



**June 22, 2010**

## **City Council Committee Report**

**To: Mayor & Council**

**Fr: Bruce Graham**

**Re: OGRA Minimum Maintenance Standards Litigation Fund**

**Recommendation:** That the City of Kenora support the request from the Ontario Good Roads Association to contribute to the Minimum Maintenance Standards Litigation Fund in the amount of \$.10 per capita.

**Background:** The Minimum Maintenance Standards (MMS) were created to help Ontario municipalities manage their risk from legal action stemming from personal injury on municipal roads. By relying on and adhering to the Minimum Maintenance Standards municipalities are in a good position to defend against claims alleging inadequate maintenance of roads, signage or failing to provide proper winter deicing, sanding and/or plowing. In deciding these types of claims the courts will ask what a reasonable person would have done in similar circumstances. The Minimum Maintenance Standards established the "reasonableness" benchmark that municipalities would rely on.

The OGRA reports that an application was recently filed with the superior Court of Justice to have the Minimum Maintenance Standards declared null and void. If successful municipalities would lose the "reasonableness" benchmark that they currently rely on. The likely result would be that more claims brought against municipalities would make it to the courts and there would quite likely be an increase in settlements against the municipalities. The increased cost required to defend these claims and to pay the settlements would translate to an increase in insurance premiums for most municipalities and could even result in it becoming difficult for municipalities to obtain insurance coverage.

The OGRA is filing notice with the court that they intend to oppose the application on behalf of their municipal members. The OGRA on their own do not have the financial resources to defend the application. As such they are looking to the municipal members to contribute to the fund and they are suggesting a contribution rate of \$.10 per capita. Contributions would be capped at a maximum of \$50,000 and a minimum of \$1,000. This relatively small contribution now could save municipalities from significant expenses in

the future. Any funds not used in the defense will be refunded back to contributing municipalities on a pro-rated basis.

**Budget:**

**Communication Plan/Notice By-law Requirements:**