
CHURCH DIOCESE LIABLE FOR VOLUNTEER'S INJURIES - NEW BRUNSWICK COURT OF APPEAL

*By Barry W. Kwasniewski**

A. INTRODUCTION

In the recent New Brunswick Court of Appeal Decision in *Moreau v. The Roman Catholic Bishop of Edmundston*,¹ the Court affirmed a trial judgment which had found the defendant Diocese liable for personal injuries suffered by a volunteer choir director as a result of a fall while on church premises. This decision provides an example of a type of liability risk to which charities and not-for-profits which own or lease property are exposed on a daily basis. This *Charity Law Bulletin* explains the decision, and summarizes the lessons to be learned from a risk management perspective.

A. THE DECISION

Mme. Moreau was a 56 year old retired teacher and a choir director with the St. Anne de Madawaska Church. On July 17, 2003, she was attending the church in her capacity as choir director, as the choir was slated to sing hymns during the liturgy. As she had done hundreds of times before, Mme. Moreau left the choir loft after the service by way of a multiple flight of stairs and landings leading to the main floor. At the last landing her left foot slipped and she lost balance. Unable to steady herself, she fell forward onto the next six stairs until her shoulder hit the door frame leading to the ground floor. As a result of the fall, she suffered a fractured left shoulder, which left her with residual pain and an inability to carry on a number of activities she enjoyed prior to the incident. She sued the Diocese for damages.

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¹ 2011 CarswellNB 124, 2011 NBCA 26 (Released March 24, 2011)

At trial, the judge found the Diocese liable for Mme. Moreau's injuries, finding that the lack of appropriate hand rails in the stairwell from the choir loft made the stairs unsafe. The trial judge also found that if the appropriate hand rails were in place, Mme. Moreau would have been able to regain her balance and stop her fall. In legal terms, this meant that the Diocese had not met the required "duty of care" to maintain a reasonably safe premises for those persons who are invited or permitted on Diocese property.

The trial judge also ruled that Mme. Moreau was not "contributorily negligent" (i.e. at fault for the fall), as she was wearing proper footwear and was walking down the stairs with reasonable care for her own safety.

The appellate court carefully reviewed the trial judge's reasons for decision, and dismissed the appeal of the Diocese. In the result, Mme. Moreau was awarded damages in the amount of \$157,523.03, plus legal costs of both the trial and the appeal.

B. CONCLUSION

As this decision illustrates, owners and occupiers of premises, including charities and not-for-profits, have a duty of care to volunteers and others permitted on their premises to ensure that the premises are reasonably safe. In many provinces, this duty to maintain safe premises is legislated.² Having a policy and programme to maintain a safe premises on an ongoing basis should be part of an organization's overall risk management plan. Further, it is also important to maintain adequate liability insurance, so if an incident occurs your organization will not be facing the prospect of having to defend, and potentially pay, a substantial claim from its own resources.

² For example in Ontario, the *Occupiers' Liability Act, R.S.O. 1990*, Chapter 0.2, applies.