

Type of Decision									
Meeting Date	Friday, Aug. 13, 2010				Report Date	Monday, August 9, 2010			
Decision Required	X	Yes		No	Priority	X	High		Low
Direction	x	Information Only			Type of Meeting	X	Open		Closed
REPORT TITLE									
Eastern Ontario Development Program Renewal Report 13/08/10/205									

Subject: OGRA – re: MMS and request for funding to assist with defending MMS in courts – additional information

**RECOMMENDATION:** That Council adopt the following resolution committing to support OGRA and its request for funding to defend the challenge to the Minimum Maintenance Standards.

**WHEREAS** OGRA has requested contributions from all Ontario municipalities to defend the use of the Minimum Maintenance Standards;

**AND WHEREAS** it has been recommended by our insurer that this worthy cause be supported;

**THEREFORE BE IT RESOLVED THAT** the Council of the United Townships of Head, Clara & Maria does hereby support OGRA by contributing a 10¢ per-capita contribution to cover legal expenses or another amount (\$\_\_\_\_\_) as decided by this Council;

**BACKGROUND/EXECUTIVE SUMMARY:** please see attached reports from our insurance providers.

Options/Discussion: support or not

Financial Considerations/Budget Impact:

- ◆ Potential for significant payouts due to liability in future;
- ◆ With Joint and Several may be responsible for 100% of payout for <1% of responsibility;
- ◆ Cost of 10¢ per capita based on most recent MPAC data as per the voter's list is 733 or \$73.30.
- ◆ Could send that amount or increase donation.
- ◆ Currently have \$500 in our donations/grants account.

Policy Impact: None.

Approved and Recommended by the Clerk

Melinda Reith,  
Municipal Clerk

*Melinda Reith*



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## FOR IMMEDIATE RELEASE

### **MINIMUM MAINTENANCE STANDARDS (MMS) LITIGATION FUND WELL ACCEPTED BY ONTARIO MUNICIPALITIES**

Mississauga, ON – Support by Ontario municipalities to OGRA's efforts to build up a legal defense fund has been extremely positive.

OGRA learned in April that an application had been filed with the Superior Court in an attempt to have the Minimum Maintenance Standards declared void. The MMS are critical for municipalities when mounting a defence against spurious law suits stemming from accidents on municipal roads.

In May, the OGRA Board of Directors directed that the Association request intervenor status and directed that a letter be sent to every Ontario municipality requesting a 10¢ per-capita contribution to cover legal expenses.. Over the last few weeks, numerous Municipalities have come forward and contributed to The MMS Litigation Fund and more are expected as the request works through the normal Council cycle.

OGRA's President, J. Paul Johnson, is pleased with the support. "We appreciate that municipal budgets are stretched and we are happy that municipalities are recognizing that a contribution now could save significant money in the future."

"The support Municipalities are providing to the fund will greatly assist OGRA in fighting this application on behalf of all our members," stated Executive Director Joe Tiernay. "Any funds not used will be refunded back to contributing municipalities on a pro-rated basis."

The mandate of the Ontario Good Roads Association is to represent the infrastructure interests of municipalities through advocacy, consultation, training and the delivery of identified services.

For more information, please visit the OGRA website at [www.ogra.org](http://www.ogra.org) or contact Joe Tiernay, Executive Director, at 905-795-2555 or [joe@ogra.org](mailto:joe@ogra.org).

## The Minimum Maintenance Standards (MMS) are being challenged!

By now, all or most of you would have received a copy of Ontario Good Roads Association (OGRA)'s Litigation Fund Request Letter.

Recently, an application was filed with the Superior Court of Justice containing an order declaring that the MMS for Municipal Highways *are void and of no force and effect*; and declaring that the MMS *be read as to be consistent with the Municipal Act*. This hearing is currently scheduled for November of 2010.

If this application is successful, the legal ramifications to Ontario municipalities are widespread. Not only would this impact future municipal road liability claims, it could also permit the reopening of all claims occurring since the implementation of the MMS in November of 2002.

OGRA, as indicated in their letter to all member municipalities, is seeking contributions for their litigation fund in order to be present for the purposes of opposing this application and in order to receive all relevant court documentation and notices.

Section 44 (1) of the Municipal Act requires a municipality to maintain its highways or bridges in a *state of repair that is reasonable in the circumstances including the character and location of the highway or bridge*. Prior to the MMS, the only available defence for a municipality was that *it did not know and could not reasonably have been expected to have known about the state of repair of the highway or bridge*; and that *it took reasonable steps to prevent the default from arising*.

Each case had to be assessed on an individual basis on its facts. If found to be at least 1% negligent, a municipality could find itself responsible for paying up to 100% of the damages awarded under the doctrine of *joint and several liability*.

Under s.44 (4) of the Municipal Act, the Minister of Transportation can enact regulations establishing minimum standards of repair for highways and bridges. This was accomplished in November of 2002 when the Minimum Maintenance Standards were created by Regulation 239/2 and further revised in February of 2010 by Regulation 23/10. During this time, the MMS have proven to be a valuable additional defence for Ontario municipalities involved in road liability claims. If a municipality could prove that the MMS were met, plaintiffs were often discouraged from proceeding with their claims.

Jardine Lloyd Thompson Canada Inc. supports OGRA's initiative.

For more information and details involved in this challenge, please refer to the OGRA website at [www.ogra.org](http://www.ogra.org).

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**Subject:** Minimum Maintenance Standards for Municipal Highways/Ontario Good Roads  
By now most of you will have been contacted by the OGRA advising that the Minimum Maintenance Standards (MMS) are being challenged. Why are they being challenged? A Judge in a 2008 case was of the opinion that the Ontario Legislature did not have the authority to empower the Minister to create the regulation. However it was an opinion only and he did not rule on this point as it was not before the Court. There has been an application to the Superior Court of Justice to declare the MMS null and void as a result of another court case. OGRA is filing notice with the Court opposing this challenge and are seeking support to help them fund this challenge. As your broker we strongly support their initiative and urge you to do so as well.

As you know MMS was created to help municipalities defend legal actions alleging non-repair of roads. Most Municipalities have made an effort and committed resources to meet the Minimum Standards. The Standards have proven to be a legitimate defence in non repair claims since their inception.

If the Regulations are set aside this will set the municipality back to the active road litigation era of pre 2002. The idea of every non repair claim being subject to the last precedent setting decision will be extremely costly to both the municipality and their insurer. A number of municipalities prior to the Regulations were not able to comply with the standard of care being forced on them by precedent law, due to economic reasons. The whole idea for MMS, was that if you were driving in the smallest Township or the largest City in Ontario you could expect to find the same or similar road conditions based on which

class of road you were driving on. This was not only a benefit to the municipality but to the general public as well knowing they could expect a standard of maintenance throughout the Province.

Should the MMS challenge be successful, it will be made null and void as of inception date, November 1, 2002. The opinion is that not only will all motor vehicles accident claims going forward be impacted, but also all open allegation of non repair of municipal roads between inception and the March 6, 2010 application.

You should also be receiving similar correspondence in the form of a newsletter/bulleting from the Program Manager, Jardine Lloyd Thompson Canada Inc.

W. L. (Bill) Riley, CIP, CCIB

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