**Road maintenance**

In Ontario, the duty to maintain roads and sidewalks in a reasonable state of repaid is currently imposed by the *Municipal Act*, S.O. 2001, C. 25[[1]](https://mail.google.com/mail/u/0/#m_8265045746378568169__ftn1), which legislation came into effect on January 1, 2003[[2]](https://mail.google.com/mail/u/0/#m_8265045746378568169__ftn2). Ontario *Regulation*239/02 sets out the Minimum Maintenance Standards (MMS) for municipal highways. The regulation provides minimum standards for routine patrolling, snow accumulation, ice cleaning, repairing potholes and cracks, eliminating shoulder drop downs, clearing debris, sufficient lighting and signage, and traffic lights, etc.

The MMS only applies to motor vehicles using municipal highways, not private roads.

In *Dickson (Lit. Guard.) v. Vezina*, [2001] O.J. No. 4264 (ONSC), the municipality succeeded on a summary judgment motion in arguing they had complied with the MMS. However, in *Jameus v. Midland (Town)*, [2006] O.J. No. 4423, the Ontario Court of Appeal overturned a summary judgment motion and found there were genuine issues for trial as to whether the ‘bare pavement’ portion of the MMS had been met.

In *Talbot-Kelly v. Fairfield*, [2005] B.C.J. No. 516 (BCSC), the plaintiff lost control, drove into oncoming traffic, and caused an accident. The plaintiff’s claim against British Columbia for failing to maintain the roads was dismissed on summary judgment.

In *Feltz (Lit. Guard) v. Cowell Estate*, (2005), 11 M.P.L.R. (4th) 106 (ONSC), the plaintiff entered an ‘S’ curve at 100 km/h in wet conditions. He lost control and caused an accident. His suit against the municipality for non-repair of a highway was dismissed as the court found that municipality had acted reasonable.

In *Johnson v. Corporation of the Town of Milton*, (2006) 25 M.P.L.R. (4th) 17 (ONSC), the Court held that Milton was entirely liable where the plaintiff was driving a tandem bicycle down a large hill, failed to make a sharp curve in the road and crashed into rocks, causing his death and seriously injuring his passenger. The court found no contributory negligence on the part of the plaintiff.

[[1]](https://mail.google.com/mail/u/0/#m_8265045746378568169__ftnref1) See also Ontario Regulation 239/02. Other provinces have similar legislation, see for instance *Housen v. Nikolaisen*, 2002 SCC 33.

[[2]](https://mail.google.com/mail/u/0/#m_8265045746378568169__ftnref2) The former 3 month limitation period to commence an action against a municipality for non-repair has been replaced by the standard two year limitation period in Ontario under the *Limitations Act*, S.O. 2002, C. 24, Sch. B.