THE GLOBE AND MAIL

Walker's slip-and-fall a lawyer's pick-me-up

Ice and snow means business is brisk for litigation counsel

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For pedestrians staggering through an icy winter, it may be the worst of times. But for lawyers who sue on behalf of those who take injurious tumbles, business is brisk.

The field is known as "slip-and-fall" litigation. Icy patches of sidewalk and craggy snow banks translate into lawsuits against municipalities or homeowners whose careless ways tripped up the unwary.

"The more snow and ice there is, the more the liability," said Richard Halpern, a Toronto litigator. "I'm sure there will be more [cases] than in the past."

Unusually large dumps of snow in many parts of the country - coupled with debatable snow-clearing procedures by cost-conscious municipalities - have set the stage for a particularly active litigation season.

"Winter is always a good time for slip-and-fall litigation," said Stacey Stevens, a Toronto lawyer with considerable experience in the field. "This winter has been a hard one, with a lot of snow and ice and changes of weather. It does appear to open the door to enhanced risk."

Ms. Stevens said that approximately one-quarter of the average personal litigation lawyer's practice involves slip-and-fall cases. Awards can top $50,000 in a serious case, she said.

Aside from municipalities, the other major targets of such cases are homeowners or businesses that have not kept their premises safe and navigable.

The key in any case is whether the defendant took "reasonable care" to reduce the risk. The factors that determine liability and awards are infinitely varied. More than a half metre of snow on a walkway may not amount to gross negligence, for example, but less than a centimetre of snow that was left over an ice patch could lead to a large award.

"Municipalities have to anticipate problems within a reasonable period of time and keep in touch with weather forecasts," Mr. Halpern said. "What measures did they take? Were they taken in a timely way? If you fail to meet the appropriate standard of care, you will be responsible for injuries that occur."

To make their cases, Ms. Stevens said, plaintiffs may subpoena anything from logs or journals kept by city works departments to the training records of plow-drivers.

The behaviour of plaintiffs is liable to be examined equally closely. "If you wore a pair of stiletto-heel boots, what were you doing? Your award can be pared down considerably," she said.

Damage awards take into account the nature of the weather activity that caused the condition; how long the municipality neglected to clear the area; and the size and financial circumstances of the municipality.

Many lawsuits are stillborn because the defendant is not notified within a set, stringent period of time. In Saskatchewan, one of the more generous jurisdictions, plaintiffs have 30 days. In Ontario, they have only 10 days to notify a municipality that it is being sued.

In stark contrast, homeowners and businesses in Ontario can be sued up to two years after an incident allegedly occurs. Ms. Stevens said that wise landlords store up receipts for sand, salt, or any other record that proves their diligence.

Other peculiarities of slip-and-fall cases include:

Municipalities can fine homeowners for not clearing the snow in front of their homes, but the municipality will still be on the hook for any damages in a lawsuit.

A municipality is particularly vulnerable in an ice or snow case if it failed to repair the site where a fall took place, such as a pothole or a cracked sidewalk. If there were no structural faults at the site, a plaintiff must prove "gross negligence" by the municipality.