

OBJECTS AND REASONS

This Bill will amend the *Constitution* in order

- (a) to provide for the establishment of the Caribbean Court of Justice as the final Court of Appeal in Barbados in place of the Judicial Committee of Her Majesty's Privy Council;
- (b) to repeal provisions that allow for appeals to Her Majesty in Council and replacing such provisions by provisions that allow for appeals to the Caribbean Court of Justice.

Arrangement of Sections

Section

1. Short title.
2. Amendment of section 24 of the Constitution.
3. Amendment of section 27 of the Constitution.
4. Amendment of section 79 of the Constitution.
5. Amendment of Chapter VII of the Constitution.
6. Amendment of section 80 of the Constitution.
7. Amendment of section 84 of the Constitution.
8. Amendment of section 87 of the Constitution.
9. Amendment of section 88 of the Constitution.

Section

10. Amendment of First Schedule to the Constitution.
11. Savings.
12. Commencement.

BARBADOS

A Bill entitled

An Act to alter the *Constitution*.

ENACTED by the Parliament of Barbados in accordance with section 49 of the *Constitution* as follows:

1. This Act may be cited as the *Constitution (Amendment) Act, 2003*. Short title.

2. Section 24 of the *Constitution* is amended by deleting the words "Her Majesty in Council" appearing in subsection (4) and substituting the words "The Caribbean Court of Justice". Amendment of section 24 of the Constitution.

3. Section 27 of the *Constitution* is amended by deleting the words "Her Majesty in Council" appearing in subsection (1) and substituting the words "The Caribbean Court of Justice". Amendment of section 27 of the Constitution.

Amendment of section 79 of the Constitution.

4. Section 79 of the *Constitution* is amended by deleting the words "Her Majesty in Council" appearing in subsection (6) and substituting the words "The Caribbean Court of Justice".

Amendment of Chapter VII of the Constitution.

5. The *Constitution* is amended in Chapter VII

(a) by inserting therein immediately before section 80 the following:

"Interpretation for purposes of Chapter VII.

79B. For the purposes of this Chapter

"Agreement" means the Agreement Establishing the Caribbean Court of Justice, to which Barbados is a party, that was signed at Bridgetown, Barbados on the 14th day of February, 2002;

"Court" means the Caribbean Court of Justice;

"Regional Judicial and Legal Services Commission" means the Commission established by Article V of the Agreement;

"Treaty" means the Revised Treaty of Chaguaramas Establishing the Caribbean Community, including the CARICOM Single Market and Economy,

(a) that was signed in the Bahamas on the 5th day of July, 2001;

(b) to which Barbados is a party.

Establishment of Judicature.

79C. There is established a Judicature consisting of

(a) The Caribbean Court of Justice Established by the Agreement; and

(b) the Supreme Court of Judicature and Magistrates Courts

that shall exercise jurisdiction under this *Constitution* or any other law.

The
Caribbean
Court of
Justice.

79D. (1) The Caribbean Court of Justice

(a) shall have exclusive and compulsory jurisdiction in

- (i) disputes between Contracting Parties to the Agreement;
- (ii) disputes between any Contracting Parties to the Agreement and the Community;
- (iii) referrals from national courts or tribunals of Contracting Parties to the Agreement;
- (iv) applications by persons in accordance with the *Caribbean Court of Justice Act*,

concerning the interpretation and application of the Treaty;

(b) have exclusive jurisdiction

- (i) to deliver advisory opinions concerning the interpretation and application of the Treaty upon the request of Contracting Parties or the Community;
- (ii) where there is a dispute as to whether the Court has jurisdiction, in a matter, whether the court has to decide, such jurisdiction; and

(c) shall be the final Court of Appeal from any decision given by the Court of Appeal.

(2) Where the Court of Appeal or the High Court is seised of an issue whose resolution involves a question concerning the interpretation or application of the Treaty, the court concerned shall, if it considers that a decision on the question is necessary to enable it to deliver judgment, refer the question to the Court for determination before delivering judgment.

(3) A decision of the Court concerning Barbados or from the Court of Appeal shall be enforced in Barbados in accordance with law.

Constitu-
tion of the
Court.

79E. (1) The Judges of the Court shall be the President and not more than 9 other Judges of whom at least 3 shall possess expertise in international law, including international trade law.

(2) The Court shall be a superior Court of record and shall have all the powers of such a Court.

(3) The determination of any matter before the Court shall be determined by a majority of the Judges hearing the case.

(4) The Court may sit in such divisions as the President directs and a judge may sit in every division.

Appoint-
ment of
Judges.

79F. (1) The President of the Court shall be appointed by the qualified majority vote of three-quarters of the Contracting Parties to the Agreement on the recommendation of the Commission.

(2) A Judge of the Court shall be appointed by the majority vote of all the members of the Regional Judicial and Legal Services Commission.

(3) The qualification for appointment of the President and a Judge shall be as prescribed by law.

(4) A Judge of the Court shall not enter upon the duties of his office until he has taken and subscribed the judicial oath in the form set out in the *First Schedule*.

First
Schedule.

79G. (1) The President of the Court shall hold office for

Tenure
of office
of Judges.

(a) a term of 7 years; or

(b) until he attains the age of 72 years or sooner resigns or retires, whichever is the earlier.

(2) A Judge of the Court shall hold office until he attains the age of 72 years or sooner resigns or retires.

(3) Notwithstanding subsections (1) and (2), the President or other Judge may continue in office for a period not exceeding 3 months in order to enable him to deliver judgment or to do any other thing in relation to any proceedings that were commenced before him before the expiry of the term of office or the attainment of the age, or his retirement or resignation, as the case may be.

79H. (1) A Judge may be removed from office only for inability to perform the functions of his office, whether arising from illness or any other cause or for misbehaviour, and shall not be so removed except in accordance with such provisions as are prescribed by law.

Removal
of Judges.

79I. The resignation or retirement of a Judge shall be in accordance with provision prescribed by law."

Resigna-
tion and
retire-
ment of
Judges.

Amend-
ment of
section 80
of the
Constitu-
tion.

6. Section 80 of the *Constitution* is amended by deleting subsection (1) of section 80 and substituting the following:

"(1) The Supreme Court of Judicature shall consists of the Court of Appeal and the High Court and shall have such power and authority as may be conferred upon those Courts respectively by this *Constitution* or any other law."

Amend-
ment of
section 84
of the
Constitu-
tion.

7. Section 84 of the *Constitution* is amended

(a) by deleting subsection (4) and substituting the following:

"(a) A Judge shall be removed from office by the Governor-General, by instrument under the Public Seal, if the question of the removal of that Judge from office has, at the request of the Governor-General made in pursuance of subsection (5), been referred by him to the Caribbean Court of Justice and the Court has advised the Governor-General that the judge ought to be removed from office for inability as aforesaid or for misbehaviour."

(b) in subsection (5), by deleting the words "Her Majesty to the Judicial Committee;" appearing in subsection (b) and substituting the words "the Governor-General to the Caribbean Court of Justice;"

(c) in subsection (8),

(i) by deleting the words "Her majesty to the Judicial Committee" appearing in paragraph (a) and substituting the words "the Governor-General to the Caribbean Court of Justice;" and

(ii) by deleting the words "the judicial committee advises Her Majesty" appearing in paragraph (b) and substituting the words "the Caribbean Court of Justice advises the Governor-General."

8. Section 87 of the *Constitution* is amended by deleting the words "to Her Majesty in Council" appearing in subsection 2 thereof and substituting the words "to the Caribbean Court of Justice".

Amendment of section 87 of the Constitution.

9. Section 88 of the *Constitution* is amended

Amendment of section 88 of the Constitution.

(a) by deleting the words "to Her Majesty in Council" appearing in subsection (1) and substituting the words "to the Caribbean Court of Justice";

(b) by deleting the words "Her Majesty" appearing in subsection (2) and substituting the words "The Caribbean Court of Justice"; and

(c) by inserting in section 88 as subsection (3) the following:

"(3) A decision of the Caribbean Court of Justice is final and shall not be the subject of any appeal or enquiry in any tribunal or other court."

10. The *First Schedule* to the *Constitution* is amended by inserting the following

Amendment of First Schedule to the Constitution.

"Judicial oath for Judges of the Caribbean Court of Justice

I do hereby swear (or solemnly affirm) that I will faithfully exercise the office of President/Judge of the Caribbean Court of Justice without fear or favour, affection or ill-will and in accordance with the Code of Judicial Conduct.

(so help me God (to be omitted in affirmation)).

Savings.

11. The provisions of this Act

(a) shall not affect

(i) an application that has been made to the Judicial Committee of the Privy Council; or

(ii) any matter that is before the Judicial Committee of the Privy 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) after the commencement of this Act.

Commence-
ment.

12. This Act shall come into effect on a date to be fixed by proclamation.