

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR THE PROVINCE OF ONTARIO)**

BETWEEN:

**THE REGIONAL MUNICIPALITY OF HALTON,
and THE TOWN OF MILTON**

**Applicants
(Appellants/
Respondents by Cross-Appeal/Defendant)**

- and -

PATRIZIA GIULIANI, TINA GIULIANI

**Respondents
(Respondents/Plaintiffs)**

**MEMORANDUM OF ARGUMENT OF THE APPLICANTS,
THE REGIONAL MUNICIPALITY OF HALTON, and THE TOWN OF MILTON**

**(Pursuant to s. 40 of the *Supreme Court Act*, R.S.C. 1985, c. S-26 as am.
1990, c. 8 and Rule 25 of the Rules of the Supreme Court of Canada)**

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PART I – STATEMENT OF FACTS

Overview

1. This case raises serious public policy implications and issues about the proper roles of legislators and courts in Canada.¹ It also has a serious impact on the public purse of all levels of municipal government in Ontario.
2. Between 1996 and 2002, the Ontario Legislature and government responded to the concerns of municipalities about financial pressures stemming from court decisions imposing liability on road authorities. The financial pressures included costs of fulfilling the statutory duty to maintain municipal roads and bridges in a state of reasonable repair and of paying liability judgments (either directly out of the public purse where the road authority is self-insured or indirectly through insurance premiums). Accordingly, the Legislature enacted amendments to the *Municipal Act's* provisions dealing with the duty to maintain highways to create a new defence absolving municipalities from liability if they meet specific “minimum maintenance standards” to be promulgated by regulation.
3. When the regulation (the “*Minimum Maintenance Standards*”, or “MMS”²) was enacted, it set out, *inter alia*, the three standards at issue in this case: (i) a “routine patrolling standard” that specifies the frequency of inspection for the conditions set out elsewhere in the MMS; (ii) a “snow accumulation standard” that specifies the depths to which municipalities should clear snow “after becoming aware” that snow accumulation has reached or exceeded those depths; and, (iii) an “icy road standard” that specifies minimum times within which municipalities should treat roadways “after becoming aware” of ice. These three standards vary in their specificity according to “classes” of road – the greater the speed limit and traffic volume, the more stringent the standard. Thus, for municipalities to meet the standard, Class 1 roads should be cleared of snow to a lower depth than Class 2 roads in a shorter time and similarly, they should be treated for ice in a shorter time after the municipality becomes aware that they are icy.

¹ Application for Leave to Appeal (“A.R.”), tab 6, pp. 68-83, Court of Appeal Reasons of O’Connor A.C.J.O., LaForme J.A. and Cunningham A.C.J. (*ad hoc*) dated December 21, 2011 (“Appeal Reasons”); A.R., tab 4, pp. 9-64, Reasons for Judgment of Murray J. dated August 31, 2010 (“Trial Reasons”); A.R., tab 3, pp. 6-8, Judgment of Murray J. dated August 31, 2010

² O. Reg. 239/02

4. The clear intent of this new regime was to limit the obligation of municipalities to monitor for snow accumulation and ice to the specifications in the routine patrolling standard and to permit them to respond only “after becoming aware” that snow accumulation has reached the specified depth or that the roadway is icy. The objective was to allow municipalities to rely on the standards, if they so choose, to provide minimum levels of service in order to control costs and avoid civil liability.

5. By adopting a hyper-literal approach to each separate standard that ignores the legislative history of the MMS and the statutory scheme, the courts below turned the MMS on its head. Contrary to the ‘modern rule’ of statutory interpretation, they narrowly construed the key statutory and regulatory provisions without considering the regime’s overall intent. They held that the snow accumulation standard only applies once the snow has reached the specified depth and that a common law general reasonableness standard applies both to the detection of, and response to, snow accumulation before the specified depth is reached. They also held that the application of the icy roadway standard is only triggered by the municipality becoming aware of the ice, with the result that until that awareness occurs, the court-imposed common law general reasonableness standard applies both to the monitoring for ice and treatment of the road for ice.

6. The judgments and reasoning of the courts below sterilize the legislative intent of the MMS. In the wake of this case, municipalities can no longer rely on the MMS to allocate their road maintenance resources as they see fit until conditions have reached the levels of deterioration set out in the MMS. They must now gauge their response to conditions before the legislated levels of deterioration are reached according to their expectations of what courts might consider reasonable. This reintroduces the unpredictability that the MMS were intended to address and results in an incoherent set of standards that are part legislated, and part “common law”. The effect will be greater pressure on municipal purses and increased litigation – precisely the opposite of what the Legislature intended. Moreover, as explained at paragraph 42 below, turning the concept of a minimum standard on its head also skews the incentive of municipalities to deploy their resources to minimize accidents on busier roads with higher speed limits.

7. This case brings into serious question the ability of provincial governments to effectively limit municipal civil liability. Instead of applying the ‘modern rule’ of statutory

interpretation, the courts below, albeit without explicitly saying so, applied 'strict construction' to uphold what they saw (erroneously) as a common law right of action. In an era of increasing fiscal pressure on governments at all levels, such an attitude does not bode well for either the public purse or the relationship between legislators and courts.

The Basic Facts

8. On April 1, 2003 at approximately 7 a.m., the respondent lost control of her vehicle on Derry Road in Milton, Ontario, which is a two-lane, two-way road with a speed limit of 80 km/h. The road was covered with snow and ice. She struck an oncoming car and was seriously hurt. The trial judge found that the respondent and the applicant municipality³ were equally at fault. The Court of Appeal dismissed the applicant's appeal from the finding that it was in default of its duty to keep the highway in a "state of repair that was reasonable in the circumstances" pursuant to s. 44(1) of the *Municipal Act, 2001*⁴ ("the Act") and the respondent's cross-appeal against the finding of contributory negligence.

9. The trial judge made the following unchallenged findings of fact:

- a. The weather forecasts from the afternoon of March 31 predicted snow in the early morning hours of April 1. The crew supervisor did not monitor the forecasts after he left work at 3:30 p.m. on March 31, as he was expected to do pursuant to the applicant's internal "Performance Standards".
- b. Snow likely began to fall at approximately 4:00 a.m. and roughly two centimeters of snow fell prior to the accident.
- c. It was still snowing at the time of the accident.
- d. By the time of the accident, at approximately 7:00 a.m., the road surface was covered with snow and ice, but the precise time of ice formation is not known. The icy conditions were caused by traffic compacting the snow.
- e. The crew supervisor woke up and saw snow at approximately 5:45 a.m. He arrived at work at 6 a.m. and called staff to come in at 6:15 a.m. Salting operations began at 7:15 a.m., fifteen minutes after the accident.

³ For the purposes of this application, the two applicants may be treated as a single entity.

⁴ *Municipal Act, 2001*, S.O. 2001, c. 25, s. 44(1)

- f. If there had been monitoring of the weather, operators would have been called in sometime between 3:30 a.m. and 4:00 a.m.
 - g. A road patrol would have treated Derry Road with the appropriate materials and equipment. Salt applied down the centre of Derry Road at the beginning of the storm at approximately 4:00 a.m. would have prevented icy conditions.⁵
10. The applicant conducted patrols for winter conditions from December 1 to March 31. However, its internal Performance Standards contemplated that winter maintenance would be done when conditions warranted.⁶
11. The only issue on appeal was whether the applicant had made out a defence under s. 44 (3)(c) of the Act, which provides that:

“...a municipality is not liable for failing to keep a highway or bridge in a reasonable state of repair if,...

(c) at the time the cause of action arose, minimum standards established under subsection (4) applied to the highway or bridge and to the alleged default and those standards have been met.

12. Pursuant to s. 44(4) of the Act, the province enacted the following icy roadway minimum standard under the MMS:

s. 5(1) The minimum standard for treating icy roadways is,

(a) to deploy resources to treat an icy roadway as soon as practicable after becoming aware that the roadway is icy; and

(b) to treat the icy roadway within the time set out in the Table to this section after becoming aware that the roadway is icy.⁷

13. Derry Road was a Class 2 highway. The Table permitted the applicant to treat Derry Road “after becoming aware” that the roadway was icy within 4 hours.⁸

14. The applicant's position was that s. 5 of the MMS provided it with a complete defence. Even assuming that ice formed on the roadway at 4 a.m. as snow began falling,

⁵ A.R., tab 6, pp. 70-72, Appeal Reasons, ¶ 7; A.R., tab 4, pp. 46-47; pp. 50-51, Trial Reasons, ¶¶ 129; ¶ 131-134; ¶ 144

⁶ A.R., tab 6, pp. 70-72, Appeal Reasons, ¶ 7; A.R., tab 4, pp. 50-51, Trial Reasons, ¶ 144

⁷ Minimum Maintenance Standards, O. Reg. 239/02, s. 5

⁸ A.R., tab 6, p. 76, Appeal Reasons, ¶ 18

its crew supervisor only became aware of the potential for ice at 5:45 a.m. There was no finding that, given his awareness at 5:45 a.m., it was practicable to deploy resources any earlier than he did. The courts below held that the applicant had to deploy resources *before* the roadway became icy. The standard in s. 5 of the MMS, however, does not require municipalities to deploy resources before becoming aware that the roadway is icy. Rather for s. 5 to insulate the municipality from liability, resources must be deployed as soon as practicable and Class 2 roads be treated within four hours. Even assuming that ice formed as soon as the snow started falling at 4 a.m., the applicant thus had until 8 a.m. to treat the road surface to meet the standard.

The Statutory Duty of Road Authorities and the Minimum Maintenance Standards

15. The relevant provisions of the Act are as follows:

Maintenance

44. (1) The municipality that has jurisdiction over a highway or bridge shall keep it in a state of repair that is reasonable in the circumstances, including the character and location of the highway or bridge.

Liability

(2) A municipality that defaults in complying with subsection (1) is, subject to the *Negligence Act*, liable for all damages any person sustains because of the default.

Defence

(3) Despite subsection (2), a municipality is not liable for failing to keep a highway or bridge in a reasonable state of repair if,

(a) it did not know and could not reasonably have been expected to have known about the state of repair of the highway or bridge;

(b) it took reasonable steps to prevent the default from arising; or

(c) at the time the cause of action arose, minimum standards established under subsection (4) applied to the highway or bridge and to the alleged default and those standards have been met.

Regulations

(4) The Minister of Transportation may make regulations establishing minimum standards of repair for highways and bridges or any class of them.

General or specific

(5) The minimum standards may be general or specific in their application.

16. The relevant provisions of the MMS are as follows:

Application

2. (1) This Regulation sets out the minimum standards of repair for highways under municipal jurisdiction for the purpose of clause 44 (3) (c) of the Act.

Routine Patrolling

3. (1) The minimum standard for the frequency of routine patrolling of highways to check for conditions described in this Regulation is set out in the Table to this section.

(2) Routine patrolling shall be carried out by driving on or by electronically monitoring the highway to check for conditions described in this Regulation.

(3) Routine patrolling is not required between sunset and sunrise.

[The Table required Class 2 roads like Derry Road to be patrolled two times every seven days.]

Snow accumulation

4.(1) The minimum standard for clearing snow accumulation is,

(a) while the snow continues to accumulate, to deploy resources to clear the snow as soon as practicable after becoming aware of the fact that the snow accumulation on a roadway is greater than the depth set out in the Table to this section; and

(b) after the snow accumulation has ended and after becoming aware that the snow accumulation is greater than the depth set out in the Table to this section, to clear the snow accumulation in accordance with subsections (2) and (3) or subsections (2) and (4), as the case may be, within the time set out in the Table.

(2) The snow accumulation must be cleared to a depth less than or equal to the depth set out in the Table.

....

(5) This section,...

(b) only applies to a municipality during the season when the municipality performs winter highway maintenance.

(6) In this section,

“snow accumulation” means the natural accumulation of new fallen snow or wind-blown snow that covers more than half a lane width of a roadway.

[For Class 2 roads, the Table provided for a depth of 5 cm and a time of 6 hours after the end of snow accumulation.]

Icy roadways

5.(1) The minimum standard for treating icy roadways is,

(a) to deploy resources to treat an icy roadway as soon as practicable after becoming aware that the roadway is icy; and

(b) to treat the icy roadway within the time set out in the Table to this section after becoming aware that the roadway is icy.

(2) This section only applies to a municipality during the season when the municipality performs winter highway maintenance.

[For Class 2 roads, the Table indicated a time of 4 hours for the purposes of s. 5(1)(b).]

The Trial Judge’s Reasons for Judgment

17. The trial judge saw the duty in s. 44(1) of the Act as “codifying the common law”.⁹

That he conceived the common law to be relevant is also shown by:

- a. his consideration of the common law policy/operational distinction in *Brown v. British Columbia (Minister of Transportation and Highways)*¹⁰, which dealt with road authority liability under that province’s common law regime; and,

⁹ A.R., tab 4, p. 50, Trial Reasons, ¶ 141

¹⁰ *Brown v. British Columbia (Minister of Transportation and Highways)* 1994 CanLII 121 (SCC), [1994] 1 S.C.R. 420

- b. his consideration of the applicant's internal Performance Standards as informing the nature of applicant's duty.¹¹

After considering a number of cases, including the Court of Appeal's decisions in *Montani v. Matthews et al., The Queen in the Right of Ontario, Third Party*¹², the trial judge found that the road was not in a state of repair because the "situation gave rise to an unreasonable risk of harm", not because the road condition at the time of the accident was such that a driver "using ordinary care could travel upon the road in safety". Accordingly, he applied a common law test, not the statutory test, to conclude that municipalities must anticipate conditions giving rise to an unreasonable risk of harm and act to prevent them from arising.¹³

18. The trial judge then considered whether the applicant had complied with the MMS so as to be able to rely on s. 44(3)(c) of the Act. With respect to the routine patrolling standard in s. 3 of the MMS, he held that the situation on March 31/ April 1 was not "routine" and, therefore, the standard did not apply.¹⁴

19. He then held that the s. 4 snow accumulation standard did not apply for two reasons:

- a. the applicant elected to treat the road with salt, not to clear the snow; and
- b. "the obligation on the municipality to clear snow accumulation, either while snow continues to accumulate or after snow accumulation has ended, is only triggered under the regulation when snow accumulation on the class 2 road is greater than 5 cm" and accumulation had not reached that depth.¹⁵

20. The trial judge held that the icy roadways standard in s. 5 of the MMS did not apply because:

This was not a case of ice forming by freezing rain or as a result of ice pellets. Neither was it a situation where the Town was notified of a dangerous patch of ice on the road. This is a

¹¹ A.R., tab 4, pp. 50-51, Trial Reasons, ¶¶ 141-144

¹² *Montani v. Matthews et al., The Queen in the Right of Ontario, Third Party* 1996 CanLII 1387 (ON CA), (1996), 29 O.R. (3d) 257 (leave to appeal to the S.C.C. refused) (1997), 99 O.A.C. 240 n. (S.C.C.) [*Montani*]

¹³ A.R., tab 4, pp. 51-53, Trial Reasons, ¶¶ 145-148; See ¶¶ 43-45, below.

¹⁴ A.R., tab 4, p. 58, Trial Reasons, ¶ 162

¹⁵ A.R., tab 4, p. 59, Trial Reasons, ¶ 163

case of snow falling and covering the road which was then compacted by vehicular traffic into hard packed snow and ice or icy conditions at various places. The remediation, salting of the roads, was intended to prevent the compacting of snow and the creation of ice and slippery conditions. It makes no common sense to interpret this section of the MMS as being applicable in the circumstances of this case. If it were otherwise, municipalities could avoid any of their obligations to clear the roads of snow by waiting until the snow becomes compacted and turns into ice and then claiming that a new time limit is triggered from the time when the municipality becomes aware that the roadway is icy.¹⁶

The Court of Appeal's Reasons for Judgment

21. The Court of Appeal acknowledged that the “drafters of the MMS intended to provide clear, bright-line, results-oriented standards” and that the purpose of the MMS is to provide a municipality with a defence if it complies with a minimum maintenance standard even if it would otherwise be liable under s. 44(1) of the Act. The court explained:

To use the common law language, a municipality is not liable for negligently failing to maintain a highway if it complied with the minimum standards that applied to its failure.¹⁷

22. The court held that s. 44 (3)(c) of the Act supports the trial judge's interpretation of ss. 4 - 5 of the MMS. It reasoned that compliance with a standard only provides a municipality with a defence if, in the language of s. 44(3)(c), the “minimum standards... applied to the highway... *and the alleged default...*” [Emphasis added by the Court of Appeal.] The court stated:

The key words for present purposes are “to the alleged default”. The defaults here, as found by the trial judge, were the failure to monitor the weather and the failure to deploy resources so as to prevent Derry Road from becoming icy. The trial judge did not find the appellants liable for failure to treat a roadway after becoming aware that it was icy.¹⁸

23. In the court's view, therefore, s. 5 of the MMS, the icy roadways standard, only speaks to situations *where the plaintiff alleges* that the municipality failed to deploy

¹⁶ A.R., tab 4, pp. 59-60, Trial Reasons, ¶ 165

¹⁷ A.R., tab 6, p. 77; p. 81, Appeal Reasons, ¶ 22; ¶ 41

¹⁸ A.R., tab 6, pp. 80A, Appeal Reasons, ¶¶ 35-36

resources after becoming aware that the roadway is icy, not to what a municipality is generally expected to do to address icy roadways to avoid liability. The court generally agreed with the trial judge's interpretation of s. 5, except it held that it was immaterial how the roadway became icy. The court stated:

Section 5 of the MMS was directed at the situation when the roadway had become icy, not before. The standard's requirement to deploy resources and treat was triggered by knowledge that the roadway is icy – present tense – not by knowledge that it may or will become icy. The standard did not address a municipality's response to conditions that had not yet become icy. ...¹⁹

24. The Court of Appeal endorsed the trial judge's interpretation of s. 4, the snow accumulation standard, agreeing that it does not apply until the snow depth reaches 5 cm: "To be clear, s. 4 of the MMS did not say that a municipality need not clear snow if there was less than five centimeters accumulation." The court also said that the trial judge's "line of reasoning" in this respect "was not challenged". This statement is incorrect. The applicant's factum in the Court of Appeal characterized the trial judge's reasoning as "illogical" and as ignoring the plain meaning and intent of s. 4.²⁰

25. The Court of Appeal did not mention that the applicant invoked s. 64 of the *Legislation Act, 2006*. Nor did it mention that the respondent submitted that "exclusion of liability clauses are to be strictly construed".²¹ Implicitly, however, the Court of Appeal accepted the respondent's strict construction approach to statutory interpretation of s. 44 of the Act and the MMS.

PART II – STATEMENT OF ISSUES

26. Does this case raise sufficiently important legal issues relating to:

- a. statutory interpretation;
- b. the ability of provincial governments to regulate the level of the civil liability of municipalities in order to control public expenditures; and

¹⁹ A.R., tab 6, p. 79, Appeal Reasons, ¶ 31

²⁰ A.R., tab 6, pp. 78-79, Appeal Reasons, ¶¶ 25-29; A.R., tab 10, p. 136, Appellant's Factum (Court of Appeal), ¶ 76

²¹ A.R., tab 11, pp. 160-161, Respondents' Factum (Court of Appeal), ¶ 29

- c. the proper relationship between legislators and the courts to warrant the attention of this national court?

PART III – STATEMENT OF ARGUMENT

A. Modern Rule of Statutory Interpretation Ignored

27. In the last two decades, this court has consistently applied the following uniform, “modern” rule of statutory interpretation:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.²²

28. This court has also made it clear that this “modern rule” of statutory construction is reflected in the federal, provincial, and territorial interpretation statutes.²³ In Ontario, the ‘modern rule’ is now embodied in s. 64 of the *Legislation Act, 2006*, which provides as follows:

64.(1) An Act shall be interpreted as remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects.

(2) Subsection (1) also applies to a regulation, in the context of the Act under which it is made and to the extent that the regulation is consistent with that Act.

29. As a primary tool of statutory interpretation, strict construction cannot be reconciled with the interpretation statutes. As this court has held, even with respect to penal statutes, strict construction only applies if the ordinary principles of statutory interpretation (i.e., today, the ‘modern rule’) fail to resolve an ambiguity.²⁴

²² E.g., *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 at ¶¶ 21- 23 quoting Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) at p. 87; *Bristol-Myers Squibb C. v. Canada (A-G)*, 2005 S.C.C. 26, [2005] 1 S.C.R. 533 at ¶¶ 36-68

²³ *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 at ¶ 22

²⁴ *Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Ironworks, Local 771*, 2005 SCC 70 [2005] 3 S.C.R. 425 at ¶¶ 17-35 per Binnie J.; *Re Canada 3000 Inc.*, 2006 SCC 24 [2006] 1 S.C.R. 865 at ¶ 84; *R. v. Mac*, 2002 SCC 24, [2002] 1 S.C.R. 856 at ¶ 4

30. As submitted below, the courts applied strict construction to ignore the remedial purpose of the statutory regime and sterilized the legislative objective of controlling the civil liability of municipalities and public expenditure.

B. Ability of Government to Regulate Civil Liability Sterilized

31. While the courts below recognized that the intent of s. 44 (3)(c) and (4) of the Act and the MMS was to provide municipalities with a defence, their reasons for judgment overlook the reality that these statutory and regulatory provisions provide municipalities with a *new* defence that did not previously exist.

32. The MMS were promulgated to remedy a problem that the Legislature and the Executive perceived in the existing law.²⁵ In 1996, the Ontario Legislature enacted the *Better Local Government Act*²⁶ which, *inter alia*, amended the *Municipal Act* to empower the Minister of Municipal Affairs to promulgate minimum maintenance standards for municipal highways. Eventually, the Minister promulgated the MMS (Regulation 239/02) which came into force on November 1, 2002. The MMS were enacted to address case law which was perceived to have imposed excessive burdens on municipalities. Included in this body of case law were the following decisions of the Ontario Court of Appeal: *Montani v. Matthews* (1996)²⁷; *Bisoukis v. Brampton (City)* (1997)²⁸; and *MacMillan v. Ontario* (1998).²⁹ *Montani* and *MacMillan* involved provincial highways, but the wording of the statutory duty in those cases was not materially different than the wording of s. 44(1) of the Act.

33. In *Montani*, *Bisoukis* and *MacMillan*, the Court of Appeal held that a road authority is not entitled to wait until ice forms on a roadway before taking steps to address icy conditions. In these cases, the concept of a condition of “non-repair” in the road included a future “situation” that could be reasonably foreseen to give rise to an unreasonable risk to drivers.³⁰ As the Court of Appeal saw it in these cases, the duty to keep the road in a

²⁵ *Re Canada 3000 Inc.*, *supra*, per Binnie J. at ¶¶ 36-37

²⁶ *Better Local Government Act*, S.O. 1996, c.32

²⁷ *Montani*, *supra*

²⁸ *Bisoukis v. Brampton (City)* (1999), 46 O.R. (3d) 417 (C.A.), leave to appeal dismissed [2001] S.C.C.A. No. 52 [*Bisoukis*]

²⁹ *MacMillan v. Ontario* 2001 CanLII 6688 (ONCA) leave to appeal dismissed, [2001] S.C.C.A. No. 348 [*MacMillan*]

³⁰ *Montani*, *supra*, at pp. 269-73; *Bisoukis*, *supra*, at pp. 439-445; *MacMillan*, *supra*, at ¶¶ 29-44

state of repair required road authorities to monitor weather conditions to predict future states of non-repair arising from winter weather and address potential situations prophylactically.

34. The Legislature and the Executive were entitled to consider that, as a matter of public policy, the standard of care required of road authorities by the courts and its financial implications (in damage awards and insurance premiums as well as expenditures on road maintenance) was simply too high. This was the mischief the MMS set out to remedy.

35. The MMS do not, as the courts below pointed out, cover every situation entailing conditions of non-repair. However, they do address snow accumulation and icy roadways and they do speak to the standard of inspection for the detection of those conditions, amongst others.

36. In the MMS, highways are classified according to their speed limits and traffic frequency. As set out in the Tables, the stringency of the minimum maintenance standard increases as these two variables increase.

37. The obvious intent of the MMS is to set out the minimum of what municipalities should do to address snow accumulation and icy roadways in order to avail themselves of the new defence in s. 44(3)(c) of the Act.

38. Section 3 of the MMS, the routine inspection standard, specifies the frequency for the inspection of roads “to check for conditions described” in the MMS.³¹ In ss. 4-5, municipalities may avail themselves of the defence by addressing snow accumulation and icy roadways within certain amounts of time “after becoming aware” that snow has reached a certain depth or that the roadway is icy. The higher the speed limit and the busier the road the faster the response should be. Neither standard specifies what a municipality must do to become aware that snow has accumulated to the specified depth or that the roadway is icy. Given the previous state of the law in *Montani*, *Bisoukis* and *MacMillan* and the modern rule of interpretation that requires legislation to be considered

³¹ In 2010, s. 3 was amended to delete the word “routine” and to provide a minimum standard for patrolling highway during “the season when a municipality performs winter highway maintenance”, which is to “patrol

remedial, it is clear that the MMS do *not* require municipalities to monitor weather forecasts to anticipate winter conditions and address them prophylactically in order to rely on the new defence. The MMS only expects municipalities to address snow accumulation and icy roadways *after* becoming aware of these conditions.

39. Therefore, the snow accumulation standard in s. 4, when read purposively and in the context of the rest of the MMS, absolves municipalities from doing anything to address snow accumulation on Class 2 roads until they become aware, through routine patrolling or otherwise, that snow has reached a depth of 5 cm. At that point, the snow should be cleared to that depth for the standard to apply. On a Class 1 highway, where the speed limit is higher and there is more traffic, the municipality should clear to a depth of 2.5 cm and maintain that depth after it becomes aware, through routine patrolling or otherwise, that snow has accumulated to that depth. If the municipality does that, it is insulated from liability pursuant to s. 44(3)(c) of the Act.

40. Similarly, the icy roadway standard, when read purposively and in the context of the rest of the MMS, only expects municipalities to deploy resources to treat Class 2 roadways as soon as practicable after becoming aware, through routine patrolling or otherwise, of icy conditions and to ensure that treatment is applied within four hours. Again, the greater the speed limit and traffic frequency, the faster the municipality should treat the class of road after becoming aware of ice in order to rely on the defence.

41. There is nothing unreasonable about the MMS expecting municipalities to react to snow accumulation and icy roadways only after becoming aware of their existence. During winter storms, most municipalities will become “aware” of snow accumulation and icy roads (unless the municipality covers a large area as some rural municipalities do). Obviously, the phrase “after becoming aware” in ss. 4-5 of the MMS bears the necessary implication that a municipality cannot be willfully blind to its knowledge of actual conditions to avail itself of the new defence.

42. The courts below adopted a very narrow and strained interpretation of both s. 44 of the Act the MMS.

highways that the municipality selects as representative of its highways, as necessary, to check for conditions in sections 4 and 5”: O. Reg. 239/02 as am. O.Reg 23/10, s. 3(1)

a) With respect to s. 4 of the MMS, they held that, until a municipality has actually become aware that snow accumulation has reached the depth specified in the Table, it must meet the standard that the court considers reasonable. On their reasoning, until snow accumulation reaches 5 cm on a Class 2 road, a municipality may be required to clear snow to a depth of *less than* 5 cm (conceivably, to bare wet pavement) in *less than* the 6 hours required by the Table (conceivably, in, say, 2 hours). With respect to a Class 1 highway affected by the same winter storm, where the depth has reached the 2.5 cm provided for in the Table, the standard would apply and the municipality would only be expected to clear the snow to a depth of 2.5 cm within four hours of becoming aware that snow accumulation has reached the specified level. On this reasoning, the courts can impose a more stringent standard on a municipality's response during the same winter storm to conditions on a Class 2 road than a Class 1 road. This flies in the face of the obvious legislative intent and provides road authorities with the wrong incentive. The lesson to be learned from the lower courts' interpretation is that a municipality should address its attention to the Class 2 road first.

b) With respect to s. 5 of the MMS, the reasoning of the courts below and its implications are equally problematic. In the courts' view, s. 5 sets out a minimum response time only after a municipality becomes aware that a road is icy and does not apply until the municipality acquires such actual knowledge. If, therefore, an accident occurs on an icy road before the municipality has actual knowledge of an icy roadway, a court is entitled to conclude that a reasonable time to both acquire such knowledge and treat the ice is less than the time specified for treating the ice in the Table. Again, this interpretation gives road authorities the wrong incentive. Assume a municipality is affected by weather conditions that cause ice formation in some areas but not others and that the municipality acquires actual knowledge of ice on a bridge on a Class 1 highway. The Table requires it to respond to this condition in 3 hours. According to the courts below, however, a municipality could be found liable for an accident caused by ice on a Class 2 highway if it failed to acquire knowledge and treat ice there within less than 3 hours. The lesson is that to avoid liability, municipalities should focus more on roads where the speed limit and traffic frequency is lower. This is the wrong lesson.

43. The erroneous interpretation of the MMS flowed from a misinterpretation of s. 44 (3) of the Act. As stated above, the Court of Appeal focused on the emphasized words in s. 44(3)(c):

(3) Despite subsection (2), a municipality is not liable for failing to keep a highway or bridge in a reasonable state of repair if,

(c) at the time the cause of action arose, minimum standards established under subsection (4) applied to the highway or bridge *and to the alleged default* and those standards have been met. [Emphasis added.]

Thus, the Court of Appeal held that, if a plaintiff alleges particulars that are not specifically addressed in the MMS, the MMS do not apply. As stated above, the obvious intent of the MMS is to guide municipalities as to what they should do to address, *inter alia*, snow accumulation and icy roadways so as not to be liable to users of their highways. Instead, the courts below interpreted the MMS as addressing what municipalities *must have done* (past tense) in relation to *the particular allegations of negligence of the particular plaintiff*. This reasoning ignores the prescriptive nature of the MMS.

44. Subsection 44 (3)(c) and, in particular, the words “applied... to the alleged default” and the MMS should be interpreted in the context of the entirety of s. 44 of the Act. The obligation of the municipality is to keep the highway in a state of “repair”: s. 44(1). If the highway is not in a state of repair, the municipality is in “default”: s. 44(2). The express purpose of the MMS, as set out in s. 2 thereof, is to set out “minimum standards of repair”. As indicated in s. 3 of the MMS, municipalities are required to “check for conditions” set out in the rest of the MMS, including snow accumulation and icy roadways. All of these “conditions” relate to matters which have the potential to cause the highway not to be in a state of “repair”. The various minimum standards provide that the municipality will not be in “default” if it complies with the standard applying to the “condition”. Thus, if the MMS contains a standard that applies to alleged failure (“default”) of the municipality to address the condition in question, it follows that the standard “applied” to the “alleged default”.

45. For almost a century, and most recently in *Housen v. Nikolaisen*, this court has held that the duty now set out in s. 44(1) of the Act requires the road authority to keep the road “in such a reasonable state of repair that those requiring to use it may, exercising ordinary

care, travel upon it with safety”.³² The statutory duty differs from the common law duty in general negligence law.³³ While British Columbia has a common law regime, Ontario and other provinces (e.g. Saskatchewan) do not.

46. The reasons of the courts below in this case manifest a fundamental misunderstanding of the nature of the statutory duty. The trial judge erroneously saw s. 44 as “codifying the common law”. The Court of Appeal also saw s. 44(1) as embodying a general negligence standard, which is consistent with what that court has stated recently on another occasion in *Frank v. Central Elgin Municipality*.³⁴ Neither court started from the correct premise that the road is only in a state of disrepair if it cannot be used safely with ordinary care.

47. Because the courts below saw s. 44(1) of the Act as incorporating the common law, they also saw the policy/operational distinction in *Brown v. British Columbia* as relevant.³⁵ They failed to appreciate that, under Ontario’s statutory regime, it is unnecessary and inappropriate for courts to examine whether the deployment or non-deployment of resources resulted from a policy or operational decision. As the Ontario Court of Appeal held in *Kennedy v. Waterloo County Board of Education*, under a statutory regime, the policy/ operational distinction is subsumed in the statutory wording. Here, the policy/operational distinction is subsumed in s. 44 of the Act and, since their promulgation, the MMS.³⁶

48. One of the objectives of the MMS is to create a uniform set of minimum standards upon which all municipalities can rely to shield themselves from liability, regardless of the level of service a municipality can afford or decides to maintain. As the focus of the courts below on the applicant’s internal Policy Standards indicates, the introduction of common law concepts and the policy/operational distinction destroys the uniformity of approach that the province thought desirable. As a result of this case, municipalities that can afford a higher level of road maintenance than provided for in the MMS will be loathe

³² *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235, 2002 SCC 33 at ¶ 38

³³ *Mero v. Waterloo (Regional Municipality)* (1992), 7 O.R.(3d) 102 (C.A.) leave to appeal dismissed, 9 O.R. (3d) xxii n; *Scott v. North Bay (City)*, (1977), 18 O.R. (2d) 365 (C.A.) at p. 3 of 5

³⁴ *Frank v. Central Elgin (Municipality)*, 2010 ONCA 574 at ¶¶ 7; 10: “The general negligence standard applies.”

³⁵ A.R., tab 4, pp. 50-51, Trial Reasons ¶¶ 141-144; A.R., tab 6, pp. 70-72; p. 77, Appeal Reasons ¶ 7; ¶ 22

to adopt them because the reasonableness of that response will now be measured by the higher standard. Municipalities that can afford to meet only the minimum standards will now face pressure to provide what they cannot afford for fear that the courts will require them to provide the levels of service provided by other municipalities with more resources.

C. Curial Intrusion into Legislative Sphere

49. The modern rule of statutory interpretation is a corollary of the constitutional principle of parliamentary supremacy. The supremacy clause of the *Constitution Act, 1982* now gives courts the power to protect fundamental individual rights and the *Constitution* now defines those rights. The right to sue for personal injuries, while important, is not a constitutionally protected right. In a democratic society, there is no justification for courts to sterilize validly enacted statutes and regulations in the absence of unconstitutionality by invoking or applying 'strict construction'.

50. With great respect, the courts below appear to have decided not to follow the modern rule of statutory interpretation. They did not observe the principle of legislative supremacy. Democratically elected legislatures and governments have the right and duty to allocate public resources and balance the needs of the taxpaying public with the needs of those who may be injured by using publicly funded and maintained infrastructure. In the absence of unconstitutionality or inconsistency between an enabling statute and subordinate legislation, neither of which was alleged in this case, the duty of the courts is to discern the intent of the legislation that strikes the balance and give effect to it.

PART IV – SUBMISSIONS AS TO COSTS

51. No costs are sought.

³⁶ *Kennedy v. Waterloo County Board of Education*, 1999 CanLII 3746, 45 O.R. (3d) 1 (C.A.) at ¶¶ 16-26; see also *Murphy v. St. John's (City)*, 2001 NFCA 23 (CanLII) at ¶ 18.

PART V – ORDER SOUGHT

52. The applicants request that leave to appeal from the order of the Court of Appeal for Ontario, dated December 21, 2011, be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 16TH DAY OF FEBRUARY 2012.



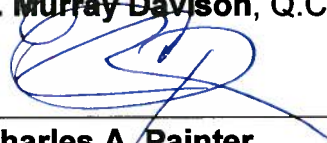
C. Kirk Boggs



**Kirk F. Stevens
LERNERS LLP**



J. Murray Davison, Q.C.



**Charles A. Painter
PATERSON, MacDOUGALL LLP**

PART VI – TABLE OF AUTHORITIES

TAB NO.	PARA. NO.
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8. <i>Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Ironworks, Local 771</i> , 2005 SCC 70 [2005] 3 S.C.R. 425	29
9. <i>Mero v. Waterloo (Regional Municipality)</i> (1992), 7 O.R.(3d) 102 (C.A.) leave to appeal dismissed, 9 O.R. (3d) xxii n	45
10. <i>Montani v. Matthews et al., The Queen in the Right of Ontario, Third Party</i> 1996 CanLII 1387 (ON CA), (1996), 29 O.R. (3d) 257 (leave to appeal to the S.C.C. refused) (1997), 99 O.A.C. 240 n. (S.C.C.)	17, 32, 33, 34
11. <i>Murphy v. St. John's (City)</i> , 2001 NFCA 23 (CanLII).....	47
12. <i>Re Canada 3000 Inc.</i> , 2006 SCC 24 [2006] 1 S.C.R. 865	29
13. <i>R. v. Mac</i> , 2002 SCC 24, [2002] 1 S.C.R. 856	29
14. <i>Re Rizzo & Rizzo Shoes Ltd.</i> , [1998] 1 S.C.R. 27	27, 28
15. <i>Scott v. North Bay (City)</i> , (1977), 18 O.R. (2d) 365 (C.A.)	45

PART VII – STATUTES, REGULATIONS AND RULES**Section 44 of the Municipal Act, 2001
S.O. 2001, CHAPTER 25****Maintenance**

44. (1) The municipality that has jurisdiction over a highway or bridge shall keep it in a state of repair that is reasonable in the circumstances, including the character and location of the highway or bridge. 2001, c. 25, s. 44 (1).

Liability

(2) A municipality that defaults in complying with subsection (1) is, subject to the *Negligence Act*, liable for all damages any person sustains because of the default. 2001, c. 25, s. 44 (2).

Defence

(3) Despite subsection (2), a municipality is not liable for failing to keep a highway or bridge in a reasonable state of repair if,

- (a) it did not know and could not reasonably have been expected to have known about the state of repair of the highway or bridge;
- (b) it took reasonable steps to prevent the default from arising; or
- (c) at the time the cause of action arose, minimum standards established under subsection (4) applied to the highway or bridge and to the alleged default and those standards have been met. 2001, c. 25, s. 44 (3).

Regulations

(4) The Minister of Transportation may make regulations establishing minimum standards of repair for highways and bridges or any class of them. 2001, c. 25, s. 44 (4).

General or specific

(5) The minimum standards may be general or specific in their application. 2001, c. 25, s. 44 (5).

council or to an employee of the municipality, subject to any conditions which the municipality may impose, the power to close a highway temporarily for any purpose specified in the by-law.

Conveyance of closed highway

43. A municipality that permanently closes a highway shall not convey the land forming the highway if it is covered with water without the consent of the Ministry of Natural Resources.

Maintenance

44. (1) The municipality that has jurisdiction over a highway or bridge shall keep it in a state of repair that is reasonable in the circumstances, including the character and location of the highway or bridge.

Liability

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Defence

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- (a) it did not know and could not reasonably have been expected to have known about the state of repair of the highway or bridge;
- (b) it took reasonable steps to prevent the default from arising; or
- (c) at the time the cause of action arose, minimum standards established under subsection (4) applied to the highway or bridge and to the alleged default and those standards have been met.

Regulations

(4) The Minister of Transportation may make regulations establishing minimum standards of repair for highways and bridges or any class of them.

General or specific

(5) The minimum standards may be general or specific in their application.

Adoption by reference

(6) A regulation made under subsection (4) may adopt by reference, in whole or in part, with such changes as the Minister of Transportation considers desirable, any code, standard or guideline, as it reads at the time the regulation is made or as it is amended from time to time, whether before or after the regulation is made.

Limitation on actions

(7) No action shall be brought against a municipality for damages for lack of repair, even if the municipality was at fault, after the expiration of three months from the time the damages were sustained.

ployés ou à un comité de son conseil, sous réserve de toute condition qu'elle impose, le pouvoir de fermer une voie publique temporairement à toute fin que précise le règlement municipal.

Transport d'une voie publique fermée

43. La municipalité qui ferme une voie publique de façon permanente ne doit pas, sans le consentement du ministère des Richesses naturelles, transporter le bien-fonds qui constitue la voie publique et qui est immergé.

Entretien

44. (1) La municipalité qui a compétence sur une voie publique ou un pont en assure l'entretien raisonnable dans les circonstances, y compris le caractère et l'emplacement.

Responsabilité

(2) Sous réserve de la *Loi sur le partage de la responsabilité*, la municipalité qui ne se conforme pas au paragraphe (1) est responsable des dommages subis par quiconque en conséquence.

Défense

(3) Malgré le paragraphe (2), une municipalité n'encourt aucune responsabilité pour ne pas avoir assuré l'entretien raisonnable d'une voie publique ou d'un pont si, selon le cas :

- a) elle n'avait pas connaissance de l'état de la voie publique ou du pont et il n'est pas raisonnable de s'attendre à ce qu'elle en ait eu connaissance;
- b) elle a pris des mesures raisonnables pour empêcher le manquement de se produire;
- c) au moment où la cause d'action a pris naissance, les normes minimales établies en vertu du paragraphe (4) s'appliquaient à la voie publique ou au pont et au manquement qu'elle aurait commis et ces normes ont été respectées.

Règlements

(4) Le ministre des Transports peut, par règlement, établir des normes minimales pour l'entretien des voies publiques et des ponts ou pour toute catégorie de ceux-ci.

Portée

(5) Les normes minimales peuvent avoir une portée générale ou particulière.

Adoption par renvoi

(6) Les règlements pris en application du paragraphe (4) peuvent adopter par renvoi, avec les modifications que le ministre des Transports estime souhaitables, tout ou partie d'un code, d'une norme ou d'une ligne directrice, tel qu'il existe au moment où sont pris les règlements ou tel qu'il est modifié, soit avant ou après ce moment.

Prescription

(7) Est irrecevable l'action intentée contre une municipalité pour des dommages causés en raison du manque d'entretien, même si celle-ci est fautive, plus de trois mois à compter du moment où les dommages ont été subis.

Untravelled portions of highway

(8) No action shall be brought against a municipality for damages caused by,

- (a) the presence, absence or insufficiency of any wall, fence, rail or barrier along or on any highway; or
- (b) any construction, obstruction or erection, or any siting or arrangement of any earth, rock, tree or other material or object adjacent to or on any untravelled portion of a highway, whether or not an obstruction is created due to the construction, siting or arrangement.

Sidewalks

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

Notice

(10) No action shall be brought for the recovery of damages under subsection (2) unless, within 10 days after the occurrence of the injury, written notice of the claim and of the injury complained of has been served upon or sent by registered mail to,

- (a) the clerk of the municipality; or
- (b) if the claim is against two or more municipalities jointly responsible for the repair of the highway or bridge, the clerk of each of the municipalities.

Exception

(11) Failure to give notice is not a bar to the action in the case of the death of the injured person as a result of the injury.

Same

(12) Failure to give notice or insufficiency of the notice is not a bar to the action if the court finds that the municipality was not prejudiced by the lack or insufficiency of the notice and that to bar the action would be unjust, even if a reasonable excuse for the lack or insufficiency of notice is not established.

Exception

(13) Subsection (12) does not apply to an injury caused by snow or ice on a sidewalk.

No responsibility for acts of others

(14) Nothing in this section imposes any obligation or liability on a municipality for an act or omission of a person acting under a power conferred by law over which the municipality had no control unless,

Sections non utilisées des voies publiques

(8) Est irrecevable l'action intentée contre une municipalité pour des dommages causés en raison, selon le cas :

- a) de la présence, de l'absence ou de l'insuffisance de murs, clôtures, garde-fous ou barrières le long d'une voie publique ou sur celle-ci;
- b) d'une construction, d'un obstacle ou d'une installation qui se trouve sur une section non utilisée d'une voie publique ou à un endroit contigu à cette section ou du placement ou de l'aménagement d'une matière ou d'un objet, notamment des masses de terre, des rochers ou des arbres, sur une telle section ou à un tel endroit, qu'un obstacle soit créé ou non par suite de la construction, du placement ou de l'aménagement.

Trottoirs

(9) Une municipalité n'est pas responsable des blessures corporelles causées par la neige ou la glace qui se trouve sur les trottoirs, sauf dans les cas de négligence grave.

Avis

(10) Est irrecevable l'action intentée en vertu du paragraphe (2) en recouvrement de dommages-intérêts à moins que, dans les 10 jours qui suivent la survenance de la blessure, un avis écrit de la réclamation et de la blessure n'ait été signifié ou envoyé par courrier recommandé :

- a) au secrétaire de la municipalité;
- b) si la réclamation est faite contre deux municipalités ou plus qui sont conjointement tenues d'entretenir la voie publique ou le pont, au secrétaire de chacune des municipalités.

Exception

(11) Le fait de ne pas donner l'avis n'empêche pas d'intenter l'action en cas de décès du blessé des suites de la blessure.

Idem

(12) Le fait de ne pas donner l'avis ou l'insuffisance de celui-ci n'empêche pas d'intenter l'action si le tribunal conclut que la municipalité n'a pas subi de préjudice du fait du défaut ou de l'insuffisance et qu'il serait injuste d'empêcher l'action d'être intentée, même si une excuse raisonnable pour expliquer le défaut ou l'insuffisance n'est pas établie.

Exception

(13) Le paragraphe (12) ne s'applique pas à une blessure causée par la neige ou la glace qui se trouve sur les trottoirs.

Aucune responsabilité à l'égard des actes d'autrui

(14) Le présent article n'a pas pour effet d'imposer une obligation ou une responsabilité à une municipalité pour un acte ou une omission sur lequel la municipalité n'a aucun contrôle et que commet une personne qui agit en vertu d'un pouvoir que la loi lui confère, sauf si, selon le cas :

- (a) the municipality participated in the act or omission;
or
- (b) the power under which the person acted was a by-law, resolution or licence of the municipality.

No liability

(15) A municipality is not liable for damages under this section unless the person claiming the damages has suffered a particular loss or damage beyond what is suffered by that person in common with all other persons affected by the lack of repair.

No personal liability

45. (1) No proceeding shall be commenced against a member of council or an officer or employee of the municipality for damages based on the default of the municipality in keeping a highway or bridge in a state of repair that is reasonable in light of all of the circumstances, including the character and location of the highway or bridge.

Exception, contractors

(2) Subsection (1) does not apply to a contractor with the municipality, including any officer or employee who is acting as a contractor, whose act or omission caused the damages.

Nuisance

46. Subsections 44 (6) to (15) apply to an action brought against a municipality for damages that result from the presence of any nuisance on a highway.

Naming highways

47. Before passing a by-law naming a highway or changing the name of a highway, a municipality shall give public notice of its intention to pass the by-law.

Naming private roads

48. A local municipality may name or change the name of a private road after giving public notice of its intention to pass the by-law.

Disabled parking permits

49. If a municipality passes a by-law for establishing a system of disabled parking, the sole manner of identifying vehicles shall be a disabled parking permit issued under and displayed in accordance with the *Highway Traffic Act* and the regulations made under it.

Restriction, motor vehicles

50. A municipality does not have power to pass a by-law establishing a system of permits for motor vehicles or trailers, as those terms are defined in the *Highway Traffic Act*, similar to the system under Part II of that Act.

- a) la municipalité a participé à l'acte ou à l'omission;
- b) le pouvoir en vertu duquel la personne a agi était accordé par un règlement, une résolution ou un permis de la municipalité.

Immunité

(15) Une municipalité n'encourt aucune responsabilité en dommages-intérêts en application du présent article à moins que la personne qui les réclame n'ait subi une perte ou des dommages particuliers outre ceux qu'elle subit conjointement avec les autres personnes touchées par le manque d'entretien.

Immunité

45. (1) Est irrecevable l'instance introduite contre un membre du conseil ou un fonctionnaire ou employé de la municipalité pour dommages découlant du fait que la municipalité n'a pas assuré l'entretien raisonnable d'une voie publique ou d'un pont compte tenu de toutes les circonstances, notamment leur caractère et leur emplacement.

Exception : entrepreneurs

(2) Le paragraphe (1) ne s'applique pas aux entrepreneurs au service de la municipalité, y compris les fonctionnaires ou employés de la municipalité qui agissent à ce titre, dont les actes ou omissions ont entraîné les dommages.

Nuisance

46. Les paragraphes 44 (6) à (15) s'appliquent aux actions intentées contre une municipalité pour dommages découlant de la présence d'une nuisance quelconque sur une voie publique.

Nom des voies publiques

47. Avant d'adopter un règlement donnant un nom à une voie publique ou changeant le nom d'une telle voie, une municipalité donne au public un avis de son intention.

Nom des chemins privés

48. Une municipalité locale peut donner un nom à un chemin privé ou changer le nom d'un tel chemin après avoir donné au public un avis de son intention d'adopter le règlement.

Permis de stationnement pour personnes handicapées

49. Si une municipalité adopte un règlement visant l'établissement d'un système de stationnement pour personnes handicapées, la seule façon d'identifier les véhicules consiste en un permis de stationnement pour personnes handicapées délivré en application du *Code de la route* et de ses règlements d'application et affiché conformément à ce code et à ces règlements.

Restriction : véhicules automobiles

50. Une municipalité n'a pas le pouvoir d'adopter un règlement établissant, pour les véhicules automobiles ou les remorques, au sens que le *Code de la route* donne à ces termes, un système d'immatriculation semblable à celui prévu par la partie II de ce code.

**Publications under the Regulations Act
Publications en vertu de la Loi sur les règlements**

2002—08—24

ONTARIO REGULATION 238/02

made under the

**ARTHUR WISHART ACT
(FRANCHISE DISCLOSURE), 2000**

Made: August 2, 2002

Filed: August 6, 2002

Amending O. Reg. 9/01

(Exemption of Franchisors under
Subsection 13 (1) of the Act)

Note: Since the end of 2001, Ontario Regulation 9/01 has been amended by Ontario Regulation 114/02. Previous amendments are listed in the Table of Regulations published in *The Ontario Gazette* dated January 19, 2002.

1. Section 1 of Ontario Regulation 9/01 is amended by adding the following items:

Apple Auto Glass Limited

The Great Atlantic & Pacific Company of Canada, Limited

TIMOTHY PATRICK HUDAK

Minister of Consumer and Business Services

Dated on August 2, 2002.

34/02

ONTARIO REGULATION 239/02

made under the

MUNICIPAL ACT

Made: July 23, 2002

Filed: August 8, 2002

**MINIMUM MAINTENANCE STANDARDS
FOR MUNICIPAL HIGHWAYS**

INTERPRETATION AND APPLICATION

Definitions

1. (1) In this Regulation,

"cm" means centimetres;

"day" means a 24-hour period;

"motor vehicle" has the same meaning as in subsection 1 (1) of the *Highway Traffic Act*, except that it does not include a motor assisted bicycle;

"non-paved surface" means a surface that is not a paved surface;

"paved surface" means a surface with a wearing layer or layers of asphalt, concrete or asphalt emulsion;

"roadway" has the same meaning as in subsection 1 (1) of the *Highway Traffic Act*;

"shoulder" means the portion of a highway that provides lateral support to the roadway and that may accommodate stopped motor vehicles and emergency use;

"surface" means the top of a roadway or shoulder.

(2) For the purposes of this Regulation, every highway or part of a highway under the jurisdiction of a municipality in Ontario is classified in the Table to this section as a Class 1, Class 2, Class 3, Class 4, Class 5 or Class 6 highway, based on the speed limit applicable to it and the average annual daily traffic on it.

(3) For the purposes of subsection (2) and the Table to this section, 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 for the previous calendar year; or
- (b) by estimating the average daily two-way traffic on the highway or part of the highway in accordance with accepted traffic engineering methods.

TABLE
CLASSIFICATION OF HIGHWAYS

Average Annual Daily Traffic (number of motor vehicles)	Posted or Statutory Speed Limit (kilometres per hour)						
	100	90	80	70	60	50	40
15,000 or more	1	1	1	2	2	2	2
12,000 - 14,999	1	1	1	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	3	3
5,000 - 5,999	1	2	2	3	3	3	3
4,000 - 4,999	1	2	3	3	3	3	4
3,000 - 3,999	1	2	3	3	3	4	4
2,000 - 2,999	1	2	3	3	4	4	4
1,000 - 1,999	1	3	3	3	4	4	5
500 - 999	1	3	4	4	4	4	5
200 - 499	1	3	4	4	5	5	5
50 - 199	1	3	4	5	5	5	5
0 - 49	1	3	6	6	6	6	6

Application

2. (1) This Regulation sets out the minimum standards of repair for highways under municipal jurisdiction for the purpose of subsection 284 (1.4) of the Act.

(2) The minimum standards of repair set out in this Regulation are applicable only in respect of motor vehicles using the highways.

(3) This Regulation does not apply to Class 6 highways.

MINIMUM STANDARDS

Routine patrolling

3. (1) The minimum standard for the frequency of routine patrolling of highways is set out in the Table to this section.

(2) Routine patrolling shall be carried out by driving on or by electronically monitoring the highway to check for conditions described in this Regulation.

(3) Routine patrolling is not required between sunset and sunrise.

TABLE
ROUTINE PATROLLING FREQUENCY

Class of Highway	Patrolling Frequency
1	3 times every 7 days
2	2 times every 7 days
3	once every 7 days
4	once every 14 days
5	once every 30 days

Snow accumulation

4. (1) The minimum standard for clearing snow accumulation is,

(a) while the snow continues to accumulate, to deploy resources to clear the snow as soon as practicable after becoming aware of the fact that the snow accumulation on a roadway is greater than the depth set out in the Table to this section; and

(b) after the snow accumulation has ended and after becoming aware that the snow accumulation is greater than the depth set out in the Table to this section, to clear the snow accumulation in accordance with subsections (2) and (3) or subsections (2) and (4), as the case may be, within the time set out in the Table.

(2) The snow accumulation must be cleared to a depth less than or equal to the depth set out in the Table.

(3) The snow accumulation must be cleared from the roadway to within a distance of 0.6 metres inside the outer edges of the roadway.

(4) Despite subsection (3), for a Class 4 highway with two lanes or a Class 5 highway with two lanes, the snow accumulation on the roadway must be cleared to a width of at least 5 metres.

(5) This section,

(a) does not apply to that portion of the roadway designated for parking; and

(b) only applies to a municipality during the season when the municipality performs winter highway maintenance.

(6) In this section,

"snow accumulation" means the natural accumulation of new fallen snow or wind-blown snow that covers more than half a lane width of a roadway.

TABLE
SNOW ACCUMULATION

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

Icy roadways

5. (1) The minimum standard for treating icy roadways is,

(a) to deploy resources to treat an icy roadway as soon as practicable after becoming aware that the roadway is icy; and

(b) to treat the icy roadway within the time set out in the Table to this section after becoming aware that the roadway is icy.

(2) This section only applies to a municipality during the season when the municipality performs winter highway maintenance.

TABLE
ICY ROADWAYS

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

Potholes

6. (1) If a pothole exceeds both the surface area and depth set out in Table 1, 2 or 3 to this section, as the case may be, the minimum standard is to repair the pothole within the time set out in Table 1, 2 or 3, as appropriate, after becoming aware of the fact.

(2) A pothole shall be deemed to be repaired if its surface area or depth is less than or equal to that set out in Table 1, 2 or 3, as appropriate.

TABLE 1
POTHOLES ON PAVED SURFACE OF ROADWAY

Class of Highway	Surface Area	Depth	Time
1	600 cm ²	8 cm	4 days
2	800 cm ²	8 cm	4 days
3	1000 cm ²	8 cm	7 days
4	1000 cm ²	8 cm	14 days
5	1000 cm ²	8 cm	30 days

TABLE 2
POTHOLES ON NON-PAVED SURFACE OF ROADWAY

Class of Highway	Surface Area	Depth	Time
3	1500 cm ²	8 cm	7 days
4	1500 cm ²	10 cm	14 days
5	1500 cm ²	12 cm	30 days

TABLE 3
POTHOLES ON PAVED OR NON-PAVED SURFACE OF SHOULDER

Class of Highway	Surface Area	Depth	Time
1	1500 cm ²	8 cm	7 days
2	1500 cm ²	8 cm	7 days
3	1500 cm ²	8 cm	14 days
4	1500 cm ²	10 cm	30 days
5	1500 cm ²	12 cm	60 days

Shoulder drop-offs

7. (1) If a shoulder drop-off is deeper, for a continuous distance of 20 metres or more, than the depth set out in the Table to this section, the minimum standard is to repair the shoulder drop-off within the time set out in the Table after becoming aware of the fact.

(2) A shoulder drop-off shall be deemed to be repaired if its depth is less than or equal to that set out in the Table.

(3) In this section,

"shoulder drop-off" means the vertical differential, where the paved surface of the roadway is higher than the surface of the shoulder, between the paved surface of the roadway and the paved or non-paved surface of the shoulder.

TABLE
SHOULDER DROP-OFFS

Class of Highway	Depth	Time
1	8 cm	4 days
2	8 cm	4 days
3	8 cm	7 days
4	8 cm	14 days
5	8 cm	30 days

Cracks

8. (1) If a crack on the paved surface of a roadway is greater, for a continuous distance of three metres or more, than both the width and depth set out in the Table to this section, the minimum standard is to repair the crack within the time set out in the Table after becoming aware of the fact.

(2) A crack shall be deemed to be repaired if its width or depth is less than or equal to that set out in the Table.

TABLE
CRACKS

Class of Highway	Width	Depth	Time
1	5 cm	5 cm	30 days
2	5 cm	5 cm	30 days
3	5 cm	5 cm	60 days
4	5 cm	5 cm	180 days
5	5 cm	5 cm	180 days

Debris

9. (1) If there is debris on a roadway, the minimum standard is to deploy resources, as soon as practicable after becoming aware of the fact, to remove the debris.

(2) In this section,

"debris" means any material or object on a roadway,

(a) that is not an integral part of the roadway or has not been intentionally placed on the roadway by a municipality, and

(b) that is reasonably likely to cause damage to a motor vehicle or to injure a person in a motor vehicle.

Luminaires

10. (1) For conventional illumination, if three or more consecutive luminaires on a highway are not functioning, the minimum standard is to repair the luminaires within the time set out in the Table to this section after becoming aware of the fact.

(2) For conventional illumination and high mast illumination, if 30 per cent or more of the luminaires on any kilometre of highway are not functioning, the minimum standard is to repair the luminaires within the time set out in the Table to this section after becoming aware of the fact.

(3) Despite subsection (2), for high mast illumination, if all of the luminaires on consecutive poles are not functioning, the minimum standard is to deploy resources as soon as practicable after becoming aware of the fact to repair the luminaires.

(4) Despite subsections (1), (2) and (3), for conventional illumination and high mast illumination, if more than 50 per cent of the luminaires on any kilometre of a Class 1 highway with a speed limit of 90 kilometres per hour or more are not functioning, the minimum standard is to deploy resources as soon as practicable after becoming aware of the fact to repair the luminaires.

(5) Luminaires shall be deemed to be repaired,

(a) for the purpose of subsection (1), if the number of non-functioning consecutive luminaires does not exceed two;

(b) for the purpose of subsection (2), if more than 70 per cent of luminaires on any kilometre of highway are functioning;

(c) for the purpose of subsection (3), if one or more of the luminaires on consecutive poles are functioning;

(d) for the purpose of subsection (4), if more than 50 per cent of luminaires on any kilometre of highway are functioning.

(6) Subsections (1), (2) and (3) only apply to,

(a) Class 1 and Class 2 highways; and

(b) Class 3, Class 4 and Class 5 highways with a posted speed of 80 kilometres per hour or more.

(7) In this section,

"conventional illumination" means lighting, other than high mast illumination, where there are one or more luminaires per pole;

"high mast illumination" means lighting where there are three or more luminaires per pole and the height of the pole exceeds 20 metres;

"luminaire" means a complete lighting unit consisting of,

(a) a lamp, and

(b) parts designed to distribute the light, to position or protect the lamp and to connect the lamp to the power supply.

TABLE
LUMINAIRES

Class of Highway	Time
1	7 days
2	7 days
3	14 days
4	14 days
5	14 days

Signs

11. (1) If any sign of a type listed in subsection (2) is illegible, improperly oriented or missing, the minimum standard is to deploy resources as soon as practicable after becoming aware of the fact to repair or replace the sign.

(2) This section applies to the following types of signs:

1. Checkerboard.
2. Curve sign with advisory speed tab.
3. Do not enter.
4. One Way.
5. School Zone Speed Limit.
6. Stop.
7. Stop Ahead.
8. Stop Ahead, New.
9. Traffic Signal Ahead, New.
10. Two-Way Traffic Ahead.
11. Wrong Way.
12. Yield.
13. Yield Ahead.
14. Yield Ahead, New.

4. There are phase or cycle timing errors interfering with the ability of a pedestrian or vehicle to safely travel through an intersection.
5. There is a power failure in the traffic control signal system.
6. The traffic control signal system cabinet has been displaced from its proper position.
7. There is a failure of any of the traffic control signal support structures.
8. A signal lamp or a pedestrian control indication is not functioning.
9. Signals are flashing when flashing mode is not a part of the normal signal operation.

Regulatory or warning signs

12. (1) If a regulatory or warning sign other than a sign listed in subsection 11 (2) is illegible, improperly oriented or missing, the minimum standard is to repair or replace the sign within the time set out in the Table to this section after becoming aware of the fact.

(2) In this section,

"regulatory sign" has the same meaning as in the *Manual of Uniform Traffic Control Devices* published in 1985 by the Ministry of Transportation;

"warning sign" has the same meaning as in the *Manual of Uniform Traffic Control Devices* published in 1985 by the Ministry of Transportation.

TABLE
REGULATORY AND WARNING SIGNS

Class of Highway	Time
1	7 days
2	14 days
3	21 days
4	30 days
5	30 days

Traffic control signal systems

13. (1) If a traffic control signal system is defective in any way described in subsection (2), the minimum standard is to deploy resources as soon as practicable after becoming aware of the defect to repair the defect or replace the defective component of the traffic control signal system.

(2) This section applies if a traffic control signal system is defective in any of the following ways:

1. One or more displays show conflicting signal indications.
2. The angle of a traffic control signal or pedestrian control indication has been changed in such a way that the traffic or pedestrian facing it does not have clear visibility of the information conveyed or that it conveys confusing information to traffic or pedestrians facing other directions.
3. A phase required to allow a pedestrian or vehicle to safely travel through an intersection fails to occur.

(3) Despite subsection (1) and paragraph 8 of subsection (2), if the posted speed of all approaches to the intersection or location of the non-functioning signal lamp or pedestrian control indication is less than 80 kilometres per hour and the signal that is not functioning is a green or a pedestrian "walk" signal, the minimum standard is to repair or replace the defective component by the end of the next business day.

(4) In this section and section 14,

"cycle" means a complete sequence of traffic control indications at a location;

"display" means the illuminated and non-illuminated signals facing the traffic;

"indication" has the same meaning as in the *Highway Traffic Act*;

"phase" means a part of a cycle from the time where one or more traffic directions receive a green indication to the time where one or more different traffic directions receive a green indication;

"power failure" means a reduction in power or a loss in power preventing the traffic control signal system from operating as intended;

"traffic control signal" has the same meaning as in the *Highway Traffic Act*;

"traffic control signal system" has the same meaning as in the *Highway Traffic Act*;

Traffic control signal system sub-systems

14. (1) The minimum standard is to inspect, test and maintain the following traffic control signal system sub-systems every 12 months:

1. The display sub-system, consisting of traffic signal and pedestrian crossing heads, physical support structures and support cables.
2. The traffic control sub-system, including the traffic control signal cabinet and internal devices such as timer, detection devices and associated hardware, but excluding conflict monitors.
3. The external detection sub-system, consisting of detection sensors for all vehicles, including emergency and railway vehicles and pedestrian push-buttons.

(2) The minimum standard is to inspect, test and maintain conflict monitors every five to seven months and at least twice a year.

(3) In this section,

"conflict monitor" means a device that continually checks for conflicting signal indications and responds to a conflict by emitting a signal.

Bridge deck spalls

15. (1) If a bridge deck spall exceeds both the surface area and depth set out in the Table to this section, the minimum standard is to repair the bridge deck spall within the time set out in the Table after becoming aware of the fact.

(2) A bridge deck spall shall be deemed to be repaired if its surface area or depth is less than or equal to that set out in the Table.

(3) In this section,

"bridge deck spall" means a cavity left by one or more fragments detaching from the paved surface of the roadway or shoulder of a bridge.

TABLE
BRIDGE DECK SPALLS

Class of Highway	Surface Area	Depth	Time
1	600 cm ²	8 cm	4 days
2	800 cm ²	8 cm	4 days
3	1,000 cm ²	8 cm	7 days
4	1,000 cm ²	8 cm	7 days
5	1,000 cm ²	8 cm	7 days

Surface discontinuities

16. (1) If a surface discontinuity, other than a surface discontinuity on a bridge deck, exceeds the height set out in the Table to this section, the minimum standard is to repair the surface discontinuity within the time set out in the Table after becoming aware of the fact.

(2) If a surface discontinuity on a bridge deck exceeds 5 cm, the minimum standard is to deploy resources as soon as practicable after becoming aware of the fact to repair the surface discontinuity on the bridge deck.

(3) In this section,

"surface discontinuity" means a vertical discontinuity creating a step formation at joints or cracks in the paved surface of the roadway, including bridge deck joints, expansion joints and approach slabs to a bridge.

TABLE
SURFACE DISCONTINUITIES

Class of Highway	Height	Time
1	5 cm	2 days
2	5 cm	2 days
3	5 cm	7 days
4	5 cm	21 days
5	5 cm	21 days

REVIEW OF REGULATION**Review**

17. (1) The Minister of Transportation shall conduct a review of this Regulation every five years.

(2) The first review shall be started before the end of 2007.

COMMENCEMENT**Commencement**

18. This Regulation comes into force on November 1, 2002.

NORMAN W. STERLING
Minister of Transportation

Dated on July 23, 2002.

34/02

ONTARIO REGULATION 240/02

made under the

EDUCATION ACT

Made: August 9, 2002
Filed: August 9, 2002

Amending O. Reg. 400/98
(Tax Matters — Tax Rates for School Purposes)

Note: Since the end of 2001, Ontario Regulation 400/98 has been amended by Ontario Regulation 138/02. Previous amendments are listed in the Table of Regulations published in *The Ontario Gazette* dated January 19, 2002.

1. Section 9 of Ontario Regulation 400/98 is amended by adding the following subsection:

(5.1) Despite subsections (3), (4) and (5), the tax rates for school purposes for 2002 for the purposes of section 257.7 of the Act for the Region of Durham and the City of Hamilton are the tax rates for the property classes set out in Table 12 opposite the name of each municipality.

2. The Regulation is amended by adding the following section:

"surface discontinuity" means a vertical discontinuity creating a step formation at joints or cracks in the surface of the sidewalk.

11. This Regulation comes into force on the day it is filed.

Made by:

KATHLEEN O'DAY WYNNE
Minister of Transportatio-

Date made: February 18, 2010.

10/10

ONTARIO REGULATION 23/10

made under the

MUNICIPAL ACT, 2001

Made: February 18, 2010

Filed: February 18, 2010

Published on e-Laws: February 19, 2010

Printed in *The Ontario Gazette*: March 6, 2010

Amending O. Reg. 239/02

(Minimum Maintenance Standards for Municipal Highways)

Note: Ontario Regulation 239/02 has previously been amended. For the legislative history of the Regulation, see the Table of Consolidated Regulations – Detailed Legislative History at www.e-Laws.gov.on.ca.

1. (1) Subsection 1 (1) of Ontario Regulation 239/02 is amended by adding the following definition:
"Ontario Traffic Manual" means the Ontario Traffic Manual published by the Ministry of Transportation, as amended from time to time;
- (2) Clauses 1 (3) (a) and (b) of the Regulation are revoked and the following substituted:
 - (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.
- (3) Section 1 of the Regulation is amended by adding the following subsection:
 - (4) For the purposes of this Regulation, a municipality is deemed to be aware of a fact if, in the absence of actual knowledge of the fact, circumstances are such that the municipality ought reasonably to be aware of the fact.
2. Subsection 2 (2) of the Regulation is revoked.
3. (1) Section 3 of the Regulation is amended by striking out the portion before the Table and substituting the following:

Patrolling

 - (1) The minimum standard for the frequency of patrolling of highways to check for conditions described in this Regulation is set out in the Table to this section.
 - (2) During the season when a municipality performs winter highway maintenance, the minimum standard for patrolling highways is, in addition to that set out in subsection (1), to patrol highways that the municipality selects as representative of its highways, as necessary, to check for conditions described in sections 4 and 5.
 - (3) Patrolling a highway consists of observing the highway, either by driving on or by electronically monitoring the highway; and may be performed by persons responsible for patrolling highways or by persons responsible for or performing highway maintenance activities.

(4) This section does not apply in respect of the conditions described in section 10, subsections 11 (0.1) and 12 (1) and section 16.1.

(2) The heading to the Table to section 3 of the Regulation is revoked and the following substituted:

TABLE
PATROLLING FREQUENCY

4. Section 4 of the Regulation is amended by striking out the portion before the Table and substituting the following:

Snow accumulation

4. (1) The minimum standard for clearing snow accumulation is,

- (a) after becoming aware of the fact that the snow accumulation on a roadway is greater than the depth set out in the Table to this section, to deploy snow-clearing resources as soon as practicable; and
- (b) after the snow accumulation has ended, to clear the snow to a depth less than or equal to the depth set out in the Table within the time set out in the Table,
 - (i) to provide a minimum lane width of the lesser of three metres for each lane or the actual lane width, or
 - (ii) on a Class 4 or Class 5 highway with two lanes, to provide a total width of at least five metres.

(2) This section,

- (a) does not apply to that portion of the roadway designated for parking; and
- (b) only applies to a municipality during the season when the municipality performs winter highway maintenance.

(3) In this section,

"snow accumulation" means the natural accumulation of any of the following that, alone or together, covers more than half a lane width of a roadway:

1. New fallen snow.
2. Wind-blown snow.
3. Slush.

5. Subsection 5 (1) of the Regulation is revoked and the following substituted:

Icy roadways

(1) 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.

6. Section 10 of the Regulation is amended by adding the following subsection:

Luminaires

(0.1) The minimum standard for the frequency of inspecting all luminaires to check to see that they are functioning is once per year.

7. (1) Section 11 of the Regulation is amended by adding the following subsection:

Signs

(0.1) The minimum standard for the frequency of inspecting signs of a type listed in subsection (2) to check to see that they meet the retro-reflectivity requirements of the Ontario Traffic Manual is once per year.

(2) Subsection 11 (1) of the Regulation is amended by striking out "improperly oriented or missing" and substituting "improperly oriented, obscured or missing".

(3) Subsection 11 (2) of the Regulation is amended by adding the following paragraphs:

- 3.1 Load Restricted Bridge.
- 3.2 Low Bridge.
- 3.3 Low Bridge Ahead.

8. Section 12 of the Regulation is amended by striking out the portion before the Table and substituting the following:

Regulatory or warning signs

12. (1) The minimum standard for the frequency of inspecting regulatory signs or warning signs to check to see that they meet the retro-reflectivity requirements of the Ontario Traffic Manual is once per year.

(2) If a regulatory sign or warning sign is illegible, improperly oriented, obscured or missing, the minimum standard is to repair or replace the sign within the time set out in the Table to this section after becoming aware of the fact.

(3) In this section,

“regulatory sign” and “warning sign” have the same meanings as in the Ontario Traffic Manual, except that they do not include a sign listed in subsection 11 (2) of this Regulation.

9. Section 16 of the Regulation is amended by striking out the portion before the Table and substituting the following:

Roadway surface discontinuities

16. (1) If a surface discontinuity on a roadway, other than a surface discontinuity on a bridge deck, exceeds the height set out in the Table to this section, the minimum standard is to repair the surface discontinuity within the time set out in the Table after becoming aware of the fact.

(2) If a surface discontinuity on a bridge deck exceeds five centimetres, the minimum standard is to deploy resources as soon as practicable after becoming aware of the fact to repair the surface discontinuity on the bridge deck.

(3) In this section,

“surface discontinuity” means a vertical discontinuity creating a step formation at joints or cracks in the paved surface of the roadway, including bridge deck joints, expansion joints and approach slabs to a bridge.

10. The Regulation is amended by adding the following section:

Sidewalk surface discontinuities

16.1 (1) The minimum standard for the frequency of inspecting sidewalks to check for surface discontinuity is once per year.

(2) If a surface discontinuity on a sidewalk exceeds two centimetres, the minimum standard is to treat the surface discontinuity within 14 days after becoming aware of the fact.

(3) For the purpose of subsection (2), treating a surface discontinuity on a sidewalk means taking reasonable measures to protect users of the sidewalk from the discontinuity, including making permanent or temporary repairs, alerting users' attention to the discontinuity or preventing access to the area of discontinuity.

(4) In this section,

“surface discontinuity” means a vertical discontinuity creating a step formation at joints or cracks in the surface of the sidewalk.

11. Subsection 17 (2) of the Regulation is revoked and the following substituted:

(2) Despite subsection (1), the first review after the completion of the review started before the end of 2007 shall be started five years after the day Ontario Regulation 23/10 is filed.

12. This Regulation comes into force on the day it is filed.

Made by:

KATHLEEN O'DAY WYNNE
Minister of Transportation

Date made: February 18, 2010.

10/10

36:1 Bill 86, Better Local Government Act, 1996

Leach, Hon Allan F. Minister of Municipal Affairs and Housing

View the Bill

Better Local Government Act, 1996

EXPLANATORY NOTES

The Bill represents the first phase of a comprehensive rewriting of Ontario's municipal legislation. Its major components are:

1. The *Municipal Elections Act, 1996*, which replaces the existing *Municipal Elections Act*, and consequential amendments to municipal and other statutes.
2. Election-related changes dealing with council size and composition and division into wards.
3. Amendments relating to municipal debt and investment.
4. Amendments relating to municipal liability.
5. Miscellaneous municipal amendments.
6. Amendments relating to annual assessment updates.
7. Amendments relating to community transportation.

Municipal Elections Act, 1996

Part I of the Bill enacts the *Municipal Elections Act, 1996*, repeals its predecessor and deals with transitional issues. The new Act appears as a schedule to the Bill. Some of its features are:

1. The Act is streamlined and reorganized, its terminology is simplified and updated, and the number of prescribed forms is reduced.
2. The requirement of a specific municipal enumeration is eliminated. (Section 19 of new Act)
3. Voters' lists will no longer be posted in public places, although they can be examined and copied in the clerk's office. (Subsection 88 (11) of new Act)
4. Nomination day is the Friday 31 days before voting day (October 10 in 1997). Candidates may be nominated from January 1 onwards in the year of a regular election. (Sections 31 and 33 of new Act)
5. Nominations must be accompanied by a deposit, which is refundable if the candidate withdraws, receives more than a prescribed minimum of the vote or is elected. (Sections 33 and 34 of new Act)
6. Employees of municipalities and local boards are entitled to seek local elected office, but must take unpaid leave in order to do so. (Section 30 of new Act)
7. Municipalities may pass by-laws providing for the use of alternative voting methods such as phone or mail-in voting. (Section 42 of new Act)
8. Previously municipalities were required to set aside at least two days for an advance vote; the minimum is reduced to one day. (Section 43 of new Act)
9. Voting day remains the second Monday in November (November 10 in 1997). As before, regular elections are held every three years. (Sections 4 and 5 of new Act)
10. Normal voting hours on voting day remain from 10 a.m. to 8 p.m., but municipalities may provide for earlier opening times. Voting hours for an advance vote are in the discretion of the council. (Sections 43 and 46 of new Act)
11. Municipalities, elected local boards and the Minister of Municipal Affairs and Housing are entitled to have questions placed on the ballot. (Section 8 of new Act)
12. The clerk conducts a recount if there is a tied vote, if the council or local board (or the Minister, when he or she has submitted a question) requires a recount, or if the Ontario Court (General Division) orders a recount. (Sections 56-62 of new Act)
13. Election campaign finance rules are rewritten. (Sections 66-82 of new Act)

Consequential amendments to the *Municipal Act* and other statutes are found in Parts II and III of the Bill. The *Municipal Elections Act, 1996* and the consequential amendments come into force when the Bill receives Royal Assent.

Election-related changes

1. Municipal councils are permitted to change council size and composition. Lower-tier councils are also permitted to change their members' titles and manner of election (by ward or by general vote). (Sections 3 and 4 of Bill; sections 26, 27 and 29 of *Municipal Act*)
2. Councils are permitted to divide or redivide municipalities into wards or dissolve existing wards, subject to a public right of appeal. Members of the public are also entitled to petition for changes relating to wards. (Section 2, subsections 74 (2) and 87 (5) of Bill; sections 13 to 13.3 of *Municipal Act*, section 5 of *Municipality of Metropolitan Toronto Act*, sections 8.1 and 8.2 of *Regional Municipality of Ottawa-Carleton Act*)

These changes, like the *Municipal Elections Act, 1996* and consequential amendments, come into force when the Bill receives Royal Assent.

Debt and Investment matters

1. Municipalities are entitled to invest surplus funds in accordance with the regulations. (Subsection 24 (3), sections 31 and 33 of Bill; subsection 144 (5) and sections 163 and 167 of *Municipal Act*; corresponding changes to *County of Oxford Act*, *District Municipality of Muskoka Act*, *Municipality of Metropolitan Toronto Act* and *Regional Municipalities Act*)
2. Prescribed municipalities are permitted to issue variable rate debentures, subject to the regulations. (Section 29 of Bill; section 149.1 of *Municipal Act*)
3. Municipal powers to borrow in foreign currencies, and to issue debentures in those currencies, are standardized and consolidated. (Sections 28 and 35 of Bill; section 146 of *Municipal Act*, corresponding changes to *County of Oxford Act*, *District Municipality of Muskoka Act*, *Municipality of Metropolitan Toronto Act* and *Regional Municipalities Act*)

Same

(3) An investment referred to in clause (2) (a) shall not be continued after the first anniversary of the effective date unless it is a permitted investment under section 167 of the Act.

Effective date

(4) For the purposes of subsections (2) and (3), the effective date is the day subsection (1) comes into force.

51. (1) Subsection 284 (1) of the Act is repealed and the following substituted:

Maintenance of roads and bridges

(1) The council of the corporation that has jurisdiction over a highway or bridge or upon which the duty of repairing it is imposed by this Act shall keep it in a state of repair that is reasonable in light of all the circumstances, including the character and location of the highway or bridge.

Liability

(1.1) In case of default, the corporation, subject to the *Negligence Act*, is liable for all damages any person sustains because of the default.

Defence

(1.2) The corporation is not liable under subsection (1) or (1.1) for failing to keep a highway or bridge in a reasonable state of repair if it did not know and could not reasonably have been expected to know about the state of repair of the highway or bridge.

Same

(1.3) The corporation is not liable under subsection (1) or (1.1) for failing to keep a highway or bridge in a reasonable state of repair if it took reasonable steps to prevent the default from arising.

Same

(1.4) The corporation is not liable under subsection (1) or (1.1) for failing to keep a highway or bridge in a reasonable state of repair if, at the time the cause of action arises,

- (a) minimum standards established under subsection (1.5) apply,
- (i) to the highway or bridge, and
- (ii) to the alleged default; and
- (b) those standards have been met.

Regulation

(1.5) The Minister of Transportation may, by regulation, establish minimum standards of repair for,

- (a) highways and roads;
- (b) classes of highways and roads;
- (c) bridges;
- (d) classes of bridges.

Same

(1.6) The minimum standards may be general or particular in their application.

Application extended to upper tier

(1.7) A regulation made under subsection (1.5) also applies to regional, district and metropolitan municipalities and the County of Oxford.

Adoption by reference

(1.8) A regulation made under subsection (1.5) may adopt by reference, in whole or in part, with such changes as the Minister of Transportation considers necessary, any code, standard or guideline, as it reads at the time the regulation is made or as amended from time to time, whether before or after the regulation is made.

(2) Subsection 284 (2) of the Act is amended by striking out "repair" in the fourth line and substituting "a reasonable state of repair".

52. The Act is amended by adding the following Part:

PART XIX.

MUNICIPAL LIABILITY

Definitions

331.1 In this Part,

"local board" means a local board as defined in the *Municipal Affairs Act*; ("conseil local")

"municipality" includes a regional, metropolitan or district municipality and the County of Oxford; ("municipalité")

"sewage" includes drainage water and storm water; ("eaux d'égout")

"sewage works" means facilities for the collection, storage, transmission, treatment or disposal of sewage, or any part of the facilities; ("réseau d'égouts")

"water works" means facilities for the collection, production, treatment, storage, supply or distribution of water, or any part of the facilities. ("réseau d'adduction d'eau")

Liability in nuisance re water and sewage

331.2 (1) No proceeding based on nuisance shall be commenced against a municipality, a member of a municipal council, an employee or agent of the

S.C.C. No.:

**THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF
APPEAL FOR THE PROVINCE OF
ONTARIO)**

B E T W E E N:

**THE REGIONAL MUNICIPALITY OF
HALTON, and THE TOWN OF MILTON**

**Applicants
(Appellants/
Respondents by Cross-Appeal/Defendant)**

- and -

PATRIZIA GIULIANI, TINA GIULIANI

**Respondents
(Respondents/Plaintiffs)**

MEMORANDUM OF ARGUMENT

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