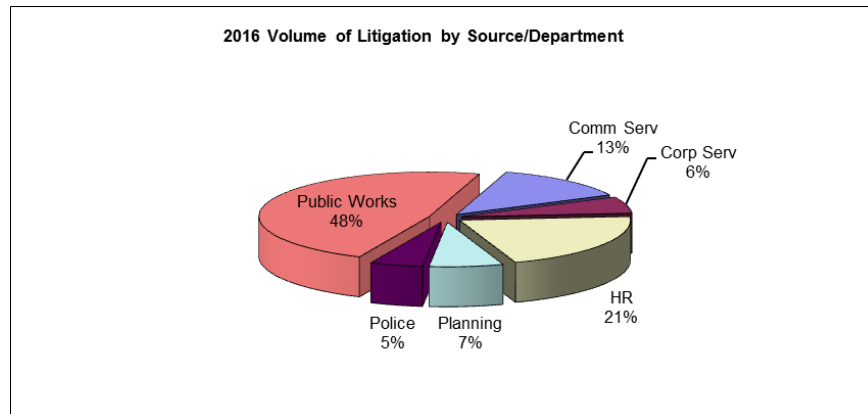
Litigation files normally have the City as a defendant/respondent, which was the case in 74% of new litigation files opened by Legal Services in 2016. The sources of new litigation against the City are mainly from use of City property, streets, water and sewer services, or arise out of City operations, 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 2016, as compared to property damage and economic loss claims. The City also saw more files opened in 2016 in relation to labour, employment and 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 26% of new claim files in 2016 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.

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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 over 60,000 court appearances on charges in 2016 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 a Deputy 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 2016, 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.

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The following two tables represent the volume and disposition of POA and Municipal Prosecutions work in 2016:

POA/Municipal Prosecution Performance Metrics					
	2012	2013	2014	2015	2016
CHARGES:					
# Charges All Enforcement Agencies	97,474	99,266	94,647	84,747	83,435
# Police Charges	82,496	82,498	78,229	67,574	66,568
# MLE/AC/BLDG. ET AL Charges	1,077	1,199	1,569	1,333	1,509
#Red Light Camera	13,523	15,569	14,133	14,410	14,167
DISPOSITION:					
# Trial Requests	7,314	6,648	7,272	7,899	5,846
# First Attendance/Early Resolution	9,204	13,673	13,512	12,590	12,146
# Disclosure Requests	no data	5,888	5,874	8,257	8,127
# Summons to Witness	1,642	1,358	1,562	1,615	1,629
# Applications for Adjournment	686	749	737	621	566
# Title Searches	528	247	255	245	313
# Property Standards Order	16	20	17	9	10
# Property Standards Discharges	23	11	24	14	13
# Corporate/Business Name Searches	63	105	110	182	162
# Charter Motions (includes 11(b))	24	81	157	167	194
# Training Events	-	4	5	6	6
# Court Events	61,284	65,875	64,057	64,647	63,873
Average Crt. Apprs. To Disposition	3	3	3	3	2
FINE REVENUE (GROSS):	\$10.6 M	11.1M	11.2M	10. M	10.8 M

Charges - Part 1s and 3s by Agency					
	2012	2013	2014	2015	2016
CHARGES:					
Animal Control	369	760	819	828	790
Municipal Law Enforcement	464	436	439	463	200
Building	19	26	113	397	331
Fire	52	61	19	22	43
Red Light Camera	13,523	15,569	14,133	14,410	14,167
Public Health	173	224	177	224	145
TOTAL	14600	17076	15700	16,344	15,676

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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 2016, the CDP lawyers were engaged in a variety of significant projects for the City, which further key Council strategic priorities, including the U.S. Steel CCAA proceedings, Horizon Merger, LRT Project, Woodward Upgrades and Biosolids Projects, Waterfront Redevelopment, and matters related to the John C. Munro Hamilton International Airport Lease.

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 2016 worked on 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
2012	81	\$ 81,786,204
2013	94	\$ 70,824,535
2014	68	\$ 50,763,077
2015	72	\$ 57,903,593
2016	66	\$ 77,188,822

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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
2016	9	\$ 2,690,453

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:

2016 Loan Metrics*		
Type of Loan	Number of Loans	Total \$ of Loans
Urban Renewal Loans	4	\$ 4,835,876.00
DC Deferral	4	\$ 8,934,336.00

* Work was also done on 6 additional loans in 2016 which have not been finalized.

2016 Leases and Licenses	
Leases:	20
Licence Agreements:	36

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.

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Files and Values of Real Estate Matters			
Year		2015	2016
Acquisitions:		20	12
Total Purchase Price:		\$ 8,111,433	\$ 4,871,798
Disposition:		30	25
Total Sale Price:		\$ 6,082,972	\$ 7,362,808
Tax Sales:		4	6
Active Expropriations:		3	2
Encroachments/Patio Agreements:		26	41

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 over the past three years. Those numbers do not include any ongoing matters which originated in previous years for developments that are still in progress.

	Subdivision Matters	Condominium Matters
2014	15	8
2015	15	12
2016	11	15

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.

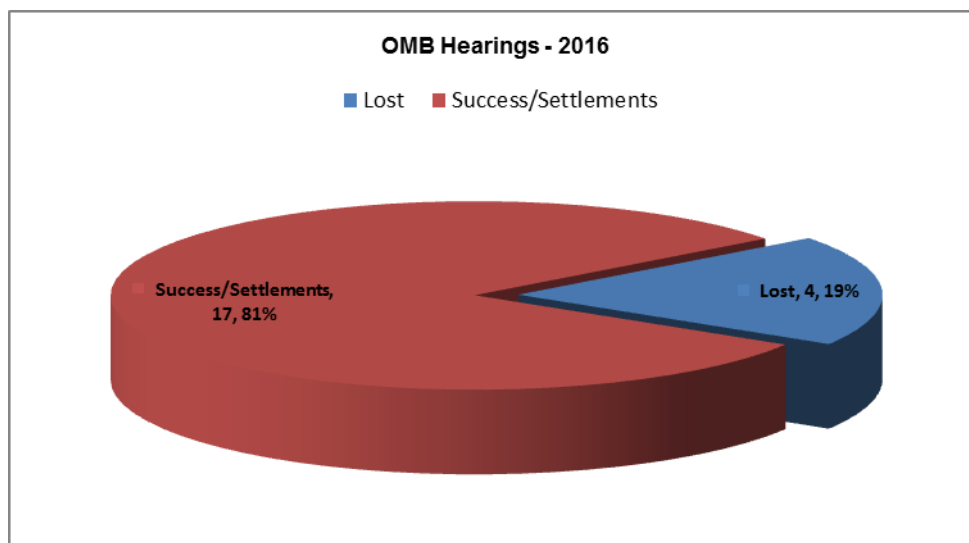
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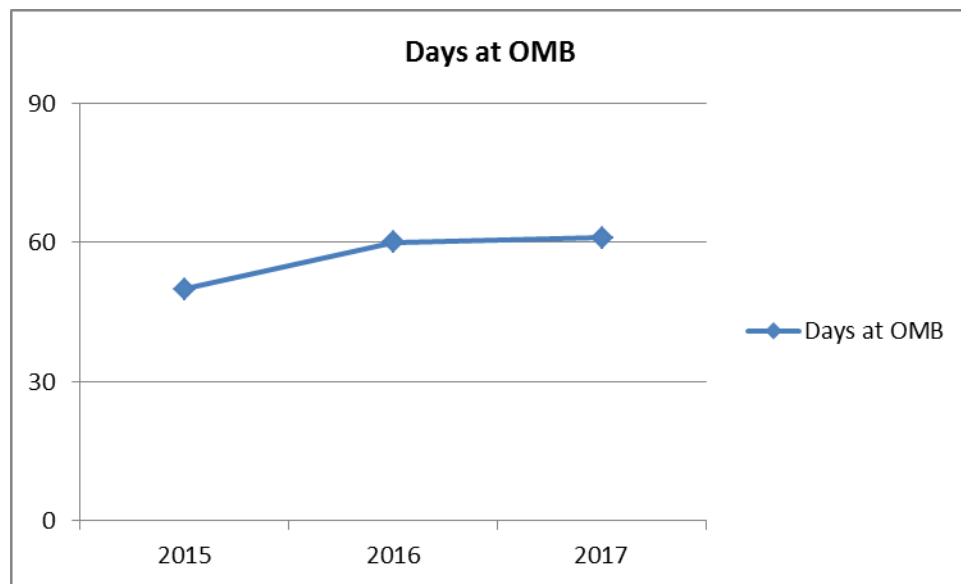
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CDP lawyers were involved in a number of important planning and development-related matters in 2016, including OMB appeals related to the West Harbour, Fruitland-Winona Secondary Plan, Strathcona Secondary Plan, Ancaster Wilson Secondary Plan, Transit Oriented Corridor Zoning By-law, Urban and Rural Hamilton Official Plan (urban boundary resolution), as well as several site specific appeals. They were also involved in providing advice to City staff and Committee and Council on Bill 73, and assisting with the implementation of changes to existing practices and documents. Further they have been actively engaged in the OMB Reform consultation process. It is anticipated that new legislation will be introduced in the spring.

In addition, in 2016, CDP lawyers were involved in other OMB matters. In particular, there were 21 planning appeal files to the OMB, resulting in 17 matters successfully argued and/or settled and 4 matter unsuccessfully argued at the OMB. To date for 2017, there are 61 days scheduled at the OMB. The attached Appendix “A” sets out the 2017 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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2017 Hearing/Pre-hearing/TCC Dates - Schedule "A"					
Matter ID	Address/description	OMB Case Number(s)	Hearing Type	Hearing Date	# Days Scheduled
16-0571	288 Glover Rd., Hamilton	PL160485	Prehearing	January. 16, 2017	1
03-0753	Ponderosa Nature Resort	JB090001	Prehearing #2	February. 7, 2017	1
15-0799	RHOPA 9 and ZBA 15-173 (Pharm Meds)	PL150805	Settlement Hearing	February. 16, 2017	1
14-0376	West Harbour Secondary Plan	PL140314	Motion Hearing	February. 23, 2017	1
16-0739	CROP, Rural Zoning (by-law 15-238)	PL151130	Settlement Hearing	March. 3, 2017	1
16-1274	14 Carruthers Lane	PL161217	Hearing	March. 14, 2017	1
15-0799	RHOPA 9 and ZBA 15-173 (Silverwood Homes; Multi-Area Developments; Artstone Holdings and Twenty Road)	PL150805	Prehearing by TCC	March. 28, 2017	1
16-0941	66 Innovation Drive	PL160836	Prehearing	March. 30, 2017	1
16-1181	9163 Twenty Rd., Hamilton	PL161144	Hearing	March. 31, 2017	1
16-1229 & 16-1228	165 Upper Centennial Pkwy & 198 First Road West	PL161115 PL161118	Prehearing	April. 11, 2017	1
10-0734	2012 Upper James St. (Living World)	PL100630	Hearing	April. 18, 2017	1
16-0571	288 Glover Rd., Hamilton	PL160485	Prehearing #2	April. 20, 2017	1
15-0743	157 Parkside Drive (Silverwood Homes Ltd.)	PL150599 PL150600 PL150601 PL150602	Hearing by TCC	May. 4, 2017	1
16-1034	2064 to 2070 Rymal Road East	PL160926	Hearing	May. 8-10, 2017	3
16-0641	383 Dundas St. E., Hamilton	PL160498	Hearing	May 23 - June 2, 2017	10
17-0140	15 Riverdale Dr., Hamilton	PL170075	Hearing	June. 5, 2017	1
16-1190	Transit Oriented Corridor (50 Dundurn St., 435-446 Main St. E., 1124 Main St. E.)	PL161168	Prehearing	June. 6, 2017	1
03-0753	Ponderosa Nature Resort	JB090001	Mediation	June. 12, 2017	1
16-1165	231 York Road	PL161098	Hearing	June. 22-23, 2017	2
16-0922	271 Beach Blvd.	PL160678	Hearing	June 26-28, 2017	3
16-0571	288 Glover Rd., Hamilton	PL160485	Prehearing by TCC	July. 7, 2017	1
15-0799	RHOPA 9 and ZBA 15-173	PL150805	Hearing	August. 8, 2017	1
17-0348	860 Queenston Road	PL170282	Hearing	August. 9, 2017	1
16-0941	66 Innovation Drive	PL160836	Hearing (Part 1 - employment threshold issue)	August. 16-17, 2017	2
16-0266	1155 West 5th (22-28 Carmel Dr.)	MM150081 MM160008 MM160015 MM160033 MM160037 MM160038 MM160064 MM160065 MM160066 MM160067 MM170008 MM170018 MM170020	Hearing	August. 21-23 2017	3
16-0571	288 Glover Rd., Hamilton	PL160485	Hearing	September 25-29, 2017	5
03-0753	Ponderosa Nature Resort	JB090001	Hearing	October. 16-27, 2017	10
16-1229 & 16-1228	165 Upper Centennial Pkwy & 198 First Road West	PL161115 & PL161118	Hearing	November. 20-24, 2017	5
Total Days at OMB					61
Total prep days					152.5
Total Days:					213.5

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