

Gov't sues Via, CN for \$2M over highway damage

BY AUSTIN M. DAVIS, LEADER-POST FEBRUARY 11, 2015

The provincial government has launched a \$2-million lawsuit against Via Rail and CN Railway alleging the companies' negligence was responsible for damage to three Saskatchewan highways.

The statement of claim, filed at Regina Court of Queen's Bench on Feb. 5, is connected to the cleanup of a 2013 derailment near the town of Togo, about 80 kilometres northeast of Yorkton, near the Manitoba border.

A statement of defence had not been filed as of Tuesday. Both companies have an office in the province and if they were served with the statement of claim in Saskatchewan, CN and Via have until Feb. 26 to file.

The provincial government, CN and Via declined to comment Tuesday, as the matter is currently before the court.

On April 28, 2013, a Via passenger train, heading to Churchill from Winnipeg, derailed near Togo on tracks owned by CN Rail. None of the seven passengers or four crew members were injured when the train became suspended after the ground underneath the tracks was washed out and gave way. Two engines and one car were derailed.

In its statement of claim, the government accuses both Via and CN of damaging highways 5, 357 and 369 while cleaning up the derailment by causing and allowing their vehicles, or their contractors' vehicles, to be driven "at weights that exceeded the maximum weight limits permitted by law.

"The defendants breached their duty of care and injured the plaintiff by ignoring or failing to determine the: Maximum weight limits for the public highways; the weight of the vehicles and by failing to prevent overweight vehicles from travelling on the public highways," says the statement.

A statement of claim contains allegations not yet proven in court.

The government's claim also alleges that the rail companies and their employees and agents trespassed on provincial land by "unlawfully entering upon it with overweight vehicles and damaging it."

It claims the damage to the highways caused by the defendants exceeded \$2 million and that the government requested both companies to repay the cost of repairs, which they rejected. The government is seeking damages in excess of \$2 million, plus interest and other costs.

In the claim, the government relies upon two sections of The Highways and Transportation Act of 1997, which deal with responsibilities of owners and operators of vehicles that alter or damage public improvements or exceed the maximum allowed weight.

The claim also deals with vicarious liability for employees and liability for agents. Within these sections, the government suggests the two companies should be held accountable for the actions of the employees who allegedly committed the breach of statute, negligence and trespass. The government's claim makes the same accusation about agents who "were at all material times acting at the request of the defendants."