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Revision Date: 31 Dec 2009



# ST CHRISTOPHER AND NEVIS

## CHAPTER 3.22

### OMBUDSMAN ACT

#### **Revised Edition**

showing the law as at 31 December 2009

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act, Cap. 1.03

This edition contains a consolidation of the following laws:

#### **Ombudsman Act**

**Act No. 18 of 2006 in force 31<sup>st</sup> July 2008**



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## CHAPTER 3.22

### OMBUDSMAN ACT

**AN ACT to provide for the appointment and functions of the Ombudsman, and for related or incidental matters.**

#### *PART I – PRELIMINARY*

**1. Short title.**

This Act may be cited as the Ombudsman Act,

**2. Interpretation.**

(1) In this Act:

“administrative action” means any action taken by or on behalf of an authority in the exercise of its administrative functions and includes

- (a) a decision or an act,
- (b) a failure to make a decision or to do an act, including a failure to provide reasons for a decision,
- (c) a recommendation,
- (d) any action taken because of a recommendation, or
- (e) a failure to make a recommendation;

“authority” means a department or other body to which this Act applies;

“complainant” means a person who makes a complaint under this Act;

“Constitution” means the Saint Christopher and Nevis Constitution Order, 1983;

“maladministration” means inefficient, bad or improper administration and, without derogation from the generality of the foregoing, includes

- (a) unreasonable delay in dealing with the subject matter of an investigation,
- (b) abuse of any power, or
- (c) administrative action that is
  - (i) contrary to law,
  - (ii) unfair, oppressive or discriminatory or based on procedures that are unfair, oppressive or discriminatory,
  - (iii) based wholly or partly on a mistake of law or fact or irrelevant grounds,
  - (iv) related to the application of arbitrary or unreasonable procedures, or

(v) negligent;

“Public Service Commission” means the Public Service Commission established under section 77 of the Constitution;

(2) Any reference in this Act to an authority includes a reference to the officers and employees of that authority.

### **3. Application.**

This Act applies to the following authorities:

- (a) government departments;
- (b) public authorities;
- (c) Government Boards; and
- (d) a corporation or body
  - (i) which is established by an Act of Parliament or in any other manner by a Minister, or
  - (ii) whose revenues derive directly from money provided by Parliament or a fee or charge of any other description authorized by Parliament.

## *PART II – THE OMBUDSMAN*

### **4. Office of Ombudsman.**

(1) The Office of the Ombudsman is hereby established for the purpose of protecting and enforcing the rights of citizens of Saint Christopher and Nevis.

(2) The Ombudsman shall be appointed by the Governor-General after consultation with the Prime Minister and the Leader of the Opposition.

(3) The Office of the Ombudsman shall have an official seal.

### **5. Tenure of office.**

(1) The Ombudsman may hold office until he attains the age of seventy years.

(2) Subject to subsection (1) nothing done by the Ombudsman shall be invalid by reason only that he or she has attained the age of seventy years.

(3) Where by reason of illness, absence from Saint Christopher and Nevis or other sufficient cause a person appointed Ombudsman is unable to perform his or her functions under this Act, he or she may appoint a member of his or her staff to perform those functions for the period not exceeding two months, but if the Ombudsman is unable or fails to appoint such a person or if it is necessary that such a person be appointed for a period in excess of two months, the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, may appoint an appropriate person to perform those functions.

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(4) The Ombudsman may be removed from his or her office only for inability to discharge the functions of his or her office, whether arising from infirmity of body or mind or any other cause, or for misconduct and shall not be removed except in accordance with the provisions of this section.

(5) Where the National Assembly, by resolution, decides that the question of removing the Ombudsman from office ought to be investigated then

- (a) the Governor-General, after consultation with the Prime Minister and Leader of the Opposition, shall appoint a tribunal which shall consist of a chairperson and not less than two other members, from among persons who hold or have held office as a judge; and
- (b) that tribunal shall enquire into the matter and report on the facts to the Governor-General and advise the Governor-General whether the Ombudsman ought to be removed from office for inability to function or for misconduct.

(6) Where the question of removing the Ombudsman from office is referred to a tribunal appointed under subsection (5) and the tribunal advises the Governor-General that the Ombudsman ought to be removed from office, the Governor-General shall, by instrument under his or her Seal, remove the Ombudsman from office.

(7) Where the question of removing the Ombudsman from office is referred to a tribunal under subsection (5), the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, may suspend the Ombudsman from performing the functions of his or her office, and any such suspension may at any time be revoked by the Governor-General and shall in any case cease to have effect if the tribunal advises the Governor-General that the Ombudsman ought not to be removed from office.

## **6. Disqualification.**

(1) A person shall not be qualified for appointment to the office of Ombudsman if he or she

- (a) is a member of the National Assembly;
- (b) is an undischarged bankrupt, or
- (c) has at any time been convicted of any offence involving dishonesty or moral turpitude.

(2) The Ombudsman shall vacate office if any circumstances arise that, if he or she were not Ombudsman, would cause him or her to be disqualified for appointment as such, by virtue of subsection (1).

## **7. Filling of vacancy.**

When a vacancy arises in the office of Ombudsman the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, may designate someone to act in that office during such vacancy, until an appointment is made.

**8. Remuneration of Ombudsman.**

(1) The Ombudsman shall receive such emoluments and be subject to such other terms and conditions of service as may, from time to time, be prescribed by or under any law or by a resolution of the National Assembly, such emoluments being not less than the emoluments which may, from time to time, be payable to a High Court Judge.

(2) The emoluments and terms and conditions of service of the Ombudsman, other than allowances that are not taken into account in computing pensions, shall not be altered to his or her disadvantage during the period of his or her appointment or reappointment, as the case may be.

(3) The emoluments for the time being payable to the Ombudsman under this Act shall be charged on and paid out of the Consolidated Fund.

*PART III – FUNCTIONS OF OMBUDSMAN*

**9. Functions and jurisdiction.**

(1) The functions of the Ombudsman are:

- (a) to investigate any administrative action of an authority for the purpose of deciding whether there is evidence of maladministration on the part of the authority;
- (b) to make recommendations, pursuant to an investigation, to the authority concerning any administrative action that formed the subject of the investigation and, generally, about ways of improving its administrative practices and procedures; and
- (c) to perform such other functions as may be conferred on him or her under this Act.

(2) Subject to this Act, the Ombudsman may investigate any administrative action taken by or on behalf of an authority

- (a) where a complaint is made to him or her by a person who claims to have been treated unjustly as a result of maladministration arising from or in connection with the administrative action taken by the authority; or
- (b) on his or her own motion, notwithstanding that no complaint has been made to him or her, where he or she is satisfied that there are reasonable grounds to carry out an investigation in the public interest.

(3) The Ombudsman may conduct an investigation notwithstanding a provision in an enactment to the effect that

- (a) any decision, recommendation or act of an authority shall be final;
- (b) no appeal shall lie in respect of any decision, recommendation or act of an authority; or
- (c) no proceeding of an authority shall be challenged, reviewed, quashed or called in question.



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(4) If a question arises about the jurisdiction of the Ombudsman to investigate a case, the Ombudsman or complainant may apply to the Court for an order declaratory of the Ombudsman's jurisdiction.

#### **10. Restrictions on jurisdiction to investigate.**

(1) Where there is under any enactment a right of appeal or objection to a tribunal or a right to apply to a Court for a remedy in respect of administrative action taken by an authority, the Ombudsman shall not investigate such action:

- (a) until after that right of appeal, objection or application has been exercised and determined; or
- (b) until after the time for the exercise of that right of appeal, objection or application has expired.

(2) Notwithstanding subsection (1), the Ombudsman may investigate any administrative action of an authority in circumstances where the complainant has or had such right or remedy, if he or she is satisfied that in the particular circumstances it is not reasonable to expect the person to resort or to have resorted to it.

(3) This Act does not authorize the Ombudsman to undertake any investigation that relates to any action or matter specified in the First Schedule.

(4) The Governor-General may, by order subject to affirmative resolution, amend the First Schedule.

#### **11. Making a complaint.**

(1) A complaint to the Ombudsman about any administrative action of an authority

- (a) shall be made by the person aggrieved, but may be made on his or her behalf by a member of his or her family or other suitable person if the person by whom the complaint might have been made is unable to act for himself or herself;
- (b) may be made orally, electronically or in writing; and
- (c) shall be made within one year after the day the complainant first had notice of the administrative action.

(2) Where a complaint is made to the Ombudsman, he or she shall record

- (a) the complainant's name, address and telephone number;
- (b) the subject matter of the complaint; and
- (c) the date when the complaint was made.

(3) Where a person who is detained in custody or otherwise confined in an institution informs the person in charge or another person performing duties in connection with his or her detention or confinement, that he or she wishes to make a complaint to the Ombudsman, the person so informed:

- (a) shall take all steps necessary to facilitate the making of the complaint including the provision of an unsealed envelope; and

- (b) without delay, shall send the complaint of the person in a sealed envelope to the Ombudsman.

(4) A communication from the Ombudsman to a person confined or in custody as described in subsection (3) shall be forwarded to that person in a sealed envelope.

(5) The Ombudsman shall write to a complainant acknowledging receipt of the complaint.

## **12. Register.**

Where the Ombudsman investigates a complaint he or she shall cause to be recorded in a register kept for the purpose

- (a) the name of the complainant;
- (b) the subject-matter of the complaint and date; and
- (c) on the conclusion of the investigation, the Ombudsman's decision respecting the complaint,

and any person may, on payment of such fees as may be prescribed, inspect any register kept pursuant to this section during the hours and on the days of business of the Ombudsman.

## **13. Preliminary inquiries.**

For the purpose of determining whether to undertake an investigation, the Ombudsman may conduct such preliminary inquiries as are appropriate.

## **14. Decision not to investigate.**

(1) The Ombudsman may decide not to investigate a complaint if he or she is satisfied that

- (a) the complainant knew of the administrative action complained against more than one year before the date when the Ombudsman received the complaint;
- (b) the law or existing administrative procedure provides a remedy adequate in the circumstances for the complainant and, if the complainant has not availed himself or herself of the remedy, there is no reasonable justification for the failure to do so; or
- (c) the complaint is frivolous, vexatious or not made in good faith.

(2) The Ombudsman may decide not to further investigate a complaint if:

- (a) the complainant has abandoned the complaint by failing to
  - (i) advise the Ombudsman of a current address or a telephone number at which the Ombudsman can contact him or her; or
  - (ii) respond after a reasonable number of attempts by the Ombudsman to contact him or her;
- (b) the complainant withdraws the complaint; or
- (c) the complaint is settled or is successfully dealt with by mediation.

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(3) Where the Ombudsman decides not to investigate or further investigate a complaint, he or she shall notify the complainant and the authority of his or her decision and give reasons in writing for the decision.

#### **15. Mediation.**

(1) The Ombudsman may decide to deal with a complaint by mediation under this section if, having regard to all the circumstances of the case, mediation is suitable in such circumstances.

(2) The Ombudsman may authorize any person appointed under section 24 as a mediator in any mediation.

(3) Participation in the mediation by the authority that is the subject of the investigation and the complainant is voluntary, and any party may withdraw at any time.

(4) The mediator may decide to terminate the mediation at any time and, where he or she does so, he or she shall give reasons for the decision.

(5) If an attempt to deal with a complaint by mediation under this section is unsuccessful

- (a) the complainant is to be treated under this Act as if the mediation had not taken place; and
- (b) the mediator is excluded from participating as an investigating officer in any subsequent investigation of the complaint.

(6) Anything said or admitted during the mediation and any document prepared for the purposes of such mediation shall not be admissible in evidence:

- (a) in any subsequent investigation of the complaint that is the subject of the investigation unless the person who said or admitted the thing, or to whom the document related, consents to its admission; and
- (b) against any person in any court or at any inquiry or in any other proceedings,

and no evidence in respect of the mediation may be given against any person.

#### **16. Notice of intention to investigate.**

(1) If the Ombudsman decides to conduct an investigation he or she shall, before commencing the investigation, give a senior officer of the authority that is the subject of the complaint and the complainant notice, in writing, in which notice the Ombudsman shall

- (a) inform the senior officer and the complainant of the Ombudsman's intention to conduct the investigation;
- (b) identify the administrative action that forms the subject of the investigation; and
- (c) inform the senior officer and complainant in general terms of the Ombudsman's powers in respect of an investigation.

*PART IV – PROCESS OF INVESTIGATION***17. Investigation.**

(1) Every investigation by the Ombudsman shall be conducted in private.

(2) When conducting an investigation, the Ombudsman

- (a) shall not be bound by the rules of evidence but shall comply with the rules of natural justice;
- (b) may obtain information from such persons, and in such manner as appropriate;
- (c) may make such inquiries as are appropriate; and
- (d) may, on giving reasonable notice to a senior officer in the authority which is the subject of the investigation and at any reasonable time:
  - (i) enter upon any premises occupied by the authority and inspect the premises; and
  - (ii) subject to section 10, carry out therein any investigation which is within his or her jurisdiction.

(3) If, during the course of an investigation or thereafter there is evidence of any breach of duty or misconduct on the part of any officer or employee of any authority, or of an offence, the Ombudsman shall refer the matter to Parliament for further consideration.

(4) Where the Ombudsman makes a reference to Parliament under subsection (3), proceedings under this Act with respect to any investigation are stayed pending consideration of the matter by Parliament.

(5) Subject to the provisions of this Act, the Ombudsman may regulate investigations and proceedings under this Act in such manner as are appropriate.

**18. Procedure in respect of investigations.**

(1) Where the Ombudsman proposes to conduct any investigation under this Act, he or she shall give to the specified officers an opportunity to comment in writing on any allegations relating to such action; and for the purposes of this subsection “specified officers” means, in relation to an allegation:

- (a) the principal officer of the authority; and
- (b) any other officer who is alleged to have done or authorized the action.

(2) The Ombudsman may adopt any procedure that is appropriate to the circumstances of a particular case and, subject to the provisions of this Act, may obtain information from such persons and in such manner, and make such enquiries as are appropriate.

(3) Nothing in this Act shall be construed as requiring the Ombudsman to hold any hearing, and except as provided by subsection (1) and (5) of this section, no person shall be entitled as of right to comment on any allegations or to be heard by the Ombudsman.

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(4) Regulations made under this Act may prescribe the procedure to be adopted at any hearing and such procedure may include provisions to ensure that any communication as is mentioned in section 20 is not disclosed at that hearing.

(5) If it appears to the Ombudsman during the course of an investigation, that there are sufficient grounds for making a report or recommendation that may adversely affect any person, he or she shall give that person an opportunity to be heard and that person may, if he or she wishes, be represented at that hearing by an attorney-at-law or any other person.

(6) After conducting an investigation, the Ombudsman shall inform the principal officer of the authority concerned of the result of that investigation, and if:

- (a) the complainant has sustained injustice as a consequence of a fault in the administration of that authority; or
- (b) the complainant's constitutional rights have been, are being or are likely to be infringed as a result of any action taken by the authority,

the Ombudsman shall inform such officer of the reason for this finding and may make recommendations for action to be taken by that authority within a specified time.

(7) Where the Ombudsman makes a recommendation under subsection (6) and within the time specified, or a reasonable time thereafter, no adequate action has been taken to remedy the injustice or infringement, he or she shall lay before Parliament a special report on the case.

(8) The Ombudsman shall not, in any report under subsection (7), comment adversely on any person unless he or she has given that person an opportunity to be heard.

(9) Where

- (a) the complainant has suffered injustice or an infringement as mentioned in subsection 6, the Ombudsman shall inform the complainant of that finding, the nature of the injustice or the infringement and the recommendations, if any, which have been made to remedy the injustice or infringement, and may make such comments in relation to the case as are appropriate;
- (b) the complainant has not suffered injustice or an infringement, the Ombudsman shall inform the complainant of that finding and the reasons for that finding and may make such comments in relation to the case as are appropriate.

(10) On the conclusion of an investigation, the Ombudsman may make recommendations to the authority concerned and in particular, but without prejudice to the generality of the foregoing, may recommend any or all of the following:

- (a) that the action which was the subject-matter of the complaint be reviewed;
- (b) the alteration of an enactment, rule or regulation which causes or may cause injustice or infringement of constitutional rights;
- (c) that compensation be made to the complainant.

(11) If the Ombudsman finds, during the conduct of his or her investigations or on the conclusion thereof, that there is evidence of a breach of duty, misconduct, or criminal offence on the part of an officer or member of any authority, he or she shall refer the matter to the person or body of persons competent to take such disciplinary or other proceedings as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.

## **19. Evidence.**

(1) The Ombudsman may, for the purpose of an investigation:

- (a) require any officer or member of the authority that is the subject of an investigation, the complainant or any other person who is able to provide information or produce documents relevant to the investigation, to give such information or produce such documents; and
- (b) may summon before him or her and examine on oath or affirmation any person referred to in paragraph (a).

(2) For the purposes of investigation, the Ombudsman shall have the same powers as the Court in so far as those powers relate to the attendance and examination of persons, including the administration of oaths or affirmation, and in respect of the production of documents.

(3) The Ombudsman shall not require:

- (a) any person to furnish any information or answer any question
  - (i) relating to proceedings or deliberations of Cabinet or any committee of Cabinet;
  - (ii) that might prejudice the security, defence or international relations of Saint Christopher and Nevis; or
  - (iii) that might prejudice the investigation or detection of offences;
- (b) any person to produce so much of any document as relates to such proceedings or that might prejudice the matters mentioned in paragraph (a);
- (c) any Minister or Junior Minister to furnish any information or answer any question.

(4) For the purposes of subsection (3) (a) (i) a certificate by the Cabinet Secretary, with the approval of the Prime Minister, certifying that any information, question, document or part of a document so relates, shall be conclusive.

## **20. Restriction on disclosure of certain matters.**

(1) Where the Cabinet Secretary at the direction of Cabinet:

- (a) gives notice that the disclosure by the Ombudsman of any document or information specified in the notice, or any class of document or information so specified, would

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- (i) involve the disclosure or the deliberations or proceedings of Cabinet or any committee, relating to matters of a secret or confidential nature and is likely to be injurious to the public interest; or
- (ii) prejudice the relations of Saint Christopher and Nevis with the government of any other country, or with any international organization; or
- (iii) prejudice the detection of offences;

the Ombudsman or any member of his or her staff shall not communicate to any person for any purpose any document or information specified in the notice, or any document or information of a class so specified;

- (b) certifies that the giving of any information or the answering of any question or production of any document or thing would prejudice the security or defence of Saint Christopher and Nevis, the Ombudsman shall not further require such information or answer to be given or such document or thing to be produced.

(2) Except as provided under subsection (1), no law which authorizes or requires the refusal to answer any question or the withholding of any information or document or thing on the ground that the answering of the question or the disclosure of the information, document or thing would be injurious to the public interest, shall apply in respect of any investigation by or proceedings before the Ombudsman.

## **21. Protection and privileges of witnesses.**

(1) A person shall have the same privileges in relation to the giving of information to the Ombudsman, the answering of questions put by the Ombudsman, and the production of documents and things to the Ombudsman, as witnesses have in Court.

(2) Compliance with any requirement of the Ombudsman under section 9:

- (a) is not a breach of any relevant obligation of secrecy or non-disclosure, or of the enactment or provision by which that obligation is imposed; and
- (b) no person shall be liable to prosecution for an offence against any enactment by reason only of that person's compliance with any requirement of the Ombudsman under that section.

(3) Except in proceedings for perjury in respect of sworn testimony given by a person before the Ombudsman or for an offence against section 34:

- (a) no statement made or answer given by any person in the course of any investigation by or proceedings before the Ombudsman shall be admissible in evidence against that person or any other person in any court or in any inquiry or other proceeding; and
- (b) no evidence in respect of proceedings before the Ombudsman shall be given against any person.

- (4) No person shall discriminate against another person because that other person
- (a) complains, gives evidence or otherwise assists with the inquiry, investigation or reporting of a complaint or other proceedings under this Act; or
  - (b) discloses information to the Ombudsman about suspected maladministration on the part of an authority.

(5) Where the Ombudsman has reasonable grounds for believing that any person has contravened subsection (4), he or she may, with the consent of the person aggrieved, refer the matter to Parliament.

#### *PART V – AFTER THE INVESTIGATION*

### **22. Procedure after investigation.**

(1) If, at the conclusion of an investigation, the Ombudsman determines that there is no evidence of maladministration on the part of the authority that is the subject of the investigation, he or she shall record his or her decision and the reasons in writing and, as soon as is reasonable, notify both the complainant and the authority.

(2) The Ombudsman may indicate with the notification under subsection (1) any other recourse that may be available to the complainant.

(3) If, at the conclusion of an investigation, the Ombudsman decides that there is evidence of maladministration on the part of the authority, the Ombudsman shall report his or her decision to the authority and the complainant and make such recommendations to the authority as are appropriate.

- (4) Without restricting subsection (3), the Ombudsman may recommend that
- (a) a matter should be referred to an authority for further consideration;
  - (b) an omission or a delay should be rectified;
  - (c) a decision or recommendation should be cancelled or altered;
  - (d) reasons should be given;
  - (e) a practice, procedure or course of conduct should be altered; or
  - (f) an enactment should be reviewed.

### **23. Authority to notify Ombudsman of steps taken**

(1) Where the Ombudsman makes a recommendation to an authority under section 22 (3):

- (a) the authority shall notify the Ombudsman, in writing, within twenty business days of receipt of the recommendation, of the action that has been taken or is proposed to give effect to the recommendation;
- (b) the authority shall, where it has taken no action within twenty business days of receipt of the recommendation or does not propose to take any action, give reasons, in writing, for failure to implement the recommendation.



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(2) The Ombudsman may, in writing, extend the time period specified in subsection (1), based on the circumstances of a particular investigation.

(3) If within the time period specified in this section, the authority:

- (a) fails to notify the Ombudsman of the action that has been taken or is proposed; or
- (b) has taken
  - (i) no action; or
  - (ii) action that is inadequate or inappropriate,

the Ombudsman, after considering any reasons given by the authority, may submit a special report under section 32 (2).

#### *PART VI – STAFF OF OFFICE OF OMBUDSMAN*

#### **24. Staff.**

(1) Without prejudice to subsection (2), there shall be appointed such number of public officers as may be required to assist the Ombudsman in the discharge of his or her functions.

(2) The Ombudsman may, in addition, engage from time to time such technical or professional advisers as are necessary to assist in the discharge of his or her functions.

(3) Every person appointed under this section is subject to the Ombudsman's direction and control in the performance of functions under this Act.

#### **25. Delegation.**

(1) Subject to subsection (2), anything that is to be done by the Ombudsman, may be done by a duly authorized member of his or her staff.

(2) The delegation of the Ombudsman's functions provided for by subsection (1) does not extend to the expression of an opinion on any accounts, or to the signing or submission of any report under section 32.

#### **26. Confidentiality.**

(1) The Ombudsman and every person concerned with the administration of this Act shall regard as secret and confidential all documents, information and matters disclosed to them in the execution of any of the provisions of this Act, except that no disclosure:

- (a) made by the Ombudsman or any person in proceedings for an offence under section 34;
- (b) which is necessary in the discharge of his or her functions and for the purpose of executing the provisions of section 18 and section 32,

shall be deemed inconsistent with any duty imposed by this subsection.

(2) The Ombudsman shall not be called upon to give evidence in respect of, or produce any document, information or thing, in any proceedings other than proceedings mentioned in subsection (1).

**27. Oath.**

Every person appointed to the staff of the Ombudsman shall, before he or she performs any function assigned to him or her under or by virtue of this Act, take and subscribe an oath to be administered by the Ombudsman, in the form set out in the Second Schedule.

*PART VII – MISCELLANEOUS***28. Adverse comments.**

(1) The Ombudsman shall not:

- (a) in any recommendation given under section 22 (3); or
- (b) in any report made under section 32,

make any statement that is adverse of any authority or person unless that person has first been given an opportunity to be heard.

(2) A person to whom subsection (1) applies may be represented at the hearing by a barrister, attorney or any other person.

**29. Privilege**

(1) No proceedings, civil or criminal, shall lie against the Ombudsman or any person appointed under section 24 in respect of anything done or omitted to be done or reported or said in the performance or intended performance of their functions under this Act unless it is shown that the Ombudsman or person acted in bad faith.

(2) Neither the Ombudsman or any person appointed under section 24 shall be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to their knowledge in the exercise of their functions under this section.

(3) Anything said or any information given or any document or thing produced by a person in the course of an investigation or proceedings before the Ombudsman shall be privileged, in the same manner as if the investigation or proceedings were proceedings in the court.

**30. Protection of title.**

No person other than the person appointed as the Ombudsman may:

- (a) use the title “Ombudsman”; or
- (b) hold himself or herself out to be the Ombudsman.

**31. Accounts.**

(1) All salaries, allowances and expenditures payable or incurred under this Act, shall be paid out of the Consolidated Fund.

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(2) The Ombudsman shall be designated as controlling officer in respect of estimates of expenditure approved in relation to the office of Ombudsman.

(3) The Ombudsman shall cause proper accounts to be kept and maintained of all the financial transactions with respect to the office of the Ombudsman and shall prepare in respect of each financial year, a statement of such accounts in such form as the Accountant General may direct.

(4) The accounts of the Ombudsman shall be audited and reported on annually, by the Auditor General, and for that purpose the Auditor General or any person authorized by him or her in that behalf shall have access to all books, records, returns and other documents relating to such accounts.

### **32. Reports.**

(1) The Ombudsman shall, as soon as practicable and in any case within six months after the end of each year, prepare a report on the performance of his or her functions under this Act during the year.

(2) Where:

- (a) any administrative action that is under investigation is of public interest; or
- (b) the Ombudsman has made a recommendation under section 22 (3), and within the period specified no action or no adequate action has been taken by the authority to remedy the administrative action complained against,

then the Ombudsman may prepare a special report on the investigation.

(3) The Ombudsman shall address and deliver his or her annual report and any special report made under this section to the Speaker of the National Assembly, and send a copy of the report to the Governor-General.

(4) Where any part of a report deals with any matter concerning an authority for which a Minister is charged with responsibility, the Ombudsman shall also send copies of that part or those parts of the report to that Minister for his or her information.

### **33. Obstruction and contempt.**

(1) If any person, without lawful excuse

- (a) obstructs the Ombudsman in the performance of his or her functions under this Act; or
- (b) does any act or makes any omission in relation to an inquiry or investigation under this Act which, if that inquiry or investigation were proceeding in the Court, would constitute the offence of contempt of Court,

that person commits the offence of contempt under this Act.

(2) Where a person commits an offence under subsection (1), the Ombudsman may refer the matter to the Court.

(3) After hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, the Court may treat the person charged in the same manner as if he or she had committed the like offence in relation to the Court.

**34. Offences.**

(1) A person commits an offence if he or she does any of the following:

- (a) makes a false statement to mislead the Ombudsman or another person in the exercise of any function or power conferred by this Act; or
- (b) discloses information or documents in contravention of section 20.

(2) Any person who commits an offence contrary to subsection (1) is liable, on summary conviction, to a fine not exceeding one thousand dollars.

**35. Remedy under any provision of law unaffected.**

Nothing in this Act shall be construed as limiting or affecting any remedy or right of appeal, objection or procedure given to any person by any other provision of law.

**36. Regulations.**

The Ombudsman, with the consent of the Governor-General, may make regulations to provide for any matter which is or may be prescribed by this Act and for any other matter in respect of which it may be necessary or desirable to make regulations for the better carrying into effect of the provisions of this Act.

**37. Transitional.**

Any complaint or other proceedings in respect of administrative action of an authority to which this Act applies that was filed before the commencement of this Act shall be dealt with under the procedures in operation on the date the matter or proceeding was filed.

**FIRST SCHEDULE**

(Section 10)

**Actions not subject to investigation**

1. Administrative action which, by virtue of any provision of the Constitution, may not be inquired into by any court.
2. Any administrative action taken by Cabinet or by a Minister or a Junior Minister.
3. Administrative action taken for the purpose of investigating crime or protecting the security of Saint Christopher and Nevis.
4. The commencement or conduct of any proceedings, whether civil or criminal, before a court of law or tribunal in Saint Christopher and Nevis, including any decision whether or not to prosecute any person for an offence.

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**Revision Date: 31 Dec 2009**

5. Any Administrative action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matter in relation to service in any office or employment in the public service or under any authority.

## **SECOND SCHEDULE**

(Section 27)

*Oath to be taken by persons on the staff of the office of the Ombudsman*

I....., do swear (solemnly affirm) that I will faithfully perform any functions assigned to me under the Ombudsman Act, and I will not, on any account, at any time whatsoever, except in so far as provisions of the Act authorize, directly or indirectly reveal any information or the nature or contents of any documents communicated to me in the performance of any functions assigned to me by virtue of the Act. So help me God.