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MAGCO LEGAL LESSONS #28

LEGAL TOPIC: THE POLICE COMPLAINTS AUTHORITY AND MAKING A COMPLAINT AGAINST POLICE

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INTRODUCTION

The normal functions of the Police Service are maintaining public order and safety, enforcing the law, and preventing, detecting, and investigating criminal activities. Essentially, Police Officers are responsible for the protection of the public and the preservation of peace.

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Section 45 of the Police Service Act Chapter 15:01 :

“A police officer shall preserve the peace...”

Police Officers have a statutory duty *to detect crime and other infractions of the law and to apprehend persons found committing an offence, or persons whom they suspect of having committed an offence* as contained in **Section 45 of the Police Service Act Chap. 15:01.**

The case of **R v. Commissioner of the Metropolis, Ex parte Blackburn [1968] 2 QB 118 (No.1) (Blackburn No. 1)** holds *that the duty to detect crime is not a discretionary one and that public bodies entrusted with discretionary powers owe several basic duties, the breach of any of which, can justify the Court’s intervention. Examples of these basic duties included:*

a) *The duty to understand the nature of the power and to ask the right questions:* **(Chief Constable of North Wales Police v Evans [1982] 1 WLR 1155);**

b) *The duty to ask questions in the correct sequence by assessing need and priority first, then considering resources:* **(R v Secretary of State for Education and Employment Ex parte Portsmouth Football Club LTD [1998] COD 142)**

and

c) *The duty to consider exercising the power:* **(Stovin v. Wise [1996] AC 923)**

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Lord Denning in Blackburn No.1 also opined:

“Although the chief officers of police are answerable to the law, there are many fields in which they have a discretion with which the law will not interfere. For instance, it is for the Commissioner of Police or the chief constable as the case may be, to decide in any particular case whether enquiries should be pursued, or whether an arrest should be made, or a prosecution brought. It must be for him to decide on the disposition of his force and the concentration of his resources on any particular crime or area. No court can or should give him direction in such a matter.”

In **R v Dytham (1979) 1 QB 723 Lord Widgery CJ** spoke of 'a public officer who has an ***obligation to perform a duty***'.

While the duty of police officers to detect crime and to apprehend persons who have committed offences or are suspected of committing an offence is not discretionary, the members of the police force have a wide discretion in the manner in which they go about detecting crime. This discretion was recognized in **R v Commissioner of Police of the Metropolis Ex p. Blackburn (Albert Raymond) (Order of Mandamus) [1973] Q.B 241 (Blackburn No. 2)**. Lord Denning explained that

except in an extreme case, *the Police have a discretion in carrying out their duty of enforcing the law with which the Courts will not interfere.*

In Denning LJ's judgement in **R v Metropolitan Police Commissioner ex parte Blackburn 1968 1 AER 763**, he opined:

"I have no hesitation ... in holding that, like every constable in the land, should be and is, independent of the executive. ... I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. ... No minister of the Crown can tell him that he must or must not keep observation of this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone."

As you will observe, Police Officers are vested with extensive powers. As such, in the execution of such powers, there are many instances where Police Officers themselves act contrary to the law and abuse this power. Some ways in which a Police Officer might do so are:

- Wrongful Arrest
- False Imprisonment
- Arbitrary Discharge of a Firearm
- Police Brutality; etc.

So therefore, if these Police Officers are responsible for the public's protection then who can protect us from the Police or regulate police behaviour?

WHAT IS THE POLICE COMPLAINTS AUTHORITY?

According to the official website of the Police Complaints Authority of Trinidad and Tobago, the Police Complaints Authority (PCA) is an independent corporate body mandated, among other things, to independently investigate complaints against police officers involved in criminal offences, police corruption and serious police misconduct.

Therefore, the Police Complaints Authority allows for members of the public to lodge complaints against members of the Police Service Commission in circumstances where they feel that they have been wronged by any such Police Officer or where they feel that any such Officer has acted contrary to the law. It is also very important to note that the Police Complaints Authority is governed by statute, that being, **The Police Complaints Authority Act of Trinidad and Tobago Chap: 15:05 (hereinafter "The Police Complaints Authority Act")**.

Today we will be looking into the basics of this piece of legislation for a better understanding of the Police Complaints Authority.

POWERS AND FUNCTIONS OF THE POLICE COMPLAINTS AUTHORITY

According to **Section 21 of the Police Complaints Authority Act**

21. (1) *The functions of the Authority are to—*
- (a) *investigate criminal offences involving police officers, police corruption and serious police misconduct;*
 - (b) *undertake inquiries into, or audits of, any aspect of police activities for the purpose of ascertaining whether there is police corruption or serious police misconduct or circumstances that may be conducive to both;*
 - (c) *monitor an investigation conducted by any person or authority in relation to any matter mentioned in paragraph (a) and to undertake audits of those investigations;*
 - (d) *advise the Police Service and other public authorities on ways in which police corruption and serious police misconduct may be eliminated;*
 - (e) *gather evidence that may be admissible in the prosecution of a person who is not a police officer for a criminal offence in relation to the Police Service and to furnish that evidence to the Director of Public Prosecutions, or where an authority outside the State is concerned, the Attorney General;*

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- (f) *gather evidence that may be used in the investigation of serious police misconduct and furnish such evidence to the Commissioner or the Commission for appropriate action;*
- (g) *gather evidence that can be used in the prosecution of a police officer involved in a criminal offence and furnish such evidence to the Director of Public Prosecutions; or*
- (h) *perform any other functions that may be conferred on it by any other written law.*

Section 22 of the Police Complaints Authority Act then goes on to discuss the powers vested in the Police Complaints Authority. This section mainly speaks to the Authority's powers of enquiry as there must be confirmation and verification of any complaint made against a Police Officer:

22. (1) *For the purpose of the performance of its functions and subject to this Act, the Authority **has the powers of a commission of enquiry** established under the Commissions of Enquiry Act as if it were a commission of enquiry for the purpose of that Act.*
- (2) *Notwithstanding subsection (1), the Authority shall also have the power to require—*
- (a) *any person to produce, within a specified time, all books, records, accounts, reports, data, stored electronically or*

otherwise, or any other documents relating to the functions of any public body or authority;

- (b) any person, within a specified time and in writing, to provide any information or to answer any question which the Authority considers necessary in connection with any investigation which the Authority is empowered to conduct under this Act; and*
- (c) that any facts, matters or documents relating to a complaint, be verified or otherwise ascertained by oral examination of the person making the complaint.*

The Authority's process of making enquiries and gathering evidence provides protection for Police Officers against malicious, untrue, vexatious, or exaggerated complaints that may be made against them.

Section 22 (4) of the Police Authority Act also places a criminal sanction on those persons who refuse to cooperate with the Authority:

22(4). A person who fails or refuses to disclose any information or to produce any document under this section commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for five years.

It would therefore be in your best interest to be extremely accurate and truthful when making any such complaint to the Authority.

HOW IS A COMPLAINT LODGED?

The Police Complaints Authority of Trinidad and Tobago have recently modernized their method of lodging an official complaint. In September 2017, a mobile application (“app”) known as “Police Complaints Authority” was launched for users in Trinidad and Tobago and it was the first of its kind regionally. The “app” is available for Android and iPhone users via the Play Store or App Store and makes it easier than ever to lodge a formal complaint.

The Facebook page of the Police Complaints Authority also has a portal through which a complaint can be lodged.

Otherwise, more traditional methods such as letters and e-mails may also be used to lodge a complaint, and this includes correspondence from your Attorney-at-law.

An important point to note is that there is a limitation period of one (1) year for making any such complaint and this is in accordance with **Section 27 of the Police Complaints Authority Act:**

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27.(1) *A complaint shall not be entertained under this Act unless it is made to the Authority not later than one year from the day on which the person making the complaint first had notice of the matter alleged in the complaint.*

WHAT HAPPENS AFTER A COMPLAINT IS LODGED?

After a complaint is lodged, an investigation may be commenced depending on the nature of that complaint. It is unlikely that an investigation into a trivial complaint will be launched.

Section 26 of The Police Complaints Authority Act states:

26. *The Authority may conduct an investigation on its own initiative or on the basis of a complaint made by a member of the public, a police officer, a public body or authority, or the appropriate unit or a disciplinary tribunal of the Police Service.*

Section 30 of the Police Complaints Authority Act also provides for preliminary investigations so that the Authority knows whether a matter is even worth investigating. As you can imagine, members of the public may make frivolous and/or trivial complaints and Section 30 provides a means through which any such complaint may be sifted out.

30. (1) *The Authority may conduct a preliminary investigation to assist it to identify whether or not there is conduct to justify a more complete investigation under the Act, or refer it to the Director of Public Prosecutions, Commissioner or the Commission for further action.*
- (2) *The Authority may, in considering whether or not to conduct, continue or discontinue an investigation have regard to such matters as it thinks fit including whether or not in its view—*
- (a) *the subject matter of the investigation is trivial;*
- (b) *the conduct or matter concerned occurred at too remote a time to justify an investigation; or*
- (c) *the complaint is frivolous, vexatious or not made in good faith.*
- (3) *Where the Authority has decided to refer a matter under subsection (1) or to discontinue a matter under subsection (2), the Authority shall, in writing, immediately inform the person who made the complaint of the decision taken and the reason for that decision.*

Further investigative powers are also bestowed to the Authority under **Section 31 of the Police Complaints Authority Act.**

31. (1) *For the purpose of an investigation, the Authority may—*
- (a) *enter and inspect any premises occupied or used by a public body or authority in that capacity;*

(b) inspect any document or other thing in the premises; and (c) take copies of any document in the premises.

(2) A public body or authority shall make available to the Authority such facilities as are necessary to enable the powers conferred by this section to be exercised.

HEARINGS

Just like a tribunal, the Police Complaints Authority also has the discretion to hold hearings.

Sections 34 and 35 of The Police Complaints Authority Act notes:

34. The Authority may hold hearings for the purpose of conducting an investigation.

35. The Authority may hold its hearings in public or in private, or partly in public and partly in private as it considers appropriate.

However, where judicial proceedings are initiated in relation to any complaint that was previously lodged with the Police Complaints Authority, any investigation in light of same ceases until the conclusion of said judicial proceedings.

Section 37 of the Police Complaints Authority Act states:

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37. *Where the subject matter of a complaint or an investigation is the subject matter of judicial proceedings, the Authority shall not commence or continue an investigation pending the final outcome of those proceedings.*

This is one area of the Legislation which may need to be looked at again or revamped because it would appear that the easiest way to put a spoke in the PCA's wheel of Investigation, would be to just initiate Court proceedings in relation to the matter/incident under investigation and the PCA is automatically stymied and prevented from initiating and/or continuing its investigation in respect thereof, pending the hearing and/or determination of the Court Proceedings which could possibly include an Appeal to the Court of Appeal and in extreme cases could also include Appeals to the Judicial Committee of the Privy Council; which as we all know can be decades before a conclusion can be reached. What then happens to a PCA investigation which has to be initiated and/or continued say eight or ten years afterwards? What happens to the Witnesses and their memories and their willingness to come forward after such a long time? What if some have migrated, passed away or gotten seriously ill? What if the Police Officer(s) involved passed away or left the Service during such time? Where then would be the justice or redress for the public, under the provisions of the PCA Act?

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