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LEGAL SUPPLEMENT – C**

PARLIAMENT OFFICE,  
Public Buildings,  
Georgetown,  
Guyana.

1984—06—20.

The following Bill which will be introduced in the National Assembly is published for general information.

*F. A. Narain,*  
Clerk of the National Assembly.



**GUYANA**

BILL NO. 9 of 1984

STATE LIABILITY AND PROCEEDINGS BILL 1984

ARRANGEMENT OF SECTIONS

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### A BILL

#### Intituled

AN ACT to amend the law relating to the civil liabilities and rights of the State and for matters connected therewith.

A. D. 1984 Enacted by the Parliament of Guyana :—

### PART I

#### PRELIMINARY

- Short title.           1.       This Act may be cited as the State Liability and Proceedings Act 1984.

2. In this Act —

Inter-  
pretation

- (a) “agent”, in relation to the State, does not include an independent contractor employed by the State;
- (b) “armed forces of the State” means the Guyana Defence Force and any such organisation for the time being constituted for the purpose of defence of the State as may be specified by order made by the Minister responsible for defence;
- (c) “Minister responsible for defence” means, where there is no Minister assigned responsibility for defence, the President;
- (d) “officer”, in relation to the State, means any person engaged in any employment for emolument under the Government and includes a Minister;
- (e) “ship” includes every description of vessel used in navigation not propelled by oars.

PART II

SUBSTANTIVE LAW

3. (1) Subject to this Act, the State shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject —

Liability of  
the State in  
tort.

- (a) in respect of torts committed by its officers or agents;
- (b) in respect of any breach of those duties which a person owes to his servants or agents at common law by reason of being their employer; and
- (c) in respect of any breach of those duties attaching at common law to the ownership, occupation, possession or control of property.

(2) No proceedings shall lie against the State by virtue of subsection (1) (a) in respect of an act or omission of an officer or agent of the State unless the act or omission would, apart from this Act, have given rise to a cause of action in tort against that officer or agent or his estate.

(3) Where the State is bound by a duty imposed by or under any written law, being a duty which is binding also upon persons other than the State and its officers, then, subject to this Act, the State shall, in respect of a failure to comply

with that duty, be subject to all those liabilities in tort (if any) to which it would be subject if it were a private person of full age and capacity.

(4) Where any functions are conferred or imposed upon an officer of the State as such either by any rule of common law or by any written law and that officer commits a tort while performing or purporting to perform those functions, the liabilities of the State in respect of the tort shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the State.

(5) Any written law which negatives or limits the amount of the liability of any officer of the State in respect of any tort committed by that officer shall, in the case of proceedings against the State under this section in respect of a tort committed by that officer, apply in relation to the State as it would have applied in relation to that officer if the proceedings against the State had been proceedings against that officer.

(6) No proceedings shall lie against the State by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him or any responsibilities which he has in connection with the execution of judicial process.

Provisions  
as to in-  
dustrial  
property.  
Cap. 90:03

4. (1) Where after the commencement of this Act any officer or agent of the State infringes a patent, a registered trade mark or any copyright (including any copyright in a design subsisting under the Patents and Designs Act) and the infringement is committed with the authority of the State, then, subject to the provisions of this Act, civil proceedings in respect of the infringement shall lie against the State.

Cap. 90:03

(2) Nothing in the preceding subsection or in any other provisions of this Act shall affect the rights of any department of the Government under sections 33 and 72 of the Patents and Designs Act.

(3) Save as expressly provided by this section, no proceedings shall lie against the State by virtue of this Act in respect of the infringement of a patent, a registered trade mark or any such copyright as is mentioned in subsection (1).

Application  
of law as to  
indemnity,  
contribution,  
joint and  
several tort,  
feasors and  
contributory  
negligence

5. (1) Where the State is subject to any liability by virtue of this Part, the law relating to indemnity and contribution shall be enforceable by or against the State in respect of the liability to which it is so subject as if the State were a private person of full age and capacity.

(2) Without prejudice to the effect of subsection (1) —

- (a) Parts II and III of the Law Reform (Miscellaneous Provisions) Act shall bind the State; Cap. 6:02
- (b) sections 1, 2 and 3 of the applied Act entitled the Maritime Convention Act, 1911, shall apply 1 & 2 Geo. 5c. 57 in the case of vessels belonging to the State as they apply in the case of other vessels.

(3) In this section “vessels” has the same meaning as in the aforesaid Maritime Convention Act, 1911.

6.(1) Subject to this Act, the law relating to civil salvage Salvage Claims against the State and State rights to salvage whether of life or property except sections 551 to 554 (inclusive) of the applied Act entitled the Merchant Shipping Act, 1894, or any corresponding provisions relating to aircraft, shall apply in relation to salvage services rendered after the commencement of this Act in assisting any ship or aircraft belonging to the State, or employed by the State and in its exclusive possession, or in saving life therefrom or in saving any cargo or apparel belonging to the State in the same manner as if the 57 & 58 V.C c. 60 ship, aircraft, cargo or apparel belonged to a private person.

(2) Where after the commencement of this Act salvage services are rendered by or on behalf of the State, the State shall be entitled to claim salvage in respect of those services to the same extent as any other salvor and shall have the same rights and remedies in respect of those services as any other salvor.

7.(1) Nothing done or omitted to be done by a member of the armed forces of the State while on duty as such shall subject either that member or the State to liability in tort for causing the death of another person or for causing personal injury to another person in so far as the death or personal injury is due to anything suffered by that other person while he is a member of the armed forces of the State if — Provisions relating to the armed forces.

- (a) at the time when that thing is suffered by that other person, he is either on duty as a member of the armed forces of the State or is, though not on duty as such, on any land, premises, ship, aircraft or vehicle for the time being used for the purposes of the armed forces of the State; and
- (b) the Minister responsible for defence certifies that the suffering of that thing by that other person has been or will be treated as attributable to service for the purpose of entitlement to a pension, gratuity, award or other benefit

(2) Subsection (1) does not exempt a member of the armed forces of the State from liability in tort in any case in which the court is satisfied that the act or omission was not connected with the execution of duties as a member of those forces.

(3) No proceedings in tort shall lie against the State for death or personal injury due to anything suffered by a member of the armed forces of the State if —

- (a) the thing is suffered by him in consequence of the nature or condition of any such land, premises, ship, aircraft or vehicle as mentioned in subsection (1) or in consequence of the nature or condition of any equipment or supplies used for the purposes of those forces; and
- (b) the Minister responsible for defence certifies as mentioned in subsection (1), nor shall any act or omission of an officer of the State subject him to liability in tort for death or personal injury, in so far as the death or personal injury is due to anything suffered by a member of the armed forces of the State, being a thing as to which the conditions mentioned above are satisfied.

(4) The Minister responsible for defence, if satisfied that it is the fact —

- (a) that a person was or was not on any particular occasion on duty as a member of the armed forces of the State; or
- (b) that at any particular time any land, premises, ship, aircraft, vehicle, equipment or supplies was or was not, or were or were not, used for the purposes of the said forces, may issue and, at the request in writing of any injured person, shall issue a certificate certifying that to be the fact, and any such certificate shall, for the purposes of this section, be conclusive evidence of the fact which it certifies.

Saving in respect of Acts done under prerogative and statutory powers.

8.(1) Nothing in this Part shall extinguish or abridge any powers or authorities which, if this Act had not been passed, would have been exercisable by virtue of the prerogative of the State or any powers or authorities conferred on the State by any written law and, in particular, nothing in this Part shall extinguish or abridge any powers or authorities exercisable by the State, whether in time of peace or war, for the purpose of the defence of the State or of training, or maintaining the efficiency of, any of the armed forces of the State.

(2) Where, in any proceedings under this Act, it is material to determine whether anything was properly done or omitted to be done in the exercise of the prerogative of the State, the Minister responsible for defence may, if satisfied that the act or omission was necessary for any purpose mentioned in subsection (1), issue a certificate to the effect that the act or omission was necessary for that purpose; and the certificate shall, in those proceedings, be conclusive as to the matter so certified.

### PART III

#### JURISDICTION AND PROCEDURE

9. (1) All claims against the State which, before the commencement of this Act, might, with the consent of the Minister, have been — <sup>Right to sue the State.</sup>

- (a) brought in the High Court in a suit instituted by the claimant as plaintiff against the Attorney General as defendant or any other officer authorised by law, or from time to time designated for that purpose by the Minister; or
- (b) enforced by proceedings instituted in a Magistrate's court against the Attorney General or other officer referred to in paragraph (a) under the Summary Jurisdiction (Petty Debt) Act, may, after the commencement of this Act, be enforced, subject to the provisions of this Act, as of right, and without the fiat of the Minister, <sup>Cap. 7:01</sup> by proceedings instituted against the State in accordance with this Act.

(2) In this section "claims against the State" includes a claim by way of set-off or counter-claim raised in proceedings by the State.

10. (1) Except as otherwise provided in any written law before the commencement of this Act, not being any provision of a written law repealed by this Act, proceedings for the enforcement of any claim by or against the State shall be brought by or against the Attorney General and may be instituted, — <sup>Enforcement of claims by or against the state</sup>

- (a) where the amount or the value of the claim is within the pecuniary limits of the civil Jurisdiction of a magistrate's court, in a magistrate's court in accordance with the Summary Jurisdiction Acts (including the rules of court regulating the practice and procedure of the magistrate's courts in the exercise of their civil jurisdiction); and



Cap 3:02.

- (b) in all other cases, in the High Court in accordance with the High Court Act (including the rules of court regulating the practice and procedure of the High Court in the exercise of its civil jurisdiction), as if the claim is a claim by or against a private party.

(2) In subsection (1) and section 17, the expression "Summary Jurisdiction Acts" means the Acts for the time being in force regulating the summary jurisdiction of magistrates in respect of civil causes and matters.

Service of documents.

11. All documents which in proceedings of the same nature between private parties would be required to be served upon the defendant shall in proceedings against the State be delivered at the Chambers of the Attorney General or at the office of any other officer designated for the purpose by the Minister.

Time for appearance and other steps.

12. Where civil proceedings are instituted against the State, the Attorney General or any other officer authorised by him in writing shall, if the Attorney General decides to oppose the claim in the proceedings, enter an appearance or appear, as the case may be, within such time as may be specified in the writ of summons, petition or the summons, as the case may be, or allowed by any written law and take such other steps in the proceedings within such time as may be prescribed by or under rules of court as if the proceedings were proceedings between private parties subject however to any directions that may be given by the judge or magistrate, as the case may be.

Interpleader Proceedings.

13. The State may obtain relief by way of interpleader proceedings, and may be made a party to such proceedings, in the same manner in which a private party may obtain relief by way of such proceedings or be made a party thereto and may be made a party to such proceedings notwithstanding that the application for relief is made by a marshal, bailiff or other similar officer and all rules of court relating to interpleader proceedings in the High Court or magistrate's court shall, subject to the provisions of this Act, have effect accordingly.

Judgment and proceedings thereon.

14. Wherever in any civil proceedings against the State judgment or order is given or made against the State, no execution shall issue thereon, but a copy of the judgment or order under the seal of the High Court or certified by the clerk of the magistrate's court, as the case may be, shall be transmitted by the Registrar of the High Court or the clerk of the magistrate's court, as the case may be, to the Minister responsible for finance, and if the judgment or order is for the payment of money, that Minister shall, by warrant under his hand, direct the amount awarded thereby to be paid and, in



case of any other judgment or order, shall take all measures necessary to cause it to be carried into effect.

15. Any judgment or order in civil proceedings by or <sup>Appeal.</sup> against the State shall be subject to appeal in the same manner as if it had been given or made in proceedings between private parties.

16. (1) Subject to and in accordance with rules of court — <sup>Discovery, injunction and specific performance.</sup>
- (a) in any civil proceedings in the High Court to which the State is a party or third party the State may be required by the court to make discovery of documents and produce documents for inspection; and
  - (b) in any proceedings as mentioned in paragraph (a) the State may be required by the court to answer interrogatories.

(2) Subsection (1) shall be without prejudice to any rule of law which authorises or requires the withholding of any document or the refusal to answer any question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

(3) Any order of the court made under the powers conferred by subsection (1)(b) shall direct by what officer of the State the interrogatories are to be answered.

(4) Without prejudice to subsection (2), any rules of court made for the purpose of this section shall be such as to secure that the existence of a document will not be disclosed, if, in the opinion of the Attorney General, it would be injurious to the public interest to disclose the existence thereof.

(5) In any civil proceedings by or against the State the court, subject to this Act, may make all such orders as it may make in proceedings between citizens, and otherwise to give the appropriate relief as the case may require.

(6) Where in any proceedings against the State any relief is sought as might in proceedings between citizens be granted by way of injunction or specific performance the court shall not grant an injunction or make an order for specific performance but may in lieu thereof make an order declaratory of the rights of the parties.

(7) In any proceedings against the State for the recovery of land or other property, the court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof make an order declaring that the

plaintiff is entitled as against the State to the land or property or to the possession thereof.

(8) The court shall not in any civil proceedings grant any injunction or make any order against an officer of the State if the effect of granting the injunction or making the order would be to give any relief against the State which would not have been obtained in proceedings against the State.

Procedures.

17. So far as applicable, and except in so far as is inconsistent with the other provisions of this Part, all the powers, authorities and provisions contained in the High Court Act or Summary Jurisdiction Acts (including the rules of court regulating the practice and procedure of the High Court and magistrate's courts in the exercise of their civil jurisdiction), as the case may be, shall extend and apply to proceedings by or against the State and in all such proceedings costs shall be awarded in the same manner as in proceedings between private parties.

Cap. 3:02

Recovery of certain claims by parate execution.

18. (1) All taxes, imposts, dues and sums of money payable to the State shall be recoverable by parate or summary execution; and the signature of the Accountant General or other officer authorised to recover them subscribed to any document setting forth or containing a statement of the amount claimed, or due, shall without proof of that signature and without proof of any other matter or thing, be held and be deemed to be in all courts, and by all judges and magistrates, *prima facie* evidence of the amount claimed being in every particular correct.

(2) Whenever parate or summary execution is hereafter issued, the defendant shall be notified that the amount due is payable within six days of the service of the process in execution upon him if he resides outside the boundaries of the City of Georgetown and within three days if he resides within the City of Georgetown.

## PART IV

### MISCELLANEOUS

Proceedings in rem.

19. (1) Nothing in this Act shall authorise proceedings *in rem* in respect of any claim against the State or the arrest, detention, or sale of any ship or aircraft belonging to the State or of any cargo or other property belonging to the State or give to any person any lien on any such ship, aircraft, cargo or other property.

(2) Where proceedings *in rem* have been instituted in any court against any such ship, aircraft, cargo or other property, the court may, if satisfied, either on the application by the plaintiff for an order under this subsection or on the ap-

plication by the State to set aside the proceeding, that the proceedings were so instituted by the plaintiff in the reasonable belief that the ship, aircraft, cargo or other property did not belong to the State, order that the proceedings shall be treated as if they were *in personam* duly instituted against the State in accordance with this Act, or duly instituted against any other person whom the court regards as the proper person to be sued in the circumstances, and that the proceedings shall continue accordingly.

(3) Any order under subsection (2) may be made upon such terms, if any, as the court deems just; and where the court makes any such order it may make such consequential order as the court deems expedient.

20. Nothing in this Act shall prejudice the right of the State under section 55 of the Interpretation and General Clauses Act to take advantage of the provisions of any written law although such written law does not affect the rights of the State and accordingly in any proceedings against the State the provisions of any written law which could, if the proceedings were between private parties, be relied upon by the defendant as a defence to the proceedings may, subject to any express provision to the contrary, be so relied upon by the State.

State entitled to rely on written law applicable to private parties as a defence in action. Cap. 2:01

21. Except as otherwise provided in this Act, nothing in this Act shall affect any rule of evidence or any statutory provisions relating to the extent to which the State is bound by any other written law.

Application of other written law to the State.

22. This Act shall not affect proceedings by or against the State which have been instituted before the commencement of this Act or apply in relation to any act or omission committed before the commencement of this Act.

Pending proceedings.

23. The Minister may make regulations for carrying into effect the purposes of this Act.

Regulations.

24. Sections 38 to 45 (inclusive) of the High Court Act are hereby repealed.

Repeal Cap. 3:02

### EXPLANATORY MEMORANDUM

The State has hitherto been immune from liability in respect of torts committed by its officers and agents. To enforce any other claim against the State, a private person requires the consent of the Minister. The purpose of this Bill is to remove these special privileges of the State.

The Bill seeks to render the State liable in tort for the acts or omissions of its officers and agents as if the State were a private person of full age and capacity. Where any other claim against the State can now be enforced only with the consent of the Minister this Bill seeks

to dispense with the necessity of such consent and to enable the claimant to sue the State to enforce such claims as of right. Further if an officer or agent of the State infringes a patent, trade mark or copyright, the State will be liable if such infringement is committed with the authority of the State.

This Bill also seeks to remove any hardships that may be caused by the rule of law that the State is not liable for death or personal injury caused by an act or omission of a member of the armed forces of the State whilst on duty to another member of such forces under certain circumstances. It seeks to achieve this by limiting such immunity to cases where the Minister responsible for defence certifies that there is provision for granting an award from the State in respect of such death or personal injury. The member of the armed forces who caused the death or injury will however not be exempt from personal liability in tort if the court is satisfied that the act or omission that caused the personal injury or death was not connected with the execution of duties as a member of the forces.

The Bill also saves the rights of the State in the exercise of its prerogative or statutory power.

Save as otherwise provided in any written law already in force, proceedings by or against the State are to be brought by or against the Attorney General, and such proceedings may be instituted in the High Court or, where the amount or value of the claim falls within the jurisdiction of the magistrate's court, in a magistrate's court. Subject to certain modifications, such proceedings are to be instituted and proceeded with in the same way as proceedings between private parties.

The Bill, in clause 16, also seeks to empower the court to require the State to produce documents for inspection and to answer interrogatories. But this power of the court is subject to any rule of law which authorises the withholding of any document or the refusal to answer any interrogatory on the ground that the disclosure of the document or the answering of the interrogatory would be injurious to the public interest. It is also provided in clause 16 that where in proceedings against the State any relief is sought by way of injunction or specific performance the court shall not grant an injunction or make an order for specific performance but may instead make an order declaratory of the rights of the parties.

The Bill, in clause 19, also seeks to preserve the immunity of the State from action *in rem*. The Bill also does not seek to effect the extent to which the State is bound by any other written law except where it is otherwise provided in the Bill or seek to affect any proceedings commenced prior to its enactment.

The provisions in the High Court Act relating to proceedings by or against the State are sought to be repealed by this Bill.

*M. Shahabuddeen,*  
Vice-President and Attorney General.