
Criminal Code, Etc., Amendment Act. 22 GEO. V. No. 40,

CRIMINAL LAW.

22 GEO. V.
No. 40.
THE
CRIMINAL
CODE (PRO-
HIBITION OF
SECRET
COMMISS-
SIONS) AND
FURTHER
AMENDMENT
ACT OF 1931.

An Act to Amend "The Criminal Code" by making provision for the Prohibition of Secret Commissions and for the Prevention of Fraud; and to Amend "The Criminal Code" in further particulars.

[ASSENTED TO 24TH DECEMBER, 1931.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

Short title
and
construction
of Act.

1. This Act may be cited as "*The Criminal Code (Prohibition of Secret Commissions) and Further Amendment Act of 1931*," and shall be read as one with *"*The Criminal Code*."

2. After section four hundred and forty-two of *"*The Criminal Code*," the following words and section are inserted therein, namely:—

"CHAPTER XLIIA.

SECRET COMMISSIONS.

Definitions.

[442A.] (1.) In this Chapter—

Agent.

The term "agent" includes any corporation, firm, or person acting or having been acting, or desirous or intending to act, for or on behalf of any corporation, firm, or person, whether as agent, partner, co-owner, clerk, servant, employee, banker, broker, auctioneer, architect, clerk of works, charterer, master mariner, purser, or any member of the crew of a vessel, engineer, barrister, solicitor, legal practitioner, conveyancer, surveyor, buyer, salesman, foreman, trustee, official assignee, executor, administrator, liquidator, trustee in bankruptcy or of a deed of assignment, receiver, director, manager, or other officer or member of the committee or governing body of any corporation, club, partnership, or association, or in any other capacity,

* 63 Vic. No. 9, Schedule I., *supra*, page 344.

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either alone or jointly with any other corporation, firm, or person, and whether in his own name or in the name of his principal or otherwise: the term also includes a Minister of the Crown, and a person serving under the Crown or a Minister of the Crown, or corporation representing the Crown, and a person serving under any local authority, harbour board, water authority, or any other local or public body constituted by or under any Act;

The term "contract" includes contract of sale or ^{Contract.} of employment, or any other contract whatever including an order for any commodity;

The term "court" means the Supreme Court ^{Court.} or a judge thereof, or police magistrate or justices having jurisdiction with respect to an offence against this Chapter;

The term "local authority" means a local ^{Local Authority.} authority constituted under **"The Local Authorities Acts, 1902 to 1929"*: the term also includes the Brisbane City Council constituted under †*"The City of Brisbane Acts, 1924 to 1930."*

The term "principal" includes a corporation, ^{Principal.} firm, or other person for or on behalf of whom the agent acts, has acted, or is desirous or intending to act: the term also includes the Crown, a Minister of the Crown, or corporation representing the Crown, or any local authority, harbour board, water authority, or any other local or public body constituted by or under any Act for or on behalf of whom the agent acts, has acted, or is desirous or intending to act;

The term "trustee" includes the public curator, ^{Trustee.} an executor, administrator, liquidator, official assignee, or trustee in bankruptcy, receiver, committee of the estate of an insane person, person having power to appoint a trustee, or person entitled to obtain probate of the will or letters of administration to the estate of a deceased person, or any other person occupying a fiduciary position;

* 2 Edw. VII. No. 19 and amending Acts, *supra*, pages 1860 *et seq.*

† 15 Geo. V. No. 32 and 21 Geo. V. No. 45, *supra*, pages 11140 and 13211.

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Valuable
considera-
tion.

The term "valuable consideration" includes any real or personal property; also money, loan, office, place, employment, agreement to give employment, benefit, or advantage whatsoever, and any commission or rebate, payment in excess of actual value of the goods or service, deduction or percentage, bonus or discount, or any forbearance to demand any moneys or moneys' worth or valuable thing; also some detriment, loss or responsibility given, suffered, or taken, or the refraining from carrying out or doing something which lawfully should be done; and the acceptance of any of the said things shall be deemed the receipt of a valuable consideration;

The offer of any valuable consideration includes any offer of any agreement or promise to give, and every holding out of any expectation of valuable consideration;

The receipt of any valuable consideration includes any acceptance of any agreement, promise, or offer to give, or of any holding out of any expectation of valuable consideration;

Advice
given.

The expression "advice given" or words to the like effect includes every report, certificate, statement, and suggestion intended to influence the person to whom the same is made or given, and every influence deliberately or expressly exercised by one person over another;

In relation
to his
principal's
affairs or
business.

The expression "in relation to his principal's affairs or business" implies the additional words "whether within the scope of his authority or course of his employment as agent or not";

Person
having
business
relations
with the
principal.

The expression "person having business relations with the principal" includes the Crown, a Minister of the Crown, or corporation representing the Crown, or any local authority, harbour board, water authority, or any other local or public body constituted by or under any Act; also every corporation, firm, or other person, whether as principal or agent, carrying on or having carried on or desirous or intending to carry on

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any negotiation or business with any principal, or engaged or interested or having been engaged or interested in the performance of any contract with or in the execution of any work or business for or in the supply of any goods or chattels to any principal; and also includes any agent or employee of the Crown, a Minister of the Crown, or corporation representing the Crown, or of any local authority, harbour board, water authority, or any other local or public body constituted by or under any Act, or of any such corporation, firm, or other person;

The expressions “solicit any valuable consideration” and “valuable consideration solicited,” and words to the like effect, shall be construed with the following directions, namely—

That every agent who diverts, obstructs, gives untruthful reports, or interferes with the proper course of business or manufacture, or impedes or obstructs, or fails to use due diligence in the prosecution of any negotiation or business with the intent to obtain the gift of any valuable consideration from any other person interested in the said negotiation or business, or with intent to injure any such person, shall be deemed to have solicited a valuable consideration from a person having business relations with the principal of such agent.

Solicit any valuable consideration, &c.

(2.) Any act or thing prohibited by this Chapter is prohibited whether done directly or indirectly by the person mentioned or by or through any other person.”

Prohibition of indirect acts.

3. After section 442A of **“The Criminal Code”* (previously inserted by section two of this Act) the following section is inserted therein, namely:—

“[442B.] Any agent who corruptly receives or solicits from any person for himself or for any other person any valuable consideration—

Receipt or solicitation of secret commission by an agent.

(a) As an inducement or reward for or otherwise on account of doing or forbearing to do, or having done or forborne to do, any act in relation to his principal’s affairs or business; or

* 63 Vic. No. 9, Schedule I., *supra*, page 344.

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- (b) The receipt or any expectation of which would in any way tend to influence him to show, or to forbear to show, favour or disfavour to any person in relation to his principal's affairs or business; or

Gift or offer of secret commission to an agent.

Any person who corruptly gives or offers to any agent any valuable consideration—

- (a) As an inducement or reward for or otherwise on account of the agent doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
- (b) The receipt or any expectation of which would in any way tend to influence the agent to show, or to forbear to show, favour or disfavour to any person in relation to his principal's affairs or business,

is guilty of an offence.”

4. After section 442B of **“The Criminal Code”* (previously inserted by section three of this Act) the following section is inserted therein, namely:—

Secret gifts received by parent, wife, child, partner, &c. of agent.

“[442c.] (1.) Any valuable consideration received or solicited by any parent, husband, wife, or child of any agent, or by his partner, clerk, or employee, from any person having business relations with the principal of such agent, shall be deemed to have been received or solicited by the agent unless it be proved that the valuable consideration was so received or solicited without the consent, knowledge, or privity of the agent.

(2.) Any valuable consideration—

Secret gifts to parent, wife, child, partner, &c. of agent.

- (a) Given or offered to any parent, husband, wife, or child of any agent, or to his partner, clerk, or employee, and so given or offered with the consent, knowledge, or privity of the agent; or
- (b) Given or offered, at the agent's request, to any person by any person having business relations with the principal of such agent,

shall be deemed to have been given or offered to the agent.”

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5. After section 442c of **“The Criminal Code”* (previously inserted by section four of this Act) the following section is inserted therein, namely :—

“[442D.] Any person who with intent to deceive or defraud the principal gives to any agent, or any agent who receives or uses or gives to the principal any receipt, invoice, account, or document in respect of which or in relation to a dealing transaction or matter in which the principal is interested, and which—

False or misleading receipt or account.

- (a) Contains any statement which is false or erroneous or defective in any important particular, or contains an overcharge or is in any way likely to mislead the principal; or
- (b) Omits to state explicitly and fully the fact of any commission, percentage, bonus, discount, rebate, repayment, gratuity, or deduction having been made, given, or allowed, or agreed to be made, given, or allowed,

is guilty of an offence.”

6. After section 442D of **“The Criminal Code”* (previously inserted by section five of this Act) the following section is inserted therein, namely :—

“[442E.] (1.) Whenever any advice is given by one person to another, and such advice is in any way intended or likely to induce or influence the person advised—

Secret commission for advice given.

- (a) To enter into a contract with any third person; or
- (b) To appoint or join with another in the appointment, or to vote for or to aid in obtaining the election or appointment, or to authorise or join with another in authorising the appointment of any third person as trustee, director, manager, or official,

and any valuable consideration is, without the assent of the person advised, given by such third person to the person giving the advice, the gift or receipt of the valuable consideration is an offence; but this subsection shall not apply when the person giving the advice was, to the knowledge of the person advised, the agent of such third person, or when the valuable consideration was not given in respect of such advice.

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Offer or solicitation of secret commission in return for advice given or to be given.

(2.) Any offer or solicitation of a valuable consideration in respect of any advice given, or to be given, by one person to another with a view to induce or influence the person advised—

- (a) To enter into a contract with the person offering or solicited; or
- (b) To appoint or join with another in appointing, or to vote for or to aid in obtaining the election or appointment, or to authorise or join with another in authorising the appointment of the person offering or solicited as trustee, director, manager, or official,

and with the intent that the gift or receipt of such valuable consideration is not to be made known to the person advised, is an offence; but this subsection shall not apply when such first-mentioned person is the agent of the person offering or solicited.”

7. After section 442E of **“The Criminal Code”* (previously inserted by section six of this Act) the following section is inserted therein, namely:—

Secret commission to trustee in return for substituted appointment.

“[442F.] Any person who offers or gives any valuable consideration to a trustee, or any trustee who receives or solicits any valuable consideration for himself or for any other person, without the assent of the persons beneficially entitled to the estate or of a judge of the Supreme Court, as an inducement or reward for appointing or having appointed, or for joining or having joined with another in appointing, or for authorising or having authorised, or for joining or having joined with another in authorising, any person to be appointed in his stead or instead of him and any other person as trustee, is guilty of an offence.”

8. After section 442F of **“The Criminal Code”* (previously inserted by section seven of this Act) the following section is inserted therein, namely:—

Liability of director, &c., acting without authority.

“[442G.] Any director, manager, or officer of a company, or any officer or member of the crew of any vessel, or any person acting for another, who knowingly takes part in or is in any way privy to doing, or attempts to do, any act or thing without authority which, if authorised, would be in contravention of any of the provisions of this Chapter, is guilty of an offence.”

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9. After section 442G of **“The Criminal Code”* (previously inserted by section eight of this Act) the following section is inserted therein, namely:—

“[442H.] All proceedings in respect of offences against this Chapter shall, subject as hereinafter provided, be heard and determined in a summary way by complaint under †*“The Justices Acts, 1886 to 1929”* :
Offences.

Provided always that—

- (a) If the police magistrate or justices before whom any person is brought, charged with any of the offences hereinbefore in this Chapter defined, is or are of opinion that there ought to be a prosecution as for an indictable offence; Trial by jury.
- (b) If the person brought before such police magistrate or justices, charged with any of the offences hereinbefore in this Chapter defined, intimates to the police magistrate or justices that he desires to be tried by a jury,

the police magistrate or justices shall abstain from dealing with the case summarily and shall commit the defendant to take his trial for the indictable offence; and the offence with which the person is so charged shall be and be deemed to be an indictable offence accordingly.”

10. After section 442H of **“The Criminal Code”* (previously inserted by section nine of this Act) the following section is inserted therein, namely:—

“[442I.] Any person guilty (whether on indictment or on summary conviction) of an offence against this Chapter is—
Penalty on conviction.

- (a) Liable, if a corporation, to a penalty of one thousand pounds, and if any other person to imprisonment for any period not exceeding one year, with or without hard labour, or to a penalty not exceeding five hundred pounds, or to imprisonment and penalty as aforesaid; and
- (b) In addition, liable to be ordered to pay to such person and in such manner as the court directs the amount or value, according to

* 63 Vic. No. 9, Schedule I., *supra*, page 344.

† 50 Vic. No. 17 and amending Acts, *supra*, pages 1132 *et seq.*

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the estimation of the court, of any valuable consideration received or given by him, or any part thereof, and such order shall be enforceable in the same manner as an order of the court."

11. After section 442I of **"The Criminal Code"* (previously inserted by section ten of this Act) the following section is inserted, namely :—

Court may order withdrawal of trifling or technical cases.

"[442J.] If in any prosecution under this Chapter it appears to the court that the offence charged is, in the particular case, of a trifling or merely technical nature, or that in the particular circumstances it is inexpedient to proceed to a conviction, the court may in its discretion, and for reasons stated on the application of the accused, dismiss the case; but the court may, if it thinks fit, make the order mentioned in the last preceding section."

12. After section 442J of **"The Criminal Code"* (previously inserted by section eleven of this Act) the following sections are inserted, namely :—

Witness giving answers crinating himself.

"[442K.] (1.) A person who is called as a witness in any proceeding under this Chapter shall not be excused from answering any question relating to any offence against this Chapter on the ground that the answer thereto may criminate or tend to criminate him.

(2.) An answer to a question in any such proceeding shall not, except in the said proceeding or in the case of any prosecution for perjury in respect of such answer, be in any proceeding, civil or criminal, admissible in evidence against the person so answering.

Certificate to witness.

[442L.] (1.) A witness in any proceeding under this Chapter who, in the judgment of the court, answers truly all questions which he is required by the court to answer shall be entitled to receive a certificate from the court stating that such witness has so answered.

Stay of proceedings against such witness.

(2.) When a person has received a certificate as aforesaid, and any criminal proceeding is at any time instituted against him in respect of the offence which was in question in the proceeding in which the said person was called as a witness, the court having

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cognizance of the case shall, on proof of the certificate and of the identity of the offence in question in the two cases, stay the proceedings.”

13. After section 442L of **“The Criminal Code”* (previously inserted by section twelve of this Act) the following section is inserted, namely :—

“[442M.] (1.) In any prosecution under this Chapter it does not amount to a defence to show that the receiving, soliciting, giving, or offering of any valuable consideration therein mentioned or referred to is customary in any trade, business, or calling. Custom of itself no defence.

(2.) If in any prosecution under this Chapter it is proved that any valuable consideration has been received or solicited by an agent from or given or offered to an agent by any person having business relations with the principal, without the assent of the principal, the burden of proving that such valuable consideration was not received, solicited, given, or offered in contravention of any of the provisions of this Chapter shall be on the accused. Burden of proof that gift not secret commission.

(3.) No prosecution under this Chapter shall be commenced without the consent of a Crown Law Officer.” Consent to prosecution.

14. The sections 442A to 442M inclusive, inserted in **“The Criminal Code”* by sections two to thirteen inclusive of this Act shall be and constitute CHAPTER XLII.A—SECRET COMMISSIONS—of *“The Criminal Code,”* and this Act shall be read and construed accordingly. Chapter XLII.A of “The Criminal Code.”

*Further Amendments of **“The Criminal Code.”**

15. Section four hundred and forty-five of *“The Criminal Code”* is amended by adding the following paragraph thereto, namely :— Amendment of s. 445.

“Without in any wise limiting the meaning of the term “unlawfully uses,” such term shall, for the purposes of this section, also mean and include the unlawful possession, by any person, of any horse, mare, gelding, ass, mule, camel, bull, cow, ox, ram, ewe, wether, goat, or pig, or the young of any such animal, without the consent of the owner or of the person in lawful possession thereof, and with intent to deprive the owner or person

* 63 Vic. No. 9, Schedule I, *supra*, page 344.

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in lawful possession thereof of the use and/or possession of such horse, mare, gelding, ass, mule, camel, bull, cow, ox, ram, ewe, wether, goat, or pig, or the young of any such animal, either temporarily or permanently.”

New s. 448A. **16.** A new section (448A) is inserted after section four hundred and forty-eight of **“The Criminal Code,”* as follows :—

Having in possession an animal with defaced brand.

“ [448A.] Any person in whose possession or custody any animal upon which any registered brand or registered mark has been altered, defaced, or otherwise rendered indistinguishable, or reasonably suspected to have been altered, defaced, or otherwise rendered indistinguishable, is found, is guilty of an offence, unless he proves that he came lawfully by the animal in question ; and he is liable on summary conviction to a fine of twenty pounds for every animal so found.

It is a defence to a charge of the offence defined in this section to prove that the accused person came lawfully by the animal in question.”

Amendment of s. 449.

17. In section four hundred and forty-nine of **“The Criminal Code”* the words “ defined in the two last preceding sections” are repealed, and the following words, namely :—“ defined in sections four hundred and forty-five, four hundred and forty-seven, and four hundred and forty-eight aforesaid” are inserted in lieu thereof.

* 63 Vic. No. 9, Schedule I., *supra*, page 344.

CROWN TENANTS' RELIEF.

See LANDS, CROWN.

DANGEROUS DRUGS.

See HEALTH.

DEBT CONVERSION AGREEMENTS.

See COMMONWEALTH AND STATES.

DECEASED HUSBAND'S BROTHER MARRIAGE ACT.

See MARRIAGE AND DIVORCE.