

New Zealand.



ANALYSIS.

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1910, No. 40.

AN ACT for the Prohibition of Secret Commissions.

[3rd December, 1910.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Secret Commissions Act, 1910, and shall come into operation on the first day of January, nineteen hundred and eleven.

2. In this Act, unless a contrary intention appears,—

“Agent” includes any person who is or has been, or desires or intends to be, employed by or acting for any other person, whether as agent, servant, broker, auctioneer, architect, solicitor, director, or in any other capacity whatever, either alone or jointly with any other person:

“Principal” includes any person by whom an agent is or has been, or intends or desires to be, employed, or for whom an agent acts or has acted, or intends or desires to act:

“Consideration” means valuable consideration of any kind; and particularly includes discounts, commissions, rebates, bonuses, deductions, percentages, employment, payment of money (whether by way of loan, gift, or otherwise howsoever), and forbearance to demand any money or valuable thing.

Title.

Short Title and commencement.

Interpretation.

Gifts to agent
without consent of
principal an offence.

3. (1.) Every person is guilty of an offence who corruptly gives, or agrees or offers to give, to any agent any gift or other consideration as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the principal's affairs or business (whether such act is within the scope of the agent's authority or the course of his employment as agent or not), or for showing or having shown favour or disfavour to any person in relation to the principal's affairs or business.

(2.) Any gift or other consideration given or offered or agreed to be given to any parent, husband, wife, or child of any agent, or to his partner, clerk, or servant, or (at the agent's request or suggestion) to any other person, shall be deemed for the purposes of this section to have been given or offered or agreed to be given to the agent.

Acceptance of such
gifts by agent
an offence.

4. (1.) Every agent is guilty of an offence who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, or solicits from any person, for himself or for any other person, any gift or other consideration as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the principal's affairs or business (whether such act is within the scope of the agent's authority or the course of his employment as agent or not), or for showing or having shown favour or disfavour to any person in relation to the principal's affairs or business.

(2.) Every agent who diverts, obstructs, or interferes with the proper course of the affairs or business of his principal, or fails to use due diligence in the prosecution of such affairs or business, with intent to obtain for himself or for any other person any gift or other consideration from any person interested in such affairs or business, shall be deemed to have corruptly solicited a consideration within the meaning of this section.

Duty of agent to
disclose pecuniary
interest in contract.

5. (1.) Every agent is guilty of an offence who makes a contract on behalf of his principal and fails to disclose to his principal, at the time of making the contract or as soon as possible thereafter, the existence of any pecuniary interest which the agent has in the making of the contract, unless to the knowledge of the agent the existence of such pecuniary interest is already known to his principal.

(2.) For the purposes of this section any pecuniary interest which a parent, husband, wife, child, or partner of the agent has in the making of the contract shall be deemed to be the pecuniary interest of the agent, unless he proves that he had no knowledge of that interest at the time when he made the contract.

(3.) For the purposes of this section an agent shall not be deemed to have any pecuniary interest in the making of a contract by reason merely of the fact that he or any person mentioned in the last preceding subsection is a shareholder in an incorporated company having more than twenty members.

Giving false
receipt, invoice, &c.,
to agent an offence.

6. Every person is guilty of an offence who, with intent to deceive the principal, gives to any agent, or signs or otherwise authenticates for the use of any agent, any receipt, invoice, account, or other document of any nature whatsoever in relation to the affairs or business of the agent or his principal which contains any

statement which is false, defective, or misleading in any material particular, or which 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, in relation to the matters referred to in that document.

7. Every agent is guilty of an offence who delivers or presents to his principal any receipt, invoice, account, or other document of any nature whatsoever in relation to the business or affairs of his principal which to the knowledge of the agent is false or defective in any material particular, or is in any way likely to mislead the principal, or which to the knowledge of the agent omits to state 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, in relation to the matters referred to in that document, or which to the knowledge of the agent omits to disclose the fact of any gift or other consideration having been received by or promised to the agent in respect of those matters, unless in any such case the fact which is not disclosed is, to the knowledge of the agent, already known to the principal at the time when the said document is so delivered or presented to him.

Delivery of false receipt, &c., to principal an offence.

8. (1.) Every person is guilty of an offence who advises any person to enter into a contract with a third person and receives or agrees to receive from that third person, without the knowledge and consent of the person so advised, any gift or consideration as an inducement or reward for the giving of that advice or the procuring of that contract, unless the person giving that advice himself acts as the agent of the third person in entering into the contract, or is to the knowledge of the person so advised the agent of that third person.

Receiving secret reward for procuring contracts an offence.

(2.) For the purposes of this section a person shall be deemed to advise another person to enter into a contract if he makes to that other person any statement or suggestion with intent to induce him to enter into the contract.

9. Every person is guilty of an offence who aids, abets, counsels, or procures, or is in any way directly or indirectly knowingly concerned in or privy to the commission of any offence against this Act, or the commission outside New Zealand of any act in relation to the affairs or business of a principal residing or carrying on business in New Zealand which if committed in New Zealand would be an offence against this Act.

Aiding and abetting offences.

10. Every person is guilty of an offence who, with or without authority, does on behalf of any other person who is an agent any act which if done by that agent himself would be an offence against this Act.

Offences by persons acting on behalf of agents.

11. (1.) Nothing in this Act contained shall be deemed to prohibit or render illegal any recognized practice or usage of any trade or calling existing at the time of the passing of this Act if the Court before which the matter of such practice or usage is in question shall be satisfied that such practice or usage is honest and reasonable; and, in so determining, the said Court may have regard to the circumstance that the commissions, rebates, or allowances paid or made by

Except as provided in this section, customary nature of gift be no defence.

the third party to the agent under such practice or usage were prior to this Act lawfully receivable by the agent without any breach of his duty towards his principal; or the circumstance that the said commissions, rebates, or allowances so paid or made would not in any case be paid or allowed by such third party to the principal; or the circumstance that the same were paid or allowed in respect of services lawfully rendered by the agent to such third party without injury or loss to the principal and without any breach by the agent of his duty towards his principal.

(2.) Except as provided by this section, evidence shall not be admissible in any proceeding for an offence against this Act to show that any such gift or consideration as is mentioned in this Act is customary in any trade or calling, nor shall the customary nature of any such gift or consideration be any defence in such proceedings.

Consent of Attorney-General necessary for prosecution.

12. (1.) No prosecution for an offence against this Act shall be commenced without the leave of the Attorney-General; and the Attorney-General shall, in granting leave to institute a prosecution, determine whether the offence shall be dealt with as an indictable offence or as one punishable on summary conviction, and the prosecution shall take place accordingly and not otherwise.

(2.) The leave of the Attorney-General may be granted without notice to the defendant, and it shall not be necessary in any information or indictment to state that such leave has been granted, or the terms thereof. Objections to an information or indictment for want of such leave or for want of conformity to the terms thereof shall be taken before the Magistrate, or by motion to quash the indictment, before the defendant is given in charge to the jury upon his trial, and not otherwise; and if the Magistrate or Judge is satisfied that such leave has not been granted, or that the terms thereof have not been conformed to, the information or indictment shall be dismissed or quashed, as the case may be.

Penalty on conviction.

13. (1.) Any person convicted on indictment of an offence against this Act is liable, if a corporation, to a fine not exceeding one thousand pounds; and if any other person, to imprisonment with or without hard labour for any period not exceeding two years or to a fine not exceeding five hundred pounds.

(2.) Any person convicted summarily of an offence against this Act is liable, if a corporation, to a fine not exceeding one hundred pounds; and if any other person, to imprisonment with or without hard labour for any period not exceeding three months or to a fine not exceeding fifty pounds.

Proceedings to be before Magistrate only.

14. An information under the Justices of the Peace Act, 1908, for an offence against this Act, whether the proceedings are by way of summary conviction or otherwise, shall be taken and heard before a Magistrate only.

Incriminating answers and discovery.

15. No person shall in any civil or criminal proceedings be excused from answering any question put either *viva voce* or by interrogatory, or from making any discovery of documents, on the ground that the answer or discovery may criminate or tend to criminate him in respect of an offence against this Act; but his answer shall not be admissible in evidence against him in any criminal proceedings for an offence against this Act.

16. (1.) For the purposes of this Act—

- (a.) Every officer of a corporation and every member of a governing body of a corporation shall be deemed to be an agent of the corporation :
- (b.) Every officer or member of any local authority, Board, Council, committee, or other body of persons, whether incorporated or unincorporated, charged by statute with any public functions shall be deemed to be an agent of that local authority, Board, Council, committee, or other body :
- (c.) Every person in the service of the Crown, or acting for or on behalf of the Crown, or holding any office in the public service, shall be deemed to be an agent of the Crown :
- (d.) Every partner in a firm shall be deemed to be an agent of the firm :
- (e.) An executor, administrator, or trustee shall be deemed to be an agent of the beneficiaries under the will, intestacy, or trust :
- (f.) The committee of the estate of a person of unsound mind shall be deemed to be the agent of that person :
- (g.) An arbitrator, umpire, or valuer shall be deemed to be an agent of every party to the arbitration or valuation :
- (h.) A liquidator of a company shall be deemed to be an agent of the company.

Persons deemed to be agents within the meaning of this Act.

(2.) If by virtue of the provisions of this Act any agent is deemed to be the agent of two or more principals in respect of the same matter, this Act shall apply to each of those principals in the same manner as if he was the sole principal.

(3.) Nothing in this section shall be so construed as to restrict in any manner the meaning of the terms "agent" or "principal" as used in this Act.