



# PUBLICATIONS

9401

**ANOTHER \$5 MILLION JUDGMENT!  
CAN WE STOP THIS?**

**Reprinted from January 1994  
COWAN NEWS**

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***A plaintiff's lawyer has only to prove 1% liability against a deep-pocket defendant to recover from that defendant 100% of the plaintiff's damages.***

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In March of 1993 our lead article was about road liability and warning signs. The Courts have just handed down another significant judgment against one of our Municipal Clients.

In this particular case the Municipality was found 20% liable for a 1988 accident in which a truck went through an intersection controlled by a stop sign and hit a vehicle on the through road.

The injuries to the occupants in the other vehicle were significant, resulting in a large quantum of damages.

The trial Judge found 80% liability against the owner and operator of the truck that went through the stop

sign. In finding 20% liability against the Municipality, the Judge concluded that the stop sign was in poor repair, that it was not easily visible and that it should have been replaced prior to the accident.

## **WHAT ARE THE IMPLICATIONS OF THIS JUDGMENT?**

The total judgment was \$5,250,000 for the Plaintiff. The Municipality's share of this loss at 20% would be just over \$1 million, with the truck owner being responsible for approximately \$4 million in damages. Unfortunately, the owner of the vehicle did not carry enough insurance nor does he have sufficient assets to satisfy the \$4 million judgment against him.

Under the Negligence Act the law states that, where damages have been caused by two or more persons and where two or more persons

are found at fault or negligent, they are jointly and severally liable to the person suffering loss or damage.

The implications in this case are that the Municipality must contribute \$4 million towards the judgment when their share based upon a finding of 20% liability is only \$1 million.

This is a very recent decision and is being studied carefully in terms of the possibility of an appeal.

## **WHAT SHOULD MUNICIPALITIES DO ABOUT THESE SITUATIONS? THERE ARE TWO ISSUES!**

Notwithstanding the potential appeal of this particular case, it is very clear that Municipalities have a responsibility to

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keep roads in safe repair and that they will be held accountable for any breach of that responsibility.


Our March 1993 Newsletter article explained that there are standards that can be followed in this respect and they are described in the Manual of Uniform Traffic Control Devices.

This document has some very specific recommendations and guidance in respect of the use of signs and related maintenance requirements, including reflectorization, illumination, etc. It is essential that Municipal Road Departments understand the importance of these issues and that regular systems of inspection and maintenance be in place.

Municipalities may also wish to consider lobbying the Provincial Government for some assistance, in terms of legislation, that would restrict Municipalities from being held responsible for someone else's negligence. The appropriate forum for this lobby could be the Ontario Good Roads Association.

It is very disturbing and even distasteful to think that a plaintiff's lawyer only has to prove 1% liability against a defendant with a deep-pocket in order to open the door for that defendant to pay up to 100% of the plaintiff's damages. It is perhaps even more ludicrous to have our

lawmakers write legislation that, on one hand, makes it legal for a driver to carry as little as \$200,000 in automobile liability insurance, while on the other hand, legalizes picking the pocket of a well-insured Municipal Corporation simply because of someone else's impecuniosity.

Although amendments to the Insurance Act as created by Bill 164 (new automobile legislation effective January 1994) may provide some assistance in respect of automobile accidents, the exposure is still there in many other areas affecting public entities. 

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