

OMBUDSMAN BILL, 2017

Arrangement of Sections

Section

PART I - PRELIMINARY	3
1. Short title.....	3
2. Interpretation.....	3
3. Application of Act.....	4
PART II – OFFICE OF OMBUDSMAN	5
ESTABLISHMENT AND FUNCTIONS OF OFFICE OF OMBUDSMAN	5
4. Establishment of Office of Ombudsman.....	5
5. Functions of Ombudsman.....	5
6. Powers of Ombudsman.....	6
HANDLING OF COMPLAINTS	7
7. Making a complaint.....	7
8. Restrictions on jurisdiction to investigate.....	7
9. Preliminary inquiries.....	8
10. Decision not to investigate a complaint.....	8
11. Complaints dealt by mediation.....	9
12. Notice of an intention to investigate.....	9
PART III – INVESTIGATIONS BY OMBUDSMAN	10
13. Conduct of investigations.....	10
14. Evidence of breach of duty or misconduct.....	10
15. Obtaining evidence for purposes of investigation.....	10
PROCEDURE AFTER INVESTIGATION	11
16. No evidence of maladministration.....	11
17. Evidence of maladministration.....	11
18. Authority to notify Ombudsman of steps taken after receipt of recommendations.	12
19. Ombudsman not to make adverse comments.....	12
PART IV - MISCELLANEOUS	13
20. Protection and privileges of witnesses.....	13
21. Privilege.....	14
22. Protection of title.....	14
23. Appropriation of funds, etc.....	14

24. Annual and special reports..... 15
25. Obstruction and contempt..... 15
26. Offences..... 16
27. Savings..... 16



OMBUDSMAN BILL, 2017

A BILL FOR AN ACT TO PROVIDE FOR THE OFFICE OF OMBUDSMAN

Enacted by the Parliament of The Bahamas

PART I - PRELIMINARY

1. Short title.

- (1) This Act may be cited as the Ombudsman Act, 2017.
- (2) This Act shall come into operation on such date as the Prime Minister may by notice in the Gazette appoint.

2. Interpretation.

- (1) In this Act, unless the context otherwise requires—
 - “**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;
 - “**authority**” means a department or other body to which this Act applies;
 - “**complainant**” means a person who makes a complaint under this Act;
 - “**Court**” means the Supreme Court;
 - “**investigation**” means an investigation under this Act;
 - “**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 (including any discretionary power); or
- (c) administrative action that was —
 - (i) contrary to law;
 - (ii) unfair, oppressive or improperly discriminatory or based on procedures that are unfair, oppressive or improperly 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;

“Ombudsman” means the person for the time being appointed to the office of Ombudsman established by section 4.;

“retired” means a judicial or legal officer eligible to receive a full pension under the Pensions Act (*Ch. 34*) upon retirement from the public service.

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

3. Application of Act.

This Act applies to the following authorities —

- (a) government departments;
- (b) public authorities;
- (c) Government boards;
- (d) local government authorities constituted under the Local Government Act (*Ch. 37*);
- (e) any other public body —
 - (i) which is established by 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 authorised by Parliament; and
- (f) any company registered under the Companies Act (*Ch. 308*), being a company in which the Government or an agency of Government holds not less than forty-nine per centum of the ordinary shares.

PART II – OFFICE OF OMBUDSMAN

ESTABLISHMENT AND FUNCTIONS OF OFFICE OF OMBUDSMAN

4. Establishment of Office of Ombudsman.

- (1) For the purpose of conducting investigations in accordance with the provisions of this Act, there is hereby established the Office of Ombudsman.
- (2) The Ombudsman shall be appointed by the Governor-General acting on the recommendations of Prime Minister after consultation with the Leader of the Opposition.
- (3) Notwithstanding anything to the contrary contained in this Act, the Office of Ombudsman shall not be a public office and the holder thereof shall not be a public officer but may be a retired judicial or legal officer.
- (4) The Ombudsman shall not hold any office of profit other than that of Ombudsman or otherwise engage in any occupation for reward outside the duties of the Office of Ombudsman.
- (5) The *Schedule* shall have effect with respect to the constitution of the Office of the Ombudsman and other matters related thereto.

5. Functions of Ombudsman.

- (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 that authority;
 - (b) pursuant to an investigation, to make recommendations to any 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 under this or any other Act.
- (2) Subject to this Act, the Ombudsman may investigate any administrative action taken by or on behalf of any authority —
 - (a) where a complaint is made to him 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 own motion, notwithstanding that no complaint has been made to him, where he 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 any enactment to the effect that —
 - (a) any decision, recommendation or act of an authority shall be final;
 - (b) no appeal shall lie in respect thereof; or
 - (c) no proceeding of an authority shall be challenged, reviewed, quashed or called in question.
- (4) If a question arises about the Ombudsman’s jurisdiction to investigate a case, the Ombudsman or complainant may apply to the Court for an order declaratory of the Ombudsman’s jurisdiction.

6. Powers of Ombudsman.

- (1) In addition to any other powers conferred by this Act, the Ombudsman shall have the power —
 - (a) to make copies of any document or examine any thing produced in accordance with section 14;
 - (b) to set aside a decision of any authority;
 - (c) to refer the subject of the complaint to the Commissioner of Police;
 - (d) to refer the subject of the complaint to the Attorney-General;
 - (e) to issue of stay of a decision pending further investigation;
 - (f) to substitute a decision of an authority with his decision in cases where there is maladministration.
- (2) For the purposes of this Act, the Ombudsman may at any time enter upon any premises occupied by any government department or division or statutory body and inspect the premises and conduct interviews or examine any document specifically relevant to the complaint.
- (3) Before entering any premises under subsection (2), the Ombudsman shall notify the head of the government department or division or statutory body occupying the premises of his purpose.
- (4) The Attorney-General may by notice to the Ombudsman exclude the exercise of the powers of the Ombudsman in whole or in part to any specific complaint being investigated by the Ombudsman, if in his opinion the application of subsection (1) might be prejudicial to the public interest.
- (5) Where a notice is given under subsection (4) and in the opinion of the Ombudsman, it is necessary to take an action apparently prevented by the notice, the Ombudsman may apply to a Justice of the Supreme Court for an Order, setting aside the notice in respect of such action and, where the judge is satisfied that such action would not be prejudicial to the public interest, he may make the order.
- (6) Subject to the provisions of the Constitution, the powers conferred on the Ombudsman by 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.

HANDLING OF COMPLAINTS

7. 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 behalf or on behalf of his estate by a member of his family or other suitable person if the aggrieved person is unable to act for himself;
 - (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 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 detention or confinement, that he 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 such envelope to the Ombudsman, sealed.
- (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.

8. Restrictions on jurisdiction to investigate.

- (1) Where there is under any enactment a right of an 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 limit 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 is satisfied that in the particular circumstances it is not reasonable to expect the person to resort or to have resorted to it.

9. Preliminary inquiries.

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

10. Decision not to investigate a complaint.

- (1) The Ombudsman may decide not to investigate a complaint if he 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 of the remedy, there is no reasonable justification for the failure to do so;
 - (c) the subject matter of the complaint was previously adjudicated by a court of competent jurisdiction; or
 - (d) 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 —
 - (i) by failing to advise the Ombudsman of a current address or a telephone number at which the Ombudsman can contact him; or
 - (ii) by failing to respond after a reasonable number of attempts by the Ombudsman to contact him;
 - (b) the complainant withdraws the complaint; or
 - (c) the complaint is settled or is successfully dealt with by mediation.
- (3) Where the Ombudsman decides not to investigate or further investigate a complaint, he shall notify the complainant and the authority of his decision and give reasons in writing for the decision.
- (4) The Ombudsman may indicate with the notification under subsection (3) any other recourse that may be available to the complainant.

11. Complaints dealt by mediation.

- (1) The Ombudsman may decide to deal with a complaint by mediation under this section if he is of the opinion, having regard to all the circumstances of the case, that mediation is suitable in such circumstances.
- (2) The Ombudsman may authorise any person appointed pursuant to paragraph 6 of the Schedule to act 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 does so, he shall give reasons for his decision.
- (5) If an attempt to deal with a complaint by mediation under this section is unsuccessful —
 - (a) the complaint 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 —
 - (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 relates, 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 other proceedings, and no evidence in respect of the mediation may be given against any person.

12. Notice of an intention to investigate.

- (1) If the Ombudsman decides to conduct an investigation he 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, under subsection (2).
- (2) The notice 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 III – INVESTIGATIONS BY OMBUDSMAN

13. Conduct of investigations.

- (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 the manner, he considers appropriate;
 - (c) may make such inquiries as he considers appropriate; and
 - (d) may, on giving reasonable notice to a senior officer in the authority 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 sections 14 and 20, carry out therein any investigation which is within his jurisdiction.

14. Evidence of breach of duty or misconduct.

- (1) If, during the course of an investigation or thereafter, the Ombudsman is of the opinion that 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, he shall refer the matter to an appropriate authority for further consideration.
- (2) Where the Ombudsman makes a reference to an appropriate authority under subsection (1), proceedings under this Act with respect to any investigation are stayed pending consideration of the matter by the appropriate authority.
- (3) Subject to the provisions of this Act, the Ombudsman may regulate investigations and proceedings under this Act in such manner as he sees fit.

15. Obtaining evidence for purposes of investigation.

- (1) Subject to this Act, for the purposes of an investigation the Ombudsman —
 - (a) may require any officer or member of the authority that is the subject of the investigation, the complainant or any other person who is in his opinion 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 and examine on oath or affirmation any person referred to in paragraph (a).
- (2) For the purposes of such investigation, the Ombudsman shall have the powers of a Justice of the Court to summon and compel the attendance and examination of persons (including the administering of oaths or affirmations) 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 the Cabinet or any committee of the Cabinet;
 - (ii) that might prejudice the security, defence or international relations of The Bahamas; 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 Parliamentary Secretary to furnish any information or answer any question.
- (4) For the purposes of subsection (3)(a)(i) a certificate by the Secretary to the Cabinet certifying that any information, question, document or part of a document so relates shall be conclusive.

PROCEDURE AFTER INVESTIGATION

16. No evidence of maladministration.

- (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 shall record his decision and the reasons in writing and, as soon as is reasonable, and in any case not more than one year after such conclusion, notify both the complainant and the authority thereof.
- (2) The Ombudsman may indicate with the notification under subsection (1) any other recourse that may be available to the complainant.

17. Evidence of maladministration.

- (1) 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 decision to the authority and the complainant and make such recommendation to the authority as he sees fit.

- (2) Without restricting subsection (1), the Ombudsman may recommend that —
- (a) a matter should be referred to an appropriate 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.

18. Authority to notify Ombudsman of steps taken after receipt of recommendations.

- (1) Where the Ombudsman makes a recommendation to an authority under section 17(1) —
- (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) where the authority has taken no action within twenty business days of receipt of the recommendation or does not propose to take any action, the authority shall give reasons, in writing, for failure to implement the recommendation.
- (2) The Ombudsman may, if he thinks fit in the circumstances of a particular investigation, in writing, extend the time period specified in subsection (1).
- (3) If within the time period specified by or under this section, the authority —
- (a) fails to notify the Ombudsman of the action that has been taken or is proposed; or
 - (b) (i) has taken no action; or
(ii) has taken action that in the Ombudsman’s opinion is inadequate or inappropriate,
- the Ombudsman, after considering any reasons given by the authority, may submit a special report under section 24(2).

19. Ombudsman not to make adverse comments.

- (1) The Ombudsman shall not —
- (a) in any recommendation given under section 17(1); or
 - (b) in any report made under section 24;

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

- (2) A person to whom subsection (1) applies may be represented at the hearing by an attorney-at-law or any other person.

PART IV - MISCELLANEOUS

20. Protection and privileges of witnesses.

- (1) Every 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 the Court.
- (2) Compliance with any requirement of the Ombudsman under section 15 —
 - (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 within the meaning of the Penal Code Act (*Ch. 84*) in respect of sworn testimony given by a person before the Ombudsman, or for an offence against section 25 or 26 —
 - (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 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 (the other person) in any of the ways specified in subsection (5) 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) For the purposes of subsection (4) discrimination occurs where a person —
 - (a) refuses to employ or to continue to employ the other person;

- (b) threatens to dismiss or threatens to penalize in any other way the other person in regard to his employment or any term or condition thereof; or
- (c) intimidates or coerces or imposes any pecuniary or other penalty upon the other person.

21. Privilege.

- (1) No proceedings, civil or criminal, shall lie against the Ombudsman or any person appointed or engaged under paragraph 6 of the Schedule 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 or engaged under paragraph 6 of the Schedule 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 Act.
- (3) Anything said or any information given or any document or thing produced by any person in the course of any 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.

22. Protection of title.

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

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

23. Appropriation of funds, etc.

- (1) All —
 - (a) salaries, other than that of the Ombudsman;
 - (b) allowances and other expenditure payable or incurred under this Act,
 shall be payable out of monies appropriated by Parliament for that purpose.
- (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 authorised by him in that behalf shall have access to all books, records, returns and other documents relating to such accounts.

24. Annual and special 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 functions under this Act during that year.
- (2) Where —
 - (a) any administrative action that is under investigation is in the opinion of the Ombudsman of public interest; or
 - (b) the Ombudsman has made a recommendation under section 17(1) and within the period specified no, or in his opinion 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 annual report and any special report made under this section to the Speaker of the House of Assembly, and send a copy of the report to the Governor-General and the President of the Senate.
- (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 information.

25. Obstruction and contempt.

- (1) If any person without lawful excuse —
 - (a) obstructs the Ombudsman in the performance of his 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 a 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 certify the offence to the Court.

- (3) Where an offence is certified under subsection (2), the Court may inquire into the matter.
- (4) 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 deal with him in any manner in which the Court could deal with him if he had committed the like offence in relation to the Court.

26. Offences.

- (1) A person commits an offence if he —
 - (a) intentionally makes a false statement to, misleads or attempts 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 paragraph 8 of the *Schedule*; or
 - (c) discriminates against another person in contravention of section 20(4);
 - (d) being a person in charge of other persons complained to by a person detained in custody fails to comply with section 7(3).
- (2) Any person who commits an offence contrary to subsection (1) is liable on summary conviction to a fine not exceeding \$1,000.00.

27. Savings.

Except as otherwise provided in this Act, nothing in this Act shall be construed as limiting or affecting any right of appeal, objection or other remedy or privilege given to any person by any other law.

SCHEDULE

(section 4)

1. Tenure of office.

- (1) Subject to the provisions of this section, any person appointed as Ombudsman shall hold office for a period of five years and shall, at the expiration of such period, be eligible for reappointment only for a further period of not more than five years.
- (2) A person appointed as Ombudsman may at his own request be relieved of office by the Governor-General and shall in any case, subject to the

provisions of subparagraph (3), vacate office on attaining the age of seventy years.

- (3) Notwithstanding that he has attained the age at which he is required by or under the provisions of this paragraph to vacate his office, the Ombudsman may continue in office for such period after attaining that age as the Governor-General, acting on the recommendations of Parliament as aforesaid, may specify, in order to enable the Ombudsman to give his decision or do any other thing in relation to any investigation he was conducting before he attained that age.
- (4) Nothing done by the Ombudsman shall be invalid by reason only that he has attained the age at which he is required by this section to vacate his office.
- (5) The Ombudsman may be removed from office only for inability to discharge the functions of his 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 subparagraph (6).
- (6) If the Prime Minister represents to the Governor-General that the question of removing the Ombudsman from office ought to be investigated then —
 - (a) the Governor-General shall appoint a tribunal, which shall consist of a Chairman and not less than two other members, selected by the Governor-General, acting in accordance with the advice of the Chief Justice from among persons who hold or have held or are eligible to hold high judicial office; and
 - (b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to the Governor-General whether the Ombudsman ought to be removed from office for inability as aforesaid or for misbehaviour.
- (7) If the question of the removal of the Ombudsman from office has been referred to the tribunal under subparagraph (6), the Governor-General may suspend the Ombudsman from performing the functions of his 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.

2. Disqualifications.

- (1) No person shall be qualified for appointment to the office of Ombudsman if he —
 - (a) is a member of the House of Assembly or the Senate;
 - (b) is a member of a local government authority;
 - (c) is an undischarged bankrupt;

- (d) owns any shares in any company in which the government owns any shares;
 - (e) 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 were not Ombudsman, would cause him to be disqualified for appointment as such, by virtue of subparagraph (1).

3. Filling of vacancy.

- (1) When a vacancy arises in the office of Ombudsman, the Governor-General acting on the recommendations of the Prime Minister after consultation with the Leader of the Opposition designate a person to act in that office during such vacancy, until a substantive appointment is made.
- (2) Where by reason of illness, absence from the country or other sufficient cause, a person appointed Ombudsman is unable to perform his functions under this Act, he may appoint a member of his staff to perform those functions for a 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, acting on the aforesaid recommendations may appoint a suitable person to perform those functions.

4. Remuneration of Ombudsman.

- (1) Subject to subparagraph (2), 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 Resolution of the House of Assembly, such emoluments being not less than the emoluments which may, from time to time, be payable to a Judge of the Supreme Court.
- (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 disadvantage during the period of his appointment or re-appointment, as the case may be.
- (3) The emoluments for the time being payable and other benefits provided to the Ombudsman by virtue of this Act shall be charged on and be met out of monies of the Consolidated Fund.

5. Pensions.

- (1) The provisions of this *Schedule* shall have effect with respect to the superannuation and other benefits to be paid to or in respect of a person who holds or has held office as the Ombudsman.

- (2) The Governor-General in accordance with any Resolution passed by both Houses of Parliament may by Order, subject to paragraph 4(2), amend this *Schedule*.

6. Staff.

- (1) Without prejudice to subparagraph (2), there shall be appointed to assist the Ombudsman in the discharge of his functions such number of public officers as may be required.
- (2) The Ombudsman may, in addition, engage from time to time such technical or professional advisers as he considers necessary to assist him in the discharge of his functions, subject to financial clearance as to the terms and conditions of such engagement.
- (3) Every person appointed or engaged under this section is subject to the Ombudsman's direction and control in the performance of functions under this Act.

7. Delegation.

- (1) Subject to subparagraph (2), anything that is to be done by the Ombudsman, may be done by a duly authorised member of the Ombudsman's 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 24.

8. Ombudsman and staff to maintain secrecy.

- (1) The Ombudsman and every person appointed or engaged under paragraph 6 of the Schedule 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 person except for the purpose of carrying out functions under this Act.
- (2) Information or documents obtained by the Ombudsman or person appointed or engaged under paragraph 6 of the Schedule in the course of or for an inquiry or investigation shall not be disclosed except for the purpose of —
 - (a) a reference to an appropriate authority under section 17(2)(a);
 - (b) a report to both Houses of Parliament under section 24; or
 - (c) proceedings under section 25 or 26.

OBJECTS AND REASONS

This Bill seeks to establish the Office of Ombudsman —

- (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.