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## **COURT OF APPEAL CONFIRMS INNOCENT MISREPRESENTATION BY DIOCESE**

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*By Sean S. Carter\**

### **A. INTRODUCTION**

The Court of Appeal for Ontario released its decision in [\*Deschenes v Lalonde\*](#)<sup>1</sup> on May 20, 2020, in the midst of a large volume of cases related to COVID-19, amongst other legal matters. In its decision, the court dismissed the appeal from the judgment of the Superior Court of Justice, dated November 27, 2018 (the “Original Decision”). The Original Decision had resulted from a case which had previously been settled on consent and dismissed by the parties. However, there had been an attempt to rescind and set aside the settlement agreement between the appellant, the Roman Catholic Episcopal Corporation of the Diocese of London in Ontario (the “Diocese”), and the respondent, Irene Deschenes (“Deschenes”).

This *Litigation Bulletin* provides a brief summary of the Court of Appeal’s decision.

### **B. CASE SUMMARY**

The underlying facts of the case relate to an action against Father Sylvestre and the Diocese by Deschenes in 1996 (“1996 Action”), alleging she was sexually assaulted as a child by Father Sylvestre in the early 1970s and claiming that the Diocese was vicariously liable for Father Sylvestre’s actions and negligent in

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<sup>1</sup> 2020 ONCA 304.

failing to prevent the assaults when it knew or ought to have known that Father Sylvestre was or might be assaulting members of the parish.

During the time of the settlement of the 1996 Action, a representative of the Diocese affirmed that, having conducted a search of the records of the Diocese and made diligent inquiries, no one in the Diocese had any knowledge or reason to believe there were any problems with Father Sylvestre until 1989, when a fellow priest raised concerns about his possible alcohol abuse and he was removed from the parish where he was then serving and sent to a treatment centre. The Diocese also stated that it had no knowledge of the alleged sexual propensities or acts of Father Sylvestre until October 1992, before he retired in 1993. Based on the Diocese's representations with regard to its knowledge of the conduct of Father Sylvestre, Deschenes agreed to settle the 1996 Action in 2000 for a payment of \$100,000 by the Diocese.

Father Sylvestre, however, in 2006 pleaded guilty to having sexually assaulted 47 girls under the age of 18, including Deschenes. At this point, it came to light that, well before Deschenes was assaulted, the Diocese had received police statements in 1962 alleging that Father Sylvestre had assaulted other girls. The executive assistant of the Bishop of the Diocese was able to find the police statements from 1962 in a filing cabinet where they had been misfiled with old accounting records. As such, Deschenes commenced a new action against the Diocese and others, claiming rescission of the settlement agreement entered into in 2000 and other relief, and the parties brought competing motions for summary judgment.

In its analysis, the Court of Appeal stated that, there is a strong presumption in favour of the finality of settlements in broad terms and a settlement agreement will not be rescinded on the basis of new information that has come to light after the settlement. The Court of Appeal noted, however, that a settlement agreement (which is simply a contract) may be rescinded on the basis of the equitable basis of misrepresentation. This means that if a false or misleading representation is material to forming a contract, even if the misrepresentation was made innocently by a party who believed it was true, that contract may be rescinded.

Therefore, the Court of Appeal noted that, although the motion judge in the Original Decision characterized the misrepresentation as a "unilateral mistake of the Diocese," there was no error in the motion judge's analysis that the settlement agreement should be rescinded. Although it had previously been alleged as material to the settlement of the 1996 Action, the Court of Appeal found that there had

been a material misrepresentation in light of the fact that the Diocese did have knowledge of Father Sylvestre’s abuse of children as far back as 1962. The Court of Appeal found that this misrepresentation was material, and that Deschenes had relied on the misrepresentation in accepting the terms of the settlement agreement in 2000 of the 1996 Action. As such, the Court of Appeal dismissed the appeal and agreed with the conclusion of the motion judge in the Original Decision that it would be fair and just to rescind the settlement agreement.

## C. CONCLUSION

On August 14, 2020, the Diocese filed an application for leave to appeal to the Supreme Court of Canada. There has been no decision with regard to this application, but the progress can be followed on the [Supreme Court of Canada website](#).<sup>2</sup> This case is an important reminder to charities and not-for-profits that although settlements of proceedings before the courts usually provide relative certainty for the future regarding liability, it cannot be founded on a material misrepresentation by any party, as the settlement may be revoked.

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<sup>2</sup> Supreme Court of Canada, “Docket 39288: *Roman Catholic Episcopal Corporation of the Diocese of London in Ontario, et al. v. Irene Deschenes*” online: <<https://www.scc-csc.ca/case-dossier/info/dock-regi-eng.aspx?cas=39288>>.