

POTHOLES AND LEGAL ACTIONS

OBA Conference
Becoming a 'Roads' Scholar
May 17, 2016

COLIN P. STEVENSON
Stevenson Whelton MacDonald & Swan LLP
Barristers
www.swlawyers.ca

POTHOLES AND LEGAL ACTIONS
by Colin P. Stevenson

TABLE OF CONTENTS

	PAGE
NOTICE REQUIREMENTS AND LIMITATION PERIODS	1
Provincial Highways and Roads	1
Actions against the Crown	2
Municipal Roadways	3
Actions against Public Authorities	4
Highway Traffic Act	5
Fatal Accidents	5
When Notice May Be Waived	6
Claims for Repair	8
Under the Public Transportation and Highway Improvement Act	8
Under the Municipal Act, 2001	10
Minimum Maintenance Standards	11
Former Owners of Roads may be Liable for Negligent Maintenance after Transfer	13
No Liability for Negligent Maintenance of Road if the Local Roads Boards Act Applies	14
The OMB and its (Lack Of) Power to Order Municipalities to Assume Roads	15
Roads in Provincial Parks are Different	16
Liability of Co-Owners to Contribute to Road Construction Costs	16
NOTICE REQUIREMENTS AND LIMITATION PERIODS	i
<i>LIMITATIONS ACT, 2002 S.O. 2002, chapter 24 Schedule B</i>	iii
<i>PUBLIC TRANSPORTATION AND HIGHWAY IMPROVEMENT ACT R.S.O. 1990, chapter P.50</i>	v
<i>MUNICIPAL ACT, 2001 S.O. 2001, Chapter 25</i>	vii
<i>PROCEEDINGS AGAINST THE CROWN ACT R.S.O. 1990, Chapter P.27</i>	ix
<i>FAMILY LAW ACT R.S.O. 1990, Chapter F.3</i>	xi
<i>TRUSTEE ACT R.S.O. 1990, Chapter T.23</i>	xii
<i>LOCAL ROADS BOARDS ACT R.S.O. 1990, Chapter L. 27</i>	xiii
<i>MUNICIPAL ACT, 2001 ONTARIO REGULATION 239/02</i>	xv

POTHoles AND LEGAL ACTIONS
Colin P. Stevenson*
Stevenson Whelton MacDonald & Swan LLP
OBA Conference, *Becoming a 'Roads' Scholar*, May 17, 2016

NOTICE REQUIREMENTS AND LIMITATION PERIODS

When the *Limitation Act*, R.S.O. 1990 c. L.15 was reformed by the *Limitation Act*, 2002, S.O. 2002, c. 24, Schedule B (referred to below as the "new Act", which came into force on January 1, 2004), the real property limitations were essentially left untouched. These are included in the *Real Property Limitations Act*, R.S.O. 1990 c. L.15 (see the 2002 Act, s. 2(1)(a))¹.

However, generally speaking, it is the new Act which provides a two year basic limitation period that applies to claims for damages arising from potholes and similar issues related to highway repairs. Section 4 of the new Act provides for a basic limitation period of two years from the date the claim was, or ought to have been, discovered. Section 5 of the new Act sets out the circumstances in which a claim will be said to have been discovered by a claimant. The new Act also provides for an "ultimate limitation period" of 15 years, in subsection 15(2).

In addition to the provisions of the new Act, there are various other notice requirements which must be carefully observed when dealing with claims involving road repairs. These are summarized below.

Provincial Highways and Roads

1. In addition to the basic two year limitation period, for a claim involving a provincially regulated highway or road, one must still give notice to the Minister of Transportation, within 10 days of the injury. See s. 33(4) of the Public Transportation and Highway Improvement Act, R.S.O. 1990, c. P.50. Notice to the Minister may be sent to the Ministry of Transportation, Claims Office, 301 St. Paul Street, St. Catharines, Ontario, L2R 7R4, at facsimile number 905-704-2777. An online form is available at <http://www.mto.gov.on.ca/english/vehicles/submit-a-claim.shtml>.
2. Upon the proclamation of the new Act in 2004, the Public Transportation and Highway Improvement Act was amended to delete the old three month limitation period, formerly in s. 33(5), so as to incorporate the basic two year limitation period under the new Act.

* The author would like to acknowledge the assistance of Spencer Wong, student-at-law, in the writing of this paper.

¹ One must be careful not to conclude, however, that the old real property limitations remain totally unchanged by virtue of the new Act. The issues are discussed in detail by Brian Bucknall in his article, *The Limitations Act, 2002 and the Real Property Limitations Act: An Evolving Dialogue (The Second Annual Real Estate Law Summit 2005, Tab 5)*.

3. In the event an action is commenced against the Minister of Transportation, pursuant to s. 33(7), the Minister is to be named as "Her Majesty the Queen in Right of the Province of Ontario, represented by the Minister of Transportation for the Province of Ontario".

Actions against the Crown

4. In addition to providing notice to the Minister of Transportation, there is also a general requirement before issuing a claim against the Crown (Ontario) that one give 60 days' notice of the claim to the Minister of the Attorney General with sufficient particulars to identify the occasion out of which the claim arose. (See s. 7 of the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27 ("*PACA*")). Notice to the Minister may be sent to the Ministry of the Attorney General, Crown Law Office (Civil), 720 Bay Street, 8th Floor, Toronto, Ontario, M7A 2S9, at facsimile number 416-326-4181. The notice should indicate that the claimant intends to commence an action against the Crown.² After the notice is served, the claimant must wait the 60 day period before commencing an action.³
5. Despite the general notice requirement mentioned above, pursuant to ss. 5(1)(c) and 7(3) of *PACA*, if the claim against the Crown is specifically in respect of a breach of duties which attach to the ownership, occupation, possession or control of property, notice of the claim against the Crown must be provided within 10 days from the day the claim arose. Notice under this section is given to the Ministry of the Attorney General. Certain claims involving road repairs may fall under this particular subsection and therefore, such claims would require that notice be provided to the Crown, in the form of both the Minister of Transportation and the Minister of the Attorney General within ten days of the occurrence of the injury.

² *Pokonzie v. Ontario*, [2004] O.J. No. 3039 (O.S.C.J.), para. 14; cited with approval in *Pfeiffer v. Ontario*, 2008 ONCA 15, leave to appeal ref'd, 2008 CarswellOnt 3207 (SCC).

³ *Beardsley v. Ontario* (2001), 57 O.R. (3d) 1 (O.C.A.), para. 12, cited with approval in *Blue v. Ontario (Ministry of Health & Long Term Care)*, 2009 CarswellOnt 2111 (Ont SCJ), at para. 7:

According to the uncontested evidence filed by the Crown defendants, the plaintiff did not give the requisite 60-day notice to Ontario. The relevant case law is clear that, where notice has not been given, the action commenced is a nullity. Further, the period of 60 days' notice cannot be abridged in any way but must run before the action is commenced. (See: *Jos. Zuliani Ltd. v. Windsor (City)* 1973, 2 O.R. (2d) 598 (Ont. H.C.), at p. 600; *Beardsley v. Ontario*, 57 O.R. (3d) 1, [2001] O.J. No. 4574 (Ont. C.A.), at para. 12; *Khan v. Leluk*, [1985] O.J. No. 578 (Ont. H.C.), at p. 2.) As a result, the plaintiff's statement of claim is struck out and her action dismissed as against Ontario.

6. All tort actions against the Crown must strictly comply with the notice requirements of *PACA*. Any failure to comply is fatal and will result in a nullity of the action⁴ but see the discussion of waiver below.
7. Section 2(1) of the *PACA* specifically provides that "This Act does not affect and is subject to....the Public Transportation and Highway Improvement Act". Therefore, it would seem that both Acts apply in conjunction with one another and notice must be given to both the Minister of Transportation and the Minister of the Attorney General. In short, as a practical matter, notice should be given to both Ministries as soon as practicable after the incident.

Municipal Roadways

8. In the case of municipal roadways, such as Yonge Street⁵, in addition to the basic two year limitation period, ss. 44(2) and (10) of the *Municipal Act, 2001*, S.O. 2001, c. 25, require that notice to the clerk of the municipality be provided within 10 days of the occurrence of the injury. If the claim is against two or more municipalities jointly responsible for the highway, notice must be given, within ten days, to the clerk of each municipality.
9. This notice provision applies to any and all actions against a municipality that allege "something wrong in the highway"⁶. However, in a decision of the Court of Appeal for Ontario,⁷ decided under s. 284 of the *Municipal Act R.S.O. 1990, c. M.45*, (the predecessor provision to s. 44 of the *Municipal Act, 2001*,), the court found that where an injury occurred on a municipal highway as a result of a utility pole that snapped off and struck a van travelling below, the action was not subject to the notice provisions of the *Municipal Act* because the damaged utility pole was not considered to be "something wrong with the highway".
10. Note that the old *Municipal Act*⁸ (ss. 284(2) and (5)) required the claimant to provide seven days' notice in the case of an urban municipality or 10 days' notice in the case of a

⁴ *Latta v. Ontario* (2002), 220 D.L.R. (4th) 157 (O.C.A.), and *Pokoznie*, *supra*, note 2 at para. 14. See also *Blue v. Ontario (Ministry of Health & Long Term Care)*, *supra*, note 3.

⁵ Yonge Street is a municipally regulated road while within the bounds of the City of Toronto. North of Toronto, Yonge Street continues to be municipally regulated by each of the municipalities it passes through until it reaches Barrie, Ontario. Just north of Barrie, Ontario, Yonge Street becomes Highway 11 and at that point, it becomes a provincially operated highway.

⁶ *Mero v. Waterloo (Regional Municipality)* (1992), 7 O.R. (3d) 102 (O.C.A.), followed in *Reaume v. Smolders*, 2008 CarswellOnt 3014 Ont SCJ).

⁷ *Ouellette v. Corporation of the Town of Hearst* (2004), 70 O.R. (3d) 204 (O.C.A.).

⁸ Section 284 of the *Municipal Act R.S.O. 1990, c. M.45* was repealed by s. 54(1) of the *Better Local Government Act*, S.O. 1996, c.32 (Bill 86) on December 19, 1996. This later Act substituted the maintenance provision quoted above. The entire *Municipal Act*, R.S.O. 1990, c. M.45 was repealed and replaced with the *Municipal Act, 2001*,

county or a township. Furthermore, the old Municipal Act required that the action be brought within three months after the damage was incurred. The notice period is now ten days and the limitation period two years. See also the discussion about "suspension" and "waiver" below.

Actions against Public Authorities

11. Claims against a public authority are also subject to the two year basic limitation period in the new Act. (Section 7 of the *Public Authorities Protection Act*, R.S.O. 1990, c. P.38 (*PAPA*) has now been repealed by s. 19 of the new Act. *PAPA* used to require a claim to be brought within six months in respect of an act and in pursuance or execution or intended execution of any statutory or other public duty or authority.)
12. Prior to the repeal of section 7 of *PAPA*, the issue of limitation periods and the Ontario Department of Highways (now the Ministry of Transportation) was considered in the Supreme Court of Canada.⁹ In this case, the Department of Highways had engaged in the reconstruction of a highway near the plaintiff's farm. As a result of an agreement between the contractor and the previous owner of the plaintiff's farm, the waste asphalt generated by the reconstruction of the highway was deposited on the farm as fill. The plaintiff subsequently brought an action against the Ministry of Transportation as a result of agricultural damage it experienced on account of the buried asphalt. The plaintiff claimed that the burial was done on behalf of the province, pursuant to a public duty to repair highways.
13. In the lower courts, the plaintiff's action was dismissed as statute barred for failing to meet the six month limitation period in *PAPA*. However, the Supreme Court overturned both lower court decisions and allowed the claim to proceed. The Supreme Court held that the disposal of the asphalt was not mandated by statute; it was done by the contractor (not the province) and it did not constitute an exercise of public power or duty. The Supreme Court stated that the disposal of waste asphalt is an internal or operational activity, outside the scope of the public duty to construct and repair highways.
14. As a result of the subsequent deletion of s. 7 of *PAPA* it is doubtful that this statute will have any application to actions concerning roads commenced after January 1, 2004. Moreover, the provisions of *PAPA* are inapplicable to any actions against municipal corporations (see section 11 of *PAPA*). Nevertheless, it is important to be mindful of the existence of *PAPA*, in the unlikely event it may be triggered.

S.O. 2001, c. 25 which was given Royal Assent on December 12, 2001 and came into force on January 1, 2003. The maintenance provisions contained in s. 284 of the old *Municipal Act* are now provided for in s. 44 of the *Municipal Act, 2001*.

⁹ *Berendsen v. Ontario*, [2001] 2 S.C.R. 849 (S.C.C.).

Highway Traffic Act

15. The two year basic limitation period for highway traffic accidents is now worded differently as a result of the new Act, although there is no practical difference because of the court's interpretation of the former section. The former (now repealed) s. 206 of the *Highway Traffic Act, 1990*, c. H.8 imposed a limitation of two years from the time when the damages occasioned by a motor vehicle were sustained or, in the case of death, within the time limited by a dependants' claim under s. 61 of the *Family Law Act*, R.S.O. 1990, c. F.3.
16. In 1997 the Supreme Court of Canada¹⁰ ruled that time under s. 206 did not begin to run until it could be reasonably discoverable that the injury meets the threshold of s. 266(1) of the Insurance Act, R.S.O. 1990 c. I.8, meaning, the injury is permanent in nature and entails serious impairment of an important bodily function.
17. The effect of that discoverability principle is now codified by the new Act which states that the two year limitation starts from the date on which the claim was discoverable.

Fatal Accidents

18. The two year basic limitation period of the new Act also applies in the case of fatal accidents, however, s. 20 of the new Act specifically provides that it does not affect the extension, suspension or other variation of a limitation period or other time limit by or under another act.
 - (a) Extension

In the case of death on a highway, a dependant (of the deceased) may bring a claim for damages under section 61 of the Family Law Act R.S.O. 1990, c. F.3 (FLA). Section 2(8) of the FLA provides that the court, on motion, may extend a time prescribed by the FLA if the court is satisfied that:

 - (i) there are apparent grounds for relief;
 - (ii) relief is unavailable because of delay that has been incurred in good faith; and
 - (iii) no person will suffer substantial prejudice by reason of delay.
19. Consequently, as a result of s. 20 of the new Act and s. 2(8) of the *FLA*, in the event of a fatal accident on a roadway, the basic two year limitation period may in some

¹⁰ *Peixeiro v. Haberman*, [1997] 3 S.C.R. 549 (S.C.C.), cited in many cases such as *Labelle v. Brand*, 2015 ONSC 5573, para. 19.

circumstances be extended for dependants of the deceased who wish to bring a claim for damages by way of a motion under ss. 2(8) and 61 of the *FLA*.

20. Note that the *FLA* used to provide, in s. 61(4), that no action for damages by a dependant shall be brought after the expiration of two years from the time the cause of action arose. However, this section was repealed and replaced when the new Act came into force, thus permitting the further extension of time in the event of a fatal accident where the grounds for extension are met.

(a) Variation

Section 38(3) of the *Trustee Act*, R.S.O. 1990 c. T.23, provides that no action for injury brought by or against the estate of a deceased may be commenced after the expiration of two years from the date of death. The courts have confirmed that the discoverability rule does not apply to the limitation period in the *Trustee Act*.¹¹ Therefore, the limitation period for a claim involving the estate of a deceased is tied to the date of death and not the date upon which the claim is discovered.¹²

(b) Suspension

According to s. 44(11) of the *Municipal Act, 2001*, where an injury results in death, the failure to give notice within the time prescribed by the Act will not constitute a bar to an action.

21. A schematic chart containing all of the notice requirements and limitation periods is attached as a schedule to this paper.

When Notice May Be Waived

22. In *Myshrall v. Toronto*,¹³ the Ontario Court of Appeal considered the issue of what constitutes proper and sufficient notice of a claim against a municipality (under s. 284 of the old *Municipal Act*). In *Myshrall*, the plaintiff provided notice of her claim to the municipality within the time period required by the Act, however, she failed to include in her notice the date or location of the accident. The municipality successfully brought a motion for summary judgment to dismiss the claim for failure to provide proper notice. In overturning the decision of the lower court, Laskin, J.A., held that the purpose of notice is to provide the municipality with an opportunity to investigate and take corrective action,

¹¹ *Re Canadian Red Cross Society* (2002), 62 O.R. (3d) 227 (O.S.C.J.), *Waschkowski v. Hopkinson Estate* (2000), 47 O.R. (3d) 370 (O.C.A.), cited with approval in *Ryan v. Moore*, 2005 SCC 38 at para. 31.

¹² *Giroux Estate v. Trillium Health Center* (2005), 74 O.R. (3d) 341 (O.C.A.). See also s. 19(1)(a) and the Schedule to the new Act, and *English Estate v. Tregal Holdings Ltd.* (2004), 9 E.T.R. (3d) 282 (O.S.C.J.) at para. 7.

¹³ (2001) 52 O.R. (3d) 686 (O.C.A.). Leave to appeal to the Supreme Court of Canada dismissed (2001) SCCA No. 160.

if necessary. Therefore, as long as the notice contains sufficient information to permit the municipality to investigate, it does not have to spell out the claim or injury. Laskin, J.A. also stated that courts should read notices in a general way, bearing in mind that those who are drafting them may not have legal training. Accordingly, the notice was deemed to be sufficient and the case was permitted to proceed.

23. In *Glazman v. Toronto*,¹⁴ the plaintiff sprained her ankle by falling in a pothole. The plaintiff failed to provide notice of her claim within the time required, but succeeded in her action, despite the lack of a timely notice, because it was found that no prejudice would result. The court held that, since the roadway where the plaintiff's injury occurred was in a general state of disrepair, there was no need to identify exactly what hazard caused the plaintiff's fall. In this case, Lane, J. found that barring the action for want of notice would constitute an injustice even though there was no reasonable excuse for the plaintiff's failure to provide notice.
24. The court's tendency to be lenient with respect to notice to a municipality is codified in s. 44(12) of the *Municipal Act, 2001* which provides that the failure to give notice, or an insufficiency in the notice provided, will not constitute a bar to an action if a judge finds that there is a reasonable excuse for the want or the insufficiency of the notice and that the municipality is not prejudiced in its defence.
25. Similarly, in an action under the *Public Transportation and Highway Improvement Act*, a claim will not be dismissed for improper notice where there is a reasonable excuse for the plaintiff's failure to satisfy the time requirement. In *Greenaway v. Ontario*,¹⁵ the court refused to dismiss a claim against the Ministry of Transportation, which had not been brought within the time prescribed, because the plaintiff's solicitor stated that he needed to obtain an expert report regarding the icy condition of the road prior to commencing the action. The court accepted the solicitor's statement as a reasonable excuse for the late filing of the claim.
26. As previously discussed, the notice requirements under *PACA* are to be strictly construed. However, even under this statute, where special and extenuating circumstances exist, the court will overlook the necessity of the notice requirement. In a case¹⁶ decided under s. 7(3) of *PACA*, the court refused to dismiss the action as a nullity, despite a failure to provide notice within 10 days, because the claimant was an incarcerated person and did not have the opportunity to meet the time requirement through no fault of his own. In another case¹⁷ where the plaintiff complied with the notice requirements under the *Public*

¹⁴ (2002) 29 M.P.L.R. (3d) 286 (O.S.C.J.).

¹⁵ (1999) 44 O.R. (3d) 296 (Ont. Gen. Div.). See also *White v. Mannen*, 2011 ONSC 1058, para. 27.

¹⁶ *Appleyard v. Ontario* (1999), 28 C.P.C. (4th) 329 (Gen. Div.) Affm'd (1999) 38 C.P.C. (4th) 309 (O.C.A.), cited with approval in *Coulter v. Ontario (Ministry of Natural Resources)*, 2014 ONSC 1573.

¹⁷ *Supra* note 15, at para. 10.

Transportation and Highway Improvement Act but not the *PACA*, the court found that compliance with the notice provisions under one Act was sufficient for all purposes.

27. These two decisions dealing with notice under *PACA* appear to be somewhat of an anomaly. In fact, in the case of *Singh v. Ontario*¹⁸ the court considered the decision in *Applewood* (above) and held that while such an exception to the notice provisions under s. 7(3) may be available in unique circumstances, such as incarceration, it is not to be applied to the notice requirement under s. 7(1), which requires strict compliance with the obligation to provide the Crown with 60 days notice of a claim.¹⁹

Claims for Repair

Under the Public Transportation and Highway Improvement Act

28. Section 33 (1) of the *Public Transportation and Highway Improvement Act* imposes a statutory duty of care on the Ministry of Transportation to maintain the King's highway and keep it in repair. Pursuant to s. 33(2), in the case of default by the Ministry of Transportation, the Crown is liable for all damage sustained by a person, by reason of the default.

¹⁸ (2002) CarswellOnt 4637 (O.S.C.J.).

¹⁹ *Supra* note 18 at para. 14. Another case that analyzes the distinction between s. 7(1) and (3) is *Coulter v. Ontario (Ministry of Natural Resources)*, 2014 ONSC 1573, at paras. 59-61:

59. The applicant also relies on *Pfeiffer v. Ontario*, 2008 ONCA 15 (Ont. C.A.), aff'g [2007] O.J. No. 5487 (Ont. S.C.J.) [*Pfeiffer*]. In *Pfeiffer*, the Ontario Court of Appeal upheld the finding of the trial judge who dismissed the appellant's action against the respondent for non-compliance with the notice requirement in s. 7(1) of the *PACA*. The Court of Appeal agreed with the trial judge's finding that the notice should have been in writing.

60. In my view, the *Pfeiffer* decision can be distinguished from the case at bar. In *Pfeiffer*, the court was dealing with the notice required under s. 7(1) of the *PACA*. Section 7(1) provides that the notice must be served "at least sixty days before the commencement of the action". I note that in circumstances where s. 7(1) applies, a claimant may have as much as 22 months to provide the required notice (assuming a two-year limitation period applies). By contrast, Kraig Coulter's claim is a property related claim and therefore the notice provision set out in s. 7(3) of the *PACA* applies. Section 7(3) requires that a plaintiff provide notice "within 10 days after the claim arises"; clearly s. 7(3) imposes a much more onerous notice requirement on a claimant.

61. In my view, it would not be unreasonable for a court to find that the ten-day notice requirement set out in s. 7(3) of the *PACA* should be construed more liberally in favour of an injured plaintiff than the less onerous notice provision in s. 7(1). Accordingly, for the purposes of deciding this motion, I am not prepared to rely on *Pfeiffer* as authority for requiring Kraig to have served a formal written notice on the Crown.

29. In order to keep the duty of the Ministry of Transportation within reasonable bounds, the Supreme Court of Canada²⁰ established that a special and highly dangerous situation is required to trigger the Ministry's obligation to take remedial action. Therefore, to successfully pursue a claim for repair against the Ministry of Transportation, the plaintiff must demonstrate that a special and highly dangerous situation exists at a certain location on the highway which otherwise, to persons reasonably using it, was quite passable and useable for traffic.²¹
30. The Court of Appeal²² further clarified the duty of the Ministry of Transportation by requiring the Ministry to take remedial steps when it knows or ought to know of a special and highly dangerous situation at a certain location on the highway which creates a risk of serious and imminent harm to motorists.
31. In order to be successful in such a claim, it is not necessary for the plaintiff to demonstrate that the Ministry knew the particular dangerous situation existed as long as it can be proven that the risk of danger existed and the Ministry knew or ought to have known of that risk.²³ In *Macmillan v. Ontario*,²⁴ the Court of Appeal overturned the trial decision and held the Ministry liable for damages, in the amount of \$3,865,644.90, where the plaintiff suffered injuries after her vehicle skidded on black ice on a bridge along the Highway 401. In his reasons for judgement, Goudge, J.A. held that, as a result of the weather conditions and the volume of traffic, the Ministry ought to have known that a special and highly dangerous situation creating a risk of serious and imminent harm would have affected the subject bridge at that time. The Court of Appeal found that the statutory duty of repair required the Ministry to undertake a reasonable remedial response

²⁰ *Millette v. Cote* (1974), 51 D.L.R. (3d) 244 (S.C.C.).

²¹ *Ibid.*

²² *Montani v. Matthews* (1996), 29 O.R. (3d) 257 (O.C.A.); *Bisoukis v. Brampton (City)*, [1999] O.J. No. 4598 (OCA). See also para. 38 of the *Frank v. Central Elgin (Municipality)*, 2010 ONCA 574 for more caselaw on point:

38. In three relatively recent decisions—two of which Ms. Frank referred to—this court held that a municipal or provincial authority had a duty of repair and then imposed liability for failing to meet the standard of care, that is, failing to take reasonable steps to address a "highly special dangerous situation at a certain location" it knew or ought to have known required special attention: see *Montani v. Matthews* (1996), 29 O.R. (3d) 257 Ont. C.A.), leave to appeal to S.C.C. refused, [2002] S.C.C.A. No. 52 (S.C.C.); *MacMillan v. Ontario (Minister of Transportation & Communications)* (2001), 24 M.V.R. (4th) 15 (Ont. C.A.), leave to appeal to S.C.C. refused, (2002), [2001] S.C.C.A. No. 348 (S.C.C.).

²³ *Ibid* at p. 271-272.

²⁴ (2001) 24 M.V.R. (4th) 15 (O.C.A.), leave to appeal was refused, 2002 CarswellOnt 837 (SCC). See also *Thornhill (Litigation Guardian of) v. Shadid*, 2008, 289 D.L.R. (4th) 396 (Ont. S.C.) at para. 18, which sets out governing principles for the application of a municipality's duty to keep streets and highways in a reasonable state of repair during the winter.

to the situation, such as conducting an early morning inspection. The evidence suggested that had an inspection been conducted, the area would have been salted and sanded prior to the accident. In examining the issue of liability, Goudge J.A. framed the test as follows:

- (a) whether, in all the circumstances, the situation at the relevant location on the highway gave rise to an unreasonable risk of harm to users of the highway;
- (b) whether the Ministry knew or ought reasonably to have known of the situation; and
- (c) whether the Ministry took reasonable remedial steps in response?

Under the Municipal Act, 2001

- 32. Generally speaking, in an action against a municipality, once the plaintiff establishes a prima facie claim that a highway is in a state of non repair and resulting damages, the onus then switches to the defendant municipality to demonstrate that it had a reasonable system of inspection and maintenance (of roads) in place, and that the inspection and maintenance operated on a timely basis.
- 33. A municipality will not be found liable in a claim for repair if it did not know and could not reasonably have been expected to know about a state of disrepair.²⁵ Moreover, a municipality will not be found liable if it took reasonable steps to prevent the default from arising.²⁶
- 34. The caselaw²⁷ has repeatedly demonstrated that a municipality's duty to repair is only triggered where an objectively hazardous condition exists such that a reasonable user of the road (be it a driver,²⁸ a pedestrian,²⁹ a cyclist,³⁰ or even a rollerblader³¹) would be unable to provide for his or her own safety.
- 35. Thus, a municipality has a positive obligation to maintain roads in a state of repair that is reasonable, in light of all the circumstances, including the character and location of the

²⁵ *Winter v. London (City)* (2002), 32 M.P.L.R. (3d) 219 (O.S.C.J.) and *Municipal Act, 2001*, c.25 s. 44(3)(a).

²⁶ *Supra* note 8 and *Municipal Act, 2001*, c.25 s. 44(3)(b).

²⁷ See the discussion of cases in *Housen v. Nikolaisen*, 2002 S.C.C. 33 (S.C.C.).

²⁸ *Reid v. Niagara (Regional Municipality)*, 2001 Carswell Ont 3827 (O.S.C.J.).

²⁹ *Bellefleur v. London (City)* (2002), 33 M.P.L.R. (3d) 252 (O.S.C.J.) and *supra* note 8.

³⁰ *Danco v. Thunder Bay (City)* (2002), 21 M.P.L.R. (3d) 18 (O.C.A.).

³¹ *Supra* note 9.

particular road. As stated by the Supreme Court of Canada, the standard of care required of a municipality is to ensure the safety of the users of a highway by using reasonable care to keep the highway in a reasonably safe condition for ordinary travel by users who are exercising ordinary care for their own safety.³²

36. These issues were considered at length in *McLeod v. General Motors of Canada*.³³ The plaintiff was injured in an accident which she said was caused by potholes in the rural, gravel road. The action was dismissed. Loose stone on a gravel road was to be expected and the eight potholes (2" deep) were not unreasonable in the circumstances. In any event, the judge considered the defences in s. 44(3) of the *Municipal Act* and concluded:
- (a) the municipality did not know about the defects (informal complaints were not insufficient);
 - (b) the municipality had a regular system of grading which was reasonable; and
 - (c) the municipality met the Minimum Maintenance Standards for inspection and pothole repair.

Minimum Maintenance Standards

37. In order to maintain a level of predictability and consistency in court decisions, and as a result of the provincial government downloading services from the province to the municipalities, municipal officials lobbied the Ontario government to establish road maintenance standards for municipal roadways.
38. Under s. 44(4) of the *Municipal Act, 2001*, The Minimum Maintenance Standards (MMS) were established, effective November 1, 2002, as Ontario Regulation 239/02. They are reviewed every five years. The standards deal with a variety of road maintenance and repair issues, such as, potholes, shoulder drop offs, surface discontinuity, icy roads, snow accumulation and debris. The MMS offer detailed and specific standards. For example, s. 6, which deals with potholes, provides that if a pothole on a class 1 paved municipal roadway exceeds 600 cm² in surface area and 8 cm in depth, the minimum standard required is for the municipality to repair the pothole within 4 days time. The minimum standard with respect to the time to repair will vary depending on the class of the highway in question. The class of a highway is determined based on the average annual daily traffic volume for the area and the posted speed limit.

³² *Housen v. Nikolaisen*, 2002 S.C.C. 33 at para 116 (S.C.C.).

³³ 2014 ONSC 134 (S.C.J.).

39. If a municipality is able to establish that minimum standards applied at the time the cause of action arose, and that those minimum standards were properly met, the municipality will not be held liable for the damages sustained in an accident.³⁴
40. The MMS also specifies standards for the clearing of snow from municipal roads. These standards were challenged in *Thornhill v. Shadid et al.*³⁵ which involved a 2002 Christmas day car accident on Green Lane, a road for which the Regional Municipality of York was responsible. The MMS, which were then two months old, required the Region to patrol Green Lane (if applicable in the circumstances of a snowstorm) three times in a seven day period and to plow when the snow was deeper than 2.5 cm. The Region had patrolled Green Lane twice on the day of the accident.
41. The Region was found liable even though the records of the Region and the plow operator initially suggested that the MMS had been met. However, a close investigation of the municipality's records, when correlated with the contemporaneous police notes, led the court to conclude that the Region's records were unreliable.
42. More significantly, Justice Howden concluded that the MMS are not an all-inclusive document. In this case they did not (at that time) specifically cover winter storms. Thus, the court held that the MMS (they have since been amended) did not eliminate a municipality's obligation to plow when it ought to have known the snow probably exceeded the threshold depth. The court relied on the lack of a standard for patrolling in inclement weather conditions and the fact that the purposes of the *Municipal Act* is to "protect reasonable users of the highways, roads and bridges from unreasonable risk of harm of which the authority has knowledge or through reasonable steps could be expected to be aware of in order to prevent or to remedy the risk of harm."³⁶
43. A municipality cannot absolve itself from liability simply by establishing it had met the MMS in other respects, e.g., by failing to patrol its busiest highway from the commencement of the snowstorm for at least 10 hours and failing to plow it for more than four to five hours after salting the road while snow continued to fall and slush accumulated to three times the depth in the MMS table.³⁷
44. In *Giuliani v. The Regional Municipality of Halton*³⁸ the Court of Appeal affirmed the lower court's decision that the MMS did not provide a defence to the municipality where

³⁴ *Municipal Act, 2001* c. 25 s.44(3)(c).

³⁵ (2008), *supra*, note 24.

³⁶ *Thornhill*, *supra*, note 24, para. 100.

³⁷ *Thornhill*, *supra*, note 24, para. 101.

³⁸ (2011) ONCA 812.

the municipality had treated the icy road within four hours, as required by the 2002 MMS.

45. The Court of Appeal held that the minimum standard with respect to treating a roadway after the municipality became aware it was icy was not the relevant issue where the specific alleged default was failure to properly monitor the weather and failure to start salting on a timely basis.
46. That the accident had occurred on a Regional Road (Derry Road) which was, by agreement, maintained by the Town of Milton. Snow had been forecast and began three hours prior to the accident, which occurred 15 minutes before salting began. The court held that proper monitoring of the weather forecasts and the road conditions would have led any reasonable municipality to start salting much sooner.
47. Section 44(3)(c) (together with s. 44(4) of the *Municipal Act* and the MMS) provide a defence only if the MMS have been met in respect of a specific alleged default. The municipality was liable in *Giuliani* because the issue was the failure to monitor the weather and to deploy resources sooner than occurred in order to avoid ice formation.³⁹
48. The result of *Giuliani* was to limit the scope of the application of the 2002 winter maintenance provisions and, of course, they have subsequently been amended. They must be reviewed carefully in respect of any particular case. Nonetheless, a municipality is only required to take reasonable steps and will only still be found liable if it falls below a reasonableness standard.⁴⁰
49. Note that in an appropriate case an argument could conceivably be made that the applicable MMS standard was not properly imposed in accordance with the delegated statutory authority specified in s. 44 of the *Municipal Act*. This argument had not yet been made in any considered manner.⁴¹

Former Owners of Roads may be Liable for Negligent Maintenance after Transfer

50. This is illustrated by the recent Court of Appeal decision in *Davis v. Grand*.⁴² The plaintiff, Davis, was struck by the defendant, Grand, in a car accident at an intersection in Niagara Falls.

³⁹ *Giuliani, supra*, note 38, para. 32.

⁴⁰ *Giuliani, supra*, note 38, para. 37.

⁴¹ See *Thornhill, supra*, note 24, paras. 28-31 and *Silveira v. Her Majesty the Queen*, 2914 ONSC 65, where such an Application was struck as being moot.

⁴² [2003] O.J. No. 3945 (O.C.A.). This decision was cited in *Spencer (Litigation Guardian of) v. Switzer*, 2014 ONSC 2344, see, for example, para. 27:

51. Davis claimed the accident was caused in part by the obstruction of the stop sign at the intersection. The responsibility for this road had been transferred three and a half months earlier from the region to the city. Davis sued both the city and the region and relied on s. 284 of the old *Municipal Act* which imposed liability on municipalities for negligent maintenance of roads. The motions judge initially allowed the region's motion for summary dismissal but the Court of Appeal reversed that decision concluding that the transfer of the property alone was not sufficient to absolve it of liability for foreseeable danger created before the transfer. The question of whether the region would be liable for negligent maintenance of the road was remitted to be determined by the trial judge.
52. The trial judge would have to take into account factors such as the amount of time which had passed (three and a half months) since the transfer, the opportunity on the part of the city to inspect the roads and whether the transfer was consensual or, as in this case, non-consensual.
53. The region had a duty to maintain the road prior to the transfer. If its negligence created or increased the risk of an accident, it could not absolve itself of liability by transferring the road. It would, however, at some point become immune by virtue of the lapse of time and the various factors which would lead to the conclusion that it was not the region's improper maintenance which created the problem. The longer the passage of time, the more the opportunity on the part of the city to remedy the problem. The Court of Appeal noted the concern that a plaintiff might have no remedy in circumstances where the city had not yet had an opportunity to inspect and repair the intersection but the region was absolved of liability simply by virtue of the transfer.

No Liability for Negligent Maintenance of Road if the Local Roads Boards Act Applies

54. Section 18 of the *Local Roads Boards Act*, R.S.O. 1990, c. L.27 (*LRBA*) provides that:

"No action shall be brought against the Crown, a board or any trustee elected or appointed under this Act for damage caused by any default in the maintenance of a local road in a local roads area and neither the Crown nor a board nor any such trustee is liable for any damage sustained by any person using such local road."

55. The Regulations made under the *LRBA* generally identify whether a road is in fact within a local roads area. For example, Ontario Regulation 734, R.R.O. 1990, s. 2 and Schedule 78 provides that "all those portions of the townships of Street, Kelly and Davis in the

27. It is clear from *Davis* that transfer of the road from Hastings to Tweed does not automatically and instantly absolve Hastings from liability for prior negligence respecting its maintenance, design or construction. The passage of time and the opportunity of the transferee to inspect the road, receive information from the transferor and have the opportunity to make the necessary repairs are all factors to be considered in determining whether the transferor's responsibility is extinguished.

Territorial District of Sudbury shown outlined on Ministry of Transportation Plan N-1404-5, filed with the Record Services Unit of the Ministry of Transportation at North Bay on September 18, 2012" are established as a local roads area.

56. One needs to identify precisely, therefore, where the accident occurred and whether the location precisely falls within the local roads area. This was the question and the Regulation in issue in *LaForet v. French River (Municipality)*,⁴³ where McDermid, J. dismissed the plaintiff's claim on the basis that the vehicle went out of control on a designated local roadway and the Township was, therefore, immune from a claim. His Honour refused to rely on s. 268 of the old *Municipal Act* which provided that the councils of local municipalities have joint jurisdiction over boundary lines. His Honour concluded that the *LRBA* and related regulations prevailed over s. 268 of the *Municipal Act*. His Honour stated:

"In my opinion, the legislature sought to deny persons injured on roads coming onto the jurisdiction of local roads boards the right to sue for damages for injuries sustained due to the non-repair of roads in remote territories without municipal organizations. The validity of this provision has not been challenged in this action."

57. It is worth noting that the *LRBA* is only applicable in territories without municipal organization. In addition, pursuant to ss. 16 and 17 of the *LRBA*, a designated local road may be removed from a local roads area by a vote of the Board, subsequently approved by the Minister of Transportation. Finally, despite the protection offered by s. 18 of the *LRBA*, a Board may be found liable for contractual claims. See s. 10.1 of the *LRBA*.

The OMB and its (Lack Of) Power to Order Municipalities to Assume Roads

58. In *Mattamy (Rouge) Ltd. v. City of Toronto*,⁴⁴ the Divisional Court answered whether the Ontario Municipal Board (the OMB) had jurisdiction to order the city of Toronto to assume roads and services against its will. The developer, Mattamy, sought approval for a draft residential plan of subdivision which included laneways with rights-of-way of only 10.5 metres, which were shown on the plan as public streets. Mattamy intended the laneways and the proposed municipal services, including storm sewers, sanitary sewers and water services beneath the laneways, to be assumed by the city.
59. The city refused to assume the laneways or responsibility for the services because the laneways were 10.5 metres wide instead of 18.5 metres wide. The laneways were so narrow as to make it difficult and costly to maintain the services. Mattamy appealed the city's refusal to make a decision about the plan within 90 days pursuant to ss. 51(31) and

⁴³ 2004 Carswell Ont. 5946 (O.S.C.J.).

⁴⁴ [2003] O.J. No. 4829 (Ont. Div. Ct.).

(34) of the Planning Act. The OMB stated a case to the Divisional Court to determine its jurisdiction to order the city to assume roads and services against its will.

60. The Divisional Court concluded that neither part III of the *Ontario Municipal Board Act*, R.S.O. 1990, c. O.28 nor the specific provisions in either s. 41 or 51 of the *Planning Act* granted jurisdiction to the OMB to order the city to assume the roads or services. They also concluded that the OMB had no jurisdiction to order the city against its will to enter into subdivision agreements or site plan agreements which included clauses requiring it to assume roads and services. The Divisional Court also relied on the *Municipal Act*, S.O. 2001, c. 25 which provide the assumption can occur only by the municipality adopting a by-law, to support of its conclusion.

Roads in Provincial Parks are Different

61. In *2016596 Ontario Inc. v. Ontario (Minister of Natural Resources)*,⁴⁵ the Court of Appeal sided with the Minister of Natural Resources effectively allowing the park superintendent's interpretation of the park management plan to be the final word on whether a timber company could use a road through a provincial park to access its lands east of the provincial park which had no other access. The park management plan, in fact, stated that the road be available as a forest access road for timber companies with allocations east of the park. The superintendent, however, concluded this phrase referred only to timber on Crown lands. The Court of Appeal confirmed that the superintendent's interpretation was not unreasonable. Furthermore, no public hearing or order in council was required as part of the access decision.

Liability of Co-Owners to Contribute to Road Construction Costs

62. An expenditure which clearly improves a neighbouring property can form the basis for a claim for unjust enrichment. Thus, if one constructs a roadway as a precondition to approval of a plan of subdivision, and there is a reasonable expectation that the owner doing the work will be reimbursed by the owner of the neighbouring lands for a portion of the value the lands contributed to the roadway and the construction costs, then the benefiting owner may be found liable on the basis of the doctrine of unjust enrichment.
63. The basic proposition is that the benefit conferred upon a defendant where there is an expectation that payment will be made will result in a constructive trust or other equitable remedies.
64. In *Conrad v. Feldbar Construction Company Ltd.*,⁴⁶ Ground, J. held that an owner which contributed part of its lands and paid for the construction costs of the roadway in

⁴⁵ [2004] O.J. No. 3922 (O.C.A.); leave to appeal to SCC refused (2004) S.C.C.A. No. 516.

⁴⁶ (2004) 70 O.R. (3d), 298 (O.S.C.J.).

circumstances which benefited the neighbouring lands meant that the neighbouring owner had to reimburse the first owner. The crux of the case, however, was proving that there was shared intention of the landowners that the road would be built with contribution by the landowners and that the neighbouring landowner was not to be given the land free of charge. The situation may well have been different if the evidence had established that the first owner knew or ought to have known that the benefiting owner would not contribute his share of the costs of the roadway.

65. It should be noted that in this particular case, the benefiting owner refused at the last moment to sign the cost sharing agreement and he was found liable. Ground, J. found against him on the basis that there was no evidence he ever communicated that he did not intend to contribute his portion of the costs.
66. In *Point Abino Assn. v. Lee*,⁴⁷ a road association purchased land and built the road to allow cottage owners to access their cottages. The defendant purchased a cottage that abutted the road but refused to join the association or pay his share of maintenance fees. The association successfully claimed monies on the basis of unjust enrichment. The court did not find that the defendant promised to pay these monies. Unjust enrichment arose from the fact that the owner was appropriating to himself the value arising from the work of others and that the benefits of the roadway were not gratuitously given by the defendant. Fleury, J. stated at paragraphs 7 and 8:

7 The claim has been framed in terms of unjust enrichment. Although I was taken aback, initially, by counsel's approach, a careful review of the jurisprudence referred to me appears to validate the position taken by plaintiff's counsel. It seems clear to me that the defendant has benefitted substantially from the services provided by the Association. The plaintiffs have paid the taxes on the lands in question, have maintained the roads, thereby giving him access to his lands, they have ploughed the snow in the winter, they have provided insurance coverage for the common lands and they have provided the services of security personnel. How a land owner, occupying a piece of landlocked property can deny receiving a direct benefit from the Association's work on private roads used to gain access to these lands is beyond me. It is also self-evident that by failing to share in the costs of the maintenance, he has deprived the Association of funds which it should have been entitled to count on.

8 There is no doubt in my mind, that the plaintiff is correct in its request to this court and I will issue a declaration to the effect that the Association is entitled at law to collect from the defendant the amount of yearly fees it stipulates as appropriate according to its own by-laws. I am satisfied that these funds are owed to the plaintiff pursuant to the principles outlined by

⁴⁷ [1997] O.J. No. 3262 (Ont. Gen. Div.).

the Supreme Court in *Deglman v. Guaranty Trust* [1954] S.C.R. 725 and later expanded by the same court in a series of cases the most notable of which are *Rathwell v. Rathwell* [1978] 2 S.C.R. 436 ad *Pettkus v. Becker* [1980] 2 S.C.R. 834. To quote Mr. Justice Dickson at p. 455 in *Rathwell* (supra): "As a matter of principle, the court will not allow any man unjustly to appropriate to himself the value earned by the labours of another."

NOTICE REQUIREMENTS AND LIMITATION PERIODS

SUBJECT OF CLAIM	NOTICE REQUIREMENTS	STATUTORY AUTHORITY
Provincial highway	Notice to the Ministry of Transportation within 10 days of injury.	<i>Public Transportation and Highway Improvement Act</i> , R.S.O. 1990, c. P.50, s. 33(4).
	Notice to the Ministry of the Attorney General within 10 days if claim is in respect of ownership, occupation, possession or control of property.	<i>Proceedings Against the Crown Act</i> , R.S.O. 1990, c. P.27, ss. 5(1)(c) and 7(3)
	Notice to the Ministry of the Attorney General 60 days prior to commencing an action.	<i>Proceedings Against the Crown Act</i> , R.S.O. 1990, c. P.27, s. 7
	Two (2) year limitation to commence the claim from the date on which the claim was discoverable.	<i>Limitations Act, 2002</i> , S.O. 2002, c. 24, Schedule "B", s. (4)
	Two (2) year limitation to commence a claim against a public authority from the date on which the claim was discoverable.	<i>Public Authorities Protection Act</i> R.S.O. 1990 c. P.38
	Two (2) year limitation to commence a claim from the date on which the claim was discoverable for a highway traffic accident.	<i>Highway Traffic Act</i> R.S.O. 1990 c. H.8 s. 206
Municipal roadways	Notice to the clerk of the municipality within 10 days of the occurrence of the injury.	<i>Municipal Act, 2001</i> , S.O. 2001, c. 25, ss. 44(2) and (10)
	Two (2) year limitation to commence claim from the date on which the claim was discoverable.	<i>Limitations Act, 2002</i> , S.O. 2002, c. 24, Schedule "B", s. 4
	Two (2) year limitation to commence a claim from the date on which the claim was discoverable for a highway traffic accident.	<i>Highway Traffic Act</i> R.S.O. 1990 c. H.8 s. 206
Fatal Accident	Two (2) year limitation to commence a claim from the date on which the claim was discoverable.	<i>Limitations Act, 2002</i> , S.O. 2002, c. 24, Schedule "B", s. 4.

NOTICE REQUIREMENTS AND LIMITATION PERIODS		
SUBJECT OF CLAIM	NOTICE REQUIREMENTS	STATUTORY AUTHORITY
	Two (2) year limitation to commence a claim for damages on behalf of a dependant of the deceased, with a possible extension of time permitted in accordance with s. 2(8) of the <i>Family Law Act</i> .	<i>Family Law Act</i> R.S.O. 1990, c. F.3 s. 61
	Two (2) year limitation to commence a claim for injury, brought by or against the estate of the deceased, commencing from the date of the death.	<i>Trustee Act</i> R.S.O. 1990, c. T.23 s. 38(3)

LIMITATIONS ACT, 2002
S.O. 2002, chapter 24
Schedule B

Application

2. (1) This Act applies to claims pursued in court proceedings other than,

- (a) proceedings to which the *Real Property Limitations Act* applies;
- (b) proceedings in the nature of an appeal, if the time for commencing them is governed by an Act or rule of court;
- (c) proceedings under the *Judicial Review Procedure Act*;
- (d) proceedings to which the *Provincial Offences Act* applies;
- (e) proceedings based on the existing aboriginal and treaty rights of the aboriginal peoples of Canada which are recognized and affirmed in section 35 of the *Constitution Act, 1982*; and
- (f) proceedings based on equitable claims by aboriginal peoples against the Crown. 2002, c. 24, Sched. B, s. 2 (1).

Exception, aboriginal rights

(2) Proceedings referred to in clause (1) (e) and (f) are governed by the law that would have been in force with respect to limitation of actions if this Act had not been passed. 2002, c. 24, Sched. B, s. 2 (2).

Crown

3. This Act binds the Crown. 2002, c. 24, Sched. B, s. 3.

Basic limitation period

4. Unless this Act provides otherwise, a proceeding shall not be commenced in respect of a claim after the second anniversary of the day on which the claim was discovered. 2002, c. 24, Sched. B, s. 4.

Discovery

5. (1) A claim is discovered on the earlier of,

- (a) the day on which the person with the claim first knew,
 - (i) that the injury, loss or damage had occurred,
 - (ii) that the injury, loss or damage was caused by or contributed to by an act or omission,
 - (iii) that the act or omission was that of the person against whom the claim is made, and
 - (iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and
- (b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a). 2002, c. 24, Sched. B, s. 5 (1).

Notice of possible claim

14. (1) A person against whom another person may have a claim may serve a notice of possible claim on the other person. 2002, c. 24, Sched. B, s. 14 (1).

Contents

(2) A notice of possible claim shall be in writing and signed by the person issuing it or that person's lawyer, and shall,

- (a) describe the injury, loss or damage that the issuing person suspects may have occurred;

- (b) identify the act or omission giving rise to the injury, loss or damage;
- (c) indicate the extent to which the issuing person suspects that the injury, loss or damage may have been caused by the issuing person;
- (d) state that any claim that the other person has could be extinguished because of the expiry of a limitation period; and
- (e) state the issuing person's name and address for service. 2002, c. 24, Sched. B, s. 14 (2).

Effect

(3) The fact that a notice of possible claim has been served on a person may be considered by a court in determining when the limitation period in respect of the person's claim began to run. 2002, c. 24, Sched. B, s. 14 (3).

Ultimate limitation periods

15. (1) Even if the limitation period established by any other section of this Act in respect of a claim has not expired, no proceeding shall be commenced in respect of the claim after the expiry of a limitation period established by this section. 2002, c. 24, Sched. B, s. 15 (1).

General

(2) No proceeding shall be commenced in respect of any claim after the 15th anniversary of the day on which the act or omission on which the claim is based took place. 2002, c. 24, Sched. B, s. 15 (2).

Other Acts, etc.

19. (1) A limitation period set out in or under another Act that applies to a claim to which this Act applies is of no effect unless,

- (a) the provision establishing it is listed in the Schedule to this Act; or
- (b) the provision establishing it,
 - (i) is in existence on January 1, 2004, and
 - (ii) incorporates by reference a provision listed in the Schedule to this Act. 2002, c. 24, Sched. B, s. 19 (1); 2008, c. 19, Sched. L, s. 3.

Act prevails

(2) Subsection (1) applies despite any other Act. 2002, c. 24, Sched. B, s. 19 (2).

Interpretation

(3) The fact that a provision is listed in the Schedule shall not be construed as a statement that the limitation period established by the provision would otherwise apply to a claim as defined in this Act. 2002, c. 24, Sched. B, s. 19 (3).

Same

(4) If there is a conflict between a limitation period established by a provision referred to in subsection (1) and one established by any other provision of this Act, the limitation period established by the provision referred to in subsection (1) prevails. 2002, c. 24, Sched. B, s. 19 (4).

Statutory variation of time limits

20. This Act does not affect the extension, suspension or other variation of a limitation period or other time limit by or under another Act. 2002, c. 24, Sched. B, s. 20.

PUBLIC TRANSPORTATION AND HIGHWAY IMPROVEMENT ACT
R.S.O. 1990, chapter P.50

Ministry to maintain and repair

33. (1) The King's Highway shall be maintained and kept in repair by the Ministry and any municipality in which any part of the King's Highway is situate is relieved from any liability therefor, but this does not apply to any sidewalk or municipal undertaking or work constructed or in course of construction by a municipality or which a municipality may lawfully do or construct upon the highway, and the municipality is liable for want of repair of the sidewalk, municipal undertaking or work, whether the want of repair is the result of nonfeasance or misfeasance, in the same manner and to the same extent as in the case of any other like work constructed by the municipality. R.S.O. 1990, c. P.50, s. 33 (1).

Liability for damage in case of default

(2) In case of default by the Ministry to keep the King's Highway in repair, the Crown is liable for all damage sustained by any person by reason of the default, and the amount recoverable by a person by reason of the default may be agreed upon with the Minister before or after the commencement of an action for the recovery of damages. R.S.O. 1990, c. P.50, s. 33 (2).

Insufficiency of fence, etc.

(3) No action shall be brought against the Crown for the recovery of damages caused by the presence or absence or insufficiency of any wall, fence, guide rail, railing or barrier adjacent to or in, along or upon the King's Highway or caused by or on account of any construction, obstruction or erection or any situation, arrangement or disposition of any earth, rock, tree or other material or thing adjacent to or in, along or upon the King's Highway that is not on the roadway. R.S.O. 1990, c. P.50, s. 33 (3).

Notice claim

(4) No action shall be brought for the recovery of the damages mentioned in subsection (2) unless notice in writing of the claim and of the injury complained of has been served upon or sent by registered letter to the Minister within ten days after the happening of the injury, but the failure to give or the insufficiency of the notice is not a bar to the action if a judge finds that there is reasonable excuse for the want or insufficiency of the notice and that the Crown is not thereby prejudiced in its defence. R.S.O. 1990, c. P.50, s. 33 (4); 2002, c. 24, Sched. B, s. 45.

(5) Repealed: 2002, c. 24, Sched. B, s. 25.

Judgment, how payable

(6) All damages and costs recovered under this section and any amount payable as the result of an agreement in settlement of a claim for damages and costs that has been approved of in writing by counsel is payable in the same manner as in the case of a judgment recovered against the Crown in any other action. R.S.O. 1990, c. P.50, s. 33 (6).

Style of action

(7) In an action against the Crown under this section, the defendant shall be described as "Her Majesty the Queen in right of the Province of Ontario, represented by the Minister of Transportation for the Province of Ontario" in English or as "Sa Majesté du chef de l'Ontario, représentée par le Ministre des Transports de l'Ontario" in French, and it is not necessary to proceed by petition of right or to procure the fiat of the Lieutenant Governor or the consent of the Attorney General before commencing the action, but every such action may be instituted and carried on and judgment may be given thereon in the same manner as in an action brought by a subject of Her Majesty against another subject. R.S.O. 1990, c. P.50, s. 33 (7).

Counterclaims and third party proceedings

(8) Despite any general or special Act, in an action against the Crown under this section, the defendant may set up by way of counterclaim any right or claim, whether the right or claim sounds in damages or not, and may claim contribution or indemnity from or any other relief over against any person not a party to the action, and every

such counterclaim and claim may be instituted and carried on and judgment may be given as if such counterclaim or claim was made by a subject of Her Majesty against another subject. R.S.O. 1990, c. P.50, s. 33 (8).

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).

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. 2001, c. 25, s. 44 (6).

(7) REPEALED: 2002, c. 24, Sched. B, s. 25.

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. 2001, c. 25, s. 44 (8).

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. 2001, c. 25, s. 44 (9).

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. 2001, c. 25, s. 44 (10).

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. 2001, c. 25, s. 44 (11).

Same

(12) Failure to give notice or insufficiency of the notice is not a bar to the action if a judge finds that there is reasonable excuse for the want or the insufficiency of the notice and that the municipality is not prejudiced in its defence. 2002, c. 24, Sched. B, s. 42.

(13) REPEALED: 2002, c. 24, Sched. B, s. 42.

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,

- (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. 2001, c. 25, s. 44 (14).

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. 2001, c. 25, s. 44 (15).

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. 2001, c. 25, s. 45 (1).

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. 2001, c. 25, s. 45 (2).

Nuisance

46. Subsections 44 (8) to (15) apply to an action brought against a municipality for damages that result from the presence of any nuisance on a highway. 2001, c. 25, s. 46; 2006, c. 32, Sched. A, s. 21.

47. REPEALED: 2006, c. 32, Sched. A, s. 22.

PROCEEDINGS AGAINST THE CROWN ACT
R.S.O. 1990, Chapter P.27

Acts not affected

2. (1) This Act does not affect and is subject to the *Expropriations Act*, the *Public Transportation and Highway Improvement Act*, the *Land Titles Act* and the *Registry Act*, as to claims against The Land Titles Assurance Fund, the *Motor Vehicle Accident Claims Act*, Parts V.1 (Debt Retirement Charge) and VI (Special Payments) of the *Electricity Act, 1998*, the *Workplace Safety and Insurance Act, 1997* and every statute that imposes a tax payable to the Crown or the Minister of Finance. R.S.O. 1990, c. P.27, s. 2 (1); 1997, c. 16, s. 14; 2004, c. 16, Sched. D, Table; 2008, c. 19, Sched. V, s. 10; 2009, c. 33, Sched. 17, s. 9; 2009, c. 34, Sched. P, s. 1.

Liability in tort

5. (1) Except as otherwise provided in this Act, and despite section 71 of the *Legislation Act, 2006*, the Crown is subject to all liabilities in tort to which, if it were a person of full age and capacity, it would be subject,

- (a) in respect of a tort committed by any of its servants or agents;
- (b) in respect of a breach of the duties that one owes to one's servants or agents by reason of being their employer;
- (c) in respect of any breach of the duties attaching to the ownership, occupation, possession or control of property; and
- (d) under any statute, or under any regulation or by-law made or passed under the authority of any statute. R.S.O. 1990, c. P.27, s. 5 (1); 2006, c. 21, Sched. F, s. 124.

Where proceedings in tort lie

(2) No proceeding shall be brought against the Crown under clause (1) (a) in respect of an act or omission of a servant or agent of the Crown unless a proceeding in tort in respect of such act or omission may be brought against that servant or agent or the personal representative of the servant or agent. R.S.O. 1990, c. P.27, s. 5 (2).

Notice of claim

7. (1) Subject to subsection (3), except in the case of a counterclaim or claim by way of set-off, no action for a claim shall be commenced against the Crown unless the claimant has, at least sixty days before the commencement of the action, served on the Crown a notice of the claim containing sufficient particulars to identify the occasion out of which the claim arose, and the Attorney General may require such additional particulars as in his or her opinion are necessary to enable the claim to be investigated.

Limitation period extended

(2) Where a notice of a claim is served under subsection (1) before the expiration of the limitation period applying to the commencement of an action for the claim and the sixty-day period referred to in subsection (1) expires after the expiration of the limitation period, the limitation period is extended to the end of seven days after the expiration of the sixty-day period.

Notice of claim for breach of duty respecting property

(3) No proceeding shall be brought against the Crown under clause 5 (1) (c) unless the notice required by subsection (1) is served on the Crown within ten days after the claim arose. R.S.O. 1990, c. P.27, s. 7.

Discovery

8. In a proceeding against the Crown, the rules of court as to discovery and inspection of documents and examination for discovery apply in the same manner as if the Crown were a corporation, except that,

- (a) the Crown may refuse to produce a document or to answer a question on the ground that the production or answer would be injurious to the public interest;
- (b) the person who shall attend to be examined for discovery shall be an official designated by the Deputy Attorney General; and

- (c) the Crown is not required to deliver an affidavit on production of documents for discovery and inspection, but a list of the documents that the Crown may be required to produce, signed by the Deputy Attorney General, shall be delivered. R.S.O. 1990, c. P.27, s. 8.

FAMILY LAW ACT
R.S.O. 1990, Chapter F.3

Extension of times

2. (8) The court may, on motion, extend a time prescribed by this Act if it is satisfied that,

- (a) there are apparent grounds for relief;
- (b) relief is unavailable because of delay that has been incurred in good faith; and
- (c) no person will suffer substantial prejudice by reason of the delay. R.S.O. 1990, c. F.3, s. 2 (8).

Right of dependants to sue in tort

61. (1) If a person is injured or killed by the fault or neglect of another under circumstances where the person is entitled to recover damages, or would have been entitled if not killed, the spouse, as defined in Part III (Support Obligations), children, grandchildren, parents, grandparents, brothers and sisters of the person are entitled to recover their pecuniary loss resulting from the injury or death from the person from whom the person injured or killed is entitled to recover or would have been entitled if not killed, and to maintain an action for the purpose in a court of competent jurisdiction. R.S.O. 1990, c. F.3, s. 61 (1); 1999, c. 6, s. 25 (25); 2005, c. 5, s. 27 (28).

Damages in case of injury

(2) The damages recoverable in a claim under subsection (1) may include,

- (a) actual expenses reasonably incurred for the benefit of the person injured or killed;
- (b) actual funeral expenses reasonably incurred;
- (c) a reasonable allowance for travel expenses actually incurred in visiting the person during his or her treatment or recovery;
- (d) where, as a result of the injury, the claimant provides nursing, housekeeping or other services for the person, a reasonable allowance for loss of income or the value of the services; and
- (e) an amount to compensate for the loss of guidance, care and companionship that the claimant might reasonably have expected to receive from the person if the injury or death had not occurred. R.S.O. 1990, c. F.3, s. 61 (2).

TRUSTEE ACT
R.S.O. 1990, Chapter T.23

Actions by executors and administrators for torts

38. (1) Except in cases of libel and slander, the executor or administrator of any deceased person may maintain an action for all torts or injuries to the person or to the property of the deceased in the same manner and with the same rights and remedies as the deceased would, if living, have been entitled to do, and the damages when recovered shall form part of the personal estate of the deceased; but, if death results from such injuries, no damages shall be allowed for the death or for the loss of the expectation of life, but this proviso is not in derogation of any rights conferred by Part V of the *Family Law Act*.

Actions against executors and administrators for torts

(2) Except in cases of libel and slander, if a deceased person committed or is by law liable for a wrong to another in respect of his or her person or to another person's property, the person wronged may maintain an action against the executor or administrator of the person who committed or is by law liable for the wrong.

Limitation of actions

(3) An action under this section shall not be brought after the expiration of two years from the death of the deceased. R.S.O. 1990, c. T.23, s. 38.

LOCAL ROADS BOARDS ACT
R.S.O. 1990, Chapter L. 27

Liability under contracts

10.1 (1) The board may enter into contracts under subsection 10 (2) in its own name and may sue and be sued with respect to such contracts in its own name, but the trustees of the board are not personally liable for the board's contracts. 1996, c. 33, s. 29 (2).

Insurance

(2) The board may purchase and maintain insurance against its liability under a contract entered into under subsection 10 (2). 1996, c. 33, s. 29 (2).

Alteration of boundaries or local roads

16. (1) Where it is proposed that,

- (a) the boundaries of a local roads area be altered;
- (b) any local road be added to or removed from a local roads area;
- (c) any local road included in a local roads area be extended; or
- (d) the minimum annual tax imposed under section 22 be altered,

the proposal shall be put to a vote at an annual meeting, and the notice of such annual meeting shall outline the proposal. R.S.O. 1990, c. L.27, s. 16 (1).

Idem

(2) Where it is proposed by the Minister that the boundaries of a local roads area be altered, the Minister may, by notice to the secretary-treasurer of the board affected, require the board to put the proposal to a vote at the next annual meeting. R.S.O. 1990, c. L.27, s. 16 (2).

Notices

(3) Where it is proposed that a local roads area be enlarged, in addition to the notice required under subsection (1), the secretary-treasurer shall post within the new area that is proposed to be added to the existing local roads area notices of the proposal, setting forth a description or illustration of the boundaries of the new area and the place, date and time of the annual meeting, and all owners of land in the new area may attend the annual meeting and vote upon the proposal. R.S.O. 1990, c. L.27, s. 16 (3).

Record of vote

(4) Where it is proposed that the boundaries of a local roads area be altered, the secretary-treasurer shall record separately the vote of the owners of land within the area that is proposed to be added to or to be removed from the local roads area. R.S.O. 1990, c. L.27, s. 16 (4).

Notification to Minister

(5) Where a vote has been taken under subsection (1) or (2), the secretary-treasurer shall forward to the Minister a copy of the proposal together with a statement of the results of the vote showing the vote of the owners for and against the proposal and, in the case of a proposal made under clause (1) (a) or under subsection (2), the vote of the owners of land in the area that is proposed to be added to or to be removed from an existing area for and against the proposal. R.S.O. 1990, c. L.27, s. 16 (5).

Order by Minister

(6) Where the Minister receives a copy of a proposal together with a statement of results as set out in subsection (5), the Minister, if the Minister considers it in the public interest so to do, may by order in writing alter the boundaries of the local roads area or the roads included therein in accordance with the proposal or in such other manner as the Minister considers appropriate. R.S.O. 1990, c. L.27, s. 16 (6).

Vote on dissolution

17. (1) Where it is proposed that a board and a local roads area be dissolved, the proposal shall be put to a vote at an annual meeting, and the notice of such annual meeting shall outline the proposal. R.S.O. 1990, c. L.27, s. 17 (1).

Notification to Minister

(2) Where the majority of owners present at an annual meeting approve a proposal that the board and its local roads area be dissolved, the secretary-treasurer shall forthwith forward to the Minister a copy of the proposal, together with a statement of the vote for and against the proposal, and the Minister, if the Minister considers it in the public interest so to do, may by order in writing dissolve the board and the local roads area. R.S.O. 1990, c. L.27, s. 17 (2).

Liability for damages

18. No action shall be brought against the Crown, a board or any trustee elected or appointed under this Act for damage caused by any default in the maintenance of a local road in a local roads area, and neither the Crown nor a board nor any such trustee is liable for any damage sustained by any person using such local road. R.S.O. 1990, c. L.27, s. 18.

MUNICIPAL ACT, 2001
ONTARIO REGULATION 239/02

MINIMUM MAINTENANCE STANDARDS FOR MUNICIPAL HIGHWAYS

Definitions

1. (1) In this Regulation,

"cm" means centimetres;

"day" means a 24-hour period;

"ice" means all kinds of ice, however formed;

"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;

"Ontario Traffic Manual" means the Ontario Traffic Manual published by the Ministry of Transportation, as amended from time to time;

"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;

"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. Newly-fallen snow.
2. Wind-blown snow.
3. Slush;

"substantial probability" means a significant likelihood considerably in excess of 51 per cent;

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

"weather" means air temperature, wind and precipitation. O. Reg. 239/02, s. 1 (1); O. Reg. 23/10, s. 1 (1); O. Reg. 47/13, s. 1.

(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. O. Reg. 239/02, s. 1 (2).

(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; or
- (b) by estimating the average daily two-way traffic on the highway or part of the highway. O. Reg. 239/02, s. 1 (3); O. Reg. 23/10, s. 1 (2).

(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. O. Reg. 23/10, s. 1 (3).

TABLE
CLASSIFICATION OF HIGHWAYS

Average Annual Daily Traffic (number of motor vehicles)	Posted or Statutory Speed Limit (kilometres per hour)						
	91 - 100	81 - 90	71 - 80	61 - 70	51 - 60	41 - 50	1 - 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

O. Reg. 613/06, s. 1.

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. O. Reg. 288/03, s. 1.

(2) REVOKED: O. Reg. 23/10, s. 2.

(3) This Regulation does not apply to Class 6 highways. O. Reg. 239/02, s. 2 (3).

MINIMUM STANDARDS

Patrolling

3. (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. O. Reg. 23/10, s. 3 (1).

(2) If it is determined by the municipality that the weather monitoring referred to in section 3.1 indicates that there is a substantial probability of snow accumulation on roadways, ice formation on roadways or icy roadways, 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, at intervals deemed necessary by the municipality, to check for such conditions. O. Reg. 47/13, s. 2.

(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. O. Reg. 23/10, s. 3 (1).

(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. O. Reg. 23/10, s. 3 (1).

TABLE
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

O. Reg. 239/02, s. 3, Table; O. Reg. 23/10, s. 3 (2).

Weather monitoring

3.1 (1) From October 1 to April 30, the minimum standard is to monitor the weather, both current and forecast to occur in the next 24 hours, once every shift or three times per calendar day, whichever is more frequent, at intervals determined by the municipality. O. Reg. 47/13, s. 3.

(2) From May 1 to September 30, the minimum standard is to monitor the weather, both current and forecast to occur in the next 24 hours, once per calendar day. O. Reg. 47/13, s. 3.

Snow accumulation

4. (1) The minimum standard for addressing 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 resources as soon as practicable to address the snow accumulation; and
 - (b) after the snow accumulation has ended, to address the snow accumulation so as to reduce 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.
- O. Reg. 47/13, s. 4.

(2) If the depth of snow accumulation on a roadway is less than or equal to the depth set out in the Table to this section, the roadway is deemed to be in a state of repair with respect to snow accumulation. O. Reg. 47/13, s. 4.

(3) For the purposes of this section, the depth of snow accumulation on a roadway may be determined in accordance with subsection (4) by a municipal employee, agent or contractor, whose duties or responsibilities include one or more of the following:

- 1. Patrolling highways.
- 2. Performing highway maintenance activities.
- 3. Supervising staff who perform activities described in paragraph 1 or 2. O. Reg. 47/13, s. 4.

(4) The depth of snow accumulation on a roadway may be determined by,

- (a) performing an actual measurement;
- (b) monitoring the weather; or
- (c) performing a visual estimate. O. Reg. 47/13, s. 4.

(5) For the purposes of this section, addressing snow accumulation on a roadway includes, but is not limited to,

- (a) plowing the roadway;

- (b) salting the roadway;
 - (c) applying abrasive materials to the roadway; or
 - (d) any combination of the methods described in clauses (a), (b) and (c). O. Reg. 47/13, s. 4.
- (6) This section does not apply to that portion of the roadway designated for parking. O. Reg. 47/13, s. 4.

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

O. Reg. 47/13, s. 4.

Ice formation on roadways and icy roadways

5. (1) The minimum standard for the prevention of ice formation on roadways is doing the following in the 24-hour period preceding an alleged formation of ice on a roadway:

1. Monitor the weather in accordance with section 3.1.
2. Patrol in accordance with section 3.
3. If the municipality determines, as a result of its activities under paragraph 1 or 2, that there is a substantial probability of ice forming on a roadway, treat the roadway to prevent ice formation within the time set out in the Table to this section, starting from the time that the municipality determines is the appropriate time to deploy resources for that purpose. O. Reg. 47/13, s. 5.

(2) If the municipality meets the minimum standard set out in subsection (1) and, despite such compliance, ice forms on a roadway, the roadway is deemed to be in a state of repair until the earlier of,

- (a) the time that the municipality becomes aware of the fact that the roadway is icy; or
- (b) the applicable time set out in the Table to this section for treating the roadway to prevent ice formation expires. O. Reg. 47/13, s. 5.

(3) The minimum standard for treating icy roadways after the municipality becomes 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, and an icy roadway is deemed to be in a state of repair until the applicable time set out in the Table for treating the icy roadway expires. O. Reg. 47/13, s. 5.

(4) For the purposes of this section, treating a roadway means applying material to the roadway, including but not limited to, salt, sand or any combination of salt and sand. O. Reg. 47/13, s. 5.

TABLE
ICE FORMATION PREVENTION AND ICY ROADWAYS

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

5	16 hours
---	----------

O. Reg. 47/13, s. 5.

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. O. Reg. 239/02, s. 6 (1).

(2) A pothole is deemed to be in a state of repair if its surface area or depth is less than or equal to that set out in Table 1, 2 or 3, as appropriate. O. Reg. 239/02, s. 6 (2); O. Reg. 47/13, s. 6.

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

O. Reg. 239/02, s. 6, Table 1.

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

O. Reg. 239/02, s. 6, Table 2.

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

O. Reg. 239/02, s. 6, Table 3.

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. O. Reg. 239/02, s. 7 (1).

(2) A shoulder drop-off is deemed to be in a state of repair if its depth is less than or equal to that set out in the Table. O. Reg. 239/02, s. 7 (2); O. Reg. 47/13, s. 7.

(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. O. Reg. 239/02, s. 7 (3).

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

O. Reg. 239/02, s. 7, Table.

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. O. Reg. 239/02, s. 8 (1).

(2) A crack is deemed to be in a state of repair if its width or depth is less than or equal to that set out in the Table. O. Reg. 239/02, s. 8 (2); O. Reg. 47/13, s. 8.

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

O. Reg. 239/02, s. 8, Table.

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. O. Reg. 239/02, s. 9 (1).

(2) In this section,

"debris" means any material (except snow, slush or ice) 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. O. Reg. 239/02, s. 9 (2); O. Reg. 47/13, s. 9.

Luminaires

10. (0.1) The minimum standard for the frequency of inspecting all luminaires to check to see that they are functioning is once per calendar year, with each inspection taking place not more than 16 months from the previous inspection. O. Reg. 23/10, s. 6; O. Reg. 47/13, s. 10 (1).

(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. O. Reg. 239/02, s. 10 (1).

(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. O. Reg. 239/02, s. 10 (2).

(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. O. Reg. 239/02, s. 10 (3).

(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. O. Reg. 239/02, s. 10 (4).

(5) Luminaires are deemed to be in a state of repair,

- (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. O. Reg. 239/02, s. 10 (5); O. Reg. 47/13, s. 10 (2).

(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. O. Reg. 239/02, s. 10 (6).

(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. O. Reg. 239/02, s. 10 (7).

TABLE
LUMINAIRES

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

Signs

11. (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 calendar year, with each inspection taking place not more than 16 months from the previous inspection. O. Reg. 23/10, s. 7 (1); O. Reg. 47/13, s. 11 (1).

(0.2) A sign that has been inspected in accordance with subsection (0.1) is deemed to be in a state of repair with respect to the retro-reflectivity requirements of the Ontario Traffic Manual until the next inspection in accordance with that subsection, provided that the municipality does not acquire actual knowledge that the sign has ceased to meet these requirements. O. Reg. 47/13, s. 11 (2).

(1) If any sign of a type listed in subsection (2) is illegible, improperly oriented, obscured 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. O. Reg. 239/02, s. 11 (1); O. Reg. 23/10, s. 7 (2).

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

1. Checkerboard.
2. Curve sign with advisory speed tab.
3. Do not enter.
- 3.1 Load Restricted Bridge.
- 3.2 Low Bridge.
- 3.3 Low Bridge Ahead.
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. O. Reg. 239/02, s. 11 (2); O. Reg. 23/10, s. 7 (3).

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 calendar year, with each inspection taking place not more than 16 months from the previous inspection. O. Reg. 23/10, s. 8; O. Reg. 47/13, s. 12 (1).

(1.1) A regulatory sign or warning sign that has been inspected in accordance with subsection (1) is deemed to be in a state of repair with respect to the retro-reflectivity requirements of the Ontario Traffic Manual until the next inspection in accordance with that subsection, provided that the municipality does not acquire actual knowledge that the sign has ceased to meet these requirements. O. Reg. 47/13, s. 12 (2).

(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. O. Reg. 23/10, s. 8.

(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. O. Reg. 23/10, s. 8.

TABLE
REGULATORY AND WARNING SIGNS

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

O. Reg. 239/02, s. 12, Table.

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. O. Reg. 239/02, s. 13 (1).

(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.
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. O. Reg. 239/02, s. 13 (2).

(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. O. Reg. 239/02, s. 13 (3).

(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*. O. Reg. 239/02, s. 13 (4).

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 once per calendar year, with each inspection taking place not more than 16 months from the previous inspection:

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. O. Reg. 239/02, s. 14 (1); O. Reg. 47/13, s. 13 (1).

(1.1) A traffic control signal system sub-system that has been inspected, tested and maintained in accordance with subsection (1) is deemed to be in a state of repair until the next inspection in accordance with that subsection, provided that the municipality does not acquire actual knowledge that the traffic control signal system sub-system has ceased to be in a state of repair. O. Reg. 47/13, s. 13 (2).

(2) The minimum standard is to inspect, test and maintain conflict monitors every five to seven months and at least twice per calendar year. O. Reg. 239/02, s. 14 (2); O. Reg. 47/13, s. 13 (3).

(2.1) A conflict monitor that has been inspected, tested and maintained in accordance with subsection (2) is deemed to be in a state of repair until the next inspection in accordance with that subsection, provided that the municipality does not acquire actual knowledge that the conflict monitor has ceased to be in a state of repair. O. Reg. 47/13, s. 13 (4).

(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. O. Reg. 239/02, s. 14 (3).

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. O. Reg. 239/02, s. 15 (1).

(2) A bridge deck spall is deemed to be in a state of repair if its surface area or depth is less than or equal to that set out in the Table. O. Reg. 239/02, s. 15 (2); O. Reg. 47/13, s. 14.

(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. O. Reg. 239/02, s. 15 (3).

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

O. Reg. 239/02, s. 15, Table.

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. O. Reg. 23/10, s. 9.

(1.1) A surface discontinuity on a roadway, other than a surface discontinuity on a bridge deck, is deemed to be in a state of repair if its height is less than or equal to the height set out in the Table to this section. O. Reg. 47/13, s. 15.

(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. O. Reg. 23/10, s. 9.

(2.1) A surface discontinuity on a bridge deck is deemed to be in a state of repair if its height is less than or equal to five centimetres. O. Reg. 47/13, s. 15.

(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. O. Reg. 23/10, s. 9.

TABLE

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

O. Reg. 239/02, s. 16, Table.

Sidewalk surface discontinuities

16.1 (1) The minimum standard for the frequency of inspecting sidewalks to check for surface discontinuity is once per calendar year, with each inspection taking place not more than 16 months from the previous inspection. O. Reg. 23/10, s. 10; O. Reg. 47/13, s. 16 (1).

(1.1) A sidewalk that has been inspected in accordance with subsection (1) is deemed to be in a state of repair with respect to any surface discontinuity until the next inspection in accordance with that subsection, provided that the municipality does not acquire actual knowledge of the presence of a surface discontinuity in excess of two centimetres. O. Reg. 47/13, s. 16 (2).

(2) If a surface discontinuity on a sidewalk exceeds two centimetres, the minimum standard is to treat the surface discontinuity within 14 days after acquiring actual knowledge of the fact. O. Reg. 23/10, s. 10; O. Reg. 47/13, s. 16 (3).

(2.1) A surface discontinuity on a sidewalk is deemed to be in a state of repair if it is less than or equal to two centimetres. O. Reg. 47/13, s. 16 (4).

(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. O. Reg. 23/10, s. 10.

(4) In this section,

"surface discontinuity" means a vertical discontinuity creating a step formation at joints or cracks in the surface of the sidewalk. O. Reg. 23/10, s. 10.

REVIEW OF REGULATION

Review

17. (1) The Minister of Transportation shall conduct a review of this Regulation and Ontario Regulation 612/06 (Minimum Maintenance Standards for Highways in the City of Toronto) made under the *City of Toronto Act, 2006* every five years. O. Reg. 613/06, s. 2.

(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. O. Reg. 23/10, s. 11.

18. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 239/02, s. 18.