



by: Charles Painter

## **Amendments to Minimum Maintenance Standards Effective as of February 18, 2010**

The much awaited amendments to the Minimum Maintenance Standards (“MMS”) were signed by the Minister of Transportation, filed with the Registrar of Regulations on February 18, 2010, and came into force on that date.

The MMS are standards set pursuant to regulation under the *Municipal Act, 2001*, and establish the minimum standards expected of municipalities in Ontario for certain aspects of the maintenance of the roads, bridges and sidewalks under their jurisdiction.

Section 44(3)(c) of the *Municipal Act, 2001* provides a defence to a municipality that is sued for allegedly not maintaining its highways, bridges or sidewalks in a “reasonable state of repair”, if it met the applicable standard under the MMS.<sup>1</sup>

The recent changes to the MMS are significant, and address issues that have been raised by the Courts in the years since the MMS were first introduced, in such cases as *Thornhill v. Shadid*.

Overall, the changes to the MMS appear to reflect an intent to strengthen the regulation, and to increase the protections afforded to municipalities by the MMS (should they be found to have complied with them).

The highlights of the changes to the MMS are:

### **Deemed Knowledge**

- A municipality will be deemed to be aware of a fact if, in the absence of actual knowledge of it, circumstances are such that the municipality ought reasonably to be aware of the fact.

### **Sidewalks**

- The minimum standard for inspecting sidewalks for “surface discontinuities” (i.e. trip ledges) is once per year.
- Surface discontinuities in excess of 2 centimetres are to be treated within 14 days of the municipality becoming aware of the fact.

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<sup>1</sup> It is important to recall that for a defence to succeed under this subsection, the MMS must apply to both the highway in question and to the alleged defect.

- Reasonable measures for “treating” a surface discontinuity include (i) making permanent or temporary repairs, (ii) alerting users’ attention to the discontinuity or (iii) preventing access to the area.

### **Patrolling of Highways**

- The section formerly entitled “Routine Patrolling” is now just titled “Patrolling”, and as before, specifies in a table how often a certain class of road must be patrolled.
- During the season in which a municipality performs its winter highway maintenance, in addition to the patrolling frequency set out in the table, municipalities are to patrol “*highways that the municipality selects as representative of its highways*”, as necessary, to check for snow accumulation and/or icy roadways.

This new “winter patrol” standard is one of the most significant changes to the MMS. It appears to be aimed directly at remedying the perceived “gap” in the MMS discussed in the *Thornhill v. Shadid* case.

### **Snow Accumulation**

- The language of the standards has changed with the removal of the words “*while the snow continues to accumulate*”.
- The definition of “Snow accumulation” has been broadened to include “slush”, in addition to new-fallen snow and wind-blown snow. (Under the previous MMS, “slush” was not included in the definition of “snow accumulation”)
- The requirement for Class 1, 2, and 3 highways, that snow accumulation must be cleared from the roadway to within a distance of 0.6 metres inside the outer edges of the roadway, has been repealed. The new requirement for Class 1, 2, and 3 highways is to provide a minimum lane width of the lesser of 3 metres for each lane, or the actual lane width. In the case of Class 4 or 5 highways with two lanes, the requirement is to provide a total width of at least 5 metres.

### **Icy Roadways**

- This section of the MMS has been simplified, and s.5(1) now states only that “*The minimum standard for treating icy roadways after becoming aware of the fact that a roadway is icy is to treat the icy roadway within the time set out in the Table to this section*”.

The response times in the Table have not changed.

The requirement “*to deploy resources to treat an icy roadway as soon as practicable after becoming aware that the roadway is icy*” has been deleted.

## **AA DT – Average Annual Daily Traffic Calculation**

- Under the MMS, highways are classified by reference to the speed limit and the AADT (average annual daily traffic). The two ways under the MMS in which the AADT for a highway may be determined by a municipality has changed. The wording has been simplified to state:

“...the average annual daily traffic on a highway or part of a highway under municipal jurisdiction shall be determined,

- (a) by counting and averaging the daily two-way traffic on the highway or part of the highway; or
- (b) by estimating the average daily two-way traffic on the highway or part of the highway.”

The change in language in the foregoing sections appears to create more flexibility in how the AADT for a highway is determined.

## **Luminaires**

- The minimum standard for inspection of all luminaires to see if they are functioning is once per year.

## **Signs**

- All references in the MMS to the Manual of Uniform Traffic Control Devices (MUTCD) have been replaced with references to the Ontario Traffic Manual.
- Section 11(2) of the MMS sets out a specific list of signs.<sup>2</sup> There is a new requirement that these specific signs, and all regulatory and warning signs as defined under the Ontario Traffic Manual, must now be inspected annually to ensure they meet the “retro-reflectivity” requirements of the Ontario Traffic Manual.
- For the signs listed in s.11(2) of the MMS, resources must be deployed to repair or replace the sign as soon as practicable after becoming aware that the sign is “obscured”, in addition to “illegible, improperly oriented or missing”. The word “obscured” has been added to s.11(2).
- For all regulatory and warning signs as defined under the Ontario Traffic Manual, (other than the ones listed in s.11(2)), if the sign is “obscured”, in addition to

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<sup>2</sup> These “special” signs in s.11(2) appear to be considered the most important regulatory or warning signs, and thus require quicker attention than others. The signs in s.11(2) include: Checkerboard, Curve sign with advisory speed tab, Do not enter, Load Restricted Bridge, Low Bridge, Low Bridge Ahead, One Way, School Zone Speed Limit, Stop, Stop Ahead, Stop Ahead – New, Traffic Signal Ahead – New, Two-Way Traffic Ahead, Wrong Way, Yield, Yield Ahead, and Yield Ahead – New.

“illegible, improperly oriented or missing”, the minimum standard is to repair or replace the sign within the time set forth in the Table, after becoming aware of the fact. The word “obscured” has been added to s.12(2).