

BILL No. 3 of 1989

FRIDAY, 10TH MARCH, 1989

**PARLIAMENT OFFICE,
Public Buildings,
Georgetown,
Guyana.**

1989—03—10

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

F. A. Narain,
Clerk of the National Assembly



Bill No. 3 of 1989

POLICE COMPLAINTS AUTHORITY BILL 1989

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SCHEDULE

A BILL

Intituled

AN ACT to make provisions for the establishment of a Police Complaints Authority and in respect of the functions and procedure of the Authority and other matters connected therewith.

Enacted by the Parliament of Guyana:—

A.D. 1989

PART I

PRELIMINARY

1. This Act may be cited as the Police Complaints Authority Act 1989 and shall come into operation on such date as the Minister may, by order, appoint.

Short title
and
commence-
ment,

2. In this Act —

- (a) “appropriate disciplinary authority” means — Interpre-
tation,
- (i) in relation to any member of the Force of or above the rank of Inspector, but not being the Commissioner, the Police Service Commission; and
- (ii) in relation to any member of the Force, other than those mentioned in subparagraph (i), the disciplinary authority;
- (b) “Authority” means the person appointed as the Police Complaints Authority established by section 3 and includes any person appointed as an *ad hoc* Police Complaints Authority under section 4;
- (c) “Commissioner” means the Commissioner of Police;
- (d) “disciplinary authority” has the same meaning as in the Police (Discipline) Act; Cap, 17:01
- (e) “member of the Force” —
- (i) except in Part II and the Schedule, has the same meaning as in the Police Act; and Cap, 16:01
- (ii) in Part II and the Schedule, does not include the Commissioner, but in other respects has the same meaning as the Police Act;
- (f) “misconduct” means any of the acts or omissions specified in the Schedule, each of such acts or omissions being an offence against discipline under the Police (Discipline) Act; Cap, 17:01
- (g) “prescribed” means prescribed by the Minister by regulations;
- (h) “the Force” has the same meaning as in the Police Act; Cap, 16:01

Establishment
of Police
Complaints
Authority,

3.(1) There is hereby established an authority to be known as the Police Complaints Authority which shall consist of one person to be appointed by the President from among persons who have been, who are, or who are qualified to be, a Puisne Judge of the High Court.

(2) The terms and conditions of appointment of the person appointed as the Authority shall be such as may be determined by the President.

(3) The headquarters of the Authority shall be in such place as may be determined by the President.

(4) The appointment of any person as the Authority shall be published in the **Gazette**.

Ad hoc
appoint-
ment as
Authority,

4.(1) Where the President is satisfied that the person who is holding office as the Authority is personally interested in —

(a) any matter in relation to any complaint made to the Authority under section 8; or

(b) any matter in relation to any complaint or information of the nature referred to in section 12, including the investigation into any such complaint or information, the President may appoint any person who is qualified to be appointed as the Authority as an **ad hoc** Police Complaints Authority to perform the functions of the Authority under this Act in respect of the complaint referred to in paragraph (a) or investigation into the complaint or information referred to in paragraph (b), as the case may be, on such terms and conditions of appointment as may be determined by the President.

(2) The appointment of any person as an **ad hoc** Police Complaints Authority and the matter or matters in respect of which the appointment has been made shall be published in the **Gazette**.

(3) One person may be appointed as **ad hoc** Police Complaints Authority in respect of more than one complaint or investigation referred to in subsection (1).

(4) Any person appointed as an **ad hoc** Police Complaints Authority under subsection (1) shall have all the functions of the Authority under this Act in respect of the complaint or investigation in relation to which he has been appointed.

(5) Where an **ad hoc** Police Complaints Authority has been appointed under subsection (1) in respect of any complaint under section 8 or investigation into any complaint or information of the nature referred to in section 12, the Police Complaints Authority shall not exercise any function in respect of that complaint or investigation.

5. It shall be the duty of a person appointed as the Authority to make and subscribe, before entering upon the duties of his office, an oath or affirmation that he will faithfully, impartially and to the best of his ability discharge the trust, and perform the duties devolving upon him by virtue of the appointment, such oath or affirmation being taken before the President.

Oath of office.

6. The Minister shall provide the Authority with a Secretary and such other officers and employees as are required for the proper performance of his functions.

Officers and employees of Authority

PART II

INQUIRY INTO COMPLAINTS OF MISCONDUCT BY MEMBERS OF THE FORCE

7.(1) The provisions of this Part shall be in addition to, and not in derogation of, the provisions of the Police (Discipline) Act.

Provisions of this Part in addition to and not in derogation of Police (Discipline) Act; powers of appropriate disciplinary authority preserved, Cap, 17:01

(2) The provisions of this Part shall be subject to the powers conferred upon the appropriate disciplinary authority by the Constitution.

8.(1) Any person who has reasonable grounds to believe that a member of the Force is guilty of any misconduct may make a complaint to the Authority stating —

Complaint to Authority,

- (a) the particulars of the complaint;
- (b) the particulars, as far as they are known, of the person against whom the complaint is made;
- (c) the nature of the evidence that the complainant proposes to produce in respect of the complaint; and
- (d) such other matters as may be prescribed.

(2) A complaint to the Authority under this section may be presented in person, or may be sent by registered post, to the Secretary of the Authority.

Procedure
on receipt
of com-
plaint.

9.(1) Where any complaint has been made to the Authority under section 8, the Authority, after considering the complaint and, where found necessary, examining the complainant, —

(a) may reject the complaint if the Authority is of the opinion —

(i) that the complaint is frivolous or that it does not pertain to a matter the authority is empowered to deal with under this Act; or

(ii) that there has been undue delay in making the complaint after the complainant has come to know of the commission of the misconduct complained of:

Provided that no complaint shall be rejected by the Authority without giving the person who made the complaint a reasonable opportunity of being heard;

(b) where the Authority does not reject a complaint under paragraph (a), he shall refer it to the Commissioner for investigation and inquiry, under the Police (Discipline) Act.

Cap. 17:01

(2) Where a complaint is referred to the Commissioner under subsection (1) by the Authority, the Commissioner shall cause the complaint to be investigated expeditiously under section 5 of the Police Discipline Act and a copy of the report of the investigating Officer referred to in Section 5(4) of that Act shall be forwarded by the Commissioner, as soon as possible after the report is submitted, to the Authority for his comments.

Cap. 17:01

(3) The comments of the Authority on the report of the investigating officer, referred to in subsection (2), shall be taken into account before a decision is taken under section 5(4) of the Police Discipline Act as to whether any charge of any misconduct should be instituted against a member of the Force.

Cap. 17:01

(4) Where a complaint has been referred to the Commissioner under subsection (1) by the Authority and an inquiry conducted against a member of the Force, in respect of the misconduct alleged in the complaint, under sections 5 and 6 of the Police Discipline Act, a copy of the report containing the findings of the officer conducting the inquiry shall be forwarded

Cap. 17:01

to the Authority for his comments before any punishment is imposed on a member of the Force pursuant to the findings and the disciplinary authority or the Police Service Commission shall take into account the comments of the Authority while imposing any punishment on a member of the Force:

Provided that the concerned member of the Force shall be provided with a copy of the comments of the Authority referred to above and given an opportunity to make representation against such comments, before any punishment is imposed on him.

(5) Without prejudice to the provisions of subsections (2), (3) and (4) where the Authority has referred a complaint to the Commissioner under subsection (1), the Authority may, before the completion of the investigation or inquiry, resulting from the complaint, under the Police (Discipline) Act request the Commissioner to furnish interim reports containing information relating to particular aspects of the investigation or of the inquiry and the Commissioner shall comply with the request as expeditiously as possible. Cap, 17:01

10.(1) Without prejudice to the preceding provisions of this Act, where a complaint under section 8 relates to the refusal or failure by any member of the Force in charge of a police station or branch to record any complaint or information as to the commission of any offence against any law and the Authority after considering the complaint and examining the complainant is *prima facie* satisfied that the said complaint or information ought to have been recorded and investigated, the Authority may direct the member of the Force in charge of the relevant police station or branch to record the complaint or information and to investigate the same. Direction to record complaint, etc.

(2) A copy of every direction under subsection (1) shall be forwarded to the Commissioner.

(3) On receipt of a direction under subsection (1), the member of the Force in charge of the police station or branch shall record the complaint or information and investigate the same as expeditiously as possible.

(4) The Commissioner shall forward to the Authority a report stating the result of every investigation under subsection (3), and any action taken on the basis of the investigation, as soon as possible after the investigation is completed.

11.(1) A contravention of any provision of this Act by any member of the Force, other than the Commissioner, or refusal or failure without lawful excuse by any such member to comply with any direction or request made to him by the Authority Contravention of Act, etc, to be deemed to be misconduct or misbehaviour.

under this Act, shall notwithstanding anything contained in this Act, or the Police (Discipline) Act, be deemed to be misconduct for the purposes of this Act and an offence against discipline for the purposes of the Police (Discipline) Act.

(2) For any misconduct and offence against discipline referred to in subsection (1), the appropriate disciplinary authority may impose on any member of the Force (not being the Commissioner) any of the punishments specified in paragraph 1 of the Schedule to the Police (Discipline) Act.

(3) A controvention of any provision of this Act by the Commissioner, or refusal or failure, by the Commissioner, without lawful excuse to comply with any direction or request made to him under this Act by the Authority, shall be deemed to be misbehaviour by the Commissioner for the purposes of article 225 of the Constitution.

PART III

SUPERVISION OF INVESTIGATION

Application
of Part,

12.(1) This Part shall apply in relation to any complaint or information that any member of the Force after the commencement of this Act, has unlawfully caused the death of any person or has committed any offence referred to in section 48, 49, or 50, section 55 read with section 56, or section 57 of the Criminal Law (Offences) Act or such other offence as may be specified by the Minister by order.

Cap, 8:01

(2) This Part shall apply in relation to a complaint or information of the nature referred to in subsection (1), notwithstanding that any person against whom, jointly with a member of the Force, the complaint is made or information is received, is not a member of the Force.

Authority
to be notified
of complaint or
information,

13. A member of the Force, to or by whom, while acting in that capacity, any complaint or information, of the nature referred to in section 12, is made or received, shall forthwith inform the Authority of the particulars of the complaint or information, including the name and other particulars of the member of the Force against whom the complaint or information has been made or received.

Supervision
of investigation
by
Authority,

14.(1) The Authority shall supervise the investigation of every complaint or information of the nature referred to in section 12.

(2) In the exercise of his functions under subsection (1), the Authority may request the Commissioner to replace the

officer investigating a complaint or information of the nature referred to in section 12 (hereinafter referred to as the investigating officer) by another member of the Force of the same rank or higher rank and where the Authority makes any such request, the Commissioner shall replace the investigating officer by another member of the Force of the same rank or higher rank after consultation with the Authority.

(3) A copy of every statement, including any confession statement, recorded or any other document prepared, seized or produced, in the course of the investigation of any complaint or information of the nature referred to in section 12, shall be forwarded to the Authority as soon as it is recorded, prepared, seized or produced; and the Authority shall be entitled to inspect any object recovered in the course of the investigation and place any identifying mark on it.

(4) Without prejudice to the generality of the provisions of subsection (1), the Authority may request the investigating officer —

- (a) to furnish to the Authority information or evidence in the possession of that officer, in regard to any matter relevant to the investigation into any complaint or information of the nature referred to in section 12; or
- (b) to consult him in respect of any aspect of the investigation into any complaint or information referred to in paragraph (a).

and the investigating officer shall comply with the request.

(5) The investigating officer shall, as soon as possible after the completion of the investigation of any complaint or information referred to in subsection (1), submit to the Authority a report giving a summary of the steps and proceedings taken in the course of the investigation and his conclusions.

15.(1) After considering the report of the investigating officer referred to in section 14(5), the evidence disclosed in the course of the investigation referred to therein and other relevant matters relating to the investigation, the Authority shall submit to the Director of Public Prosecutions a statement containing the following particulars —

- (a) whether the investigation was or was not conducted to the Authority's satisfaction;
- (b) specifying any particular aspect in relation to which it was not conducted to the satisfaction of the Authority; and

Statement
by Author-
ity,

(c) any other particulars that may be prescribed.

(2) A copy of the statement referred to in subsection (1) shall be forwarded by the Authority to each of the following, namely, the Minister and the Commissioner.

(3) In deciding whether or not any person should be prosecuted for any offence pursuant to any complaint or information of the nature referred to in section 12, due regard shall be had to the statement referred to in section (1).

Confidentiality of information.

16. Any information received by the Authority, or by any officer or employee provided to the Authority under section 6, in the course of the performance of his functions under this Part, (including any information contained in any document received by him by virtue of the provisions of this Part) shall not be divulged by the Authority, or any such officer or employee, to any person except to the extent necessary to discharge his functions under this Act or any other written law or for the purpose of prosecution for an offence or other proceedings under this Act or any other written law.

PART IV

MISCELLANEOUS

Panel to assist Authority,

17. (1) In the discharge of his functions the Authority shall be assisted by a panel of two persons to be appointed by the President from among persons who in his opinion, have adequate qualifications or experience in regard to matters relevant to the functions conferred on the Authority.

(2) The appointment of any person to the panel under subsection (1) shall be published in the GAZETTE.

(3) Section 5 shall apply to a member of the panel in the same manner as it applies to a person appointed as the Authority.

(4) The terms and conditions of appointment of a member of the panel shall be such as may be determined by the President.

(5) The Authority shall consider the views expressed by the members of the panel in relation to any matter arising for decision, while discharging his functions under this Act.

Authority to be independent,

18. In the exercise of his functions under this Act the Authority shall not be subject to the direction or control of any other person or authority.

19. The Authority may, either by himself or accompanied by such persons as the Authority deems proper, inspect any place, building or other premises where any act relating to any misconduct or relating to any offence which is the subject of any complain or information of the nature referred to in section 12, is alleged to have been committed.

Power for local inspection,

20. It shall be the duty of every member of the Force to render to the Authority and the officers and employees provided to the Authority under section 6 such assistance as the Authority may request, for the purpose of discharging the functions of the Authority.

Duty of member of Force to assist Authority,

21. Any notice to be served by the Authority shall be served in such manner as may be prescribed.

Manner of service of notice by Authority,

22. (1) The Minister may, by order, amend the Schedule.

Amendment of Schedule,

(2) Every order under subsection (1) shall be subject to negative resolution of the National Assembly.

(3) Notwithstanding anything contained in this Act or the Police (Discipline) Act, every act or omission mentioned in the Schedule shall be deemed to be a misconduct for the purposes of this Act and an offence against discipline for the purposes of the Police (Discipline) Act.

Cap. 17:01

23. (1) The Authority shall, before the expiry of three months after the end of each calendar year, submit to the Minister a report containing an account of the activities of the Authority throughout the preceding calendar year and the difficulties, if any experience by the Authority in the exercise of his functions.

Annual report by Authority,

(2) A copy of the report referred to in subsection (1) shall be forwarded by the Authority to each of the following, namely, the Director of Public Prosecutions and the Commissioner.

(3) The Minister shall lay before the National Assembly a copy of the report with any explanation that he, the Director of Public Prosecutions or the Commissioner may like to offer in regard to any matter stated in the report.

24. Any person who contravenes section 16 shall be liable on summary conviction to a fine of five thousand dollars and to imprisonment for six months.

Penalties for contravention of section 16,

25. (1) The Minister may make regulations for carrying out the purposes of this Act.

Power to make regulations,

(2) Without prejudice to the generality of the provisions of subsection (1), the Minister may in particular make regulations to provide for all or any of the following matters —

- (a) the matters that a complaint to the Authority under section 8(1) shall contain;
- (b) the procedure of the Authority;
- (c) the particulars that a statement under section 15 shall contain;
- (d) the form of any notice to be given or served by the Authority and the manner of giving or serving any such notice;
- (e) any other matter that is required to be or may be prescribed by or under this Act.

SCHEDULE

s. 2(f)

ACTS OR OMISSIONS BY ANY MEMBER OF THE FORCE CONSTITUTING MISCONDUCT

1. Neglect of his duty, that is to say —

- (i) neglect, or without good and sufficient cause omission, to carry out promptly and diligently anything which is his duty as a member of the Force;
- (ii) when on duty failing to perform his duty with diligence;
- (iii) failing to work his beat in accordance with orders, or leaving his beat or patrol, point or other place of duty to which he has been ordered without due permission or sufficient cause;
- (iv) by carelessness or negligence, permitting a prisoner to escape;
- (v) failing, when knowing where an offender is to be found, to report the same, or to make due exertion for making him amenable to justice;
- (vi) failing to report any matter which it is his duty to report;
- (vii) failing to report anything which he knows concerning a criminal charge, or failing to disclose

any evidence which he can give for or against any prisoner or defendant on a criminal charge, or the name of any person whom he believes can give such evidence;

- (viii) omitting to make any necessary entry in any official document, paper or book maintained for, or in connection with, the recording of, or investigation into, any complaint or information;
- (ix) failing to attend to any reasonable request made to him by any member of the public;
- (x) wanting in civility to any member of the public; or
- (xi) neglecting to assist any person injured or taken ill in any public place.

2. Knowingly making or signing any false statement in any official document or book, maintained for, or in connection with, the recording of, or investigation into, any complaint or information.

3. Without good and sufficient cause, destroying or mutilating any official document or record relevant in connection with the recording of, or investigation into, any complaint or investigation, or altering or erasing any entry therein.

4. Prevaricating before any court or at any inquiry.

5. Committing any breach of confidence, that is to say —

- (i) divulging any matter, relevant in connection with the recording of, or investigation into, the commission of any offence or the trial of the offender, which it is his duty to keep secret; or
- (ii) giving notice, directly or indirectly to any person against whom any warrant or summons has been or is about to be issued, except in the lawful execution of such warrant or service of such summons.

6. Committing any corrupt practice, that is to say —

- (i) receiving any bribe;
- (ii) failing to account for, or to make a prompt and true return of, any money or property received by him in his official capacity;
- (iii) directly or indirectly soliciting or receiving any gratuity, present or subscription without the consent of the Commissioner; or

- (iv) placing himself under any pecuniary obligation to any person licensed to sell intoxicating liquor, or to any person who holds a licence, concerning the granting or renewal of which the police may have to report or give evidence.

7. Being guilty of any unlawful or unnecessary exercise of authority, that is to say, —

- (i) without good and sufficient cause, making any unlawful or unnecessary arrest; or
- (ii) using any unnecessary violence to any prisoner, or other person with whom he may be brought into contact in the execution of his duty.

8. While on or off duty being unfit for duty as a result of being under the influence of intoxicating liquor, or drinking or soliciting intoxicating liquor while on duty, that is to say —

- (i) without the consent of his superior officer, drinking or receiving from any person any intoxicating liquor while on duty; or
- (ii) demanding from, or endeavouring to persuade, any person to give him, or to purchase or obtain from him, any intoxicating liquor while on duty.

9. Improperly entering licensed premises, that is to say, —

- (i) entering, while on duty, any premises licensed for the manufacture, storage, distribution or sale of intoxicating liquor, when his presence there in the execution of his duty is not required; or
- (ii) entering such premises dressed in uniform when not on duty when his presence there in the execution of his duty is not required.

10. Incurring debt without any reasonable prospect or intention of paying the same, or having incurred any debt, making no reasonable effort to pay the same.

11. Gambling, or permitting, or failing to report gambling in any police station, barracks, or other building or premises used in connection with the Force.

12. Removing his duty badge when on duty or endeavouring at any time to conceal or disguise his number.

13. Smoking when on duty.

14. Contravention of any provision of this Act, or refusal or failure to comply with any direction or request made under this Act by the Authority.

15. Knowingly being an accessory to any act or omission referred to above.

EXPLANATORY MEMORANDUM

This Bill seeks to establish an independent Police Complaints Authority. Under the Bill only a person who has been or who is or is qualified to be a Puisne Judge of the High Court can be appointed as the Authority. As proposed by the Bill the Authority will consist of one person only, but he will be assisted by two persons having relevant qualifications or experience. (Clauses 3, 4 and 17)

2. Two main functions are sought to be conferred on the Authority by the Bill. The first relates to complaints of specified cases of misconduct by members of the Police Force. The second is supervision of investigation of certain serious crimes alleged to have been committed by the members of the Police Force.

3. Part II of the Bill deals with the first aspect. The acts or omissions which constitute misconduct for the purposes of the Bill are specified in the Schedule annexed to it. Except for item 14 of the Schedule, the acts and omissions specified in the Schedule are relatable to those offences against discipline mentioned in section 4 of the Police (Discipline) Act, Cap. 17:01, which generally speaking, pertain to dealings of the members of the Police Force with the members of the public.

4. Section 4 of the Police (Discipline) Act, Cap. 17:01, relating to offences against discipline, does not apply to the Commissioner of Police, obviously because of the Constitutional protection his office enjoys. For the same reason the provisions of Part II of the Bill dealing with inquiry into misconduct, being offences against discipline, are not sought to be made applicable to the Commissioner of Police.

5. Under the provisions of the Bill where the Authority does not reject a complaint regarding misconduct as being frivolous or outside its jurisdiction or on the ground of undue delay, he is to refer it to the Commissioner of Police for investigation and inquiry under the Police (Discipline) Act, Cap. 17:01. (Clause 9 (1) of the Bill). Provisions have been made for the forwarding of the reports of the investigating or inquiring officers, to the Authority and consideration to be given to the comments of the Authority on the reports of those officers. The Authority is also entitled to call for interim reports from the Commissioner of Police. (Clause 9 (2) to (5) of the Bill).

6. Power is also sought to be conferred on the Authority, where the complaint of misconduct to the Authority relates to refusal or failure to re-

cord any complaint or information as to the commission of any offence against any, law, to direct the member of the Police Force in charge of the relevant police station or branch to record the complaint or information and to investigate the same. As proposed in the Bill, the Commissioner of Police is required to forward to the Authority the result of the investigation and any action taken on its basis. (Clause 10 of the Bill).

7. Provisions are also sought to be incorporated in the Bill for sanctions against members of the Police Force, including the Commissioner of Police, who contravene any provision of the Bill or who without lawful excuse refuse or fail to comply with any direction or request made by the Authority. (Clause 11 of the Bill).

8. Part III of the seeks to make provisions for supervision by the Authority of the investigation of any complaint or information that any member of the Police Force has, after the coming into operation of the legislation, unlawfully caused the death of any person or committed any offence referred to in sections 48, 49 or 50, section 55 reads with section 56, or section 57 of the Criminal Law (Offences) Act, Cap. 8:01, or committed any other criminal offence specified by the Minister by order. This Part applies to the Commissioner of Police also.

9. According to clause 23(3) of the Bill a copy of the annual report of the Authority is to be laid before the National Assembly by the Minister with any explanation that the Minister, the Director of Public Prosecutions or the Commissioner of Police may like to offer in regard to any matter stated in the report.

K. S. Massiah
Attorney General
and Minister of Legal Affairs.