Steadman v. Corporation of the County of Lambton

On January 16, 2015, the Ontario Superior Court of Justice released its decision in the case of Steadman v. Corporation of the County of Lambton. The Court ruled in favour of the Steadmans and awarded a total of $107,352 in damages for the depreciated value of their property and crop losses from 1998 – 2013. The Court found that the damages stemmed from the County's use of road salt along a road that borders the Steadman's farm. The County was found liable in nuisance.

Intact Public Entities had this matter reviewed by two separate legal firms in order to assess if there was the potential for an appeal of the trial verdict that found the County liable in nuisance. We were advised by both firms that the verdict as outlined in Justice Carey's Reasons is not appealable. Therefore, Intact Public Entities will not appeal this decision.

With respect to this decision, we feel it is important to clarify the following two points.

1. This case is not legal precedent

   Justice Carey states in his decision [28] "The leading case in Ontario considering whether the application of salt upon a farmer's property constitutes a nuisance remains Schenk v. The Queen." The decision in favour of Schenk was upheld on appeal to the Ontario Court of Appeal and the Supreme Court of Canada.

   Justice Carey also references Rokeby v. The Queen. Another prior similar case (though not referenced) is Tock v. St. John's. The Schenk decision reaffirmed the decision in Tock.

2. This case was decided in nuisance and not negligence.

   To make a defence against nuisance, the Municipality would have to argue the various defences arising from actions completed with "statutory authority" or "legislative authority". The prior similar cases referenced (Tock v. St. Johns and Schenk v. The Queen) have very narrowly defined and limited the defences available. The road maintenance activity that we rely upon, as outlined in the MMS, does not specify road salt as the only means of maintenance to reach compliance.

   The Tock v. St. Johns decision as reaffirmed by Schenk v. The Queen concluded that the cost of a particular activity is not relevant consideration to such decision making.

From a risk management perspective, we recommend that municipalities seek to review and where possible remedy:

1. Roadside drainage – can it adequately handle the potential for salt run-off during a spring melt.
2. Culverts – adequacy of locations; performing regular inspections and following through on required maintenance.
3. Road salt concentrations – review your road salt concentrations to ensure you are conforming with recommended rates as set out by the Ontario Ministry of Transportation and not over-salting your roads.
4. Use of snow fences – consider constructing natural snow fences; they can lessen the impact on the environment by requiring less salt, fewer truck trips and less fuel.

The best way to prevent these types of claims from continuing is to amend the *Municipal Act* to provide municipalities protection from nuisance claims in connection with the escape of road salt or de-icing materials from a highway or bridge. We recommend that all Ontario municipalities support OGRA as they move to petition the Ontario Minister of Municipal Affairs to amend the *Municipal Act* to provide municipalities protection from these nuisance claims.