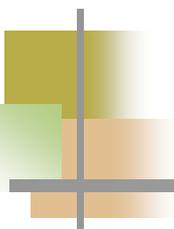


# 2018 Amendments



## Minimum Maintenance Standards

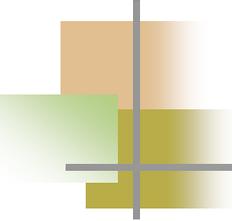
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**Amanda M. Pinto**

pmlaw |

Paterson MacDougall<sup>ll</sup>

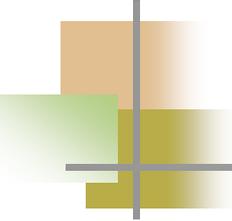
*Barristers, Solicitors*



# What is O. Reg 239/02

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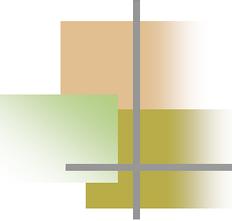
- **S. 44 of the *Municipal Act, 2001***
- A municipality that has jurisdiction over a highway or bridge **shall** keep it in a state of repair that is reasonable in the circumstances, including the character and location of the highway or bridge. (ss. 44(1))
- A municipality that defaults may be sued pursuant to the Negligence Act and can be found liable for all damages sustained due to the default (ss. 44(2))



# What is O. Reg 239/02

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- **S. 44(3)** A municipality is **not liable** for failing to keep a highway or bridge in a reasonable state of repair if:
  - it did not know and could not reasonably have been expected to have known about the state of repair of the highway or bridge;
  - it took reasonable steps to prevent the default from arising; or
  - **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.**
- **S. 44(4)** The Minister of Transportation may make **regulations** establishing minimum standards of repair for highways and bridges or any class of them.



# Committee Makeup

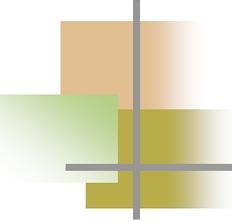
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- **Organizations**: OGRA, Ministry of Transportation etc.
- **Municipalities**: Toronto, Brampton, Owen Sound, Timmins, Middlesex County, County of Peterborough, Tilsonburg, Leeds Grenville
- **Legal Counsel**:

pmlaw |

Paterson MacDougall<sup>llr</sup>

*Barristers, Solicitors*

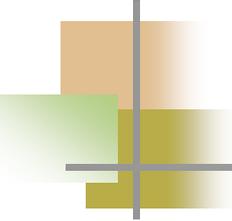


# Purpose of O. Reg 239/02

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- **Section 2.1:**

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



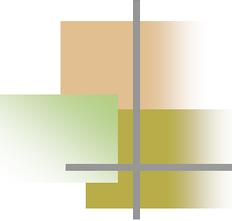
# Numerous Changes

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- Numerous changes:
  - Classification of Roadways;
  - Addition of Bicycle Lanes;
  - Changes regarding summer maintenance;
  - Changes regarding winter maintenance and so on.
  
- This presentation will deal with winter maintenance of roadways (and possibly sidewalks) only because ...

Winter is coming ...

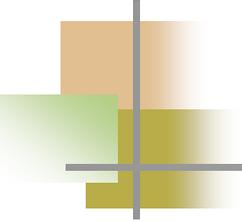




# New Defence Tools

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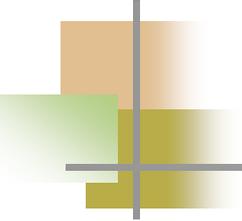
- Deeming provisions regarding snow accumulation and ice formation:
  - Roadways (s. 4, s. 5)
  - Sidewalks (s. 16.4, 16.5)
- Declaratory Powers
  - Also engages a deeming provision
  - “significant weather event”
  - “weather hazard”



# Ice Formation and Snow Accumulation

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- Part 1: Ice Formation on Roadways
- Part 2: Snow Accumulation on Roadways
- Part 3: Ice Formation on Sidewalks
- Part 4: Snow Accumulation on Sidewalks

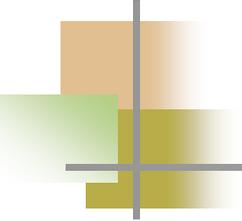


# Preventing Ice Formation on Roadways

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s. 5(1): The 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:

- A) Monitor the weather in accordance with section 3.1.
- B) Patrol in accordance with section 3.
- C) If the municipality determines that there is a substantial probability of ice forming on a roadway, treat the roadway, if practicable, within the time set out in Table 1

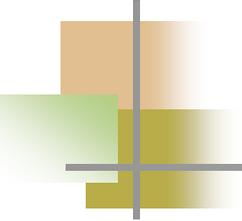


# Preventing Ice Formation on Roadways

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A) **Monitor** the weather in accordance with section 3.1:

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



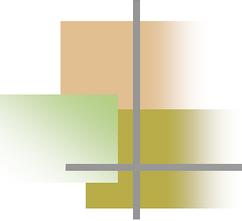
# Preventing Ice Formation on Roadways

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## B) **Patrol** in accordance with section 3:

| 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   |

- If substantial probability of snow accumulation, ice formation on roadways or icy roadways, the standard for patrolling highways is, in addition to the table, is to patrol representative highways at intervals deemed necessary to check conditions.
- Patrolling a highway consists of observing the highway, either by driving on or by electronically monitoring the highway.

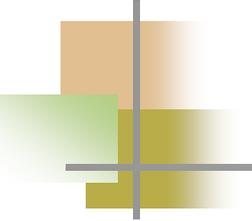


# Preventing Ice Formation on Roadways

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- C) If the municipality determines that there is a substantial probability of ice forming on a roadway, treat the roadway, if practicable, within the time set out in Table 1 (Ice Formation Prevention) starting from the time the municipality determines is appropriate to deploy resources for that purpose.:

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



# Treatment of Icy Roadways

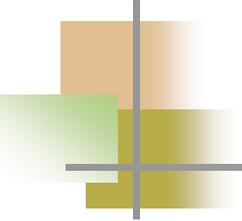
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- S. 5(3): the standard for treating icy roadways is to treat the icy roadway within the time set out in Table 2, and an icy roadway is deemed to be in a state of repair until the applicable time expires after the municipality becomes aware of the icy roadway condition:

Treatment of Icy Roadways

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

- 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.

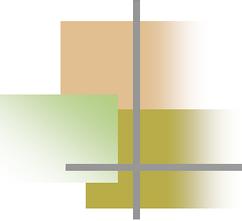


# Snow Accumulation on Roadways

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**S. 4(1):** The standard for addressing snow accumulation:

- (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.

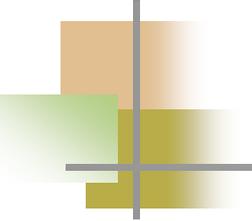


# Snow Accumulation on Roadways

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| 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 |

**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.

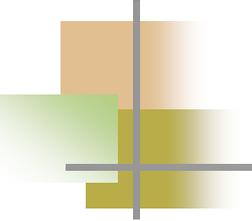


# Ice Formation on Sidewalks

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**S.16.5(1)** The standard for the prevention of ice formation on sidewalks is to:

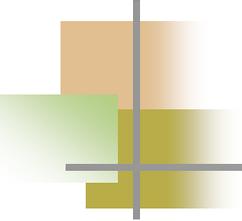
- monitor the weather in accordance with section 3.1 in the 24-hour period preceding an alleged formation of ice on a sidewalk; and
- treat the sidewalk if practicable to prevent ice formation or improve traction within 48 hours if the municipality determines that there is a substantial probability of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



# Ice Formation on Sidewalks

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- **Monitor** the weather in accordance with section 3.1 in the 24-hour period preceding an alleged formation of ice on a sidewalk:
  - Same monitoring section as roadways;
  - This can include visually observing the sidewalk (driving by on the adjacent roadway, driving or walking on the sidewalk or by electronically monitoring the sidewalk).
  - S. 16.7: (1) If 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 representative sidewalks at intervals deemed necessary by the municipality.

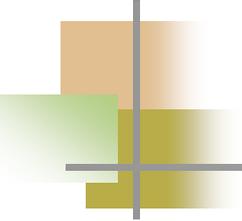


# Snow Accumulation on Sidewalks

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S. 16.3(1) Subject to section 16.4, the standard for addressing snow accumulation on a sidewalk after the snow accumulation has ended is:

- to reduce the snow to a depth less than or equal to 8 centimetres within 48 hours; and
- to provide a minimum sidewalk width of 1 metre.

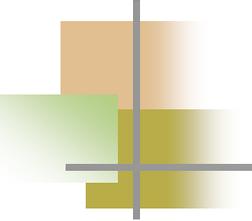


# Weather Hazard / Significant Weather Event

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## Definitions : Section 1(1)

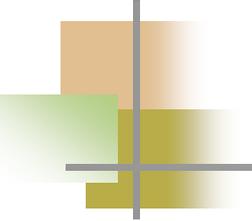
- “significant weather event” means an approaching or occurring weather hazard with the potential to pose a significant danger to users of the highways within a municipality;
- “weather hazard” means the weather hazards determined by Environment Canada as meeting the criteria for the issuance of an alert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



## Significant Weather Event

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- Unlike a weather hazard, a municipality may declare a significant weather event in accordance with this regulation at any time in its **sole discretion** it elects to do so
- The amendment includes Significant Weather Event sections for roadways, bicycle lanes and sidewalks.

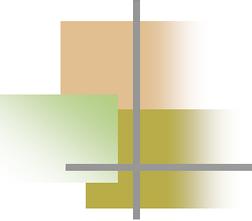


# Significant Weather Event : What for?

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- Environment Canada's Criteria for public weather alerts
  - 23 types of weather hazards listed
    - (eg. Snow fall, snow squall, freezing rain, freezing drizzle, frost etc.)
  - Snow fall (Ontario): When 15 cm or more of snow falls within 12 hours or less.

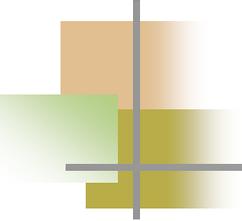
<https://www.canada.ca/en/environment-climate-change/services/types-weather-forecasts-use/public/criteria-alerts.html#snowFall>



# Ways to Declare a Significant Weather Event

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- **S. 16.9:** The beginning or end of a significant weather event may be declared in 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.

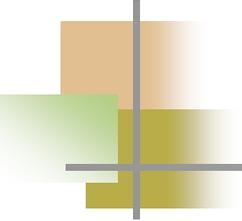


## Content of Declaration - Significant Weather Event

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The Corporation of the City of \_\_\_\_\_ declares a significant weather event in respect of freezing rain commencing at 2:00 p.m. on January 1, 2019 pursuant to O. Reg 239/02.

*Additional: During this time, anticipate that roads, bicycle lanes and sidewalks may become slippery. Proceed with caution.*

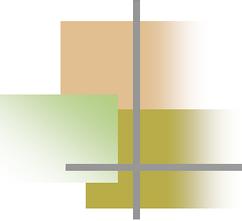


## Content of Declaration - End

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The significant weather event, declared in respect of freezing rain commencing at 2:00 p.m. on January 1, 2019 pursuant to O. Reg 239/02, is declared over as of 5:00 p.m. on January 2, 2019 by the Corporation of the City of \_\_\_\_\_.

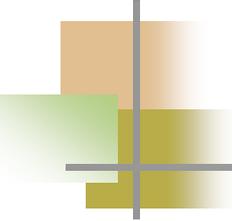
*Additional: We ask residents to continue monitoring the City's website for further announcements.*



## Declaration of Significant Weather Event

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- Can be declared for multiple weather conditions.
- Can be ended for only one of multiple weather conditions.
- No penalty for being wrong:
  - If unproven, may not benefit from Significant Weather Event deeming provision, but can still rely on other deeming provisions.



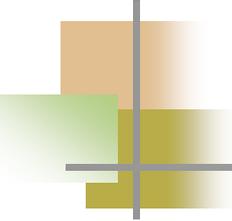
# Once declared, what next?

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E.g.: If a municipality declares a significant weather event relating to snow accumulation, the standard 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.

Note: ss. (1) of s. 4.1, 4.3, 5.1, 16.4 and 16.6 have similar wording.

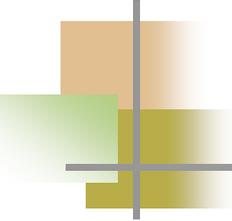


# Significant Weather Event: Deeming Provision

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- (2) If complied with (1), all roadways within the municipality are deemed to be in a state of repair with respect to snow 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: (snow accumulation, s.4)

| 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 |



# Significant Weather Event: Closing Tips

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- Document everything!!
  - Why was it called? Why was it ended?
- Always try to get ahead of a serious weather event
- Don't sit back once a significant weather event is declared
- Note: Roadway classification changes

# 2018 Amendments

## Minimum Maintenance Standards

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