CONFESSIONS IN CRIMINAL CASES:

FAREWELL TO R. v. LLOYD

In *R. v. Hartz and Power*[1] the accused were convicted of evading purchase tax. During the investigation the investigating officers demanded and obtained the production of documents in the exercise of statutory powers; they also obtained answers to oral questions by telling the accused that unless they answered the questions they were liable to prosecution, which was not the case: both the documents and the answers to the oral questions were admitted at the trial. The accused appealed on the grounds that neither the documents nor the answers to the oral questions should have been admitted at the trial.

The Court of Criminal Appeal (Cantley and Blain, J. J.; Thesiger, J. dissenting) upheld the appeal. All three judges agreed that the documents were admissible, but the majority held that the answers to the oral questions were not. Thesiger, J., was of opinion that the answers to the oral questions were admissible despite the fact that they had been induced by threats of prosecution, as threats or inducements do not render a confession inadmissible unless they are connected with the charge. The majority, however, held that while promises do not render confessions inadmissible unless they relate to the charge, threats render a confession inadmissible whether they relate to the charge or not; and on these grounds they distinguished *R. v. Lloyd*[2], where it was held that a promise to a prisoner that he could see his wife did not render a confession inadmissible.

The prosecution appealed, but the House of Lords (Lord Reid, Lord Morris of Borth-y-Gest, Lord Hodson, Lord Pearce and Lord Wilberforce) unanimously dismissed the appeal, and rejected *in toto* the proposition that in order to render a confession inadmissible the threat or promise must relate to the charge. With regard to *R. v. Lloyd*, Lord Reid, in a judgment with which all the other Law Lords concurred, said:—[3]

> "It is said that if the threat or promise which induced the statement related to the charge or contemplated charge against the accused, the statement is not admissible; but that if it related to something else, the statement is admissible . . . This is merely an inference which those learned writers draw from a few cases, none of which appears to me to warrant it. The most striking is *R. v. Lloyd.* There the inducement was that the gaoler would let the prisoner see his wife, and Patterson, J., without giving any reason held that that did not make the confession inadmissible. The report is short and we do not know all the circumstances. He may well have thought the inducement too small to matter. Suppose, however, that the wife had been at death's door: I can imagine

1. [1966] 3 All E.R. 433 (C.C.A.); [1967] 1 All E.R. 177 (H.L.)
2. (1834) 6 Car. & P. 393, 172 E.R. 1291.
3. [1967] 1 All E.R. 177, at 182.

> no inducement more likely to lead to a false confession, and I cannot believe that in such a case Patterson, J., would have held it to have been admissible."

It is submitted that this case will be followed in Canada, not only because of the great persuasive value of judgments of the House of Lords, but because it is clearly correct in principle, for as Lord Reid said:—[4]

> "That the alleged rule or formula is illogical and unreasonable I have no doubt. Suppose that a daughter is accused of shoplifting and later her mother is detected in a similar offence, perhaps at a different branch, where the mother is brought before the manager of the shop. He might induce her to confess by telling her that she must tell him the truth and it will be the worse for her if she does not: or the inducement might be that, if she will tell the truth, he will drop proceedings against the daughter. Obviously the latter would in most cases be far the more powerful inducement and far the more likely to lead to an untrue confession; but if this rule were right the former inducement would make the confession inadmissible, and the latter would not. The law of England cannot be so ridiculous as that."

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STATUTORY LIMITATION UPON THE USE OF THE DECLARATION AS MEANS OF ATTACKING MUNICIPAL BY-LAWS

Both British Columbia and Manitoba include provisions within their Municipal Acts which attempt to limit the use of the declaration as a vehicle for attacking a municipal by-law to the same time period as that stipulated for the statutory motion to quash. The relevant sections are as follows:

(i) The Municipal Act, R.S.M. 1954, c. 173, as amended by S.M. 1966, c. 38,

> "s. 392(1) Subject to subsections (2) and (3) where one year has elapsed since the passing of a by-law,
>
> (a) no application under section 391 [i.e. a motion to quash]; and
>
> (b) no application to the court of Queen's Bench for a declaratory judgment or order that a by-law is invalid or void; shall be made to, or entertained by, the Court."[1.2.]

(ii) The Municipal Act, R.S.B.C. 1960, c. 255, as amended by S.B.C. 1962, c. 41,

4. **Ibid.**, at 184.

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