

PART X

Fraudulent Transactions Relating to Contracts and Trade (continued)

Fraud (continued)

Sentencing — aggravating circumstances

380.1 (1) Without limiting the generality of section 718.2, where a court imposes a sentence for an offence referred to in section 380, 382, 382.1 or 400, it shall consider the following as aggravating circumstances:

- (a)** the magnitude, complexity, duration or degree of planning of the fraud committed was significant;
- (b)** the offence adversely affected, or had the potential to adversely affect, the stability of the Canadian economy or financial system or any financial market in Canada or investor confidence in such a financial market;
- (c)** the offence involved a large number of victims;
- (c.1)** the offence had a significant impact on the victims given their personal circumstances including their age, health and financial situation;
- (d)** in committing the offence, the offender took advantage of the high regard in which the offender was held in the community;
- (e)** the offender did not comply with a licensing requirement, or professional standard, that is normally applicable to the activity or conduct that forms the subject-matter of the offence; and
- (f)** the offender concealed or destroyed records related to the fraud or to the disbursement of the proceeds of the fraud.

Aggravating circumstance — value of the fraud

(1.1) Without limiting the generality of section 718.2, when a court imposes a sentence for an offence referred to in section 382, 382.1 or 400, it shall also consider as an aggravating circumstance the fact that the value of the fraud committed exceeded one million dollars.

Non-mitigating factors

(2) When a court imposes a sentence for an offence referred to in section 380, 382, 382.1 or 400, it shall not consider as mitigating circumstances the offender's employment, employment skills or status or reputation in the community if those circumstances were relevant to, contributed to, or were used in the commission of the offence.

Record of proceedings

(3) The court shall cause to be stated in the record the aggravating and mitigating circumstances it took into account when determining the sentence.

2004, c. 3, s. 3; 2011, c. 6, s. 3.

Prohibition order

380.2 (1) When an offender is convicted, or is discharged on the conditions prescribed in a probation order under section 730, of an offence referred to in subsection 380(1), the court that sentences or discharges the offender, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, may make, subject to the conditions or exemptions that the court directs, an order prohibiting the offender from seeking, obtaining or continuing any employment, or becoming or being a volunteer in any capacity, that involves having authority over the real property, money or valuable security of another person.

Duration

(2) The prohibition may be for any period that the court considers appropriate, including any period to which the offender is sentenced to imprisonment.

Court may vary order

(3) A court that makes an order of prohibition or, if the court is for any reason unable to act, another court of equivalent jurisdiction in the same province, may, on application of the offender or the prosecutor, require the offender to appear before it at any time and, after hearing the parties, that court may vary the conditions prescribed in the order if, in the opinion of the court, the variation is desirable because of changed circumstances.

Offence

(4) Every person who is bound by an order of prohibition and who does not comply with the order is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years;
or

(b) an offence punishable on summary conviction.

2011, c. 6, s. 4.

380.3 [Repealed, 2015, c. 13, s. 11]

380.4 [Repealed, 2015, c. 13, s. 11]

Using mails to defraud

381 Every person who makes use of the mails for the purpose of transmitting or delivering letters or circulars concerning schemes devised or intended to deceive or defraud the public, or for the purpose of obtaining money under false pretences, is guilty of

- (a) an indictable offence and liable to imprisonment for a term of not more than two years; or
- (b) an offence punishable on summary conviction.

R.S., 1985, c. C-46, s. 381; 2019, c. 25, s. 137.

Fraudulent manipulation of stock exchange transactions

382 Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years or is guilty of an offence punishable on summary conviction who, through the facility of a stock exchange, curb market or other market, with intent to create a false or misleading appearance of active public trading in a security or with intent to create a false or misleading appearance with respect to the market price of a security,

- (a) effects a transaction in the security that involves no change in the beneficial ownership thereof,
- (b) enters an order for the purchase of the security, knowing that an order of substantially the same size at substantially the same time and at substantially the same price for the sale of the security has been or will be entered by or for the same or different persons, or
- (c) enters an order for the sale of the security, knowing that an order of substantially the same size at substantially the same time and at substantially the same price for the purchase of the security has been or will be entered by or for the same or different persons.

R.S., 1985, c. C-46, s. 382; 2004, c. 3, s. 4; 2019, c. 25, s. 138.

Prohibited insider trading

382.1 (1) Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years or is guilty of an offence punishable on summary conviction who, directly or indirectly, buys or sells a security, knowingly using inside information that they

- (a) possess by virtue of being a shareholder of the issuer of that security;
- (b) possess by virtue of, or obtained in the course of, their business or professional relationship with that issuer;
- (c) possess by virtue of, or obtained in the course of, a proposed takeover or reorganization of, or amalgamation, merger or similar business combination with, that issuer;

(d) possess by virtue of, or obtained in the course of, their employment, office, duties or occupation with that issuer or with a person referred to in paragraphs (a) to (c); or

(e) obtained from a person who possesses or obtained the information in a manner referred to in paragraphs (a) to (d).

Tipping

(2) Except when necessary in the course of business, a person who knowingly conveys inside information that they possess or obtained in a manner referred to in subsection (1) to another person, knowing that there is a risk that the person will use the information to buy or sell, directly or indirectly, a security to which the information relates, or that they may convey the information to another person who may buy or sell such a security, is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) an offence punishable on summary conviction.

Saving

(3) For greater certainty, an act is not an offence under this section if it is authorized or required, or is not prohibited, by any federal or provincial Act or regulation applicable to it.

Definition of *inside information*

(4) In this section, ***inside information*** means information relating to or affecting the issuer of a security or a security that they have issued, or are about to issue, that

(a) has not been generally disclosed; and

(b) could reasonably be expected to significantly affect the market price or value of a security of the issuer.

2004, c. 3, s. 5; [2019, c. 25, s. 139](#).

Gaming in stocks or merchandise

383 (1) Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, with intent to make gain or profit by the rise or fall in price of the stock of an incorporated or unincorporated company or undertaking, whether in or outside Canada, or of any goods, wares or merchandise,

(a) makes or signs, or authorizes to be made or signed, any contract or agreement, oral or written, purporting to be for the purchase or sale of shares of stock or goods, wares or merchandise, without the *bona fide* intention of acquiring the shares, goods, wares or merchandise or of selling them, as the case may be, or

(b) makes or signs, or authorizes to be made or signed, any contract or agreement, oral or written, purporting to be for the sale or purchase of shares of stock or goods, wares or merchandise in respect of which no delivery of the thing sold or purchased is made or

received, and without the *bona fide* intention of making or receiving delivery thereof, as the case may be.

This section does not apply if a broker, on behalf of a purchaser, receives delivery, even if the broker retains or pledges what is delivered as security for the advance of the purchase money or any part of it.

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(2) Where, in proceedings under this section, it is established that the accused made or signed a contract or an agreement for the sale or purchase of shares of stock or goods, wares or merchandise, or acted, aided or abetted in the making or signing thereof, the burden of proof of a *bona fide* intention to acquire or to sell the shares, goods, wares or merchandise or to deliver or to receive delivery thereof, as the case may be, lies on the accused.

R.S., 1985, c. C-46, s. 383; 2019, c. 25, s. 140.

Broker reducing stock by selling for their own account

384 (1) Every person commits an offence who, being an individual, or a member or employee of a partnership, or a director, officer or employee of a corporation, if they or the partnership or corporation is employed as a broker by any customer to buy and carry on margin any shares of an incorporated or unincorporated company or undertaking, whether in or outside Canada, later sells or causes to be sold shares of the company or undertaking for any account in which they or their firm or a partner of the firm or the corporation or a director of the corporation has a direct or indirect interest, if the effect of the sale is, otherwise than unintentionally, to reduce the amount of those shares in the hands of the broker or under their control in the ordinary course of business below the amount of those shares that the broker should be carrying for all customers.

Punishment

(2) Every person who commits an offence under subsection (1) is guilty of

(a) an indictable offence and liable to imprisonment for a term of not more than five years; or

(b) an offence punishable on summary conviction.

R.S., 1985, c. C-46, s. 384; 2019, c. 25, s. 141.

Fraudulent concealment of title documents

385 (1) Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than two years or is guilty of an offence punishable on summary conviction who, being a vendor, mortgagor or hypothecary debtor of property or a chose in action or an incorporeal right or being a lawyer or notary for or agent or mandatary of a vendor, mortgagor

or hypothecary debtor of property, a chose in action or incorporeal right, is served with a written demand for an abstract of title by or on behalf of the purchaser, mortgagee or hypothecary creditor before the completion of the purchase, mortgage or hypothec, and who

(a) with intent to defraud and for the purpose of inducing the purchaser, mortgagee or hypothecary creditor to accept the title offered or produced to them, conceals from them any settlement, deed, will or other instrument or act material to the title, or any encumbrance on the title, or

(b) falsifies any pedigree on which the title depends.

Consent required

(2) No proceedings shall be instituted under this section without the consent of the Attorney General.

R.S., 1985, c. C-46, s. 385; 2019, c. 25, s. 142.

Fraudulent registration of title

386 Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, as principal, agent or mandatary in a proceeding to register title to real property or immovable property, or in a transaction relating to real property or immovable property that is or is proposed to be registered, knowingly and with intent to deceive,

(a) makes a material false statement or representation,

(b) suppresses or conceals from a judge or registrar, or any person employed by or assisting the registrar, any material document, fact, matter or information, or

(c) is privy to anything mentioned in paragraph (a) or (b).

R.S., 1985, c. C-46, s. 386; 2019, c. 25, s. 143.

Fraudulent sale of real property

387 Every person who, knowing of an unregistered prior sale or of an existing unregistered grant, mortgage, hypothec, lien or encumbrance of or on real property, fraudulently sells the property or any part of it is guilty of

(a) an indictable offence and liable to imprisonment for a term of not more than two years; or

(b) an offence punishable on summary conviction.

R.S., 1985, c. C-46, s. 387; 2019, c. 25, s. 144.

Misleading receipt

388 Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than two years or is guilty of an offence punishable on summary conviction who knowingly,

(a) with intent to mislead, injure or defraud any person, whether or not that person is known to him, gives to a person anything in writing that purports to be a receipt for or an acknowledgment of property that has been delivered to or received by him, before the property referred to in the purported receipt or acknowledgment has been delivered to or received by him, or

(b) accepts, transmits or uses a purported receipt or acknowledgment to which paragraph (a) applies.

R.S., 1985, c. C-46, s. 388; 2019, c. 25, s. 145.

Fraudulent disposal of goods on which money advanced

389 (1) Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than two years or is guilty of an offence punishable on summary conviction who

(a) having shipped or delivered to the keeper of a warehouse or to a factor, an agent or a carrier anything on which the consignee thereof has advanced money or has given valuable security, thereafter, with intent to deceive, defraud or injure the consignee, disposes of it in a manner that is different from and inconsistent with any agreement that has been made in that behalf between him and the consignee, or

(b) knowingly and wilfully aids or assists any person to make a disposition of anything to which paragraph (a) applies for the purpose of deceiving, defrauding or injuring the consignee.

Saving

(2) No person is guilty of an offence under this section where, before disposing of anything in a manner that is different from and inconsistent with any agreement that has been made in that behalf between him and the consignee, he pays or tenders to the consignee the full amount of money or valuable security that the consignee has advanced.

R.S., 1985, c. C-46, s. 389; 2019, c. 25, s. 146.

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