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City loses 'slip and fall' appeal

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To plow or not to plow. That is the \$21 million question.

Toronto appears to have slipped and fallen hard after the Ontario Court of Appeal upheld a lower court ruling making the city liable for injuries suffered by a woman who fell and broke her wrist while walking through an icy laneway that had not been plowed.

The city's 11-year legal battle to avoid removing ice and snow from busy laneways has so far cost about \$300,000 but this decision may cost taxpayers millions more. The city has fought, and lost, at every court level, except the Supreme Court.

The case involves Vier Guy, a nurse who fell and fractured her wrist in March 1999, while walking in a laneway adjacent to the Greenwood subway station.

Guy slipped and fell on a thick accumulation of ice that was concealed by snow.

Unless the city takes the fight to the Supreme Court of Canada the decision means Toronto, and other municipalities across Ontario "must now take steps to ensure busy laneways and walkways are maintained safe for pedestrians and are free of ice and snow," or face similar lawsuits, says Guy's lawyer, Alan Preyra.

It's unclear what the city will do next.

City spokeswoman Leisa Odum said in an email Saturday the transportation services division "will review the court's decision with the city's legal services division before determining the next course of action."

The decision, delivered orally on Friday, is about one particular laneway and the city is being "alarmist" when it says it will now be forced to plow all 250 kilometres of laneways, Preyra said.

"The city has said that this decision means we're going to have to plow all our laneways, and that's not what it means.

"They're going to alarm the public by saying it's going to cost \$20 million. That's not what the court said at all.

"The court said here we have a 600-foot laneway that people are using as a service corridor, high school children are using, and should be maintained. It doesn't mean that every single laneway has to be maintained. I think that's alarmist."

The appeal court upheld an earlier Divisional Court ruling which found the city was "grossly negligent" for not clearing a laneway adjacent to the Greenwood subway exit.

The laneway was regularly used by local residents, subway passengers and students of a nearby high school, and for deliveries to the back entrance of stores.

The city was ordered to pay \$33,948 to Guy, 44.

Three Divisional Court justices agreed with a December 2008 decision by a Superior Court judge who ruled "the laneway should receive the same standard of maintenance as a sidewalk."

"The Supreme Court of Canada is the last avenue of appeal, but I don't know if they would be interested in hearing a case like this," Preyra said.

In documents submitted to Divisional Court, the city's lawyers argued the appeal ruling would have a "sweeping impact on all municipalities



Vier Guy walks with lawyer Alan Preyra in January 2009 along a snowy lane where she slipped and fell 11 years ago.

Tony Bock/Toronto Star file photo

which build vehicular laneways servicing the backs of properties.”

Provincial law requires municipalities to maintain all sidewalks.

They can pass bylaws, like Toronto’s, that require homeowners to clean the snow from adjacent sidewalks.

But courts have ruled that if someone slips and falls, it is municipalities — not homeowners — that are liable.

Between 2003 and 2008, lawsuits springing from slip-and-falls on icy sidewalks are estimated to have cost the city more than \$30 million after all the bills are paid.

The city released the figures after the Toronto Star filed a Freedom of Information request in January 2009.

There were 533 sidewalk slip-and-fall claims during the harsh winter of 2008.

Toronto spends \$12 million a year cleaning and salting three-quarters of the city’s 8,000 kilometres of sidewalks.

It calculates that extending sidewalk snow removal to all neighbourhoods would cost another \$7 million to \$8 million a year.

Extending it to Toronto’s 250 kilometres of laneways would cost at least another \$21 million.

With files from Emily Jackson