

ANTIGUA AND BARBUDA

THE CARIBBEAN COURT OF JUSTICE ACT, 2004

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ANTIGUA AND BARBUDA
THE CARIBBEAN COURT OF JUSTICE BILL, 2004

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A BILL *No.*

FOR *Dated*

AN ACT to implement the Agreement Establishing the Caribbean Court of Justice and other Agreements relating to the Court and the Regional Judicial and Legal Services Commission and for other related matters.

ENACTED by the Parliament of Antigua and Barbuda as follows:

- | | | |
|------------------------------------|----|--|
| Short title
and
commencement | 1. | This Act may be cited as the Caribbean Court of Justice Act, 2004 and shall come into operation on a date appointed by the Minister by notice published in the Gazette. |
| Interpretation | 2. | <p>(1) In this Act, unless the context otherwise requires –</p> <p>“Agreement” means the Agreement Establishing the Caribbean Court of Justice, signed at Bridgetown, Barbados on the 14th February, 2002, the text of which is set out in the First Schedule;</p> <p>“appellate jurisdiction” means the appellate jurisdiction conferred upon the Court by or under Part III of the Agreement;</p> <p>“Commission” means the Regional Judicial and Legal Services Commission established by Article V of the Agreement;</p> <p>“Contracting Party” means a Contracting Party within the meaning of Article I of the Agreement; and, in relation to Antigua and Barbuda, means the Government of Antigua and Barbuda;</p> |

“Court” means the Caribbean Court of Justice established by the Agreement;

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“Court of Appeal” or “Court of Appeal of a Contracting Party”, in relation to Antigua and Barbuda, means the Court of Appeal established under the Supreme Court Order;

“Minister” means the Minister responsible for justice and legal affairs;

“original jurisdiction” means the original jurisdiction of the Court provided for in Part II of the Agreement;

“Rules of Court” means the Rules of Court made under Article XXI of the Agreement; and

“Treaty” means the Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy, signed in the Bahamas on the 5th July, 2001.

(2) For the purposes of Article XXIV of the Agreement, a reference to a national of a Contracting Party, in relation to Antigua and Barbuda, includes a reference to -

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(a) a citizen of Antigua and Barbuda by virtue of the Constitution or any other law;

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(b) a person who, not being a citizen of Antigua and Barbuda, is lawfully resident in Antigua and Barbuda in accordance with the Immigration and Passport Act or any other law; and

(c) an entity, in Antigua and Barbuda, established by or under any law of Antigua and Barbuda.

Agreement, its related Instruments, and Rules of Court to have force of law

3. The following shall have the force of law in Antigua and Barbuda:

(a) the Agreement, other than the provisions of the Agreement relating to the appellate jurisdiction of the Court provided for in Part III of the Agreement, and the relevant Rules of Court made thereunder; and

First Schedule

Second, Third
and Fourth
Schedules

(b) the Second, Third and Fourth Schedules.

Original
Jurisdiction
of the Court

4. The Court shall have the original jurisdiction conferred on it by Part II of the Agreement.

Exclusion of
matters declared
final

5. Nothing in this Act shall be construed as conferring jurisdiction on the Court to hear any matter in relation to the Court of Appeal which on the date of commencement of this Act was, pursuant to the Constitution or any other law, declared to be final.

Mode of
bringing matters
before Court

6. (1) Matters pertaining to the exercise of the original jurisdiction of the Court shall be brought before the Court in the manner prescribed by the relevant Rules of Court.

(2) The Minister shall cause the Rules of Court to be published in the Gazette.

Expenses of
Court and
Commission to
be a charge on
Consolidated Fund

7. The amount of the contribution assessed under the Fourth Schedule as payable by the Government for the expenses of the Court and Commission in accordance with Article XVIII of the Agreement shall be charged on and paid from the Consolidated Fund.

Immunity of
Commission
from court
proceedings

8. The proceedings of the Commission shall not be enquired into in any court.

SCHEDULES

- First Schedule:*** The Agreement Establishing the Caribbean Court of Justice.
- Second Schedule:*** The Protocol to the Agreement Establishing the Caribbean Court of Justice Relating to the Juridical Personality and Legal Capacity of the Court.
- Third Schedule:*** The Protocol on the Status, Privileges and Immunities of the Caribbean Court of Justice and the Regional Judicial and Legal Services Commission.
- Fourth Schedule:*** The Agreement Establishing the Caribbean Court of Justice Trust Fund.

Passed the House of Representatives
this day of 2004

Passed the Senate
this day of 2004

D. Giselle Isaac-Arrindell
Speaker

Dr. Edmond Mansoor
President

Sylvia Walker
Clerk to the House of Representatives

Sylvia Walker
Clerk to the Senate

EXPLANATORY MEMORANDUM

The object of this Bill is to implement and give legal effect to the Agreement Establishing the Caribbean Court of Justice and other Agreements relating to the Court and the Regional Judicial and Legal Services Commission and also to provide for other related matters.

The Agreement, the text of which is set out in the First Schedule to this Bill and to which Antigua and Barbuda is a party, establishes the Caribbean Court of Justice for the Member States of the Caribbean Community and any other Caribbean country which may become a Party to the Agreement.

If this Bill is enacted, the Court will have compulsory and exclusive original jurisdiction to hear and determine disputes concerning the interpretation and application of the Revised Treaty of Chaguaramas Including the CARICOM Single Market and Economy and will also have jurisdiction to deliver advisory opinions at the request of the Contracting Parties or the Community and to determine issues referred to it by national courts or tribunals regarding the interpretation or application of the Treaty.

Clause 1 of the Bill provides for the short title of the Act to be enacted under this Bill and also for the commencement of the Act.

Clause 2 of the Bill contains definitions of the expressions used in the Bill.

Clause 3 of the Bill seeks to confer the force of law, in Antigua and Barbuda, on the following instruments which, together, constitute the essential legal framework for the effective operation of the Court, namely:

- (a) the Agreement Establishing the Caribbean Court of Justice, set out in First Schedule and the Rules of Court made under the Agreement;

- (b) the Protocol to the Agreement Establishing the Caribbean Court of Justice Relating to the Juridical Personality and Legal Capacity of the Court, set out in the Second Schedule;
- (c) the Protocol on the Status, Privileges and Immunities of Caribbean Court of Justice and the Regional Judicial and Legal Services Commission, set out in the Third Schedule; and
- (d) the Agreement Establishing the Caribbean Court of Justice Trust Fund, set out in the Fourth Schedule.

Clause 4 of the Bill seeks to confer on the Court the original jurisdiction provided for in Part II of the Agreement.

Clause 5 of the Bill is intended to preclude the Court from dealing with matters which, on the date of commencement of the Act proposed in this Bill and pursuant to the Constitution or any other law are declared to have been finally determined by the Court of Appeal.

Clause 6 of the Bill would require matters to be brought before the Court in accordance with the relevant Rules of Court. The Rules are to be published in the Gazette.

Clause 7 of the Bill is designed to make the contribution of the Government of Antigua and Barbuda towards the expenses of the Court and the Regional Judicial and Legal Services Commission statutory expenditure to be charged on and paid out of the Consolidated Fund.

Clause 8 of the Bill would preclude the courts from enquiring into the proceedings of the Commission.

The *First Schedule* to the Bill sets out the text of the Agreement Establishing the Caribbean Court of Justice, which Agreement provides for the Court's composition and its functions including the exercise of original and appellate jurisdiction and the conditions under which both jurisdictions may be exercised. In pursuance of the provisions of paragraph (a) of clause 3 of the Bill, the Court will not exercise its appellate jurisdiction in relation to Antigua and Barbuda. The Agreement also establishes the Regional Judicial and Legal Services Commission with power to appoint Judges of the Court, other than the President of the Court who will be appointed by the Heads of Government on the recommendation of the members of the Commission.

The *Second Schedule* to the Bill sets out the Protocol to the Agreement Establishing the Caribbean Court of Justice Relating to the Juridical Personality and Legal Capacity of the Caribbean Court of Justice, which Protocol constitutes an integral part of the Agreement establishing the Court. It confers juridical personality to enable the Court to perform its judicial functions and also confers legal personality recognised under the municipal law so that the Court can, for example, hold and dispose of property and, in its non-judicial capacity, sue and be sued in the name of the Registrar as its representative.

The *Third Schedule* contains the Protocol on the Status, Privileges and Immunities of the Caribbean Court of Justice and the Regional Judicial and Legal Services Commission. This Protocol confers immunity from legal process on the Court and the Commission and provides for the inviolability of their premises, archives, property and assets. The Protocol also exempts the Court and the Commission from taxes and duties and grants functional immunities and privileges to counsel appearing in proceedings before the Court.

The *Fourth Schedule* to the Bill sets out the text of the Agreement Establishing the Caribbean Court of Justice Trust Fund for the purpose of providing the resources necessary to finance the capital and operating budget of the Court and the Commission in perpetuity. The Agreement will ensure the financial viability of the Court and the

Commission which is essential for the efficiency, effectiveness and independence of the Court in the performance of its functions and also for safeguarding its integrity and credibility. Each Contracting Party to the Agreement establishing the Court is required to contribute to the Trust Fund the amount set out in the scale of contributions in the Annex to the Protocol. The Fund is to be managed by an independent Board of Trustees and will enjoy functional immunities and privileges.

Dated this 9th day of July, 2004.

Justin L. Simon
Attorney-General and
Minister of Justice and Legal Affairs