



Dear Mayor & Members of Council:

As you know, the Minimum Maintenance Standards (MMS) were created to help Ontario municipalities manage their risk from legal action stemming from personal injury on municipal roads. Unfortunately, claims are repeatedly brought against road authorities for personal injury and property damage alleging inadequate maintenance of roads, signage or failing to provide proper winter deicing, sanding and/or plowing. The MMS have been very successful in defending against these claims. If the municipality can show that they were following the minimum level of maintenance set out in the regulations, plaintiffs are often discouraged from proceeding with their claims either by their lawyers or upon presentation of proof in discovery. Further, upon making it to the Courts, usually with a claim for catastrophic injury, the courts have been looking for the compliance with MMS with regards to municipal liability.

Recently an application was filed with the Superior Court of Justice to have the Minimum Maintenance Standards declared null and void. This application has been filed by individuals who have also filed suit against a municipality for a winter related accident. The municipality is attempting to defend the action, in part, by proving that they were in compliance with the Minimum Maintenance Standards.

The application to have an order declaring the MMS null and void, if successful, will have huge implications for all Ontario municipalities. Municipalities, who are exercising due diligence and maintaining their roads in good repair, or providing excellent winter maintenance, will no longer have a viable defence against spurious claims of liability. With no viable defence, claims that might otherwise be thrown out will continue onto expensive trials and old claims could possibly be re-filed. The courts may once again start awarding large settlements which will result in higher insurance premiums for municipalities. For this reason the Ontario Good Roads Association is filing notice with the court that we wish to oppose the application on behalf of our municipal members.

OGRA does not have the financial resources to defend this application and any subsequent appeals, which potentially could go as high as the Supreme Court of Canada. We are therefore turning to you, our members, to ask you to consider contributing to a "MMS Litigation Fund". A small contribution to the fund will greatly assist OGRA in fighting this application on behalf of all our members.

We are suggesting that each municipality consider contributing 10¢ per-capita with the maximum contribution capped at \$50,000 and the minimum being \$1,000. We appreciate that municipal budgets are stretched; however a small contribution now could save significant money in the future. Please feel free to contribute whatever you can to the cause. Any funds not used will be refunded back to contributing municipalities on a pro-rated basis.

Thank you for your consideration of this request. If you have any questions or concerns please contact me.

Yours truly,

J. W. Tiernay
Executive Director