

SENTENCING ON CONVICTION FOR GROSS INDECENCY

In volume 4, C.L.Q. 123 one Magistrate's view with regard to sentencing of homosexuals is set out. In a judgment delivered June 27th, 1966 in the cases of *R. v. Gaudry*, *R. v. Stevenson* and *R. v. Stokes*, the Manitoba Court of Appeal made clear its views on sentencing for homosexual acts with juveniles.

All three cases arose from a single set of facts. Gaudry, aged 39, pleaded guilty to four counts of gross indecency with respect to four boys, one aged 17 and three aged 15, and two counts of buggery with respect to two of the boys. Stevenson, aged 30, pleaded guilty to three counts of gross indecency and two counts of buggery with the same boys. Stokes, aged 27, pleaded guilty to one charge of gross indecency with one of the boys.

None of the accused had any previous convictions. All three were confirmed homosexuals. The acts were not new to the juveniles. There was no complaint to the Police. The prosecution merely resulted from a very thorough investigation.

Gaudry is from a normal family and works as a plasterer's helper and as a semi-professional dancer.

Stevenson is a talented music teacher with two diplomas, one from the Royal Conservatory of Music in Toronto, and one from the University of Manitoba. He taught music to fifty pupils at the time of his arrest. After his arrest, police officers, in the course of their investigation, advised the parents of each of his pupils about the pending charges.

Stokes had for three years been a valued and trusted employee of a drug distributor. His detention in gaol before being released on bail had a traumatic effect on him. He lost his job as a result of his conviction.

Gaudry was sentenced on December 23, 1965 by Magistrate I. Rice Q.C., to two years in gaol, his reasons being:

"I can't get out of my mind these boys are all juveniles."

"It is a maximum of fourteen years, so what can I do . . . two years."

Stevenson appeared before Magistrate I. V. Dubienki, Q.C. and on March 9, 1966 sentence was suspended for two years. His Worship gave these reasons:

"The problem is, as it was made quite clear, incarceration in these cases does nothing but aggravate the situation. However, I think the accused may be punished in such a way that he realizes he has gone beyond the bounds of his actions, that is, he should and he will have to cease that part of his actions brought on here today. As a result, I have given this a great deal of consideration and I have come to the conclusion I am going to put the accused on a two

year suspended sentence on certain conditions. Firstly, accept the course of consultation with Dr. Lucy and that he will not associate with people of the kind such as the complainants in this case, and that on each of the charges he will have the costs in the amount of \$140.00. I say this because I know this will execute on the accused at this time and serve as a hardship because of the fact that there has been sufficient publicity about this matter that the accused is running into financial difficulty and it will be some time before he works his way out of it and will constantly be reminded about it. It will have a greater effect on him than any incarceration."

Stokes also appeared before Magistrate Dubiensi on February 16, 1966, and sentence was suspended for two years.

His Worship gave these reasons:

"Well, I am not going to enter into dissertation with regard to my attitudes with regard to this charge. I take into consideration the fact there was no complaint and from what the Crown says it would appear that the offence was discovered by accident, not that that isn't a good enough reason for some investigating, but there was no complaint. It doesn't seem that there was a corrupting of anybody, and the accused is apparently well aware of his problem and is prepared to take whatever assistance he can and, therefore, I put the accused on two years suspended sentence with condition that he seek and continue the assistance he is receiving from Doctor Hunzinger, the Psychiatrist. Of course, if this offence occurs again then the matter will be reviewed at that time. You will enter into a bond of one thousand dollars guaranteeing that you will comply with the conditions of the suspension."

The Crown appealed the sentences of Stokes and Stevenson. Gaudry appealed his sentence.

Appeals with respect to all three sentences were heard together. Since the date of sentence Gaudry had served six months and four days of his sentence. Since Stevenson's hearing in Magistrates Court three months and eighteen days had elapsed and since Stokes' hearing, four months and eleven days had passed. During that time Stevenson had paid \$400.00 of his fine, stayed out of trouble, and obtained letters of recommendation by a cross section of members of the community. Stokes having lost his job while in custody, finally obtained one shortly before the hearing of the appeal. He reported regularly to a Psychiatrist who expressed the view that with continued psychiatric assistance Stokes would be able to manage without coming into conflict with the law again.

At the hearing of the appeal the Court had before it a document in full statements by all seven parties involved. The statements are in crude terms, gave vivid descriptions of the acts involved, and referred to many acts not specifically charged.

With respect to Stokes the Crown admitted that he was in a different position than the other two, and that he was merely before the Court so that the Court would have all the circumstances before it.

The Court of Appeal allowed all three appeals, and reduced Gaudry's sentence to one year and sentenced Stevenson and Stokes to one year each in gaol. Guy J. A. delivered the Judgment of the Court, with which Schultz J. A. & Freedman J. A. concurred as follows:

"The offence in all three cases involved gross indecency with juvenile males, under largely similar circumstances in each case. In considering the propriety of the sentences imposed, there are two factors which should be borne in mind:

"The first is that these were offences of gross indecency of a particular revolting kind committed by the accused with juvenile boys. The second is that as far as possible, and having regard to the equality of other circumstances, similar offences should receive similar penalties."

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REDEMPTION AND ACCELERATION IN CONDITIONAL SALES

We are now in an era where the great majority of the populace buys goods on instalment plans. In a typical situation a buyer of durable goods such as an automobile or a refrigerator, enters into a conditional sales contract with the vendor and executes a promissory note payable to him. The vendor will then generally assign his interest under the contract, and endorse the promissory note to a finance company. If all goes well, the dealer realizes a profit on the transaction (a mark up on the price); the finance company realizes a profit (the excess of the instalment payments, over the company's costs); and the purchaser has the advantage of being able to use the goods while he is paying for them. Such financing plays an important role in our economy.

The typical conditional sales contract reserves title in the goods to the vendor until full payment is made by the purchaser. The relationship is one of bailment wherein the bailee, the conditional purchaser, acquires the goods without acquiring ownership thereof. By the act of assignment, the purchaser agrees that the assignee will take all the rights of the seller.

One of these rights is the right to repossess the goods upon default in an instalment payment or other breach of condition. It is usual that a statutory provision prohibits the bailor from dealing with the goods in any way for a period of twenty days¹ and affords the bailee the right to redeem the goods upon payment of the amount then in arrears, together with the interest, and expenses incurred by the bailor by the repossession.²

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1. If during the statutory period the bailor converts the repossessed goods to his use or mortgages them, or disposes of them in any way, he may become liable in conversion. (Mellis v. Meyer 10 W.W.R. 241; Sawyer-Massey v. Bouchard 13 W.W.R. 394.)

2. In Manitoba the relevant provision is contained in section 3(1) of the Lien Notes Act R.S.M., 1954, c. 144.