TAB 6

which it conveyed material from its plant to the machine. There can be no real dispute that serious and dangerous defects existed in the delivery system which Metcalfe had put in place. The appellant, however, did not design or build the system. Nor was it consulted about its design and construction. In fact, the appellant had no connection with that delivery system. Mr. Deshane was not injured because the forage harvester was being used in a stationary position. He was injured because of the unusual and dangerous method adopted by Metcalfe for shutting off the flow of material from the conveyor belt to the chute. There was nothing done by the appellant which in any way contributed to Mr. Deshane falling into the chute.

I have reached the conclusion that, because the danger was obvious to any observer and was in fact known to Metcalfe and Mr. Deshane, the law did not impose a duty upon the appellant to warn them of the danger which the exposed feed rolls posed. It follows that the trial judge should have refused to enter judgment upon the findings of the jury because, in my opinion, the duty which they found to have been breached was non-existent in law. The appellant was entitled to have had the action dismissed.

I would, therefore, allow the appeal with costs set aside the judgment at trial, and direct that the action be dismissed with costs.

Appeal allowed.

Stoddard v. Watson et al.; Murphy et al., Interveners

[Indexed as: Murphy v. Welsh; Stoddard v. Watson]

Court File No. 22601

Supreme Court of Canada, La Forest, L'Heureux-Dubé, Sopinka, Cory, McLachlin, Iacobucci and Major JJ. September 2, 1993.

Limitations — Persons under disability — Infants — Motor vehicle actions — Two-year limitation period in provincial highway traffic legislation commencing when minor comes of age — No extension of time for action by parent — Highway Traffic Act, R.S.O. 1980, c. 198, s. 180(1) — Limitations Act, R.S.O. 1980, c. 240, s. 47.

Limitations — Extension — Parent and minor child involved in motor vehicle accident — Action not brought within two-year limitation period prescribed by provincial highway traffic legislation — Child allowed to bring action within two years of attaining majority — Parent's action out of time — No extension possible — Rules of Civil Procedure cannot extend where legislation establishing limitation period makes no provision for

extension of time — Highway Traffic Act, R.S.O. 1980, c. 198, s. 180 — Limitations Act, R.S.O. 1980, c. 240, s. 47 — Rules of Civil Procedure, O.Reg. 560/84, rule 3.02(1), (2).

Statutes — Interpretation — Conflicting legislation — Presumption of coherence — Provincial limitations legislation prescribing six-year limitation period for negligence actions unless shorter period prescribed elsewhere postponing running of limitation period while plaintiff under legal disability — Provincial highway traffic legislation prescribing two-year limitation period in cases of damage occasioned by motor vehicles and silent on issue of commencement of limitation period in cases where plaintiff under legal disability — Provisions not inconsistent — Limitation period under highway traffic legislation not to commence until date minor comes of age or disability ceases — Highway Traffic Act, R.S.O. 1980, c. 198, s. 180(1) — Limitations Act, R.S.O. 1980, c. 240, s. 47.

The *Limitations Act*, R.S.O. 1980, c. 240, establishes a six-year limitation period for negligence actions unless a shorter period is prescribed elsewhere. Section 47 of the *Limitations Act* postpones the running of a limitation period while a plaintiff is under a legal disability, and provides that the limitation period is to commence from the date a minor comes of age or the disability ceases. Under s. 180(1) of the *Highway Traffic Act*, R.S.O. 1980, c. 198, the limitation period is reduced to two years. Two actions involving plaintiffs who were minors at the time of the motor vehicle accident raised the issue of whether s. 47 of the *Limitations Act* postponed the limitation period in s. 180(1) of the *Highway Traffic Act*. In the first action, the plaintiff L.S. was injured in a motor vehicle accident which occurred while she was a minor. The action was commenced more than two years from the date of the accident but within two years of her attaining majority. The trial judge concluded that L.S. had brought the action in time. In the second action, the plaintiff J.M. was injured in a motor vehicle accident which occurred when he was eight years old. His mother S.M. was injured in the same accident. Due to an error on the part of the solicitors, negligence actions brought by J.M. and his mother, together with a derivative action by J.M. under the *Family Law Reform Act*, R.S.O. 1980, c. 152, were commenced more than two years from the date of the accident but while J.M. was still a minor. An application to extend the time for commencing the action was granted by the Ontario District Court and an appeal to the Supreme Court of Ontario was dismissed, the court concluding that J.M.'s claim was not barred and that there were "special circumstances" allowing an amendment to add the mother as a party to the infant's action. Both cases came before the Ontario Court of Appeal, which concluded that the limitation period in s. 180(1) of the *Highway Traffic Act* was not subject to s. 47 of the *Limitations Act*. Both actions were hence found to be out of time.

On further appeal to the Supreme Court of Canada, **held**, the appeal with respect to the claims of the infants should be allowed; the appeal with respect to the action of the mother and the derivative action of J.M. under the *Family Law Reform Act* should be dismissed.

The infants L.S. and J.M. commenced their actions within time and the Court of Appeal's orders declaring their claims to be statute-barred should be set aside. On its proper interpretation, s. 180(1) of the *Highway Traffic Act* does not exclude the application of s. 47 of the *Limitations Act*. In determining legislative intention there is a presumption of coherence between related statutes. Sections 180(1) and 47 are not *prima facie* inconsistent. Section 180(1) sets the length of the

limitation period while s. 47 states when the limitation period begins to run. Their coexistence does not lead to absurd results.

The mother's action is incurably out of time, however. Although in "special circumstances" the court will allow a statement of claim to be amended to add another party after a limitation period expires, the new party's claim will only go back to the date of the statement of claim. Nor is an extension of time under rule 3.01(1) and (2) of the Ontario Rules of Civil Procedure, O. Reg. 560/84, available, as the limitation period falls under the *Highway Traffic Act* which makes no provision for extending of limitation periods.

Cases referred to

Papamonolopoulos v. Toronto (City) Board of Education (1986), 30 D.L.R. (4th) 269, 38 C.C.L.T. 82, 10 C.P.C. (2d) 176, 56 O.R. (2d) 1, 39 A.C.W.S. (2d) 72 [leave to appeal to S.C.C. refused 35 D.L.R. (4th) 767*n*, 58 O.R. (2d) 528*n*, 76 N.R. 240*n*]; *Martin v. Kingston City Coach Co.*, [1947] 1 D.L.R. 864, [1947] O.W.N. 110; affg [1947] 1 D.L.R. 367, [1946] O.W.N. 915; *M. (K.) v. M. (H.)* (1992), 96 D.L.R. (4th) 289, [1992] 3 S.C.R. 6, 14 C.C.L.T. (2d) 1, 57 O.A.C. 321, 142 N.R. 321, 36 A.C.W.S. (3d) 466; *Kamloops (City) v. Nielsen* (1984), 10 D.L.R. (4th) 641, [1984] 2 S.C.R. 2, 29 C.C.L.T. 97, 36 M.P.L.R. 1, [1984] 5 W.W.R. 1, 66 B.C.L.R. 273, 54 N.R. 1, 26 A.C.W.S. (2d) 453; *Central Trust Co. v. Rafuse* (1986), 31 D.L.R. (4th) 481, [1986] 2 S.C.R. 147, 37 C.C.L.T. 117, 42 R.P.R. 161, 34 B.L.R. 187, 75 N.S.R. (2d) 109, 69 N.R. 321, 1 A.C.W.S. (3d) 294 [vard [1988] 1 S.C.R. 1206]; *Basarsky v. Quinlan* (1971), 24 D.L.R. (3d) 720, [1972] S.C.R. 380, [1972] 1 W.W.R. 303

Statutes referred to

Canadian Charter of Rights and Freedoms, s. 15
Family Law Act, R.S.O. 1990, c. F.3, ss. 2(5), 61(4)
Family Law Reform Act, R.S.O. 1980, c. 152 [repealed by s. 71(1) of *Family Law Act, 1986* S.O. 1986, c. 4]
Highway Traffic Act, R.S.O. 1980, c. 198, s. 180 [am. 1984, c. 11, s. 183] — now R.S.O. 1990, c. H.8, s. 206
Limitations Act, R.S.O. 1980, c. 240, ss. 45, 47 — now R.S.O. 1990, c. L.15, ss. 45, 47
Professional Engineers Act, R.S.O. 1990, c. P.28, s. 46

Rules and regulations referred to

Rules of Civil Procedure, O.Reg. 560/84, rule 3.02(1), (2) — now R.R.O. 1990, Reg. 194, rule 3.02(1), (2)

APPEALS from a judgment of the Ontario Court of Appeal, 81 D.L.R. (4th) 475, 4 C.P.C. (3d) 301, 30 M.V.R. (2d) 163, 3 O.R. (3d) 182, 50 O.A.C. 246, 26 A.C.W.S. (3d) 1179: (1) in the case of *Stoddard v. Watson*, allowing an appeal from a judgment of Osborne J. granting judgment for the plaintiff; and (2) in the case of *Murphy v. Welsh*, allowing an appeal from a judgment of the Ontario Divisional Court, 44 D.L.R. (4th) 192, 31 C.P.C. (2d) 109, 62 O.R. (2d) 159, dismissing an appeal from a judgment of Rosenberg J., 33 D.L.R. (4th) 762, 15 C.P.C. (2d) 173, 57 O.R. (2d) 622, dismissing an appeal from an order of Stayshyn J. granting a retroactive extension of time for commencement of the action.

W.L.N. Somerville, Q.C., and *R.B. Bell*, for appellant.

William S. Zener, for respondents.

William Morris, Q.C., and *Michael W. Kelly*, for interveners, Sharon-Leigh Murphy and Jamie Murphy by his litigation guardian, Sharon-Leigh Murphy.

Ian Scott, Q.C., *Thomas D. Galligan* and *Andrew K. Lokan*, for intervener, Frederick Welsh.

W.L.N. Somerville, Q.C., for intervener, Hastings, Charlebois, Feltmate, Fur and Delibato.

The judgment of the court was delivered by

MAJOR J.:—

I
THE FACTS

Both *Stoddard v. Watson* and *Murphy v. Welsh* (S.C.C., File No. 22542) involve the interpretation of limitations legislation. Ontario's limitation scheme is divided between the *Limitations Act*, R.S.O. 1980, c. 240, and various other statutes. Generally, s. 45 of the *Limitations Act* sets a six-year limitation period for negligence actions, unless a shorter period is prescribed elsewhere. Under the *Highway Traffic Act*, R.S.O. 1980, c. 198, s. 180(1) (hereinafter "s. 180(1)") the limitation period is reduced to two years. Section 180 reads:

> 180(1) Subject to subsections (2) and (3), no action shall be brought against a person for the recovery of damages occasioned by a motor vehicle after the expiration of two years from the time when the damages were sustained.
>
> (2) Where death is caused, the action may be brought within the time limited by the *Family Law Reform Act*.
>
> (3) Notwithstanding subsections (1) and (2), when an action is brought within the time limited by this Act for the recovery of damages occasioned by a motor vehicle and a counterclaim is made or third party proceedings are instituted by a defendant in respect of damages occasioned in the same accident, the lapse of time herein limited is not a bar to the counterclaim or third party proceedings.

However, s. 47 of the *Limitations Act* (hereinafter "s. 47") postpones the running of a limitation period while a plaintiff is under a legal disability:

> 47. Where a person entitled to bring an action mentioned in section 45 or 46 is at the time the cause of action accrues a minor, mental defective, mental incompetent or of unsound mind, the period within which the action may be brought shall be reckoned from the date when such person became of full age or of sound mind.

The central issue in the present cases is whether s. 47 postpones the s. 180(1) limitation period.

The appellant Lorna Stoddard was injured in a motor vehicle accident in November, 1984. Stoddard was 17 at the time of the accident. The action to recover for her injuries was commenced on February 18, 1987, more than two years from the date of the accident but within two years of her attaining majority. The trial proceeded by means of an agreed statement of facts. The respondents Wanda Watson and Tilden Rent-a-Car (hereinafter "Tilden") admitted liability and all parties agreed on the assessment of damages at $33,917.75. Watson and Tilden did not allege any prejudice other than the limitation bar. The trial judge relied on *Papamonolopoulos v. Toronto (City) Board of Education* (1986), 30 D.L.R. (4th) 269, 38 C.C.L.T. 82, 56 O.R. (2d) 1 (C.A.), and found Stoddard had brought her action in time. *Papamonolopoulos v. Toronto (City) Board of Education* involved s. 47 and a limitation period under the *Public Authorities Protection Act*, R.S.O. 1980, c. 406.

The facts in *Murphy v. Welsh* are somewhat more complex. The appellant Jamie Murphy was injured in a motor vehicle accident in June, 1984. He was eight years old at the time of the accident. His mother, the appellant Sharon Murphy, was injured in the same accident. The Murphys' first lawyer notified the respondent Frederick Welsh of the claim in September, 1984. The law firm of Hastings, Charlebois, Feltmate, Fur and Delibato took over the Murphy file in April, 1986. The file was misplaced and the statement of claim was not issued until July 11, 1986, more than two years from the date of the accident but while Jamie Murphy was still an infant. The statement of claim named both Sharon Murphy and Jamie Murphy as plaintiffs, and included a derivative action by Jamie Murphy under the *Family Law Reform Act*, R.S.O. 1980, c. 152.

An application to extend retroactively the time for commencing the action was brought in October, 1986. The Ontario District Court granted the extension without reasons. Welsh appealed the order to the Supreme Court of Ontario [33 D.L.R. (4th) 762, 15 C.P.C. (2d) 173, 57 O.R. (2d) 622]. The Supreme Court of Ontario, relying on *Papamonolopoulos v. Toronto (City) Board of Education*, found that Jamie Murphy's claim was not barred by s. 180(1). The Supreme Court of Ontario went on to find that there were "special circumstances" that would allow an amendment to add Sharon Murphy as a party in Jamie Murphy's action. Eventually, the matter came before the Ontario Court of Appeal as a special case, with Hastings, Charlebois, Feltmate, Fur and Delibato intervening.

The Court of Appeal (81 D.L.R. (4th) 475, 4 C.P.C. (3d) 301, 3 O.R. (3d) 182) delivered its decision in *Stoddard v. Watson* together with its decision in *Murphy v. Welsh.* The Court of Appeal held that s. 180(1) excluded s. 47. The Court of Appeal relied on basic principles of statutory interpretation and found that s. 180(1) was only subject to s-ss. (2) and (3). The Court of Appeal also found support for its position in the legislative history of s. 180(1) and in its earlier decision in *Martin v. Kingston City Coach Co.*, [1947] 1 D.L.R. 864, [1947] O.W.N. 110; affirming [1947] 1 D.L.R. 367, [1946] O.W.N. 915 (H.C.J.). *Martin v. Kingston City Coach Co.* held that the *Highway Traffic Act* applied to bar claims after two years regardless of whether the plaintiff was under a legal disability. While acknowledging that s. 47 was not being applied uniformly to special limitation periods, the Court of Appeal considered this was a matter for legislative reform. The Court of Appeal concluded that Sharon Murphy's claim fell with Jamie Murphy's action.

This court granted leave to appeal in both cases. In order to deal properly with the constitutional question raised in *Murphy v. Welsh* that case was adjourned. However, all parties in *Murphy v. Welsh* were granted intervener status in *Stoddard v. Watson*, so that the court could proceed with the remaining issues in both cases.

II
ISSUES

The issues stated in *Stoddard v. Watson* are:

(1) In actions on behalf of infants and those under legal disability for damages occasioned by a motor vehicle, will the limitation period be reckoned from the date the person comes of age or disability ceases or from the date of the accident?

(2) As a matter of statutory interpretation, do the words "subject to" when prefacing limitation provisions in a section of an act such as the *Highway Traffic Act*, serve to exclude operation of statutes of general application in favour of infants and those under legal disability, such as the *Limitations Act*?

(3) Does s. 15 of the *Canadian Charter of Rights and Freedoms* require an interpretation of statutes (regardless of any merit to the "proper construction" or "subject to" analysis) to allow those with personal characteristics such as infants and others under legal disability to be treated differently than adults with no disability in order to avoid inequality before the law applicable to remedies?

The non-constitutional issues stated in *Murphy v. Welsh* are:

(4) Did the Court of Appeal err in finding that s. 47 of the *Limitations Act* (the "disability" clause) did not apply to the limitation period prescribed in s. 180 of the *Highway Traffic Act*?

(5) If the claim of the plaintiff Jamie Murphy is allowed to proceed, should the claim of Sharon Murphy also be allowed to proceed on the basis of a court's discretion to grant relief from the consequences of a limitation period where the "special circumstances" are found?

Given the result in these appeals it will only be necessary to deal with issues 1, 4, and 5.

III
ANALYSIS

A. *Interpretation of ss. 180(1) and 47*

These appeals concern the relationship between provisions in different statutes. The respondents argue that the opening words of s. 180(1) define this relationship and exclude the application of s. 47: "Subject to subsections (2) and (3), no action shall be brought . . .". However, to find that subsections (2) and (3) are the sole exceptions to s. 180(1) means reading s. 180(1) as "subject *only* to subsections (2) and (3)". Statutory interpretation presumes against adding words unless the addition gives voice to the legislator's implicit intention. As Pierre-André Côté states in *The Interpretation of Legislation in Canada*, 2nd ed. (Cowansville, Quebec: Yvon Blais Inc., 1991), at pp. 231-2:

> Since the judge's task is to interpret the statute, not to create it, as a general rule, interpretation should not add to the terms of the law. Legislation is deemed to be well drafted, and to express completely what the legislator wanted to say:
>
> . . . . .
>
> The presumption against adding words must be treated with caution because legal communication, like all communication, has both implicit and explicit elements. The presumption only concerns the explicit element of the legislature's message: it assumes that the judge usurps the role of Parliament if terms are added to a provision. However, if the judge makes additions in order to render the implicit explicit, he is not overreaching his authority. The relevant question is not whether the judge can add words or not, but rather if the words that he adds do anything more than express what is already implied by the statute.

In determining the legislator's intention there is a presumption of coherence between related statutes. Provisions are only deemed inconsistent where they cannot stand together. Sections 180(1) and 47 are not *prima facie* inconsistent. Section 180(1) sets the length of the limitation period. Section 47 states when the limitation period begins to run. Their coexistence does not lead to absurd results. Merely because s. 180(1) sets a short limitation period does not bar postponement for disability. Section 45(1)(*h*) and (*i*) of the

Limitations Act sets two-year limitation periods, and s. 45(1)(*m*) sets a one-year limitation period, all of which are subject to s. 47. The coexistence of a short limitation period and a rule for its postponement is not an absurd result.

This court recently described the purpose of limitations legislation in *M.(K.) v. M.(H.)* (1992), 96 D.L.R. (4th) 289, [1992] 3 S.C.R. 6, 14 C.C.L.T. (2d) 1. *M.(K.) v. M.(H.)* was a claim for damages for incest brought well after the expiration of the limitation period, even allowing for the plaintiff to reach majority. La Forest J. stated at pp. 301-2:

> In order to determine the time of accrual of the cause of action in a manner consistent with the purposes of the *Limitations Act*, I believe it is helpful to first examine its underlying rationales. There are three, and they may be described as the certainty, evidentiary, and diligence rationales: see Alan Rosenfeld, "The Statute of Limitations Barrier in Childhood Sexual Abuse Cases: The Equitable Estoppel Remedy" (1989), 12 Harv. Women's L.J. 206 at p. 211.
>
> Statutes of limitations have long been said to be statutes of repose: see *Doe on the demise of Count Duroure v. Jones* (1791), 4 T.R. 301, 100 E.R. 1031, and *A'Court v. Cross* (1825), 3 Bing. 329, 130 E.R. 540. The reasoning is straightforward enough. There comes a time, it is said, when a potential defendant should be secure in his reasonable expectation that he will not be held to account for ancient obligations.
>
> . . . . .
>
> The second rationale is evidentiary and concerns the desire to foreclose claims based on stale evidence. Once the limitation period has lapsed, the potential defendant should no longer be concerned about the preservation of evidence relevant to the claim . . . Finally, plaintiffs are expected to act diligently and not "sleep on their rights"; statutes of limitation are an incentive for plaintiffs to bring suit in a timely fashion.

While these rationales benefit the potential defendant, the court also recognized that there must be fairness to the plaintiff as well. Hence, the reasonable discovery rule which prevents the injustice of a claim's being statute-barred before the plaintiff becomes aware of its existence: *Kamloops (City) v. Nielsen* (1984), 10 D.L.R. (4th) 641, [1984] 2 S.C.R. 2, 29 C.C.L.T. 97; *Central Trust Co. v. Rafuse* (1986), 31 D.L.R. (4th) 481, [1986] 2 S.C.R. 147, 37 C.C.L.T. 117; *M.(K.) v. M.(H.)*, *supra*. A limitations scheme must attempt to balance the interests of both sides.

The s. 180(1) limitation period favours the defendant by serving both the certainty and evidentiary rationales. The diligence rationale cannot be used to support s. 180(1). Implicitly, diligence requires awareness of one's rights. Those under legal disability are presumed not to know their rights and remedies and it would be unfair to expect them to proceed diligently in such matters. Whatever interest a defendant may have in the universal applica-

tion of the two-year motor vehicle limitation period must be balanced against the concerns of fairness to the plaintiff under legal disability. If s. 180(1) excludes s. 47, an individual under legal disability would be deprived of any remedy unless the disability ends within two years of the accident. Only infants over the age of 16 and individuals suffering from short-term mental incompetence would be able to pursue their remedies. The prejudice to plaintiffs under legal disability outweighs the benefits of providing a procedural defence to liability.

Admittedly, vicarious liability and reverse onus provisions may result in a defendant's being faced with a claim years down the road for an accident caused by another person. However, driving and owning a motor vehicle are activities with known risks. The s. 180(1) limitation period truncates liability. Surely the legislature did not intend to remove these risks altogether.

B. *Special circumstances*

Even if there are special circumstances in the case at bar they do not assist Sharon Murphy's claim. As this court held in *Basarsky v. Quinlan* (1971), 24 D.L.R. (3d) 720, [1972] S.C.R. 380, [1972] 1 W.W.R. 303, in special circumstances the court will allow a statement of claim to be amended to add another party after a limitation period expires. However, the new party's claim will only go back to the date of the statement of claim. Here, even if Sharon Murphy is added as a party to Jamie Murphy's action, her claim is out of time. While the statement of claim was filed in time for the infant, it was too late for the adult. The remedy granted by the Supreme Court of Ontario was ineffectual.

The only remedy that would allow Sharon Murphy to bring her claim is an extension of time. Indeed this is what the Murphys originally asked for under the Rules of Civil Procedure, O.Reg. 560/84. Rule 3.02(1) and (2) allows a court to "extend or abridge any time prescribed by these rules . . . on such terms as are just . . . before or after the expiration of the time prescribed". However, the present limitation period falls under the *Highway Traffic Act*. Rule 3.02 cannot be used to extend the limitation period. Unlike the *Family Law Act*, R.S.O. 1990, c. F.3, ss. 2(5) and 61(4), and the *Professional Engineers Act*, R.S.O. 1990, c. P.28, s. 46, which provide for extending of limitation periods, the *Highway Traffic Act* makes no provision for extending time to commence an action. Sharon Murphy's action is incurably out of time.

IV
CONCLUSION

The infants Lorna Stoddard and Jamie Murphy commenced their actions within the time prescribed by the *Highway Traffic Act* and the *Limitations Act*. The appeals are allowed on this point and the Court of Appeal's orders declaring the infants' claims to be statute-barred are set aside. Sharon Murphy's claim is statute-barred; as a result, Jamie Murphy's derivative claim under the *Family Law Reform Act* also falls.

The appellant is entitled to costs against the respondents Wanda Watson and Tilden Rent-a-Car. The intervener Jamie Murphy by his litigation guardian, Sharon Murphy, is entitled to costs against the intervener Frederick Welsh. There is no other order as to costs.

Appeal allowed in part.

Regina v. Tremblay et al.

[Indexed as: R. v. Tremblay]

Court File No. 22650

Supreme Court of Canada, La Forest, L'Heureux-Dubé, Gonthier, Cory and McLachlin JJ. September 2, 1993.

Criminal law — Prostitution — Keeping common bawdy-house — Keeping place for purpose of acts of indecency — Meaning of act of indecency — Customer paying to watch woman dance completely nude — Acts taking place in small room — Facilities for owner to observe activities — Performer and customer masturbating in each other's presence — No physical contact between performer and customer — Trial judge did not err in finding that conduct not constituting acts of indecency — Open to trial judge to rely upon expert evidence, charging practices by police in similar cases and parliamentary report — Conduct not violating community standard of tolerance — Cr. Code, s. 210.

Criminal law — Indictment and information — Amendment — Accused charged with keeping common bawdy-house by using premises for purpose of practice of acts of indecency — At conclusion of case Crown seeking to amend information to delete words "the practice of indecency" or to include "practice of prostitution" — Trial judge properly refusing to permit amendment — Accused would be prejudiced by amendment — Accused having called expert evidence and defended case on basis that conduct not amounting to acts of indecency — Court of Appeal erred in amending information on Crown appeal from acquittal — Court of Appeal to exercise amendment power only in exceptional circumstances — Cr. Code, s. 601.

Criminal law — Indecency — Indecent act — Proof of offence — Charge of keeping bawdy-house for purpose of practice of indecent acts — Client and