

# THE OFFICIAL GAZETTE 5<sup>TH</sup> OCTOBER, 2004 LEGAL SUPPLEMENT – C

BILL No. 17 of 2004

*Tuesday 5<sup>th</sup> October, 2004*

PARLIAMENT OFFICE  
Public Buildings,  
Georgetown,  
Guyana.  
5<sup>th</sup> October, 2004.

The following Bill will be passed in the National Assembly is published for general information.

*S. E. Isaacs,*  
Clerk of the National Assembly.



GUYANA

BILL No. 17 of 2004

## PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE CARIBBEAN COURT OF JUSTICE AND THE REGIONAL JUDICIAL AND LEGAL SERVICES COMMISSION BILL 2004

### ARRANGEMENT OF SECTIONS

#### Section

1. Short title and commencement.
2. Interpretation.
3. Protocol given the force of law.
4. Certificate of Minister conclusive as to contents.
5. Amendment of Protocol.
6. Regulations.

**SCHEDULE - Protocol on the Privileges and Immunities of the Caribbean Court of Justice  
and the Regional Judicial and Legal Services Commission.**

**A BILL**  
**Intituled**

AN ACT to enable the implementation by Guyana the Protocol on the Privileges and Immunities of the Caribbean Court of Justice and the Regional Judicial and Legal Services Commission and for related matters.

A.D. 2004

Enacted by the Parliament of Guyana:-

Short title and commencement.

1. This Act may be cited as the Protocol on the Privileges and Immunities of the Caribbean Court of Justice and the Regional Judicial and Legal Services Commission Act 2004 and shall come into operation on such date as the Minister may by Order appoint.

Interpretation.

2.(1) In this Act -

- (a) "Agreement" means the Agreement establishing the Caribbean Court of Justice, signed at Bridgetown, Barbados, on the 14<sup>th</sup> day of February, 2002;
- (b) "Commission" means the Regional Judicial and Legal Services Commission established by Article V of the Agreement;
- (c) "Court" means the Caribbean Court of Justice established by the Agreement;

(d) "Protocol" means the Protocol on the Privileges and Immunities of the Caribbean Court of Justice and the Regional Judicial and Legal Services Commission, signed at Montego Bay, Jamaica on 4<sup>th</sup> July, 2003, the text of which is set out in the Schedule.

Schedule

Protocol given the force of law.

3. The Protocol shall have the force of law in Guyana.

Certificate of Minister conclusive as to contents.

4. If in any proceedings a question arises as to the entitlement of the Commission or the Court to any immunities or privileges under the Protocol, a certificate issued by or under the authority of the Minister to the effect that the Commission or the Court is or is not entitled shall be conclusive evidence of the fact.

Amendment of the Protocol.

5.(1) Where Guyana becomes a party to any agreement to amend the Protocol the Minister may, by order, amend the Schedule by including therein the amendment.

(2) An order made under subsection (1) may contain such consequential, supplemental or ancillary provisions (including provisions amending this Act) as appear to the Minister to be necessary or expedient for the purpose of giving due effect to the amendment of the Protocol as mentioned aforesaid.

(3) Where the Protocol in the Schedule is amended pursuant to this section any reference in this Act or any other instrument to the Protocol shall, unless the context otherwise requires, be construed as a reference to the Protocol as so amended.

(4) Every order made under this section shall be subject to negative resolution of the National Assembly.

**Regulations.**

6. The Minister may make regulations which he considers necessary for giving effect to the provisions of this Act.

SCHEDULE

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PROTOCOL  
ON THE  
PRIVILEGES AND IMMUNITIES  
OF THE  
CARIBBEAN COURT OF JUSTICE  
AND THE  
REGIONAL JUDICIAL AND LEGAL SERVICES  
COMMISSION

PROTOCOL ON THE STATUS, PRIVILEGES AND IMMUNITIES OF THE  
CARIBBEAN COURT OF JUSTICE AND THE REGIONAL JUDICIAL AND LEGAL  
SERVICES COMMISSION

PREAMBLE

The Contracting Parties

Noting that the Agreement Establishing the Caribbean Court of Justice entered into force on 23 July 2002;

Recognising that paragraph 2 of Article VII of the Agreement Establishing the Caribbean Court of Justice (hereinafter referred to as "**the Agreement**") provides that the privileges and immunities to be accorded the Regional Judicial and Legal Services Commission shall be laid down in a Protocol to the Agreement;

Conscious that Article XXX of the Agreement also provides that the privileges and immunities to be recognised and granted by the Contracting Parties thereto to the judges and officers of the Court necessary to protect their independence and impartiality, shall be laid down in a Protocol to the Agreement; and

Desirous of establishing conditions to safeguard the independence and integrity of the judges and officers of the Caribbean Court of Justice (hereinafter referred to as "**the Court**") and the Members of the Regional Judicial and Legal Services Commission,

Have agreed as follows:

**ARTICLE I**  
**USE OF TERMS**

In this Protocol, unless the context otherwise requires:

"archives of the Court or the Commission" includes the records, correspondence, documents, manuscripts, photographs, slides, films, sound recordings and electronic storage devices belonging to or held by the Court or the Commission;

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

"competent Authorities" means national, regional or local authorities of the Contracting Parties, as may be appropriate in the context and in the laws of the Contracting Parties;

"Conference" means the Conference of Heads of Government of the Member States of the Caribbean Community;

"Contracting Party" means a state in relation to which this Protocol is in force;

"counsel" means a person qualified to conduct proceedings before the Court on behalf of another;

"the Court" means the Caribbean Court of Justice established by Article III of the Agreement;

"the Government" means the Government of a Contracting Party to this Protocol;

"officers of the Court" means the Registrar of the Court and the Deputy Registrar;

"the President" means the President of the Court;

"property" means all forms of property including funds and assets belonging to or held or administered by the Court or the Commission and all income accruing to the Court of the Commission.

"Registrar" means the Registrar of the Court.

"Secretary General" means the Secretary-General of the Caribbean Community.

## ARTICLE II

### PROPERTY FUNDS AND ASSETS OF THE COURT AND THE COMMISSION

1. The Court, the Commission, their property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case such immunity has been expressly waived in accordance with Article X. No waiver of immunity shall extend to any measure of execution.

2. The property of the Court and the Commission, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference whether by executive, administrative or judicial action.

## ARTICLE III

### PREMISES OF THE COURT AND THE COMMISSION

1. The premises occupied by the Court or the Commission shall be inviolable.

2. The President may make regulations relating to the premises mentioned in paragraph 1 of this Article for the purpose of establishing therein conditions necessary for the full execution of the functions of the Court or the Commission, as the case may be.



3. Officials of the Government shall not enter the premises referred to in this Article to perform any official duties therein except with the consent of and under conditions agreed by the President. However, in case of fire or other emergency requiring prompt protective action or in the event that officials of the Government have reasonable cause to believe that such an emergency has occurred, the consent of the President to entry on the premises by the officials of the Government shall be presumed if the President cannot be reached in time.

#### ARTICLE IV

##### ARCHIVES OF THE COURT AND THE COMMISSION

The archives of the Court and the Commission, and in general all documents belonging to or held by the Court or the Commission, shall be inviolable wherever located.

#### ARTICLE V

##### EXEMPTION FROM FOREIGN EXCHANGE CONTROLS

1. Without being restricted by financial controls, regulations or moratoria of any kind, the Court and the Commission shall be entitled for their official use only:

- (a) to purchase from authorised dealers, hold and make use of negotiable currencies, operate foreign currency and external accounts and purchase through authorised dealers, hold and make use of funds and securities;
- (b) to freely transfer their funds, securities and foreign currencies to or from the territory of any Contracting Party and to convert any currency held by them into any other currency.

2. The Court and the Commission, in exercising their rights under paragraph 1 of this Article, shall pay due regard to any representations made by the Government and shall give effect to such representations so far as this is possible without detriment to the interests of the Court or the Commission.

## ARTICLE VI EXEMPTION FROM TAXES, CUSTOMS DUTIES AND IMPORT OR EXPORT DUTIES

1. The Court and the Commission shall be exempt from:

- (a) any form of direct or indirect taxation, but the Court or the Commission shall not claim exemption from taxes which are, in fact, no more than charges for public utility services;
- (b) customs duties and prohibitions and restrictions on imports in respect of articles imported or exported by the Court or the Commission for their official use, subject to the condition that articles imported under such exemption shall not be sold within the territory of the Contracting Party except under conditions agreed to with the Government;
- (c) customs duties and other levies and prohibitions and restrictions in respect of the import, sale and export of their publications.

2. For the purposes of this Article, "indirect taxation" means airport departure or travel tax, travel ticket tax, hotel and restaurant taxes, customs and excise duties, consumption tax, stamp duties, withholding tax on interest, value added tax, finance charges and imposts with equivalent effect.

**ARTICLE VII**  
**FACILITIES IN RESPECT OF COMMUNICATIONS**

1. The Court and the Commission shall, in relation to their official communications, enjoy in the territory of the Contracting Party, treatment no less favourable than that accorded by the Government to any other international organisation.
2. The Court and the Commission shall be immune from censorship of their official correspondence and official communications.
3. The Court and the Commission shall have the right to use codes and to despatch and receive correspondence whether by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags.
4. Nothing in this Article shall be construed so as to preclude the adoption of appropriate security measures in the interest of the Government concerned.

**ARTICLE VIII**  
**JUDGES AND OFFICERS OF THE COURT AND MEMBERS OF THE COMMISSION**

1. Judges and officers of the Court and members of the Commission engaged in the business of the Court or the Commission, as the case may be, in the territory of a Contracting Party, shall enjoy:

- (a) immunity from legal process in respect of words spoken or written and all acts done by them in their official capacity; such immunity shall continue notwithstanding that the persons concerned have ceased to exercise their functions with the Court or the Commission;
- (b) immunity from personal arrest or detention in relation to acts performed by them in their official capacity;
- (c) inviolability of all papers, documents and materials related to the work of the Court or the Commission as the case may be;
- (d) exemption from immigration restrictions, alien registration requirements and national service obligations;
- (e) the same protection and repatriation facilities in times of international crisis as are accorded representatives of foreign governments on temporary official missions;
- (f) the right, for the purpose of all communications with the Court or the Commission, as the case may be, to use codes and to despatch or receive papers, correspondence or other official material by courier or in sealed bags;

- (g) the same privileges and facilities in respect of currency and exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
- (h) immunity from inspection and seizure of personal and official baggage except in cases where the person is caught in flagrante delicto. In such cases, the competent authorities shall immediately inform the Registrar or other appropriate official of the Court. Inspection of personal baggage shall be conducted in the presence of the person concerned or his authorised representative, and in the case of official baggage, in the presence of a duly authorised representative of the Registrar;
- (i) exemption from any form of direct taxation on salaries, remuneration and allowances paid by the Court or the Commission and from customs duties on imports in respect of articles imported for personal use, subject to the condition that articles imported under such exemption shall not be sold within the territory of the Contracting Party except under conditions determined by the Government.

#### ARTICLE IX

#### COUNSEL APPEARING IN PROCEEDINGS BEFORE THE COURT

1 Counsel appearing in proceedings before the Court while present in the territory of a Contracting Party shall, in the performance of their functions connected with such proceedings, enjoy:

- (a) inviolability of all papers, documents and materials relating to the proceedings before the Court;
- (b) immunity from personal arrest or detention and legal process in relation to words spoken or written or acts performed by them in relation to proceedings before the Court;
- (c) exemption from immigration restrictions, alien registration requirements and national service obligations;
- (d) the same privileges and facilities in respect of currency and exchange restrictions in relation to proceedings before the Court as are accorded to representatives of foreign governments on temporary official missions.

2 The immunity mentioned in paragraph 1(a) and (b) shall continue although the person entitled is no longer conducting proceedings before the Court.

3 The privileges, immunities and facilities mentioned in this Article are only intended to assist Counsel in the efficient representation of clients in proceedings before the Court and shall not be employed to circumvent applicable laws and regulations of the Government.

## ARTICLE X

### CO-OPERATION WITH COMPETENT AUTHORITIES

1 Privileges and immunities are recognised and granted by this Protocol in the interest of the Court and the Commission and not for the personal benefit of persons entitled thereto. The Conference in the case of the President and the President in the case of other persons entitled thereto.

Conference in the case of the President and the President in the case of other persons entitled thereto, shall have the right to waive such privileges and immunities whenever in their opinion the enjoyment of the privileges and immunities would impede the course of justice and could be waived without prejudice to the interests of the Court or the Commission.

2. The President and the Registrar, as the case may be, shall co-operate at all times with the competent authorities to facilitate the proper administration of justice, secure the observance of the laws and regulations of the Government and to avoid the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Protocol.

3. Without prejudice to the privileges and immunities accorded by this Protocol, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the Government and not to interfere in the internal affairs of the Contracting Party.

4. If the Government considers that an abuse has occurred in the enjoyment of any privilege or immunity conferred by this Protocol, the Registrar shall, at the request of the Government, consult with the competent authorities to determine whether such an abuse has occurred. If such consultations fail to achieve results satisfactory to the Registrar and the Government, the issue shall be settled in accordance with the procedure laid down in Article XII.

#### ARTICLE XI FACILITATION OF TRAVEL.

Subject to the laws or regulations restricting entry or movement for reasons of national security, the Contracting Party shall extend all facilities for the uninterrupted passage within its territory as well as for the entry and departure therefrom of the categories of persons mentioned below:

- (a) judges of the Court and members of their families forming part of their households;
- (b) officers of the Court and members of their families forming part of their households;
- (c) members of the Commission;
- (d) counsel and their clients appearing in proceedings before the Court;
- (e) persons appearing in proceedings before the Court;
- (f) persons other than officers of the Court performing missions for the Court and members of their families forming part of their households; and
- (g) other persons invited to the Seat of the Court or the offices of the Commission on official business.

2 The Registrar shall communicate to the Government the names of the persons mentioned in paragraph 1 of this Article.

3 This Article shall not be applicable in case of a general interruption of transportation and shall not impede the effective application of laws in force nor waive the reasonable application of quarantine and health regulations.

4 Visas required by persons referred to in paragraph 1 of this Article shall be granted by the Government expeditiously and free of charge.



**ARTICLE XII**  
**SETTLEMENT OF DISPUTES**

- i The President shall make appropriate provisions for the settlement of:
- (a) disputes arising out of contracts and other disputes of a private law character to which the Court or the Commission is a party;
  - (b) disputes involving any judge or officer of the Court or Counsel conducting proceedings before the Court enjoying immunity if such immunity has not been waived by the persons empowered in that behalf.

1. Any difference between the Government and the Court or the Commission arising out of the interpretation or application of this Protocol and which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a Tribunal of three arbitrators at the instance of any Contracting Party to this Protocol: one to be appointed by the Government, one to be appointed by the Registrar, and the third, who shall be the Chairman of the Tribunal, to be chosen by the first two arbitrators.

2. If any of the parties fails to appoint an arbitrator within six weeks of the decision to resort to arbitration, an arbitrator or arbitrators, as the case may be, shall be appointed for such purposes by the Secretary-General.

3. If the first two arbitrators within three weeks of their appointment fail to agree upon the third arbitrator, the Government or the Registrar shall request the Secretary-General to appoint the third arbitrator.

5. A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding.

6. The Chairman shall be empowered to settle all questions of procedure in any case where there is disagreement between the other arbitrators in respect thereto.

### ARTICLE XIII

#### SIGNATURE

This Protocol shall be open for signature by the Contracting Parties to the Agreement.

### ARTICLE XIV

#### ENTRY INTO FORCE

This Protocol shall enter into force immediately upon signature by at least three Contracting Parties to the Agreement.

### ARTICLE XV

#### ACCESSION

1. Any Contracting Party to the Agreement may accede to this Protocol.

2. Instruments of accession shall be deposited with the Secretary-General who shall transmit certified copies to the Governments.

**ARTICLE XVI  
AMENDMENTS**

1. Consultations in respect of any amendment to this Protocol may be initiated either by the Government or the Registrar.

2. Amendments shall enter into force upon their acceptance by all of the Contracting Parties.

**ARTICLE XVII  
DEPOSITARY**

This Protocol and any amendment thereto shall be deposited with the Secretary-General who shall transmit certified copies thereof to the Contracting Parties.

**ARTICLE XVIII  
IMPLEMENTATION**

Each Contracting Party shall promptly inform the Conference of the action which it has taken to make effective the provisions of this Protocol in its territory.

ARTICLE XIX  
WITHDRAWAL

1. A Contracting Party which withdraws from the Agreement, may also withdraw from this Protocol by giving notice in writing to the Depository who shall promptly notify the other Contracting Parties accordingly.

2. Withdrawal shall take effect five years after the date on which the notice was received by the Depository, unless the Contracting Party before the withdrawal becomes effective notifies the Depository in writing of the cancellation of its notice of withdrawal.

3. A Contracting Party withdrawing from this Protocol shall honour all obligations assumed by it before the effective date of its withdrawal.

IN WITNESS WHEREOF the undermentioned representatives duly authorised in that behalf have executed this Protocol for their respective Governments

Signed at Montego Bay, Jamaica on the 4<sup>th</sup> day of July 2003

Signed by for the Government of Antigua and Barbuda on the 4<sup>th</sup> day of July 2003

*[Signature]*  
at Montego Bay, Jamaica

Signed by for the Government of Barbados on the 4<sup>th</sup> day of July 2003 at

*[Signature]*  
at Montego Bay, Jamaica

Signed by for the Government of Belize on the 4<sup>th</sup> day of July 2003 at

*[Signature]*  
at Montego Bay, Jamaica

igned by for the Government of the Commonwealth of Dominica on the 4<sup>th</sup> day of July 2003 at Montego Bay, Jamaica

igned by for the Government of Grenada on the \_\_\_\_\_ day of \_\_\_\_\_ 2003 at \_\_\_\_\_

igned by for the Government of the Co-operative Republic of Guyana on the 4<sup>th</sup> day of July 2003 at Montego Bay, Jamaica

igned by for the Government of Jamaica on the 4<sup>th</sup> day of July 2003 at Montego Bay, Jamaica

igned by for the Government of Montserrat on the \_\_\_\_\_ day of \_\_\_\_\_ 2003 at \_\_\_\_\_

Signed by for the Government of St. Kitts and Nevis on the 4<sup>th</sup> day of JULY 2003 at Montego Bay, Jamaica  
*Henry D. Anthony*

Signed by for the Government of Saint Lucia on the 4<sup>th</sup> day of July 2003 at Montego Bay, Jamaica  
*Ralph Gonsalves*

Signed by for the Government of St. Vincent and the Grenadines on the 4<sup>th</sup> day of July 2003 at Montego Bay, Jamaica

Signed by for the Government of The Republic of Suriname on the 4<sup>th</sup> day of July 2003 at Montego Bay, Jamaica  
*Kenneth L. Giff*

Signed by for the Government of The Republic of Trinidad and Tobago on the 4<sup>th</sup> day of July 2003 at Montego Bay, Jamaica

## EXPLANATORY MEMORANDUM

This Bill seeks to enable the implementation by Guyana of the Protocol on the privileges and immunities of the Caribbean Court of Justice and the Regional Judicial and Legal Services Commission.

Clause 3 provides for the Protocol to have the force of law in Guyana.

Under article II of the Protocol the Court, the Commission and their property shall enjoy immunity from every form of legal process.

Under article III of the Protocol the premises of the Court or Commission shall be inviolable. Under article IV the archives and all documents of the Court and the Commission shall be inviolable. The Court and the Commission shall be exempt from any form of taxation and customs duties and other levies (Article VI). The official communications of the Court and the Commission shall enjoy the same treatment accorded to any other international organisation (Article VII). Judges and officers of the Court and members of the Commission shall be accorded the same immunities as diplomatic agents (Article VIII). Counsel appearing in proceedings before the Court shall enjoy inviolability of all documents, immunity from arrest, exemption from immigration restrictions (Article IX).

Clause 4 makes conclusive the certificate of the Minister as to the entitlement of the Commission or the Court to any immunities or privileges under the Protocol.

Clause 5 sets out the procedure for the amendment of the Protocol in the Schedule and clause 6 gives the Minister power to make regulations.

  
Attorney General and Minister of Legal Affairs.