

## Unilateral Mistake

Douglas Wilhelm Harder

When a mistake is made by one party, it is called a *unilateral mistake*. Under which conditions can the other party profit from that mistake? In this case, the precedence is not entirely clear.

In 1960, the case of *Imperial Glass Ltd. v. Consolidated Supplies Ltd.*, the supplier prepared a bid using an incorrect figure which significantly reduced the cost of the contract. The mistake was obvious but the offeree accepted the bid. The British Columbia Court of Appeal did not overturn the mistake, as an offer had been made and accepted.

In 1977, the case of *Belle River Community Arena Inc. v. W.J.C. Kaufmann Co. et. al.* saw the contractor prepare a bid that was irrevocable and sealed but through a clerical error the bid of \$641,603 was \$70,000 less than what was intended. Upon discovering the mistake, the contractor attempted to withdraw the bid and while both sides acknowledged the error, the request was refused; the owner attempted to offer the contract to Kaufmann and the contractor refused. Next, the owner offered to offer the contract to the contractor with the next lowest bid who accepted the contract. The owner then attempted to sue Kaufmann for the difference in the bids. The Ontario High Court of Justice rejected the suit indicating that no contract was yet established between the contractor and the offeree. The court also noted that the deliberate attempt by the offeree to enrich themselves was crucial to the decision.

### Foreshadowing

Now, later, we will see the case of *Ron Engineering v. Regina*. Ron Engineering submitted a bid, but together with the bid was required to submit a deposit. In this case, a mistake in the bid allowed Ron Engineering to refuse entering into the contract, but the deposit was lost as the return of the deposit was premised on either not being offered the contract or being offered the contract (as the lowest bidder) and accepting it. In this case, the Supreme Court of Canada viewed the tendering agreement as a contract in its own right.

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## References

Donald L. Marston, B.Sc., P.Eng., LL.B., *Law for Professional Engineers: Canadian and Global Insights*, 4<sup>th</sup> Ed., McGraw-Hill Ryerson, Toronto, 2008.