



ST. CHRISTOPHER AND NEVIS

CHAPTER 21.02

CONFIDENTIAL RELATIONSHIPS ACT

Revised Edition

showing the law as at 31 December 2017

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CONFIDENTIAL RELATIONSHIPS ACT

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The Regional Law Revision Centre Inc.,
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West Indies.

Available for purchase from—

Attorney General's Chambers,
Government Headquarters, P.O. Box 164,
Church Street, Basseterre, St. Kitts,
West Indies

Tel: (869) 465-2521

Ext. 1013

Tel: (869) 465-2127

Fax: (869) 465-5040

Email: attorneygeneral@gov.kn

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CHAPTER 21.02

CONFIDENTIAL RELATIONSHIPS ACT

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CHAPTER 21.02

CONFIDENTIAL RELATIONSHIPS ACT

AN ACT TO GIVE SANCTION TO THE DUTY OF NON-DIVULGENCE OF INFORMATION IMPARTED UNDER CONDITIONS OF BUSINESS OR PROFESSIONAL CONFIDENCE; AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

Short title.

1. This Act may be cited as the Confidential Relationships Act.

Interpretation.

2. In this Act, unless the context otherwise requires—

“bank” means any bank or other financial institution to which the provisions of the Banking Act, Cap. 21.01 apply;

“business of a professional nature” includes the relationship between a professional person and his or her principal, by whatever term the latter may be described, and also the relationship between a bank and a customer of that bank;

“confidential information” includes information concerning any property, or relating to any business of a professional nature or commercial transaction which has taken place, or which any party concerned contemplates may take place, which the recipient thereof is not, otherwise than in the normal course of business or professional practice authorised by the principal to divulge;

“entitled to possession of confidential information” means so entitled, in the normal course of business or professional practice or by the specific consent of the party who, but for the giving of such consent, would be entitled to require the preservation of the confidentiality of that information;

“Minister” means the person charged for the time being with responsibility for finance;

“principal” means a person who has imparted to another person confidential information in the course of his or her business or professional relationship with that other person, and includes a customer or a bank in relation to his or her business transactions with that bank;

“professional person” includes an accountant, or barrister-at-law, solicitor or attorney (or other legal practitioner by whatever name called), a broker or other kind of commercial agent or adviser, a bank or other financial institution, any public officer or other government official or employee, and such other persons as may be prescribed as being professional persons for the purposes of this Act and whether or not any such person was licenced or authorised, under any law for the time being in force, to act in that capacity; and also includes any person subordinate to or in the employment or under the control of any such person for the purpose of his or her professional activities;

“property” includes every present, contingent or future interest or claim, direct or indirect, legal or equitable, positive or negative, in any money or money’s worth, real personal, movable or immovable, rights, charges and securities thereover and all documents and things evidencing or relating thereto.

Application of Act.

3. (1) Subject to the provisions of subsection (2), this Act shall apply to all confidential information with respect to business of a professional nature which arises in or is brought into Saint Christopher and Nevis and to all persons who come into possession of such information at any time thereafter, whether within or without Saint Christopher and Nevis.

(2) This Act shall not apply to confidential information given to or received by—

- (a) any person in the course of the taking or giving of evidence whether within or without Saint Christopher and Nevis, for the purpose of or in the course of the trial of any person in respect of an alleged criminal offence triable within Saint Christopher and Nevis or which would have been triable if it had been committed within Saint Christopher and Nevis;
- (b) a police officer in the execution of his or her duties whether within or without Saint Christopher and Nevis, investigating any criminal offence committed within Saint Christopher and Nevis or which, if it had been committed within Saint Christopher and Nevis, would have been a criminal offence under the law of Saint Christopher and Nevis;
- (c) the Minister or a person exercising powers of examination or investigation under any of the provisions of the Banking Act, Cap. 21.01 or any law repealing or replacing that Act;
- (d) the Comptroller of Inland Revenue or an officer authorised by him or her for the purposes of collection of taxes or investigation of non-payment of taxes and for related matters pursuant to the Tax Administration and Procedures Act, Cap. 20.52.

(Inserted by Act 34 of 2012)

Offences against the Act.

4. (1) Subject to the provisions of subsection (2) of section 3, any person who—
- (a) being in possession of confidential information, however obtained—
 - (i) divulges it to any person not entitled to possession thereof; or
 - (ii) attempts, offers or threatens to divulge it to any person not entitled to possession thereof;
 - (b) obtains or attempts to obtain confidential information to which he or she is not entitled,

commits an offence:

Provided that it shall be a defence for a person charged with an offence under this subsection if he or she proves to the satisfaction of the court that, at the time when he or she divulged, attempted, offered or threatened to divulge or obtained or attempted to obtain (as the case may be), the confidential information in question, he or she did not know and did not have reasonable grounds to suspect that doing so would be a breach of an express or implied duty to preserve confidentiality or would be contrary to the provisions of this Act.

(2) Any person who, being in possession of information which he or she knows or has reason to suppose is confidential information, makes use thereof, without the consent of the principal, for the benefit of himself or herself or any other person, commits an offence.

(3) Any person who commits an offence under this section shall be liable, on summary conviction—

- (a) in the case of an individual, to a fine of five thousand dollars or to imprisonment for twelve months or to both such fine and imprisonment; or
- (b) in the case of a body corporate, to a fine of twenty-five thousand dollars:

Provided that where an offence under this section is committed by a professional person, that person shall be liable, on conviction—

- (i) in the case of an individual, to a fine of ten thousand dollars or to imprisonment for twelve months or to both such fine and imprisonment; or
- (ii) in the case of a body corporate, to a fine of fifty thousand dollars.

(4) Any person who is convicted of an offence under subsection (1) and is proved to have solicited, received or offered (as the case may be), on behalf of himself or herself or any other person, any reward for doing the act which constituted the offence, shall be liable, in addition to any penalty imposed under subsection (3), to a further fine equivalent to the amount or value of the reward solicited, received or offered and to forfeit the amount or value of any reward actually received by him or her.

(5) Where an offence under this section is committed by a body corporate and is proved to the satisfaction of the court to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of any director, manager, secretary or similar officer (by whatever name called) of that body corporate, or by any person purporting to act in any such capacity, he or she as well as the body corporate commits an offence and shall be liable to be proceeded against and punished accordingly.

(6) For the avoidance of doubt, it is hereby declared that, subject to subsection (2) of section 3, a bank which gives credit reference in respect of a customer, without first obtaining the authority of that customer, commits an offence under subsection (1).

Saving.

5. Nothing in this Act shall be deemed to affect or derogate from any rule or law or the rights of any person with regard to the civil liability of any person for any breach of any express or implied condition of confidentiality with regard to any business or professional relations or transactions between them.

The Regulations.

6. The Minister may make regulations for carrying into effect the provisions of this Act and for prescribing anything which is required to be prescribed under any such provisions.

Notification to Attorney-General before prosecution.

7. Before any prosecution is instituted under this Act the Director of Public Prosecutions shall advise the Attorney-General in writing.