TO: Chair and Members
   Public Works Committee

WARD(S) AFFECTED: CITY WIDE

COMMITTEE DATE: October 4, 2010

SUBJECT/REPORT NO:
Ontario Good Roads Association (OGRA) Request for Contribution to
MMS Litigation Defense Fund (PW10097) - (City Wide)

SUBMITTED BY:
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SIGNATURE:

RECOMMENDATION

That the request from the Ontario Good Roads Association (OGRA) for support funding
in the litigation defense of the Municipal Maintenance Standards be denied at this time
as being unaffordable.

EXECUTIVE SUMMARY

At its meeting of July 8th, 2010 Council referred Communication Item 5.1 to the Public
Works Committee, a request from the Board of Directors of the Ontario Good Roads
Association (OGRA) for financial support from municipalities to support a litigation fund
in defense of the Minimum Maintenance Standards (MMS) for a report to the Public
Works Committee.

The 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 Municipal
Maintenance Standards were established in 2001 through regulations under the
Municipal Act, providing guidance to municipalities in the delivery of various operating
and maintenance services to roads and related infrastructure.
OGRA contends that the MMS are critical for municipalities when mounting a defense against spurious law suits stemming from accidents on municipal roads. In May 2010, its Board of Directors directed that the Association request intervener status and that a letter be sent to every Ontario municipality requesting a 10¢ per-capita contribution to cover legal expenses. Hamilton’s contribution on this basis would be $50,000.

Staff has reviewed the request and while in agreement on the benefit of the MMS it does not support the request for support funding on the basis of affordability.

Alternatives for Consideration – See Page 4

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<th>FINANCIAL / STAFFING / LEGAL IMPLICATIONS</th>
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<td><strong>Financial:</strong> The recommendation implies no direct financial implications.</td>
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<td><strong>Staffing:</strong> The recommendation implies no staffing implications.</td>
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| **Legal:** Council has the authority to provide a grant to the Ontario Good Roads Association if it deems the Minimum Maintenance Standards (MMS) litigation to be in the City’s interest. The OGRA is a non-profit corporation. The City relies on the MMS in highway liability claims on municipal roads and sidewalks, and though it is rarely the only defense available it is often used as the primary defense where a claim relates to road maintenance. The municipal defense relies on the current wording of the Municipal Act, S. O. 2001, c. 25 and the regulations passed under the Act dealing with standards for inspection and maintenance of municipal road systems. If the application proceeding with the Superior Court results in a decision that the MMS are void it would affect every municipality’s use of the MMS defense as well as raise implications in previous and future litigation with potential financial implications arising from liability. The Province is expected to be a party to the MMS litigation along with the City of Vaughan (defendant), and presumably both be defending the MMS legislation. In the event the MMS are declared by the Court to be void, the Province is in the position to amend either the Municipal Act and/or regulations to address the alleged conflict, depending on its political will and legislative process. Highway related litigation against municipalities would be affected in the meantime and the municipal approach to highway inspection, maintenance and repair are designed around the MMS, so operations would be affected or thrown into uncertainty.

Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.

Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
HISTORICAL BACKGROUND

Council received a letter dated June 16, 2010 from the OGRA requesting financial support to oppose a recent application to have the minimum maintenance standards declared null and void. The correspondence was received as Communications Item 5.1 at its meeting of July 8, 2010 and referred to the Public Works Committee.

The Municipal Maintenance Standards were established in 2001 through regulations under the Municipal Act, providing guidance to municipalities in the delivery of various operating and maintenance services to roads and related infrastructure. Subsequent Staff reports (PW04016 and PW04016 (a) were provided identifying program compliance and related issues. In 2007 the Ministry engaged the OGRA to lead a Task Force in a mandated review of the MMS and their recommendations formed a basis for the amendments of February 22, 2010. Staff has subsequently reviewed its operating programs in relation to the amendments.

In years since its creation, the MMS has been increasingly relied upon in litigation matters related to vehicle and roadway accidents, in providing a standard basis for the determination of due diligence related to the operation and maintenance of municipal roadways and related infrastructure. The value of the MMS in this regard is proving itself, and thus the recent application filed with the Superior Court attempting to have the Minimum Maintenance Standards declared void is a matter of concern to the OGRA. The position of the Ministry in this matter is not known.

POLICY IMPLICATIONS

There are no policy implications related to the recommendations.

RELEVANT CONSULTATION

This report has been prepared in consultation with staff from Legal Services and Risk Management considering the various and significant interests in the MMS by Public Works.

ANALYSIS / RATIONALE FOR RECOMMENDATION

While the emerging value of the MMS to municipalities in the delivery of its programs and in its defense against spurious claims is recognized, this must be balanced with local considerations. As such, staff are recommending that funding not be provided and that limited resources be directed to achieving program compliance with the MMS as a priority.
**ALTERNATIVES FOR CONSIDERATION**

As an alternative to the recommendation, Council may wish to comply with the request for support funding or provide a lesser amount as it may deem appropriate (i.e. at a lesser contribution amount than the $50,000 specified).

As a further alternative, Council may consider revisiting the issue in the event the ORGA is granted intervener status. This approach may be too late or insufficient if in the meantime the ORGA is not able to raise sufficient funding to pursue intervener status or its litigation.

**CORPORATE STRATEGIC PLAN**


**Intergovernmental Relationships**
- Maintain effective relationships with other public agencies

**APPENDICES / SCHEDULES**

None