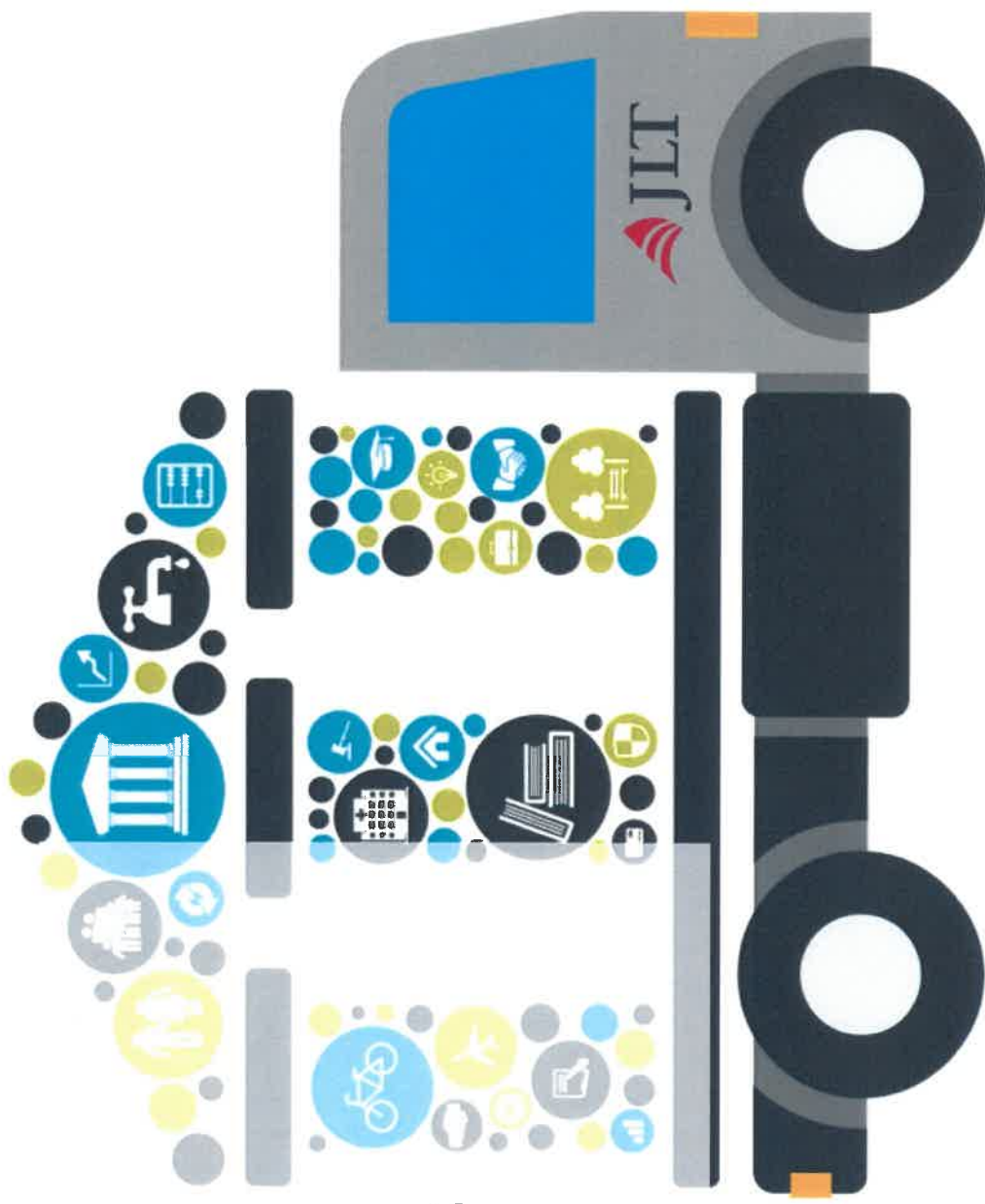


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# MINIMUM MAINTENANCE STANDARDS

## IT'S HISTORY AND WHERE WE ARE TODAY

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

# MINIMUM MAINTENANCE STANDARDS

## IT'S HISTORY AND WHERE WE ARE TODAY

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- Understanding the intent and purpose behind the MMS, the defence provided for by s.44(3)(c), requires an understanding of how the approach to liability by the Courts has evolved from an event-based one to a risk-based one.
- Traditionally, (pre-1985) Courts would assess municipal liability by mainly looking at the “event” (i.e. the winter storm or ice formation) and considering how fast after the event occurred that the municipality responded.
- The modern focus of our Courts is looking at how a municipality assessed and attempted to mitigate the “risk” of a hazard arising in the first place, and determining if it was reasonable.
- **This is accomplished through**
  - Weather monitoring,
  - Being proactive – having your policies and procedures in place
  - Ensuring staff know what their responsibilities are as it pertains to training and deploying staff

## REVISIONS

### FEB 2010 3<sup>RD</sup> REVISION SINCE INCEPTION JULY 2003



#### Three gaps became apparent in 2011 after Milton vs Guilianani

- ☐ Snow Accumulation – at the time of the accident snow accumulation was 2.5 cm
  - The standard was 5 cm however there was no definition for snow accumulation
- ☐ Ice had formed on the road resulting from snow being packed down by traffic
  - The standard defined ice as freezing rain or ice pellets
- ☐ The weather was not being monitored

**Task Force regrouped, amended the standards and were passed in 2013**

**Changes were:**

- ☐ Snow accumulation was defined – natural accumulation of newly-fallen snow, wind-blown snow and/or slush that covers more than half a lane width of a roadway
- ☐ Ice was defined – all kinds of ice however formed
- ☐ Weather monitoring
  - Substantial Probability – significant likelihood considerably in excess of 51%.  
This relates to patrols and maintenance activities that are done in anticipation of snow accumulation or ice formation
- Weather defined as air temperature, wind and precipitation

### **Bicycle Facility and Bicycle Lanes**

- “Bicycle facility” includes, but is not limited to, the various on-road and in-boulevard cycling facilities listed in Section 2.3 and its subsections of Book 18 of the Ontario Traffic Manual.
- “Conventional bicycle lane” means a portion of a roadway which has been designated by pavement markings and signage for the preferential or exclusive use of cyclists; “roadway” has the same meaning as in Subsection 1 (1) of the Highway Traffic Act.
- “Separated bicycle lane” means a portion of a roadway which has been designated for the exclusive use of cyclists by signage along with a physical or marked buffer.



# MINIMUM MAINTENANCE STANDARDS

## WHERE WE ARE TODAY – NEW DEFINITIONS



- **Encroachment, (Area Adjacent to Sidewalks)**
  - means anything that is placed, installed, constructed or planted within the highway that was not placed, installed, constructed or planted by the municipality
- **Potholes**
  - means a hole in the surface of a roadway caused by any means, including wear or subsidence of the road surface or subsurface
- **Sidewalks**
  - means the part of the highway specifically set aside or commonly understood to be for pedestrian use, typically consisting of a paved surface but does not include crosswalks, medians, boulevards, shoulders or any part of the sidewalk where cleared snow has been deposited

# MINIMUM MAINTENANCE STANDARDS

## WHERE WE ARE TODAY – NEW DEFINITIONS



- **Utility and Utility Appurtenance (Sidewalk surface discontinuities)**
  - Utility includes any air, gas, water, electricity, cable, fibre-optic, telecommunication or traffic control system or subsystem, fire hydrants, sanitary sewers, storm sewers, property bars and survey monuments
  - Utility Appurtenance includes maintenance holes and hole covers, water shut-off covers and boxes, valves, fittings, vaults, braces, pipes, pedestals, and any other structures or items that form part of or are an accessory part of any utility
- **Weather Hazard**
  - means the weather hazards determined by Environment Canada as meeting the criteria for the issuance of an alert under its Public Weather Alerting Program
- **Significant Weather Event**
  - means an approaching or occurring weather hazard with the potential to pose a significant danger to users of the highways within a municipality



# MINIMUM MAINTENANCE STANDARDS

## WHERE WE ARE TODAY, SIGNIFICANT WEATHER EVENT



### Applies to

- Snow Accumulation on Roadways, sidewalks and bicycle lanes
- Ice Accumulation on Roadways and Sidewalks

“

**4.1 (1)** If a municipality declares a significant weather event relating to snow accumulation or ice accumulation the standard for addressing snow accumulation on roadways until the declaration of the end of the significant weather event is

- a) to monitor the weather in accordance with section 3.1; and
- b) if deemed practicable by the municipality, to deploy resources to address snow accumulation on roadways, starting from the time that the municipality deems appropriate to do so.

# MINIMUM MAINTENANCE STANDARDS

## WHERE WE ARE TODAY, SIGNIFICANT WEATHER EVENT



**4.1 (2)** If the municipality complies with subsection (1), all roadways within the municipality are deemed to be in a state of repair with respect to snow and ice accumulation until the applicable time in the Table to section 4 expires following the declaration of the end of the significant weather event by the municipality.

**4.1 (3)** Following the end of the weather hazard in respect of which a significant weather event was declared by a municipality under subsection (1), the municipality shall

- a) (declare the end of the significant weather event when the municipality determines it is appropriate to do so; and
- b) address snow accumulation on roadways in accordance with section

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**Declaration of significant weather event**

**16.9.**

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

### Closure of a Highway

#### 16.8

- 1) When a municipality closes a highway or part of a highway pursuant to its powers under the Act, the highway is deemed to be in a state of repair in respect of all conditions described in this Regulation from the time of the closure until the highway is re-opened by the municipality.
- 1) For the purposes of subsection (1), a highway or part of a highway is closed on the earlier of
  - a) when a municipality passes a by-law to close the highway or part of the highway; and
  - b) when a municipality has taken such steps as it determines necessary to temporarily close the highway or part of a highway.

# MINIMUM MAINTENANCE STANDARDS

## WHERE WE ARE TODAY - SIDEWALKS



- The MMS now contains specific sections dealing with sidewalk winter maintenance. Section 16.3 provides that snow accumulation on sidewalks shall be reduced to less than or equal to 8 centimeters within 48 hours of the end of a snow event. The section further provides a standard of a minimum maintained width of one meter.
- Sidewalks are deemed to be in a state of repair with respect to snow accumulation
  - a) where snow depth is less than or equal to 8 centimeters; and
  - b) during ongoing snow accumulation, even where it exceeds 8 cm, until 48 hours after the snow accumulation ends.



# MINIMUM MAINTENANCE STANDARDS

## WHERE WE ARE TODAY - SIDEWALKS

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- Section 16.5 sets out standards with respect to ice formation on sidewalks
  - It requires that municipalities monitor weather, and to treat the sidewalk if practicable to prevent ice formation or improve traction within 48 hours if the municipality determines that there is a substantial probability of ice forming on a sidewalk, starting from the time that the municipality determines the appropriate time to deploy resources for that purpose"
  - Where ice forms on a sidewalk, the sidewalk is deemed to be in a state of repair in respect of ice until 48 hours after the municipality first becomes aware of the fact that the sidewalk is icy.

# MINIMUM MAINTENANCE STANDARDS

## WHERE WE ARE TODAY - SIDEWALKS



### Winter Sidewalk Patrols

#### 16.7

- (1) If it is determined by the municipality that the weather monitoring referred to in section 3.1 indicates that there is a substantial probability of snow accumulation on sidewalks in excess of 8 cm, ice formation on sidewalks or icy sidewalks, the standard for patrolling sidewalks is to patrol sidewalks that the municipality selects as representative of its sidewalks at intervals deemed necessary by the municipality.
- (2) Patrolling a sidewalk consists of visually observing the sidewalk, either by driving by the sidewalk on the adjacent roadway or by driving or walking on the sidewalk or by electronically monitoring the sidewalk, and may be performed by persons responsible for patrolling roadways or sidewalks or by persons responsible for or performing roadway or sidewalk maintenance activities.

# MINIMUM MAINTENANCE STANDARDS, **WHERE WE ARE TODAY - ENCROACHMENTS**



## **16.2 Applies to Area Adjacent to Sidewalks**

- (1) The standard for the frequency of inspecting an area adjacent to a sidewalk to check for encroachments is once per calendar year, with each inspection taking place not more than 16 months from the previous inspection.
- (2) If the area adjacent to a sidewalk has been inspected in accordance with subsection (1) it is deemed to be in a state of repair in respect of any encroachment present.
- (3) For greater certainty, the area adjacent to a sidewalk begins at the outer edges of a sidewalk and ends at the lesser of the limit of the highway, the back edge of a curb if there is a curb and a maximum of 45 cm.

# MINIMUM MAINTENANCE STANDARDS, **WHERE WE ARE TODAY - ENCROACHMENTS**



## **16.2 Applies to Area Adjacent to Sidewalks**

- (1) The area adjacent to a sidewalk is deemed to be in a state of repair in respect of any encroachment present unless the encroachment is determined by a municipality to be highly unusual given its character and location or to constitute a significant hazard to pedestrians
- (2) If a municipality determines that an encroachment is highly unusual given its character and location or constitutes a significant hazard to pedestrians, the standard is to treat the encroachment within 28 days after making such a determination, and the encroachment is deemed in a state of repair for 28 days from the time of the determination by the municipality
- (3) For the purpose of subsection (4), treating an encroachment means taking reasonable measures to protect users, including making permanent or temporary repairs, alerting users' attention to the encroachment or preventing access to the area of the encroachment

# MINIMUM MAINTENANCE STANDARDS

## WHERE WE ARE TODAY – BICYCLE LANES

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- Clearing of Snow and Ice based on the road classification and corresponding snow accumulation.
- For the purposes of addressing snow accumulation on a bicycle lane it includes, but is not limited to
  - a) plowing the bicycle lane;
  - b) salting the bicycle lane;
  - c) the application of other chemical or organic agents to the bicycle lane;
  - d) applying abrasive materials to the bicycle lane;
  - e) sweeping the bicycle lane; or
  - f) any combination of the methods described in clauses (a), (b), (c), (d) or (e).



# MINIMUM MAINTENANCE STANDARDS

## WHERE WE ARE TODAY - BICYCLE LANES

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- **Treating snow and ice on roadways, sidewalks and bicycle lanes**
  - applying other chemical or organic agents to the roadway;
- **Luminaires**
  - For conventional illumination, if three or more consecutive luminaires on **the same side of a highway** are not functioning, the standard is to repair the luminaires within the time set out in the Table to this section after becoming aware of the fact.

# MINIMUM MAINTENANCE STANDARDS

## WHERE WE ARE TODAY

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- Setting municipal policies and procedures
  - They should never be absolute
  - Ensure staff are aware of and can consistency meet your municipalities set standards and procedures.
  - If your municipalities polices and procedures exceed the standards and there is a loss your negligence will be based on your standards, not the legislated standards.
  - Documentation must show that your municipality have met your set policies and procedures.

THANK YOU  
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