



TO: Ontario Municipalities

FROM: J. W. Tiernay, Executive Director
Ontario Good Roads Association

DATE: May 26, 2011

RE: Minimum Maintenance Standards Litigation – Status Report

Background

Last year all heads of Council received a letter advising that a legal challenge had been filed to have the Minimum Maintenance Standards (MMS) declared null and void. The letter requested municipalities consider contributing to a Litigation Fund to fight the application. I am pleased to report that many municipalities have contributed to the fund and we are proceeding with our opposition to this application. If your municipality is still considering the request please let me know at your earliest convenience as to whether funds will be forthcoming.

This memo is intended to keep all municipalities informed as to the progress to date on this important matter.

Discussion

OGRA has retained J. Murray Davison, Q.C. of the law firm, Paterson, MacDougall, LLP as our legal counsel to represent your interests. Mr. Davison is very knowledgeable in the area of Minimum Maintenance Standards having volunteered his time and expertise in the development of the initial standards and the 5 year review that was recently undertaken.

Our counsel filed an application with the courts to grant OGRA intervenor status. The opposing counsel did not object to this application and the court issued an order adding OGRA as intervenor on October 8, 2010.

A MMS Litigation steering committee made up of representatives from the Ontario Good Roads Association; the Ontario Municipal Insurance Exchange (OMEX); the Regional Municipality of York; the Province of Ontario; the Waterloo Region Municipalities Insurance Pool and Frank Cowan Company Limited met on May 25, 2011 and received an update from our legal team.

The plaintiff's Counsel has filed a motion for the production of all documents associated with the creation of the original Minimum Maintenance Standards.

Our litigation team is supporting two motions filed by the Crown. The first being to limit the scope of the hearing to the standards that were in effect at the time of the accident that precipitated this action. The second motion is to transfer the hearing from the Superior Court to the Divisional Court. In the Superior Court only one judge presides, while at Divisional Court three judges preside. Our legal team feels that this move would be advantageous to our position.

All the above referenced motions are currently scheduled to be heard on June 13, 2011. A further update will be issued subsequent to that hearing.

We previously advised that the Ontario Trial Lawyers Association was going to seek intervenor status. They have not done so to-date however we anticipate that they will do so later.

At this time there is a possibility that the application will be heard in the fall of this year, however the prevailing opinion suggests that it might not be heard until spring of 2012.

Further updates will be issued as the matter progresses.

JWT