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GRENADA

ACT NO. 24 OF 2007



I assent,

14th September, 2007.

DANIEL CHARLES WILLIAMS
Governor-General.

AN ACT to provide for the appointment of an Ombudsman with power to investigate the administrative actions taken by or on behalf of the Government and other authorities, and for other purposes connected therewith.

[21st September, 2007].

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Senate and House of Representatives and by the authority of the same as follows—

PART I

PRELIMINARY

1. This Act may be cited as the

Short title.

OMBUDSMAN ACT, 2007.

2.—(1) In this Act —

Interpretation.

“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 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;

“complainant” means a person who makes a complaint pursuant to Section 20;

“Court” means the High Court;

“emoluments” means salary, allowances and fees;

“functions” includes duties and powers;

“Government” means the Government of Grenada;

“investigation” means an investigation carried out pursuant to the provisions of this Act;

“mal-administration” 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;

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- (b) abuse of power, including any discretionary power; or
 - (c) administrative action that was—
 - (i) contrary to law;
 - (ii) unfair, oppressive, 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 authority” means—

- (a) a corporation established by an Act of Parliament for the purpose of providing a public function and subsidiary company thereof registered pursuant to the provisions of the Companies Act;
- (b) a Department or Ministry of the Government;
- (c) any body, board, commission, committee or other similar body providing a public function;

“public function” means any activity performed a single time or continually, whether or not payment is received for it, and which is carried out by—

- (a) a person for or on behalf of or under the direction of a Ministry, Department of Government, a statutory body, local government authority or a government company;
- (b) a body, whether public or private providing public utilities including the provision of water, electricity or communications;

“public office and public service” shall have the meaning assigned to them respectively pursuant to section 111 of the Constitution;

“Public Service Commission” means the Public Service Commission established pursuant to section 83 of the Constitution;

(2) The references in this Act to a Ministry, Department or Agency of Government shall include references to the Minister, Minister of State, members or officers of that Ministry, Department or Agency or any other person acting on behalf of such person or persons in the exercise or performance of a function conferred on such person or persons pursuant to any law in force in Grenada.

Application
of Act.

3.—(1) This Act shall apply to all public authorities.

PART II

ESTABLISHMENT OF OFFICE OF OMBUDSMAN

4.—(1) There shall be an Ombudsman for Grenada who shall be appointed by the Governor-General on the recommendation of the Prime Minister and the Leader of the Opposition.

Office of the
Ombudsman.

(2) A person appointed as Ombudsman shall be a person of high integrity, capable of exercising diligence, sound judgment, confidentiality and impartiality in fulfilling his or her duties pursuant to the provisions of this Act.

(3) Notwithstanding anything to the contrary contained in this Act, the Office of the Ombudsman shall not be deemed to be an office in the public service.

Tenure of office.

5.—(1) Subject to the provisions of this section, a person appointed as Ombudsman shall hold office for a period not exceeding five years and shall, at the expiration of such period, be eligible for reappointment.

(2) A person appointed as Ombudsman pursuant to subsection (1) may on his or her own request be relieved of his or her office by the Governor-General and shall in any case, subject to the provisions of subsections (3) and (4), vacate office on attaining the age of sixty five years.

(3) The Governor-General acting on the recommendations of the Prime Minister and the Leader of the Opposition, may permit an Ombudsman who attains the age of sixty five years to continue in office until he or she has attained such later age not exceeding seventy years, as may be agreed between them.

(4) Notwithstanding that the Ombudsman has attained the age required by or under the provisions of this section to vacate his or her office, the Ombudsman may continue in office for such period after attaining the age of sixty five as the Governor-General, acting on the recommendation of the Prime Minister and the Leader of the Opposition may specify in order to enable the Ombudsman to give his or her decision or do any other thing in relation to any investigation he or she was conducting before he or she attained that age.

(5) Nothing done by the Ombudsman shall be invalid by reason only that he or she has attained the age at which he or she is required by this section to vacate office.

Removal from
office.

6.—(1) The Ombudsman may be removed from 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 misbehaviour, and shall not be removed except in accordance with the provisions of subsection (2).

(2) Subject to subsection (3), the Ombudsman shall be removed from office by the Governor-General, if the question of his or her removal has been referred to the Advisory Council appointed pursuant to subsection (3) and the Advisory Council has recommended to the Governor-General that the Ombudsman ought to be removed from office pursuant to the provisions of subsection (1).

(3) Where the Governor-General, acting on the advice of the Prime Minister and the Leader of the Opposition, considers the question of removing the Ombudsman from office in accordance with the provisions of this section, the Governor-General shall appoint an Advisory Council which shall consist of the following persons —

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- (a) a Judge of the High Court;
 - (b) The Senior Magistrate; and
 - (c) an Attorney-at-Law of at least seven years standing.

(4) The Advisory Council shall inquire into the matter and report on the facts to the Governor-General and advise the Governor-General as to whether the Ombudsman ought to be removed pursuant to this section.

(5) If the question of removing the Ombudsman from office has been referred to the Advisory Council, the Governor-General 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 Advisory Council advises the Governor-General that the Ombudsman ought not to be removed from office.

(6) The Advisory Council shall give the Ombudsman an opportunity to show cause as to why he or she should not be removed from office.

7.—(1) A person shall not be qualified for appointment to the Office of Ombudsman if he or she—

Disqualifications
of appointment.

- (a) is a member of the House of Representatives or the Senate;
- (b) is a public officer;
- (c) is an undischarged bankrupt; or
- (d) has at any time been convicted of an 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) of this section.

(3) A person appointed as an Ombudsman shall be a full time officer and—

- (a) shall not be employed in any other capacity during any period in which he or she holds office as Ombudsman; and
- (b) shall not at any time after he or she has ceased to hold office as Ombudsman, be eligible for appointment in the public service.

Resignation.

8. The Ombudsman may resign his or her office in writing signed by him or her and delivered to the Governor-General and upon receipt of his or her resignation by the Governor-General, he or she shall be deemed to have vacated his or her office.

Filling of
vacancy.

9.—(1) If the Ombudsman dies or resigns from office or is removed from office in accordance with the provisions of this Act, the Governor-General acting on the recommendation of the Prime Minister and the Leader of the Opposition shall designate a person to act in that office during such vacancy until a substantive appointment is made.

Acting
Appointment.

10.—(1) Subject to subsection 2, the Governor-General acting on the advice of the Prime Minister after consultation with the Leader of the Opposition, may appoint a person to act in the office of Ombudsman during—

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- (a) a period, or during all periods when the person holding the office is absent from duty or from Grenada or is, for any other reason unable to perform the duties of his or her office;
 - (b) the suspension from office of the person holding the office; or
 - (c) a vacancy in the office,

until a substantive appointment is made.

(2) The appointment of a person pursuant to subsection (1) to act in the Office of the Ombudsman shall not prevent a subsequent appointment of that person or another person in accordance with this section.

(3) The Governor-General may at any time, terminate an appointment under this section.

(4) A person appointed to act in the Office of Ombudsman during a vacancy in office shall not continue so to act for a period exceeding twelve months.

(5) Where a person is acting in the office of the Ombudsman in pursuance of an appointment under this section, he or she has, and may exercise, all the powers, and he or she may perform all the functions, of the holder of that office pursuant to the provisions of this Act.

11.—(1) Subject to subsection (2), the Ombudsman shall receive such emoluments and may 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 resolution of Parliament, such emoluments being not less than the emoluments which may, from time to time, be payable to a Puisne Judge.

Remuneration of
Ombudsman.

(2) The emoluments and terms of 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 re-appointment, as the case may be.

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

Pensions and gratuities.

12. Ombudsman shall receive such provisions and other benefits on retirement as may be prescribed.

Oath of office.

13.—(1) Before first entering upon the exercise of the office of the Ombudsman, the Ombudsman and an acting Ombudsman shall each take an oath or make an affirmation as provided for in Schedule I that he or she will faithfully and impartially perform the duties of the office, and that he or she will not, except for the purposes of carrying out or giving effect to the provisions of this Act, divulge any information received by him or her under this Act.

(2) An oath taken or affirmation made pursuant to subsection (1) shall be administered by a judge.

Appointment of officers.

14.—(1) The Ombudsman may appoint and employ for the purposes of this Act, on such remunerations and on such terms and conditions as may be approved by the House of Representatives such officers and agents as may be considered necessary to assist him or her in the proper performance of his or her functions under the Act.

(2) Without prejudice to subsection (3), the Public Service Commission, may subject to such conditions as may be imposed, approve the transfer of an officer in the public service to the office of the Ombudsman, provided that in

relation to pension, gratuity, allowances and other rights as a public officer such officer shall be deemed to be in the public service while so employed.

(3) The Ombudsman may in the conduct of an investigation, engage from time to time such technical or professional advisers as he or she considers necessary to assist him or her in the discharge of his or her functions.

(4) A person transferred pursuant to subsection (1) and a person engaged pursuant to subsection (2) shall, before commencing duties, take an oath before the Ombudsman not to divulge any information received pursuant to the provisions of this Act, save and except if permitted by this Act.

(5) Every person appointed pursuant to the provisions of this section shall be subject to the direction and control of the Ombudsman in the performance of his or her functions.

15.—(1) The Ombudsman may, by instrument in writing ^{Delegation.} delegate to a duly authorized member of staff of the office of the Ombudsman, any of his or her powers pursuant to the provisions of this Act, save and except his power of delegation and the powers conferred on him or her under this Act.

(2) A power so delegated may be exercised by the delegate in accordance with the instrument of delegation.

(3) A delegate shall, upon request by a person affected by the exercise of any power delegated to him or her, produce the instrument of delegation, or a copy of the instrument, for inspection.

(4) A delegation under this section is revocable by the Ombudsman at will and shall not prevent the exercise of a power delegated under this Act by the Ombudsman.

Secrecy of
information.

16.—(1) The Ombudsman and every person appointed pursuant to section 14 shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions and shall not communicate any such matter to any other person save and except for the purpose of carrying out functions under this Act.

(2) Information or documents obtained by the Ombudsman or persons engaged or employed pursuant to section 14 in the course of an inquiry or investigation shall not be disclosed except for the purpose of—

- (a) a reference to an authority pursuant to section 28; or
- (b) a report to Parliament pursuant to section 32; or
- (c) proceedings pursuant to section 35.

Privilege.

17.—(1) No proceedings, civil or criminal, shall lie against the Ombudsman or any person appointed pursuant to section 14 in respect of anything done or omitted to be done or reported or said in the performance or intended performance of their functions pursuant to this Act unless it is shown that the Ombudsman or the person acted in bad faith.

(2) Neither the Ombudsman or any person appointed under section 14 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 the Act.

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

18. No person, other than the person for the time being appointed as Ombudsman may—

Protection of title.

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

19.—(1) Subject to the provisions of this section the Ombudsman shall be responsible for approving the level of capital equipment, furnishings, materials and administrative activities for the carrying out of the functions, powers and duties under this Act.

Funding and accounts.

(2) The finance required for the salary and allowances of the Ombudsman, and for the resources described in section 14 and subsection (1) and for this section shall not exceed a maximum amount indicated in an Ombudsman plan approved by the House of Representatives and shall be a charge on the Consolidated Fund without any further appropriation other than this Act.

Provided that the Ombudsman shall present to the House of Representatives by the 15th day of September of each year, an Ombudsman plan which will indicate the activities for the ensuing year.

(3) The accounts of the Office of the Ombudsman shall be audited by the Director of Audit, and the provisions of the Finance and Audit Act shall apply.

PART III

FUNCTIONS OF THE OMBUDSMAN

Functions and
jurisdiction.

20.—(1) The functions of the Ombudsman are as follows—

- (a) subject to subsection (2), to investigate any administrative action of a public authority for the purpose of deciding whether there is evidence of mal-administration on the part of the public authority; or whether any person or body of persons has or may have sustained injustice, injury or abuse as a result of any action taken by public authority or an officer or a member of such public authority;
- (b) pursuant to an investigation, to make recommendations to the public authority concerning any administrative action that formed the subject of the investigation and, generally, about the ways of improving its administrative practices and procedures; and
- (c) to perform such other functions as may be conferred on him or her pursuant to the provisions of this Act.

(2) Subject to the provisions of this Act, the Ombudsman may investigate any administrative action taken by or on behalf of a public 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 mal-administration arising from or in connection with the administrative action taken by the public authority;

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- (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's interest.

(3) The Ombudsman shall not investigate any matter or action which arose or took place more than ten years prior to the commencement of this Act.

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

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

(5) The expression “abuse” as used in subsection (1) above shall include any act of dishonesty or refusal to act and any act motivated by discrimination based on religion, language, race, sex, colour, creed, disability or infirmity.

(6) Subject to the provisions of subsection (7), the Ombudsman shall not investigate—

- (a) any such action aforesaid in respect of which the complainant has already sought a remedy by way of proceedings in any court or in any tribunal constituted by or under any law;

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- (b) any such action or matters as are described in Schedule II; or
 - (c) the exercise of the powers conferred on the Governor-General pursuant to section 72 of the Constitution which relates to the prerogative of mercy.

(7) The Ombudsman shall not be precluded from conducting an investigation in respect of any matter by reason only that it is open to the complainant to apply to the court for redress pursuant to section 16 of the Constitution, which relates to redress for contravention of the provisions for the protection of fundamental rights and freedoms.

(8) If any question arises as to whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act, he or she may apply to the Court for a declaration determining that question.

(9) The fact that an action is commenced in any court in connection with a matter under investigation by the Ombudsman shall not, unless the court otherwise directs, preclude such investigation.

Initiation of
investigation.

21. An investigation pursuant to section 20 may be undertaken by the Ombudsman on his or her own initiative or on a complaint made to him or her pursuant to section 22.

Making of
complaint.

22.—(1) A complaint to the Ombudsman about any administrative action of a public authority—

- (a) shall be made by an aggrieved person, but may be made on his or her behalf by a member of his family or other suitable person to act for himself or herself;

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- (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 the complaint is made to the Ombudsman, he or she shall record—

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

(3) The provisions of any law now or hereafter in force in Grenada prohibiting or restricting or authorizing or requiring the imposition of prohibitions or restrictions on communication between any person and any other person shall not apply to any communication between any person and the Ombudsman for the purpose of making a complaint under this Act and any person having the right or being under a duty to keep in custody or to detain in any place a person who desires to make a complaint under this Act shall take the necessary steps to facilitate the making of the complaint.

(4) A person who is in custody, including on remand, shall be entitled—

- (a) on making a request to the person in whose custody he or she is detained or to any other person performing duties in connection with his or her detention to—

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- (i) be provided with facilities for preparing a complaint in writing pursuant to this Act for furnishing to the Ombudsman and after the complaint has been made, any other relevant information and for enclosing the complaint or other information, if any, in a sealed envelope;
 - (ii) have sent to the Ombudsman, without undue delay, a sealed envelope delivered by him or her to any such person and addressed to the Ombudsman; and
- (b) to have delivered to him or her, without undue delay, any sealed envelope, addressed to him or her and sent by the Ombudsman, that comes in the possession or under the control of the person in whose custody he or she is detained or of any other person performing duties in connection with his or her detention.

(5) Where a sealed envelope addressed to the Ombudsman is delivered by a person detained in custody to a person referred to in subsection (4) for sending to the Ombudsman, or a sealed envelope addressed to a person so detained and sent by the Ombudsman comes into the possession or under the control of a person referred to in that subsection, neither the person in whose custody the first mentioned person is detained nor any other person performing duties in connection with his or her detention shall be entitled to open the envelope or to inspect any document enclosed in the envelope.

(6) For the purposes of subsections (4) and (5), the Ombudsman may make arrangements with the appropriate public authority for the identification and delivery of sealed envelopes sent by the Ombudsman to persons detained in custody.

23.—(1) Where a complaint has been made to the Ombudsman in respect of an action taken by, or on behalf of a public authority the Ombudsman may make inquiries of the public authority for the purposes of determining whether or not he or she is authorized to investigate the action—

Preliminary and minor inquiries.

(2) If pursuant to subsection (2) the Ombudsman is authorized to investigate the action, the Ombudsman shall decide

- (a) whether or not if he or she may subject to section 24, decide not to investigate the action; or
- (b) whether or not he may determine the action without the need for an investigation under this Act;

having regard to the nature and seriousness of the complaint.

(3) An inquiry under subsection (1) is not an investigation for the purposes of section 27.

24.—(1) The Ombudsman may refuse to investigate or may cease investigating a complaint if, in the opinion of the Ombudsman, any of the following apply—

Refusal to investigate.

- (a) the complainant knew or ought to have known of the decision, recommendation, act or omission to which he or she refers more than a year before the complaint was received by the Ombudsman;
- (b) the subject matter of the complaint primarily affects a person other than the complainant and the complainant does not have sufficient personal interest in it and is not making the complaint pursuant to section 22 (1) (a);
- (c) 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;
- (d) the complaint is frivolous, vexatious, not made in good faith or concerns a trivial matter;
- (e) having regard to all the circumstances, further investigation is not necessary in order to consider the complaint;
- (f) if in the circumstances, investigation would not benefit the complainant;
- (g) the complainant has abandoned the complaint—
 - (i) by failing to advise the Ombudsman of a current address or a telephone number at which the Ombudsman can contact him or her;

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- (ii) by failing to respond after a reasonable number of attempts by the Ombudsman to contact him or her verbally in writing;
 - (h) the complaint is withdrawn by the complainant by notice to the Ombudsman;
 - (i) the complaint is settled pursuant to section 25.

(2) For the purposes of subsection 1 (a), a complainant shall be deemed to have first had knowledge of the matters alleged in the complaint at the time when he or she might reasonably be expected to have had that knowledge.

(3) Where the Ombudsman decides not to undertake or continue the investigation of a complaint, he or she shall notify the complainant of his or her decision and give reasons therefor.

(4) The Ombudsman may indicate with the notification under subsection (3) any other recourse that may be available to the complainant.

25.—(1) The Ombudsman may decide to deal with a ^{Mediation.} complaint by mediation under this section if he or she is of the opinion having regard to all the circumstances of the case, that mediation is suitable to such circumstances.

(2) The Ombudsman may authorize any person appointed pursuant to section 14 (3) to act as a mediator in any mediation.

(3) Participation in the mediation by the public 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 his or her decision.

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

- (a) the complaint shall 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—

- (a) shall not be admissible in evidence 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) shall not be admissible in evidence against any person in any court or at any inquiry or in any proceedings;

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

Extent of
exercise of
powers.

26. Subject to the provisions of the Constitution, the powers conferred on the Ombudsman pursuant to the provisions of this Act may be exercised notwithstanding any provision in any law that an act done thereunder shall not be challenged, reviewed, quashed or called into question.

PART IV

PROCESS OF INVESTIGATION

27.—(1) If the Ombudsman decides to conduct an investigation he or she shall, before commencing the investigation, give the principal officer of the public authority that is the subject of the complaint and the complainant notice in writing, pursuant to subsection (2).

Notice of
intention to
investigate.

(2) The notice shall—

- (a) inform the principal officer and the complainant of the intention of the Ombudsman to conduct the investigation;
- (b) identify the administrative action that informs the subject of the investigation; and
- (c) inform the Principal Officer of the public authority and the complainant in general terms of the powers of the Ombudsman in respect of an investigation.

(3) Every investigation under this Act shall be conducted in private.

(4) The Governor-General may make regulations to prescribe the procedure to be adopted at any hearing of the Ombudsman.

(5) The Ombudsman shall not be required to hold any hearing for the purposes of an investigation, and he or she may obtain information from and consult with such persons and in such manner as he or she thinks fit and may determine whether any person may be represented by an attorney-at-law or otherwise, in the course of the investigation.