

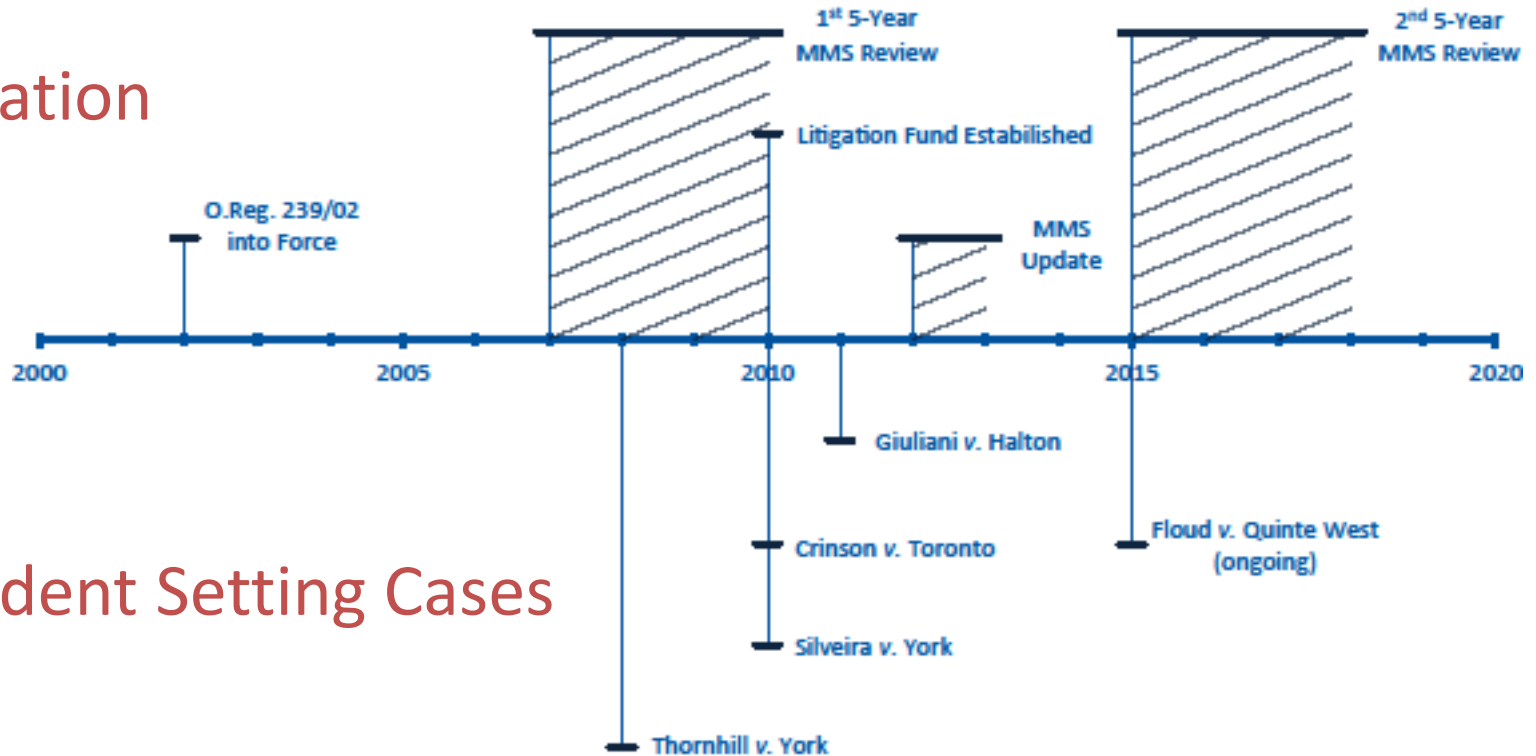
# Minimum Maintenance Standards

2018 Amendments



# MMS Timeline

Regulation



Precedent Setting Cases



# MMS 2<sup>nd</sup> 5-Year Review

## Committee Makeup

Organizations:



Legal Council:



# MMS 2<sup>nd</sup> 5-Year Review

Municipalities:



# MMS 2<sup>nd</sup> 5-Year Review

Insurance Providers:



# The word Minimum

- The word minimum has been removed from all sections of the regulation with the exception of the title and section 2(1).
- The regulation now refers to **the standard**



# Section 2.1

- The purpose of this regulation is to clarify the scope of the statutory defence available to a municipality under clause 44 (3) (c) of the Act by establishing maintenance standards which are non-prescriptive as to the methods or materials to be used in complying with the standards but instead describe a desired outcome.



# Classification Table revisions

Column 1 Average Daily Traffic (number of motor vehicles)	Column 2 91 - 100 km/h speed limit	Column 3 81 - 90 km/h speed limit	Column 4 71 - 80 km/h speed limit	Column 5 61 - 70 km/h speed limit	Column 6 51 - 60 km/h speed limit	Column 7 41 - 50 km/h speed limit	Column 8 1 - 40 km/h speed limit
53,000 or more	1	1	1	1	1	1	1
23,000 - 52,999	1	1	1	2	2	2	2
15,000 - 22,999	1	1	2	2	2	3	3
12,000 - 14,999	1	1	2	2	2	3	3
10,000 - 11,999	1	1	2	2	3	3	3
8,000 - 9,999	1	1	2	3	3	3	3
6,000 - 7,999	1	2	2	3	3	4	4
5,000 - 5,999	1	2	2	3	3	4	4
4,000 - 4,999	1	2	3	3	3	4	4
3,000 - 3,999	1	2	3	3	3	4	4
2,000 - 2,999	1	2	3	3	4	5	5
1,000 - 1,999	1	3	3	3	4	5	5
500 - 999	1	3	4	4	4	5	5
200 - 499	1	3	4	4	5	5	6
50 - 199	1	3	4	5	5	6	6
0 - 49	1	3	6	6	6	6	6

Classifications that have been changed

New Classifications





# Classification Table revisions

- AADT – Annual Average Daily Traffic has been removed and replaced with:

## ADT – Average Daily Traffic

- A roadway's average daily traffic is the volume of vehicles counted over a given time period -- greater than one day but less than one year -- divided by the number of days in that time period





# Let's look at what's for Winter Maintenance



# Before we look at the changes

We must remember that **Section 3.1 Weather Monitoring** is the lynchpin for winter maintenance, which reads:

- (1) From October 1 to April 30, the standard is to monitor the weather, both current and forecast to occur in the next 24 hours, once every shift or three times per calendar day, whichever is more frequent, at intervals determined by the municipality.
- (2) From May 1 to September 30, the standard is to monitor the weather, both current and forecast to occur in the next 24 hours, once per calendar day



# Ice Formation on Roadways

## Section 5(1) 3 revised

- If the municipality determines, as a result of its activities under paragraph 1 or 2, that there is a substantial probability of ice forming on a roadway, treat the roadway, if practicable, to prevent ice formation within the time set out in Table 1 to this section, starting from the time that the municipality determines is the appropriate time to deploy resources for that purpose.

Table 1 – Ice Formation Prevention

Class of Highway	Time
1	6 hours
2	8 hours
3	16 hours
4	24 hours
5	24 hours

# Icy Roadways

## Section 5(3) revised

- Subject to section 5.1, the standard for treating icy roadways is to treat the icy roadway within the time set out in Table 2 to this section, and an icy roadway is deemed to be in a state of repair until the applicable time set out in Table 2 to this section expires after the municipality becomes aware of the fact that a roadway is icy.

Table 2 – Treatment of Icy Roadways

Class of Highway	Time
1	3 hours
2	4 hours
3	8 hours
4	12 hours
5	16 hours

# Weather Hazard & Significant Weather Event



## Definitions Section 1(1)

- “significant weather event” means an approaching or occurring weather hazard with the potential to pose a significant danger to users of the highways within a municipality;
- “weather hazard” means the weather hazards determined by Environment Canada as meeting the criteria for the issuance of an alert under its Public Weather Alerting Program.

# Significant Weather Event

- A municipality may declare a significant weather event in accordance with this Regulation at any time in its sole discretion it elects to do so.



- The amendment includes Significant Weather Event sections for roadways, bicycle lanes and sidewalks

# Declaration of a Significant Weather Event



## Section 16.9

- A municipality declaring the beginning of a significant weather event or declaring the end of a significant weather event under this Regulation shall do so in one or more of the following ways:
  1. By posting a notice on the municipality's website.
  2. By making an announcement on a social media platform, such as Facebook or Twitter.
  3. By sending a press release or similar communication to internet, newspaper, radio or television media.
  4. By notification through the municipality's police service.
  5. By any other notification method required in a by-law of the municipality



# What do I do once declared

- **Sections 4.3, 5.1, 16.4 and 16.6 have similar wording to 4.1 copied here**
- **4.1(1)** If a municipality declares a significant weather event relating to snow accumulation, the standard for addressing snow accumulation on roadways until the declaration of the end of the significant weather event is,
  - a) to monitor the weather in accordance with section 3.1;  
and
  - b) if deemed practicable by the municipality, to deploy resources to address snow accumulation on roadways, starting from the time that the municipality deems appropriate to do so.



# At the end of a Significant Weather Event

- (3) Following the end of the weather hazard in respect of which a significant weather event was declared by a municipality under subsection (1), the municipality shall,
  - (a) declare the end of the significant weather event when the municipality determines it is appropriate to do so; and
  - (b) address snow accumulation on roadways, bike lanes and sidewalks

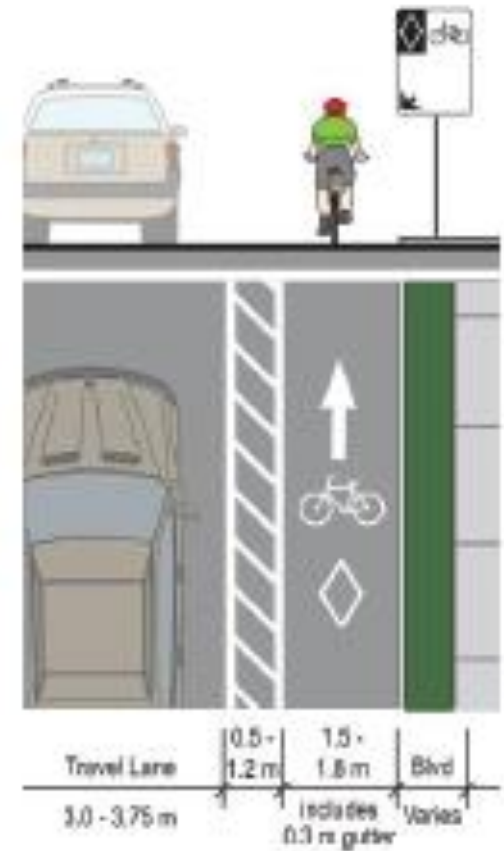


# Bicycle Lanes



## Definition

- “bicycle lane” means,
  - a) a portion of a roadway that has been designated by pavement markings or signage for the preferential or exclusive use of cyclists, or
  - b) a portion of a roadway that has been designated for the exclusive use of cyclists by signage and a physical or marked buffer;



# Snow Accumulation on Bicycle lanes

4.2 (1) (a) after becoming aware of the fact that the snow accumulation on a bicycle lane is greater than the depth set out in the Table to this section, to deploy resources as soon as practicable to address the snow accumulation

## Roadway

Class of Highway	Depth	Time
1	2.5 cm	4 hours
2	5 cm	6 hours
3	8 cm	12 hours
4	8 cm	16 hours
5	10 cm	24 hours



## Bicycle Lanes

Class of Highway	Depth	Time
1	2.5 cm	8 hours
2	5 cm	12 hours
3	8 cm	24 hours
4	8 cm	24 hours
5	10 cm	24 hours

# Ice Formation on Bicycle Lanes



## Section 5(5)

- For greater certainty, this section applies in respect of ice formation on bicycle lanes on a roadway, but does not apply to other types of bicycle facilities.

# Sidewalk Winter Maintenance



## Definition

“sidewalk” means the part of the highway specifically set aside or commonly understood to be for pedestrian use, typically consisting of a paved surface but does not include crosswalks, medians, boulevards, shoulders or any part of the sidewalk where cleared snow has been deposited;

# Snow accumulation on sidewalks



## Section 16.3

- (1) Subject to section 16.4, the standard for addressing snow accumulation on a sidewalk after the snow accumulation has ended is,
  - a) to reduce the snow to a depth less than or equal to 8 centimetres within 48 hours; and
  - b) to provide a minimum sidewalk width of 1 metre.

# Ice formation of sidewalks and icy sidewalks



## Section 16.5

- (1) Subject to section 16.6, the standard for the prevention of ice formation on sidewalks is to,
  - a) monitor the weather in accordance with section 3.1 in the 24-hour period preceding an alleged formation of ice on a sidewalk; and
  - b) treat the sidewalk if practicable to prevent ice formation or improve traction within 48 hours if the municipality determines that there is a substantial probability of ice forming on a sidewalk, starting from the time that the municipality determines is the appropriate time to deploy resources for that purpose.



# Winter Sidewalk Patrol



## Section 16.7

- (1) If it is determined by the municipality that the weather monitoring referred to in section 3.1 indicates that there is a substantial probability of snow accumulation on sidewalks in excess of 8 cm, ice formation on sidewalks or icy sidewalks, the standard for patrolling sidewalks is to patrol sidewalks that the municipality selects as representative of its sidewalks at intervals deemed necessary by the municipality.

# MMS or Section 44(9)?

***When would the defence of a claim use:***

- ***Municipal Act*** Section 44(9) Except in case of gross negligence, a municipality is not liable for a personal injury caused by snow or ice on a sidewalk.

***Versus the use of:***

- the new ***MMS*** Sections for sidewalk winter maintenance



# Questions





# Potholes



## clauses added to Section 6

- (1.1) For the purposes of this section, the surface area and depth of a pothole may be determined in accordance with subsections (1.2) and (1.3), as applicable, by a municipal employee, agent or contractor whose duties or responsibilities include one or more of the following:
  1. Patrolling highways.
  2. Performing highway maintenance activities.
  3. Supervising staff who perform activities described in paragraph 1 or 2.
- (1.2) The depth and surface area of a pothole may be determined by,
  - (a) performing an actual measurement; or
  - (b) performing a visual estimate.
- (1.3) For the purposes of this section, the surface area of a pothole does not include any area that is merely depressed and not yet broken fully through the surface of the roadway.

# Cracks



**The depth and width of a crack taken out of the table and added to the clauses**

- **8. (1)** If a crack on the paved surface of a roadway is greater than **5 cm wide and 5 cm deep** for a continuous distance of three metres or more, the standard is to repair the crack within the time set out in the Table to this section after becoming aware of the fact.
- **(2)** A crack is deemed to be in a state of repair if its width or depth is less than or equal to **5 cm**.

# Luminaires



## wording – same side of highway

- 10(2) For conventional illumination, if three or more consecutive luminaires on the **same side of a highway** are not functioning, the standard is to repair the luminaires within the time set out in the Table to this section after becoming aware of the fact
- 10(4) Despite subsection (2), for high mast illumination, if all of the luminaires on consecutive poles on the **same side of a highway** are not functioning, the standard is to deploy resources as soon as practicable after becoming aware of the fact to repair the luminaires

# Sidewalk Surface Discontinuities

## Definition Revised – Section 16.1(5)

- “surface discontinuity” means a vertical discontinuity creating a step formation at any joint or crack in the surface of the sidewalk or any vertical height difference between a utility appurtenance found on or within the sidewalk and the surface of the sidewalk.





# Encroachments, area adjacent to sidewalk



## Definition – Section 1(1)

- “encroachment” means anything that is placed, installed, constructed or planted within the highway that was not placed, installed, constructed or planted by the municipality;

# What is the area adjacent to the sidewalk?

## Section 16.2(3)

- For greater certainty, the area adjacent to a sidewalk begins at the outer edges of a sidewalk and ends at the lesser of the limit of the highway, the back edge of a curb if there is a curb and a maximum of 45 cm



# When do I inspect?

## Section 16.2

- (1) The standard for the frequency of inspecting an area adjacent to a sidewalk to check for encroachments is once per calendar year, with each inspection taking place not more than 16 months from the previous inspection.
- (2) The area adjacent to a sidewalk that has been inspected in accordance with subsection (1) is deemed to be in a state of repair in respect of any encroachment present



# What is a highly unusual encroachment?

- (4) The area adjacent to a sidewalk is deemed to be in a state of repair in respect of any encroachment present unless the encroachment is determined by a municipality to be highly unusual given its character and location or to constitute a significant hazard to pedestrians.
- (5) If a municipality determines that an encroachment is highly unusual given its character and location or constitutes a significant hazard to pedestrians, the standard is to treat the encroachment within 28 days after making such a determination, and the encroachment is deemed in a state of repair for 28 days from the time of the determination by the municipality.



# Closure of a Highway



## Section 16.8

- (1) When a municipality closes a highway or part of a highway pursuant to its powers under the Act, the highway is deemed to be in a state of repair in respect of all conditions described in this Regulation from the time of the closure until the highway is re-opened by the municipality.



# Questions



*Thank  
you*



**Charles Painter**

**pmlaw** | Paterson MacDougall LLP

**James Smith**



**Brian Anderson**



**pmlaw** | Paterson MacDougall LLP

