To be a laneway, or not to be a laneway, that is the question: *Guy v. Toronto (City)*, 2011 ONCA 689.

This recent decision of the Ontario Court of Appeal is likely to cause ripples of apprehension in municipalities across Ontario. In *Guy v. Toronto (City)*, the Court of Appeal upheld both the Divisional Court and the Superior Court decisions finding the City of Toronto liable to Ms. Guy for damages she suffered as a result of a slip and fall on an icy road allowance.

The plaintiff, Ms. Guy, had just exited the Greenwood subway station onto a commonly used laneway with the intention of attending a local community college. Approximately half way down this laneway, she slipped on a thick accumulation of ice which was concealed under a layer of snow. As a result of this fall, Ms. Guy suffered a Colles' fracture to her left wrist, as well as headaches and some minor pain to her buttocks. Even at the time of trial, some nine years later, she continued to have intermittent wrist pain Further, her injuries prevented her from continuing her studies that semester, resulting in a loss of tuition and other associated costs.

The fundamental question before the trial judge was this: Is the alley/laneway in which Ms. Guy fell a roadway for vehicles or rather, a pedestrian footpath/sidewalk? The answer to that question would determine the duty of care owed by the City of Toronto.

At trial, the City of Toronto submitted that the laneway in which Ms. Guy fell was a vehicular roadway and was designated as a "commercial laneway" for vehicular traffic. Further, any standard of care or duty of care relates to one referable to vehicles being able to safely pass over the laneway and not a higher duty required for pedestrians. Conversely, counsel for the plaintiff submitted at trial that the true nature or character of the laneway was that of a pedestrian footpath.

The trial judge heard evidence that:

- the laneway had no signage prohibiting pedestrian traffic or warning of potential surface dangers;

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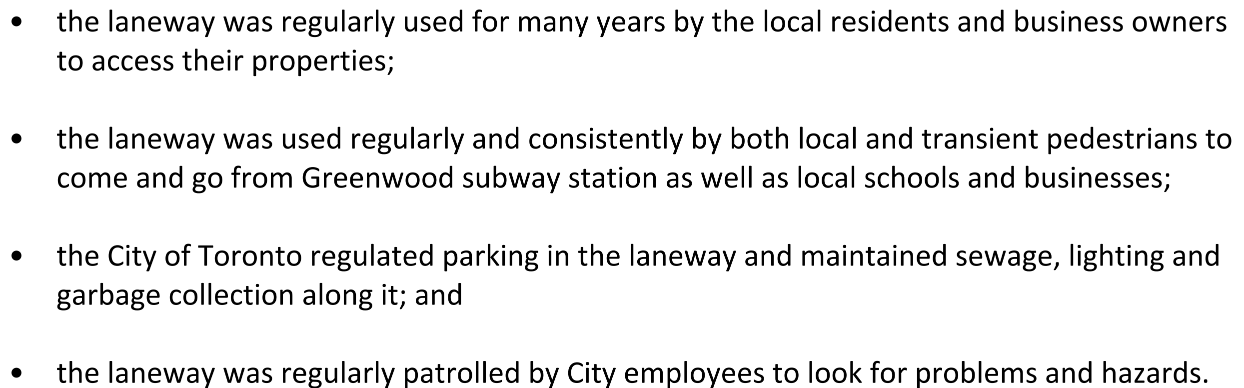

- the laneway was regularly used for many years by the local residents and business owners to access their properties;
- the laneway was used regularly and consistently by both local and transient pedestrians to come and go from Greenwood subway station as well as local schools and businesses;
- the City of Toronto regulated parking in the laneway and maintained sewage, lighting and garbage collection along it; and
- the laneway was regularly patrolled by City employees to look for problems and hazards.

In his reasons, Justice Stong stated that, “by its location and use, this alley/laneway had become a regular footpath/sidewalk in use and that was known, or ought to have been known by the City” and further, that, “since this particular segment of laneway has become in part, a pedestrian walkway...it should receive the exact same attention as a sidewalk designed for pedestrian use.”

Justice Stong ruled that the City of Toronto, “in failing to employ the resources already in place has demonstrated that it was grossly negligent in relation to pedestrian traffic using this segment of the laneway...” and awarded Ms. Guy $33,948.39 in damages and $60,000.00 in legal costs.

The lesson to be gleaned from this case is that even though a road allowance is designated a vehicular roadway or one dedicated to vehicular traffic, Courts will now look deeper at the true nature or character of the road allowance and determined that it may actually be a “shared roadway and sidewalk.”

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