COURT OF APPEAL FOR ONTARIO

RE: **JUDITH LYTLE, MIKE McCALLION, YVONNE LYTLE AND ALAN LYTLE (Plaintiffs/Respondents in Appeal) – and – CITY OF TORONTO AND <u>ROANNE ROBERTSON</u> (Defendants/<u>Appellant in Appeal</u>)**

BEFORE: **LABROSSE, MACPHERSON AND LANG JJ.A.**

COUNSEL: **Timothy Danson**
      for the appellant

      L. Craig Brown and Robert Brent
      for the respondents

HEARD &
RELEASED
ORALLY: **September 27, 2006**

On appeal from the judgment of Justice Gerald F. Day of the Superior Court of Justice, dated April 15, 2004 and February 17, 2006.

E N D O R S E M E N T

[1]   The appellant, Roanne Robertson, appeals the finding of liability made against her at a ten-day trial. In the action, the respondent, Judith Lytle, claimed damages for injuries sustained as a result of a fall when she caught her foot and tripped over pipes that had been placed on the sidewalk in front of the appellant's house.

[2]   The pipes were subject to "special collection" under the City of Toronto's by-laws and should not have been lying on the sidewalk for some five days as they were.

[3]   It is implicit in the detailed reasons of the trial judge that he accepted the respondent's evidence and found her to be a credible witness. On either theory expressed by the trial judge, the finding of negligence is supported by the evidence.

[4]   The finding that the appellant had breached the appropriate standard of care is supported by the appellant's failure to meet the City of Toronto's standards for placing

the pipes on the sidewalk and the evidence that the pipes constituted a danger to pedestrians.

[5]   The trial judge applied the correct standard for negligence in his finding that the appellant caused or materially contributed to the respondent's injuries and is entitled to deference. In addition, we see no basis to interfere with the trial judge's apportionment of negligence.

[6]   In the result, the appeal is dismissed with costs fixed at $15,000.00, all inclusive.

"J.M. Labrosse J.A."

"J.C. MacPherson J.A."

"S.E. Lang J.A."