

Woman wins right to sue city

After slipping on icy walk and breaking her leg, she couldn't work as a truck driver

BY GAY ABBATE

After more than three years of legal wrangling, a Toronto woman who fell on an icy sidewalk has finally won the right to sue the city over the accident.

This week, the city lost its last bid to avoid a trial when the Supreme Court of Canada refused to hear an appeal of a lower court ruling.

On Jan. 24, 1998, a cold Saturday morning, Donna Myshrall slipped on ice in front of her neighbour's home and broke her leg. She was taken to hospital by ambulance. "It was a very bad break," her lawyer,

James Singer, said yesterday.

Ms. Myshrall, a truck driver, was unable to work for almost two years and still has "serious residual problems," Mr. Singer said.

Six days after the accident, Ms. Myshrall called an official in the city clerk's office who dealt with claims and said she would be filing an action against the city. She gave the person all the pertinent information and followed the call with a fax, as she was asked to do.

The call was made and the fax sent within the time frame required by the Municipal Act. The act stipulates that anyone seeking to sue the

city must submit written notice to that effect within seven days of the injury.

Because Ms. Myshrall's signature on the fax was not very legible and because she neglected to include where and when the injury happened, city lawyers persuaded a judge to toss out the lawsuit out.

Ms. Myshrall appealed, and in February the Ontario Court of Appeal said the issue of whether the fax met the act's requirements should be decided at a trial.

The city then sought leave to appeal to the country's highest court. The Supreme Court does not normally give reasons for refusing leave to appeal and did not do so in this case. For that court to hear a case, there must be a larger issue that affects the public interest.

In its ruling, the Court of Appeal criticized the city for not investigating Ms. Myshrall's claim.

Even if the signature was not very legible, the clerk's office had her name and the city could have looked it up in the phone directory, the appeal judges said. They noted she was one of only two Myshralls listed.

"A trier of fact could conclude that with little effort the city could have ascertained where she lived and where she fell. . . . Instead, the city did nothing," the panel of judges said.

They also said that by the time the city received Ms. Myshrall's statement of claim in March, the ice had long melted and there was nothing left for the city to investigate.