

**CONSTITUTION OF GRENADA (CARIBBEAN COURT OF JUSTICE AND
RENAMING OF SUPREME COURT) (AMENDMENT) BILL, 2018**

EXPLANATORY MEMORANDUM

1. On 14th February 2001 at St. Michael in Barbados, Heads of Governments of CARICOM countries agreed to and signed a document entitled "*An Agreement Establishing the Caribbean Court of Justice*" ("the CCJ Agreement").
2. The CCJ Agreement has very firm provisions on the appointment of CCJ Judges, their tenure, their protection against arbitrary removal from office, their being assured substantial jurisdiction, and the independent financing of CCJ. The CCJ Agreement may be considered to give full insulation to the CCJ from political interference.
3. The Caribbean Court of Justice ("the CCJ") has two jurisdictions: an *Original Jurisdiction* which is mainly responsible for determining issues in connection with the interpretation of the Treaty of Chaguaramas which treaty seeks to establish a common economic space among CARICOM countries; and an *Appellate Jurisdiction* which is meant to make provisions for final appeals from the various Courts of Appeal in the region to be made to the CCJ instead of to Her Majesty in Council (hereinafter called "the Privy Council") based in the United Kingdom.
4. It was envisaged that the utilisation of the CCJ by Caribbean litigants would be less costly and more accessible than having the Privy Council as the final Court of Appeal. Moreover, the CCJ would provide the proper platform for the development of a mature Caribbean jurisprudence for independent states.
5. All CARICOM countries participate in the Original Jurisdiction of the CCJ. Their various Constitutions allowed for this. However, most of the countries including Grenada are compelled to amend their respective Constitutions in order to accede to the Appellate Jurisdiction of the CCJ.
6. In accordance with section 104 of the Constitution of Grenada, final appeals from the Court of Appeal in Grenada may only be made to the Privy Council.
7. The Constitution of Grenada may only be amended in accordance with its own section 39 in the following manner—
 - i. An appropriate Bill for an Act has to be introduced in the House of Representatives and remain there for at least 90 days (excluding Sundays and Public holidays) before it is taken through the remaining stages in that House;
 - ii. The Bill has to receive the support of not less than two-thirds of all the members of that House;
 - iii. The Bill has to receive the majority support of the members of the Senate;

- iv. The Bill has to be approved on a referendum by not less than two-thirds of all the votes validly cast on that referendum;
- v. The Bill has to be subsequently assented to by the Governor-General and gazetted.

8. The main purpose of the Bill for an Act shortly entitled *Constitution of Grenada (Caribbean Court of Justice and Renaming of the Supreme Court) (Amendment) Act, 2018*, is to amend the Constitution of Grenada in order to enable accession to the CCJ as the final Court of Appeal instead of the Privy Council. This is done through **sections 3 to 16**.

9. Another proposed amendment is styling the Supreme Court in Grenada “The Eastern Caribbean Supreme Court” instead of the “The Supreme Court of Grenada and the West Indies Associated States” as established by section 105 (a) of the Constitution. Grenada missed the opportunity to change the name of the Court as all other OECS countries had done because the country was no longer in the OECS court system during what has been referred to as “the revolutionary period” from 1979 to 1983. This is done by **sections 17-31**.

10. The date of commencement of the Act would be appointed by the Governor-General by proclamation published in the Gazette, by clause 1(3); but it is not to have effect retroactively.

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Sir Lawrence Joseph, PhD
ATTORNEY-GENERAL

**CONSTITUTION OF GRENADA (CARIBBEAN COURT OF JUSTICE AND
RENAMING OF SUPREME COURT) (AMENDMENT) BILL, 2018**

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**CONSTITUTION OF GRENADA (CARIBBEAN COURT OF JUSTICE AND
RENAMING OF SUPREME COURT) (AMENDMENT) BILL, 2018**

GRENADA

ACT NO.

2018

AN ACT to alter the Constitution of Grenada to provide for the establishing of the Caribbean Court of Justice as the final appellate court for Grenada in substitution for Her Majesty in Council and to provide for the renaming of the Supreme Court in Grenada to the Eastern Caribbean Supreme Court and other justice- related matters;

WHEREAS it is a fundamental objective that jurisdiction as to the final determination of litigation arising in and for Grenada would be vested in the Caribbean Court of Justice in substitution for Her Majesty in Council;

AND WHEREAS the attainment of the said objective requires that there be duly altered the Constitution of Grenada and other constitutional instruments of Grenada;

AND WHEREAS the attainment of other justice-related objectives such as styling the Supreme Court the Eastern Caribbean Supreme Court also requires that there be duly altered the Constitution of Grenada and other constitutional instruments of Grenada;

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

**PART I
PRELIMINARY**

Short title, commencement and alteration of the Constitution

1. (1) This Act may be cited as the

**CONSTITUTION OF GRENADA (CARIBBEAN COURT OF JUSTICE AND
RENAMING OF SUPREME COURT) (AMENDMENT) ACT, 2018.**

(2) This Act shall come into effect on such date as may be appointed by Proclamation issued by the Governor-General and published in the *Gazette*; and different dates may be appointed for the various provisions of this Act; provided that no provision of this Act shall have effect retroactively to any date prior to the commencement of this Act.

(3) This Act shall be read and construed as altering the Constitution.

Interpretation

2. In this Act—

“Agreement Establishing the Caribbean Court of Justice” means the Agreement Establishing the Caribbean Court of Justice referred to in section 11 of this Act;

“Caribbean Court of Justice” means the Caribbean Court of Justice established under the Agreement Establishing the Caribbean Court of Justice in relation to the Appellate Jurisdiction of that Court established by clause (b) of paragraph 1 of Article III of that Agreement;

“Constitution” means the Constitution of Grenada which is set out in Schedule 1 to the Grenada Constitution Order 1973;

“Constitutional instruments” includes the—

- (a) Grenada Constitution Order 1973;
- (b) Constitution of Grenada;
- (c) West Indies Associated States Supreme Court Order 1967;
- (d) West Indies Associated States (Appeals to Privy Council) Order 1967; and
- (e) West Indies Associated States (Appeals to Privy Council) (Grenada) Order 1967;

“Constitution Order” means the Grenada Constitution Order 1973.

PART II SUBSTITUTING THE CARIBBEAN COURT OF JUSTICE FOR HER MAJESTY IN COUNCIL

Alteration of section 16 of the Constitution

3. Section 16 of the Constitution is altered in subsection (4) by deleting the words “Her Majesty in Council” wherever they occur and in each case substituting the words “the Caribbean Court of Justice”.

Alteration of section 18 of the Constitution

4. Section 18 of the Constitution is altered in subsection (1) in the definition of the word “court” by deleting the words “Her Majesty in Council” and substituting the words “the Caribbean Court of Justice”.

Alteration of section 39 of the Constitution

5. Section 39 of the Constitution is altered—

- (a) in subsection (1)—
 - (i) by deleting the words “or section 3 of the West Indies Associated States (Appeals to Privy Council) Order 1967”; and
 - (ii) by deleting the words “in the manner” and substituting the words “or the Agreement Establishing the Caribbean Court of Justice in the manner”;
- (b) in subsection (2)—
 - (i) by deleting the words “or section 3 of the West Indies Associated States (Appeals to Privy Council) Order 1967”; and
 - (ii) by deleting the word “shall” and substituting the words “or the Agreement Establishing the Caribbean Court of Justice shall”;
- (c) in subsection (4)—
 - (i) by deleting the words “or section 3 of the West Indies Associated States (Appeals to Privy Council) Order 1967”; and
 - (ii) by deleting the words “shall not be suggested” and substituting the words “or the Agreement Establishing the Caribbean Court of Justice shall not be suggested”;
- (d) in subsection (5) by deleting the words “or section 3 of the West Indies Associated States (Appeals to Privy Council) Order 1967”;
- (e) by inserting after subsection (5) the following new subsection—

“(5A) The provisions of paragraph (c) of subsection (5) of this section shall not apply in relation to any bill to alter section 8 of the Courts Order to give effect to any agreement among countries in and over which the Supreme Court has jurisdiction to substitute for references in that section to “the Judicial Committee of Her Majesty’s Privy Council” and “the Judicial Committee” references to “the Caribbean Court of Justice”. ”;

- (f) in subsection (8)—
 - (i) by deleting the words “or section 3 of the West Indies Associated States (Appeals to Privy Council) Order 1967”; and
 - (ii) by deleting the words “shall not be submitted” and substituting the words “or the Agreement Establishing the Caribbean Court of Justice shall not be submitted”;
- (g) in subsection 9—
 - (i) by deleting paragraph (c) and substituting with the following—

“(c) references to the Agreement Establishing the Caribbean Court of Justice are references to that Agreement in so far as it has effect as part of the law of Grenada, and include references to any law that alters that Agreement in so far as it has such effect;” and
 - (ii) in paragraph (d)—
 - (a) by deleting the words “or section 3 of the West Indies Associated States (Appeals to Privy Council) Order 1967”;
 - (b) by deleting the words “as the case may be” and substituting the words “or the Agreement Establishing the Caribbean Court of Justice, as the case may be”; and
 - (c) by inserting after subsection (9) the following new subsection—

“(10) In this section, references to the Agreement Establishing the Caribbean Court of Justice are references to those provisions of that Agreement which relate to the Appellate Jurisdiction of the Caribbean Court of Justice which is established by clause (b) of paragraph 1 of Article III of that Agreement.”.

Alteration of section 71 of the Constitution

6. Section 71 of the Constitution is altered in subsection (5) by deleting the words “Her Majesty in Council” and substituting the words “the Caribbean Court of Justice”.

Alteration of section 102 of the Constitution

7. Section 102 of the Constitution is altered in subsection (2) by deleting the word “Her Majesty in Council” wherever they occur and in each case substituting the words “the Caribbean Court of Justice”.

Insertion of Chapter heading

8. The Constitution is altered by inserting immediately after section 103 the following—

**“CHAPTER VIII
CARIBBEAN COURT OF JUSTICE**

PART I

Jurisdiction of the Caribbean Court of Justice”

Repeal and replacement of section 104 of the Constitution

9. Section 104 of the Constitution is repealed and the following substituted therefor—

“Appeals to the Caribbean Court of Justice

104. (1) An appeal shall lie as of right to the Caribbean Court of Justice (which Caribbean Court of Justice may hereinafter in this Chapter VIII A be referred to as “the Court”) from decisions of the Court of Appeal in the following cases—

- (a) final decisions in any civil proceedings where—
 - (i) the matter in dispute on appeal to the Court is of the prescribed value or upwards; or
 - (ii) the appeal involves directly or indirectly a claim to or a question respecting property or a right regarding any matter of the prescribed value or upwards;
- (b) final decisions in proceedings for dissolution or nullity of marriage;
- (c) final decisions in any civil or criminal proceedings which involve a question as to the interpretation of this Constitution;
- (d) final decisions given in the exercise of the jurisdiction conferred upon the High Court relating to redress for a contravention of the provisions of this Constitution for the protection of fundamental rights and freedoms;

- (e) final decisions given in the exercise of the jurisdiction conferred upon the High Court relating to the determination of any question for which a right of access to the High Court is expressly provided by this Constitution; and
 - (f) such other cases as may be prescribed by Parliament.
- (2) An appeal shall lie to the Caribbean Court of Justice from decisions of the Court of Appeal with the leave of the Court of Appeal—
- (a) in respect of decisions in any civil proceedings where in the opinion of the Court of Appeal, the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to the Court; and
 - (b) such other cases as may be prescribed by Parliament.
- (3) An appeal shall lie to the Caribbean Court of Justice with the special leave of the Court from any decision of the Court of Appeal in any civil or criminal matter.
- (4) References in this section to decisions of the Court of Appeal shall be construed as references to decisions of the Court of Appeal in exercise of the jurisdiction conferred by this Constitution or any other law for the time being in force in Grenada.
- (5) In this section the “prescribed value” means the value of fifteen hundred dollars or such other value as may be prescribed by Parliament.
- (6) This section shall be subject to the provisions of subsection (7) of section 37 of this Constitution.”.

Insertion of sections in the Constitution

10. The Constitution is amended by the inserting after section 104 the following—

“Decisions of the Caribbean Court of Justice shall be final

104A. Decisions of the Caribbean Court of Justice shall be final and shall not be subject to any appeal, review or other enquiry whatever in any other court, tribunal or body whatsoever.

PART II

Appeals from courts in Grenada only to the Caribbean Court of Justice

No appeal shall lie from any Court in or for Grenada except to the Caribbean Court of Justice

104B. No appeal shall lie or shall be brought from or in respect of any decision of any court in or for Grenada to any court, tribunal or other body

whatsoever, except only to the Caribbean Court of Justice in accordance with section 104 of this Constitution, whether—

- (a) as of right;
- (b) by leave of any court, tribunal or other body;
- (c) by special leave of any court, tribunal or other body; or
- (d) otherwise.”.

Alteration of section 111 of the Constitution

11. Section 111 of the Constitution is altered as follows—

- (a) in subsection (1), by inserting the following definition in its appropriate alphabetical order—

““Agreement Establishing the Caribbean Court of Justice”
means the Agreement Establishing the Caribbean Court of Justice, signed at St. Michael, Barbados, on the 14th day of February 2001, together with all Protocols and amendments thereto;”;

- (b) by deleting subsection (3) and substituting with the following—

“(3) In this Constitution—

- (a) references to the Court of Appeal, the High Court and the Judicial and Legal Services Commission are references to the Court of Appeal, the High Court and the Judicial and Legal Services Commission established by the Courts Order; and
- (b) references to the Caribbean Court of Justice are references to the Caribbean Court of Justice established under the Agreement Establishing the Caribbean Court of Justice in relation to the Appellate Jurisdiction of that Court established by clause (b) of paragraph 1 of Article III of that Agreement.”; and

- (c) by deleting subsection (15) and substituting with the following-

“(15) Except where interpretation provisions are specifically set out in this Constitution, the Interpretation and General Provisions Act Cap. 153 shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto.”.

PART III
REPEAL OF WEST INDIES ASSOCIATED STATES
(APPEALS TO PRIVY COUNCIL) ORDER 1967
AND
WEST INDIES ASSOCIATED STATES
(APPEALS TO PRIVY COUNCIL) (GRENADA) ORDER 1967

Repeals of the West Indies Associated States (Appeals to Privy Council Order)

12. (1) The West Indies Associated States (Appeals to Privy Council) Order 1967, in so far as it has effect as part of the law of Grenada, is repealed.

(2) The West Indies Associated States (Appeals to Privy Council) (Grenada) Order is repealed.

PART IV
GENERAL, SAVINGS, TRANSITIONAL

Other relevant references

13. Where in any part of the constitutional instruments other than those specifically mentioned above, or in any written law other than the constitutional instruments, provision is made for, or reference is made to, an appeal to Her Majesty in Council or the Judicial Committee of Her Majesty's Privy Council or the Judicial Committee of the Privy Council or the Judicial Committee or the Privy Council or any such kindred expression, such provision or reference shall, after the date of commencement of this Act, be construed as a reference to an appeal to the Caribbean Court of Justice.

Matters already finally determined

14. Nothing contained in this Act shall be construed as conferring jurisdiction on the Caribbean Court of Justice to hear and determine matters in relation to any decision of the Court of Appeal which at the date of commencement of this Act was, pursuant to the Constitution or any other law, declared to be final.

Savings

15. The provisions of this Act—

(a) shall not affect—

(i) any application that was made to Her Majesty in Council;
or

(ii) any matter that was before Her Majesty in Council before the date of commencement of this Act;

(b) shall not affect the execution or enforcement of any decision given, in respect of an application or matter referred to in paragraph (a) of this section, after the commencement of this Act.

Transitional

16. (1) An appeal pending before Her Majesty in Council at the date of commencement of this Act may be transferred to the Caribbean Court of Justice with the consent of all parties.

(2) Proceedings shall be deemed to be pending where—

(a) an appeal to Her Majesty in Council has been instituted before the date of commencement of this Act; or

(b) leave to appeal or special leave to appeal to Her Majesty in Council has been granted or applied for before the date of commencement of this Act.

(3) Any judgment of Her Majesty in Council which at the commencement of this Act has been given but not satisfied may be enforced after the date of commencement of this Act as if such judgment had been a judgment of the Caribbean Court of Justice.

PART V

**STYLING THE SUPREME COURT THE
“EASTERN CARIBBEAN SUPREME COURT”**

Insertion before section 105 of new Chapter name, number and heading in the Constitution

17. The Constitution is altered by inserting before section 105 the following—

**“CHAPTER VIII B
SUPREME COURT TO BE STYLED THE
EASTERN CARIBBEAN SUPREME COURT”**

Repeal and replacement of section 105 of the Constitution

18. Section 105 of the Constitution is repealed and the following substituted therefor—

“Supreme Court to be styled the Eastern Caribbean Supreme Court

105. In this Chapter, references to this Constitution shall be construed as including references to the Courts Order, which, subject to any provisions made by Parliament under section 39 of this Constitution, shall continue to have effect as part of the law of Grenada but which shall be styled the Eastern Caribbean Supreme Court Order; and for that purpose the Supreme Court established by that Order shall be styled the Eastern Caribbean Supreme Court.”.

Alteration of section 4 of the Courts Order

19. Section 4 of the Courts Order, in so far as it has effect as part of the law of Grenada, is altered in subsection (1) so that for purposes of the law of Grenada the Supreme Court there referred to, as impacted by any relevant law, shall be styled the “Eastern Caribbean Supreme Court”.

**PART VI
STYLING THE COURTS ORDER THE
“EASTERN CARIBBEAN SUPREME COURT ORDER”**

Alteration of section 39 of the Constitution

20. Section 39 of the Constitution is altered—

(a) in subsections (1), (2), (4), (5), (8) (a), (9) (b) and (9) (d) by deleting the words “Courts Order” wherever they occur and in each case substituting the words “Eastern Caribbean Supreme Court Order”; and

(b) by deleting subsection (9) (b) and replacing it as follows—

“(b) references to the Courts Order which shall be styled the Eastern Caribbean Supreme Court Order in so far as it has effect as part of the law of Grenada shall include references to any law that alters that Order in so far as it has such effect.”.

Alteration of section 92 of the Constitution

21. Section 92 of the Constitution is altered in subsection (6) by deleting the words “Courts Order” and substituting the words “Eastern Caribbean Supreme Court Order”.

Alteration of section 93 of the Constitution

22. Section 93 of the Constitution is altered in subsection (7) by deleting the words “Courts Order” and substituting the words “Eastern Caribbean Supreme Court Order”.

Insertion of heading in the Constitution

23. The Constitution is altered by inserting before section 101 the following—

“PART I
Jurisdiction in Constitutional Questions”.

Insertion of heading in the Constitution

24. The Constitution is altered by inserting after section 102 the following—

“PART II
Court of Appeal”.

Insertion of section in the Constitution

25. The Constitution is altered by inserting after section 105 the following—

“References to this Constitution include references to the Eastern Caribbean Supreme Court Order

105A. In this Chapter and in Chapters VIII and VIIIA references to this Constitution shall be construed as including references to the Courts Order, which, subject to any provisions made by Parliament under section 39 of this Constitution, shall continue to have effect as part of the law of Grenada but which shall be styled the Eastern Caribbean Supreme Court Order.”.

Alteration of section 111 of the Constitution

26. Section 111 of the Constitution is altered—

(a) in subsection (1) by inserting in the appropriate alphabetical order the following—

“**“Eastern Caribbean Supreme Court”** means the Supreme Court referred to in section 105 of this Constitution;

“Eastern Caribbean Supreme Court Order” means the Eastern Caribbean Supreme Court Order referred to in section 105A of this Constitution; and

“the State” means Grenada;”;

(b) in subsection (3) by deleting the words “Courts Order” and substituting the words “Eastern Caribbean Supreme Court Order”; and

(c) by deleting subsection (4) and substituting with the following—

“(4) In this Constitution—

(a) the Eastern Caribbean Supreme Court referred to in section 105 of this Constitution may be referred to as “the Supreme Court”; and

(b) the Eastern Caribbean Supreme Court Order referred to in section 105A of this Constitution may be referred to as “the Supreme Court Order”.”.

Alteration of Schedule 1 to the Constitution

27. Schedule 1 to the Constitution is altered—

(a) In PART I—

(i) by deleting paragraph (vi) and substituting the following—

“(vi) Chapter VIII as amended;” and

(ii) by inserting in the appropriate place the following—

“(viA) Chapter VIII B;” and

- (b) In PART II by deleting the words “COURTS ORDER” and substituting the words “EASTERN CARIBBEAN SUPREME COURT ORDER”.

Alteration of Schedule 2 to the Grenada Constitution Order

28. Schedule 2 of the Grenada Constitution Order 1973 is altered in subparagraphs (1) and (2) of paragraph 1 by deleting the words “Courts Order” wherever they occur and substituting the words “Eastern Caribbean Supreme Court Order”.

Alteration of title to the Courts Order

29. The Courts Order is altered—

- (a) at the beginning immediately after the words “1967 No. 223” by deleting the words “ASSOCIATED STATES” and substituting the words “EASTERN CARIBBEAN”; and
- (b) at the beginning immediately before the words “Made... 22nd February 1967” by deleting the words “Courts Order” and substituting the words “Eastern Caribbean Supreme Court Order”.

Alteration of section 1 of the Courts Order

30. The “Courts Order” is altered by deleting subsection (1) of section 1 and substituting the following—

- “1. (1) This Order may be cited as the Eastern Caribbean Supreme Court Order 1967.”.

PART VII EASTERN CARIBBEAN SUPREME COURT GENERALLY

Eastern Caribbean Supreme Court generally

31. In any provision in the constitutional instruments other than those specifically mentioned above, or in any other provision of the written law of Grenada—

- (a) where there appear the words “Supreme Court of Grenada and the West Indies Associated States” or the words “West Indies Associated States Supreme Court” those words are deleted and there are substituted the words “Eastern Caribbean Supreme Court”; and
- (b) where there appear the words “Courts Order” or the words “West Indies Associated States Supreme Court Order” those words are deleted and there are substituted the words “Eastern Caribbean Supreme Court Order”.

Passed by the House of Representatives this 7th day of September, 2018.

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Clerk to the House of Representatives

Passed by the Senate this 14th day of September, 2018.

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Clerk to the Senate

