

# COVID-19 & IMPACTS ON MUNICIPAL HIGHWAY MAINTENANCE AND LEGAL LIABILITY

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**A Presentation for Ontario Good Roads  
Association**

**pmlaw** | Paterson MacDougall LLP



# COVID-19 in Ontario

## Status of Cases in Ontario

updated with the every day, seven days a week, at 10:30 a.m. and 5:30 p.m. ET.

Negative	29967
Currently under investigation	10074
Confirmed positive	967
Resolved	8
Deceased	18
<b>Total number of patients approved for COVID-19 testing to date</b>	<b>41,032</b>

# COVID-19 in Ontario

## How Ontario is Responding

“implementing a robust plan to monitor for, detect and, if needed, isolate any cases of the 2019 novel coronavirus.” This includes:

- monitoring hospitals for potential cases
- adding the 2019 novel coronavirus as a designated disease reportable under Ontario's public health legislation, enabling local public health units to quickly and effectively take all necessary measures to investigate, complete lab tests and do case and contact management to prevent and control further spread of the infection
- through the work of the Command Table to respond quickly and effectively to any scenario, including: enhanced access to screening; expanding lab-testing capacity; and implementing new initiatives to keep public and frontline workers safe

# COVID-19 in Ontario

## Ontario Action Plan: Responding to COVID-19 released yesterday

- Enhancing funding by \$148 million for charitable and non-profit social services organizations such as food banks, homeless shelters, churches and emergency services to improve their ability to respond to COVID-19, by providing funding directly to Consolidated Municipal Service Managers and District Social Service Administration Boards who would allocate this funding based on local needs.
- Over \$1.8 billion by deferring the upcoming June 30 quarterly municipal remittance of education property tax to school boards by 90 days, which will provide municipalities the flexibility to, in turn, provide property tax deferrals to residents and businesses, while ensuring school boards continue to receive their funding

# OGRA and COVID-19

## How OGRA is Responding

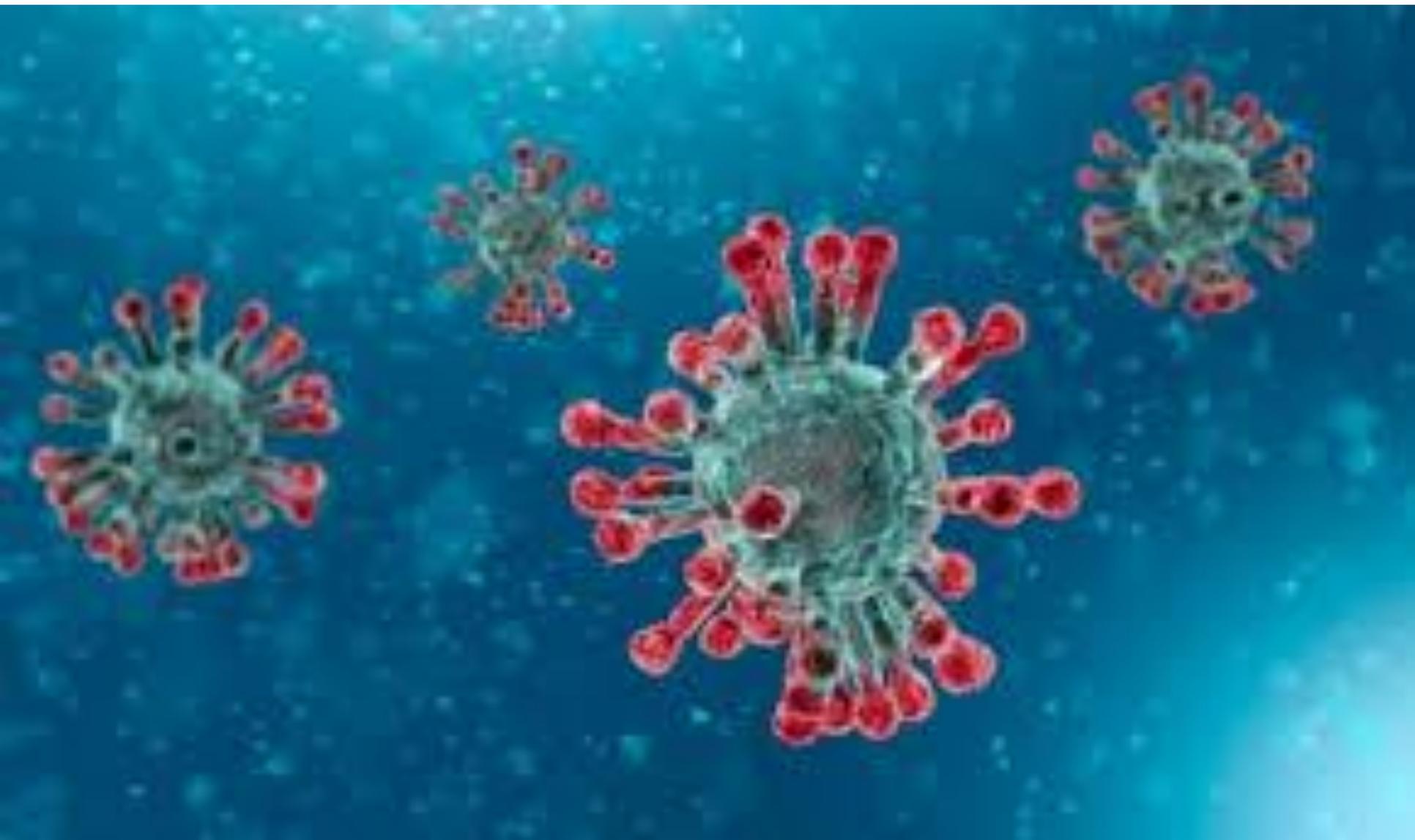
- Staff are working remotely since Friday, March 13, 2020
- Education and professional development offerings are being rescheduled
- Engaging our municipal membership in online learning opportunities to understand how COVID-19 is affecting the delivery of municipal transportation and infrastructure services

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# Pandemic Influenza Preparedness, Response and Recovery Guide for Critical Infrastructure and Key Resources, DHS USA

PANDEMIC ALERT PERIOD			
<b>3</b>	Human infection(s) with a new subtype, but no human-to-human spread, or at most rare instances of spread to a close contact.	<b>0</b>	New domestic animal outbreak in at-risk country
		<b>1</b>	Suspected human outbreak overseas
<b>4</b>	Small cluster(s) with limited human-to-human transmission but spread is highly localized, suggesting that the virus is not well adapted to humans.	<b>2</b>	Confirmed human outbreak overseas
<b>5</b>	Larger cluster(s) but human-to-human spread still localized, suggesting that the virus is becoming increasingly better adapted to humans, but may not yet be fully transmissible (substantial pandemic risk).		
PANDEMIC PERIOD			
<b>6</b>	Pandemic phase: increased and sustained transmission in general population.	<b>3</b>	Widespread human outbreaks in multiple locations overseas
		<b>4</b>	First human case in North America
		<b>5</b>	Spread throughout United States
		<b>6</b>	Recovery and preparation for subsequent waves

# New Brunswick Pandemic Influenza Planning Guide for Municipalities, 2005

## Background

It is estimated that between 500 and 1500 Canadians die each year from influenza and its complications. Typically, between one in four and one in ten is infected with the influenza virus each season which causes a significant impact on health and productivity. However, three times in the last century there have been worldwide or pandemic influenza strains that cause high rates of death and illness. The 1918 “Spanish Flu” is estimated to have caused over 20 million deaths worldwide. **The next pandemic is expected to cause high rates of death and illness resulting in a tremendous amount of social disruption. Assuming an illness rate of 35% it is estimated that over 120,000 New Brunswickers will seek medical care during a pandemic. An attack rate of 35% would mean that 1/3 of municipal staff may be out at any given time – some will die. This would cause an enormous strain on health services and create human resource gaps in essential services for all communities.**

# Town of Kapuskasing Pandemic Influenza Plan, 2009

- 2.3.1 An influenza pandemic will affect all of Ontario and the rest of Canada. For planning purposes, a worst-case prediction must be used.
- 2.3.2 As a basis for planning, it is therefore assumed:
  - Little or no direct assistance will be provided by neighboring communities, the Province or the Federal government (with the exception of the provision of vaccine and antiviral drugs, and other clinic supplies when available).
  - The Town of Kapuskasing must plan to respond to an influenza pandemic on its own, using its own resources.
  - An influenza attack rate of 35% will be assumed when planning for the effects of an influenza pandemic. (NB: An attack rate of 35% means that over the course of a pandemic, **about 35% of the population will have influenza severe enough to take 3 days off work**).

# Nitro-phosphate and Odam's Chemical Manure Company v. London and St. Katharine Docks Company (1878), 9 Ch. D. 503 at 515-6

- *A phenomenon need not be unique to amount to an act of God; it is sufficient if it was extraordinary, and could not have been expected...*

# Review Of City Of Toronto Pandemic Planning And Preparedness November 16, 2007

In the event of a pandemic emergency, the City has three vital responsibilities:

- **Public health** - Toronto Public Health is responsible for implementing public health measures to protect human health by preventing and controlling the spread of the disease;
- **Continuity of operations** - the City's divisions, agencies, boards, and commissions are responsible for maintaining critical City services such as policing, public transportation, ambulance services, garbage collection, and drinking water treatment; and
- **Employee health and support** – the City is responsible for the health and safety of its employees and has an obligation to assist them through a pandemic emergency

## 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. O. Reg. 366/18, s. 15.

(2) 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. O. Reg. 366/18, s. 15.

# Municipal Act, 2001, S.O. 2001, c. 25

## By-laws re: matters within spheres of jurisdiction

11(3) A lower-tier municipality and an upper-tier municipality may pass by-laws, subject to the rules set out in subsection (4), respecting matters within the following spheres of jurisdiction:

1. Highways, including parking and traffic on highways.
2. Transportation systems, other than highways...

# Municipal Act, 2001, S.O. 2001, c. 25

## Defence

44 (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).

# Emergency Management and Civil Protection Act, R.S.O. 1990, c. E.9

## Declaration of emergency

4 (1) The head of council of a municipality may declare that an emergency exists in the municipality or in any part thereof and may take such action and make such orders as he or she considers necessary and are not contrary to law to implement the emergency plan of the municipality and to protect property and the health, safety and welfare of the inhabitants of the emergency area. R.S.O. 1990, c. E.9, s. 4 (1).

## County of Simcoe – March 18, 2020

Midhurst/March 18, 2020 - Today, March 18, 2020 at 3 p.m., County of Simcoe Warden George Cornell has declared an emergency as a result of the COVID-19 pandemic developments in our region.

Declaring an emergency affords the County additional powers to protect the health and safety of all individuals, families and businesses as well as the vulnerable populations that we serve. This declaration also aligns with the Government of Ontario's Declaration of Emergency made March 17, 2020.

“The County of Simcoe is taking the important step of declaring an emergency through the Emergency Management and Civil Protection Act,” said Warden George Cornell. “Recognizing these extraordinary circumstances, we need to ensure we can use all available resources to protect the health and well-being of our residents. We thank front-line staff who are working diligently to ensure our most vulnerable residents remain safe.”

## City of Toronto – March 23, 2020

"We are declaring a State of Emergency as part of the City's ongoing efforts to stop the spread of COVID-19 and to ensure the municipal government can continue to act and respond quickly to the pandemic and any other events that arise in the weeks ahead. I know this is an incredibly tough time for residents across our city. I want them to know that we are doing everything we can at the City to fight this virus while continuing to deliver our essential and critical services. I remain confident that we will get through this pandemic by continuing to work together and all following the advice of our public health professionals."

- Mayor John Tory

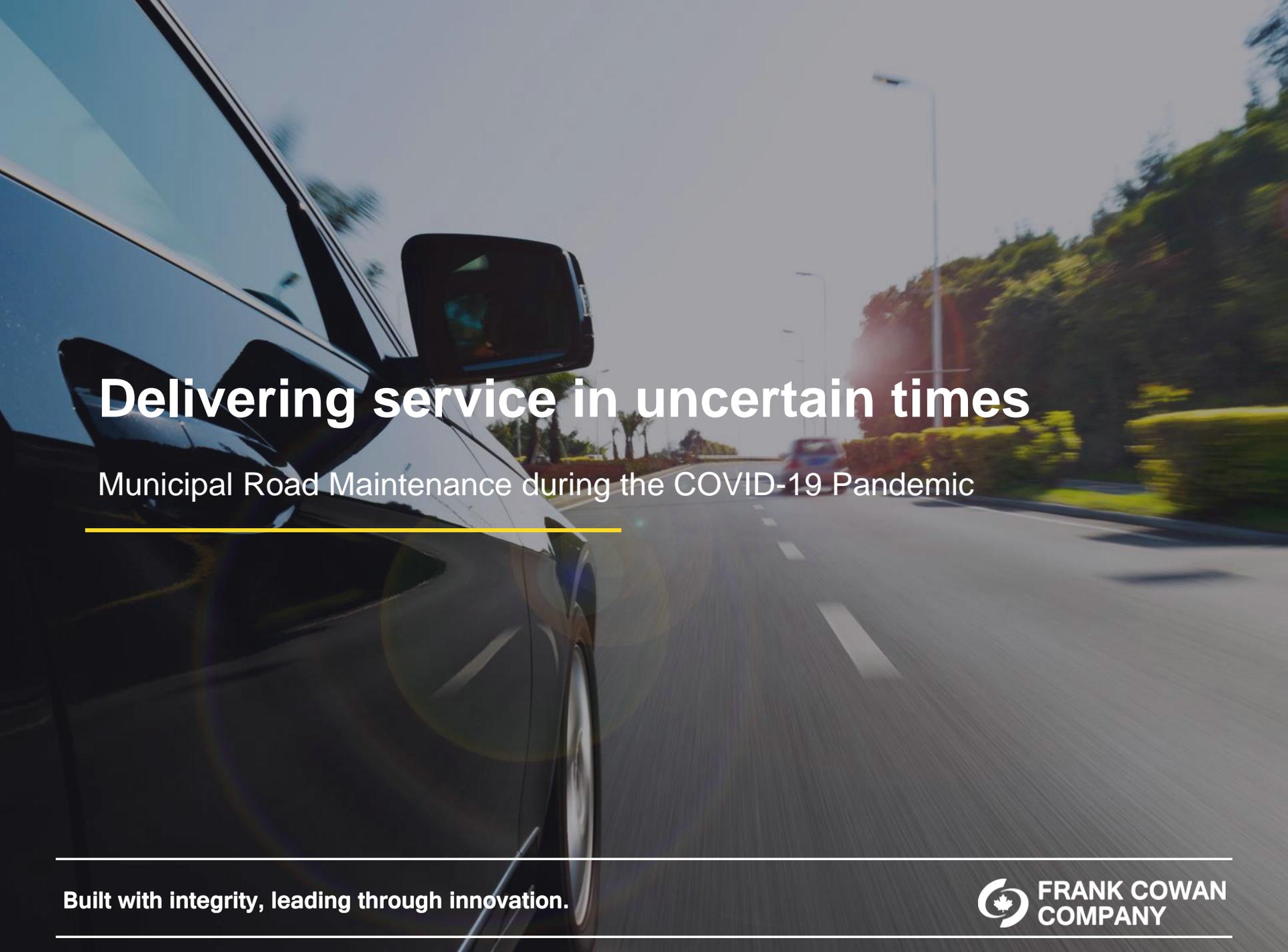
# Emergency Management and Civil Protection Act, R.S.O. 1990, c. E.9

12. Where money is expended or cost is incurred by a municipality or the Crown in the implementation of an emergency plan or in connection with an emergency, the municipality or the Crown, as the case may be, has a right of action against any person who caused the emergency for the recovery of such money or cost, and for the purposes of this section, “municipality” includes a local board of a municipality and a local services board. R.S.O. 1990, c. E.9, s. 12; 1999, c. 12, Sched. P, s. 8.

*Thank  
you*



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# Delivering service in uncertain times

Municipal Road Maintenance during the COVID-19 Pandemic

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Built with integrity, leading through innovation.

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## Business as usual

While our offices are closed, our business continues to operate with additional precautions. Our priority remains the well-being and safety of employees, clients, broker and business partners. We want to reassure you that our employees are mobilized to continue to support clients and broker partners.

If your personal car or home are insured with our parent company Intact or our sister company Bellair Direct all of the services provided before the pandemic continue as usual.

# Closure of parks and trails

## What are my responsibilities

Many municipalities have been closing their parks and trails and other open spaces. Having said that, some people are ignoring the closure and are using the open spaces at least.

Occupiers Liability Act provides at section 3.(1) An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that persons entering on the premises, and the property brought on the premises by those persons are reasonably safe while on the premises.

Staff should determine if the park, trail, etc is being used and if they are being used inspect the closed parks and trails as usual to look for defects



## MMS is one of the available defences

Remember many services provided in the maintenance of highways are not included in the MMS, e.g. roadside mowing

Section 44(1) of the Municipal Act states: “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.

During this unprecedented time, if several staff members contract the virus (heaven forbid) or are self isolating at home and the municipality cannot deliver service as per the MMS or their own level of service because of a reduced workforce, the best advice may be to continue to provide service to the best of your ability, first and foremost patrol your roads, set priorities based on those patrols taking into consideration the reduced workforce.

## Document, Document, Document

As always document everything:

- Document work completed
- Document how the priorities have changed or level of service changed due to the reduced workforce
- Add to that documentation the number of staff members who are unable to work that day, that week or that month due to self isolation or because staff have contracted the virus.

# Coronavirus: What you need to do



**Wash your hands**



**Use a tissue for coughs**

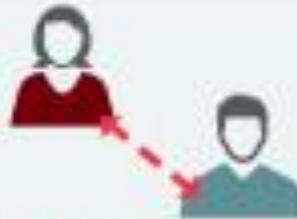


**Avoid touching your face**

# HOW TO DO SOCIAL DISTANCING



**NO HANDSHAKES  
OR HUGS**



**KEEP YOUR  
DISTANCE**  
(about 6 feet)



**WORK  
REMOTELY**



**AVOID  
CROWDS**



**STAY  
AT HOME**



**WASH  
YOUR HANDS**

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