



UPDATE

May 18, 2023

Rural Ontario Municipal Association Intervenes in Drainage Dispute with CN Rail

Association applies for intervener status in case that pits large railways against rural communities

The Rural Ontario Municipal Association (ROMA) is seeking legal intervener status in a dispute between CN Rail and the City of Sarnia over the cost of critical drainage work on CN property.

Proper drainage helps prevent flooding and property damage. It protects the environment, the economy, and the agricultural sector. Under Ontario's *Drainage Act*, landowners share the cost for work to municipal drains located on the owner's property. It is one of Canada's oldest laws, dating back to 1859.

Despite complying with the legislation for more than a century, railways have started telling municipalities that they will not cover the costs. CN is claiming that because railways are federally regulated, they are not bound by provincial and municipal government laws, bylaws, and regulations. The railway has applied to the Canadian Transportation Agency to settle the matter with Sarnia.

ROMA has applied for intervener status because of the negative impact of these actions on rural communities throughout Ontario. According to research gathered by ROMA, at least 30 municipalities - mostly ROMA members - indicated they experienced problems with *Drainage Act* compliance by CN.

"Railways are essentially asking Ontario's property taxpayers to foot the bill for project costs that should be covered by large, wealthy corporations," said ROMA Chair Robin Jones. "Railways are harming the very communities that produce the goods they move across the province."

CN is valued at more than \$80 billion. Yet for many rural municipalities, covering the railway's costs would mean considerable tax increases for local

property taxpayers. For example, in some rural municipalities a 1% property tax increase only generates about \$10,000.

Based on ROMA's research, unpaid maintenance costs from CN and other railways are nearing \$500,000 and the tab for unpaid capital construction projects is crossing \$1 million. About \$1.7 million in critical capital construction projects have been delayed due to lack of cooperation by the railways.

This is having a significant impact on small rural communities, and their ability to provide other essential services.

Rail lines run through communities across Ontario, including agricultural areas. Without proper and effective drainage, it would be difficult for railways to operate.

"Federally regulated industries must be held to the same standards as all property owners, including following local laws, bylaws and regulations. CN is creating a false conflict between municipal and provincial laws, and federal regulations," Jones added.

ROMA believes that CTA is not the proper authority to resolve this dispute. ROMA's view is that the matter should be resolved, as with any landowner, through the appeal processes set out in the *Drainage Act*. If CN wants to make a constitutional argument that it is exempt from the Act, that debate should be heard by the Ontario Superior Court.

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