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ELIZABETHAE SECUNDAE REGINAE

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No. 28 of 1978

**An Act to regulate the admission of certain evidence in proceedings relating to sexual offences and the mode of taking evidence in such proceedings, to protect persons concerned in the commission of sexual offences from identification, and for related purposes**

[ASSENTED TO 2ND JUNE, 1978]

BE IT ENACTED by the Queen'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:—

**1. Short title.** This Act may be cited as the *Criminal Law (Sexual Offences) Act 1978*.

**2. Commencement of Act.** This Act shall come into operation on a date to be appointed by Proclamation.

**3. Meaning of terms.** In this Act, save where a contrary intention appears—

“complainant” means a person on whom a sexual offence is alleged to have been committed;

- “defendant” means a person charged with having committed a sexual offence;
- “examination of witnesses” means an examination of witnesses in relation to an indictable offence, being a sexual offence, commenced after the commencement of this Act and taken pursuant to the *Justices Act 1886-1977*;
- “report” means an account in writing and an account broadcast by wireless telegraphy in sound or visual images;
- “sexual offence” means any of the following offences:—
- (a) rape;
  - (b) attempt to commit rape;
  - (c) indecent assault on a female;
  - (d) assault with intent to commit rape;
- “the court” includes justices taking an examination of witnesses;
- “trial” means a trial of a defendant and a proceeding taken with a view to sentencing a defendant convicted of a sexual offence, which in either case is commenced after the commencement of this Act.

**4. Special rules of evidence concerning sexual offences.** The following rules shall apply in relation to any examination of witnesses or trial whether or not the examination or trial relates also to a charge of an offence other than a sexual offence against the same or any other defendant:—

1. The court shall not receive evidence of and shall disallow any question as to the general reputation of the complainant with respect to chastity.
2. Without the leave of the court—
  - (a) the complainant shall not be cross-examined as to her sexual activities with any person other than the defendant; and
  - (b) evidence shall not be received as to the sexual activities of the complainant with any person other than the defendant.
3. The court shall not grant leave under Rule 2 unless it is satisfied that the evidence sought to be elicited or led has substantial relevance to the facts in issue or is proper matter for cross-examination as to credit.
4. Evidence that relates to or tends to establish the fact that the complainant was accustomed to engage in sexual activities with a person or persons other than the defendant shall not be regarded—
  - (a) as having substantial relevance to the facts in issue by reason only of any inference it may raise as to general disposition; or
  - (b) as being proper matter for cross-examination as to credit in the absence of special circumstances by reason of which it would be likely materially to impair confidence in the reliability of the evidence of the complainant.

Without prejudice to the substantial relevance of other evidence, evidence of an act or event that is substantially contemporaneous with any offence with which a defendant is charged in an examination of witnesses or a trial or that is

part of a sequence of acts or events that explains the circumstances in which such an offence was committed shall be regarded as having substantial relevance to the facts in issue.

5. An application for leave under Rule 2 shall be made in the absence of the jury, if any, and, if the defendant so requests, in the absence of the complainant and shall be determined after the court has allowed such submissions or evidence (sworn or unsworn) as the court considers necessary for the determination of the application.

**5. Exclusion of public.** (1) Whilst a complainant is giving evidence in an examination of witnesses the justices taking the examination shall cause to be excluded from the room or place where the examination is taken all persons except—

- (a) the complainant and her counsel and solicitor;
- (b) the defendant and his counsel and solicitor;
- (c) the Crown Law officer or a person authorized by him;
- (d) the prosecuting officer;
- (e) the member of the police force in charge of the case;
- (f) the officers assisting the justices in taking the examination;
- (g) any person whose presence at the examination is, in the justices' opinion, necessary to or desirable for its proper conduct and any person who makes application to the justices to be present at the examination and whose presence, in the justices' opinion—
  - (i) would serve a proper interest of the applicant in the proceedings; and
  - (ii) would not be prejudicial to the interests of the complainant;
- (h) where a complainant or defendant is under or apparently under the age of 17 years,
  - (i) the parent or guardian of the child;
  - (ii) a representative of the Department of Children's Services; and
  - (iii) a representative of an organization or institution concerned with the care and rehabilitation of children being one directly concerned in the case.

(2) The provisions of subsection (1) shall be construed so as not to prejudice the power of justices had under any other provision or rule of law to exclude from an examination of witnesses any person, including a defendant.

**6. Publication at large of complainant's identity prohibited.** Any report made or published concerning an examination of witnesses or a trial, other than a report specified in section 8 (1), shall not reveal the name, address, school or place of employment of a complainant therein or any other particular likely to lead to the identification of a complainant therein unless the court, for good and sufficient reason shown, orders to the contrary.

If the court makes an order to the contrary it may therein specify—

- (a) the particulars that may be revealed; and
- (b) the extent to which publication of the report made is permitted.

**7. Publication prematurely of defendant's identity prohibited.** Any report made or published concerning an examination of witnesses, other than a report specified in section 8, shall not reveal the name, address, school or place of employment of a defendant therein or any other particular likely to lead to identification of a defendant therein unless the justices taking the examination, for good and sufficient reason shown, order to the contrary.

If justices make an order to the contrary they may therein specify—

- (a) the particulars that may be revealed; and
- (b) the extent to which publication of the report made is permitted.

**8. Exempted reports.** (1) Sections 6 and 7 do not apply to—

- (a) a report made for the purposes of an examination of witnesses or a trial or of a proceeding on appeal arising from a trial;
- (b) a report made verbatim of a judgment or decision delivered in a trial or in a proceeding on appeal arising from a trial and contained in a recognized series of Law Reports;
- (c) a report made to or on behalf of the Department of Justice, the Police Department or the Department of Children's Services for the purposes of the department to or on behalf of which it is made.

(2) Section 7 does not apply to a report made concerning an examination of witnesses that reveals any particular referred to in that section of a defendant therein who as a result of the examination is committed for trial or sentence upon a charge of a sexual offence if the report is made after the committal order is made and does not reveal any such particular of any other defendant therein who is not so committed.

**9. Act affords additional protection.** Sections 6 and 7 shall be construed to be in addition to and not to prejudice any other provision or rule of law directed towards the protection of witnesses or other persons in an examination of witnesses or a trial from identification.

**10. Offences and penalty.** (1) A person who makes or publishes a report to which section 6 or 7 applies that contravenes the applicable section commits an offence against this Act.

(2) Where the making or publication of a report to which section 6 or 7 applies is permitted by order of the court a person who makes or publishes such a report that does not comply in all respects with the order of the court commits an offence against this Act.

(3) A person who, by a statement or representation made or published otherwise than in a report concerning an examination of witnesses or a trial, reveals the name, address, school or place of employment of—

- (a) a complainant, at any time; or
- (b) a defendant, before he is committed for trial or sentence upon a charge of the sexual offence to which the statement or representation relates,

commits an offence against this Act except where the statement or representation is made or published for an authorized purpose referred to in section 11.

- (4) A person who commits an offence against this Act is liable—
- (a) in the case of a body corporate, to a penalty not exceeding \$2 000; and
  - (b) in the case of an individual, to a penalty not exceeding \$500 or to imprisonment for a term not exceeding six months or to both such penalty and imprisonment.

(5) The fact that a person is liable to a penalty prescribed by subsection (4) in respect of an offence defined in subsection (2) shall not prevent his being dealt with for contempt of court evidenced by his offence.

**11. Authorized purposes.** (1) For the purposes of section 10 an authorized purpose is one authorized by or pursuant to this section.

(2) The following purposes are authorized by this section:—

- (a) the purpose of an investigation into the complaint made by or on behalf of a complainant;
- (b) the purpose of preparing for or conducting an examination of witnesses or a trial or a proceeding on appeal arising from a trial.

(3) If, before the commencement of an examination of witnesses or a trial, a defendant makes application to a judge of the Supreme Court for a direction pursuant to this subsection and satisfies the judge that—

- (a) the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the examination or trial; and
- (b) that the conduct of the applicant's defence at the examination or trial is likely to be substantially prejudiced if the direction is not given,

the judge shall direct that section 10 (3) shall not, by virtue of an accusation that alleges a sexual offence and is specified in the direction, apply in relation to a complainant or defendant specified in the direction.

(4) If a person who has been convicted of a sexual offence and has given notice of appeal to the Court of Criminal Appeal against the conviction or notice of an application for leave to so appeal applies to that court or to a judge of the Supreme Court for a direction pursuant to this subsection and satisfies the court or judge that—

- (a) the direction is required for the purpose of obtaining evidence in support of the appeal; and
- (b) the applicant is likely to suffer substantial injustice if the direction is not given,

the court or judge shall direct that section 10 (3) shall not, by virtue of an accusation that alleges a sexual offence and is specified in the direction, apply in relation to a complainant specified in the direction.

**12. Liability of directors etc. of body corporate.** Where a body corporate has committed an offence against this Act a person who, at the time the offence is committed, is a director or member of the governing body of the body corporate or the manager of or an officer concerned in the management of the business in Queensland of the body

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corporate (including, where the offence consists in publication in a newspaper, the editor thereof) shall be deemed to have committed a like offence and be liable therefor unless he proves that the offence occurred without his consent or connivance and that he exercised all due diligence to prevent the commission of the offence.

**13. Proceedings for offences.** A proceeding in respect of an offence against this Act shall be taken in a summary way under the *Justices Act 1886-1977* upon the complaint of a person authorized in writing in that behalf by the Minister for Justice and Attorney-General whose signature shall, for this purpose, be judicially noticed.