



ST. CHRISTOPHER AND NEVIS

CHAPTER 1.08

OECS SUPREME COURT (IMMUNITIES AND PRIVILEGES) ACT

Revised Edition

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OECS SUPREME COURT (IMMUNITIES AND PRIVILEGES) ACT

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CHAPTER 1.08

OECS SUPREME COURT (IMMUNITIES AND PRIVILEGES) ACT

ARRANGEMENT OF SECTIONS

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CHAPTER 1.08

OECS SUPREME COURT (IMMUNITIES AND PRIVILEGES) ACT

AN ACT TO GIVE EFFECT TO THE PROTOCOL FOR THE EASTERN CARIBBEAN SUPREME COURT BETWEEN THE GOVERNMENTS OF THE MEMBER STATES AND THE EASTERN CARIBBEAN SUPREME COURT PROVIDING FOR THE ENJOYMENT OF IMMUNITIES AND PRIVILEGES UPON THE EASTERN CARIBBEAN SUPREME COURT, THE OFFICES OF THE CHIEF JUSTICE, HIGH COURT JUDGES, MASTERS, CHIEF REGISTRARS AND SENIOR OFFICERS AND OFFICIALS OF THE ORGANISATION OF EASTERN CARIBBEAN STATES SUPREME COURT AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

Short title.

1. This Act may be cited as the OECS Supreme Court (Immunities and Privileges) Act.

Interpretation.

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

“Court” means the Eastern Caribbean Supreme Court;

“OECS” means the Organisation of Eastern Caribbean States established by the Treaty of Basseterre 1981 done at Basseterre on the 18th June 1981 and amended by the Revised Treaty under Article 2 of the Organisation of Eastern Caribbean States Economic Union done at Gros Islet on the 18th June 2010;

“Protocol” means the Protocol for the Eastern Caribbean Supreme Court Between the Governments of the Member States and the Eastern Caribbean Supreme Court signed on the 20th May 2010 in Kingstown, St. Vincent.

Protocol for the Eastern Caribbean Supreme Court to have force of law.

3. The Protocol for the Eastern Caribbean Supreme Court signed between the Governments of the Member States and the Eastern Caribbean Supreme Court, as set out in the Schedule shall have the force of law within Saint Christopher and Nevis.

Regulations.

4. The Minister may make Regulations necessary to give effect to the provisions of this Act.
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SCHEDULE

PROTOCOLS FOR THE EASTERN CARIBBEAN SUPREME COURT BETWEEN THE GOVERNMENTS OF THE MEMBER STATES AND THE EASTERN CARIBBEAN SUPREME COURT

These protocols made this 20th day of May two thousand and eleven.

Between: the Governments of Antigua and Barbuda, Anguilla, the Commonwealth of Dominica, Grenada, Montserrat, St. Kitts and Nevis, St. Vincent & the Grenadines, and the Territory of the Virgin Islands acting herein and represented by the Prime Minister, Premier, and Chief Minister as the case may be (hereinafter called the Governments) of the one part.

And: The Eastern Caribbean Supreme Court acting herein and represented by Kimberly Cenac-Phulgence, Chief Registrar of Second Floor Heraldine Rock Building, the Waterfront, in the city of Castries (hereinafter called the Court) of the other part.

Considering that Article 6 of the Eastern Caribbean Supreme Court Agreement dated the 16th of January 1982 (hereinafter “the ECSC Agreement”) provides that the Government of each state shall take steps to provide suitable accommodation for the Court of Appeal and the High Court;

Desiring that the Chief Justice, Judges, Master, Chief Registrar, senior officers and other officials of the Eastern Caribbean Supreme Court will enjoy such status, privileges and immunities, as the case may require, to enable them to perform their functions effectively;

Have Agreed as follows—

PROTOCOL I

DEFINITIONS

In these Protocols, unless the context otherwise requires—

“**Archives of the court**” include the records, correspondence, documents, manuscripts, photographs, slides, films, sound recordings, and electronic storage devices belonging to or held by the Court;

“**Authority**” means the body comprising Heads of Government of the States or such other Ministers as may be designated by the Governments of the States;

“**Child**” means a person who is age 18 or under and who has never been married;

“**Competent Authorities**” means national or local authorities of the Member States and territories within the jurisdiction of the Eastern Caribbean Supreme Court as may be appropriate in the context and in the laws of the respective Member State and Territory;

“**Court Office**” means the premises provided by the Government in accordance with paragraph 6 of the ECSC Agreement and occupied by the Court for its official use. It includes the building or parts of the building and the land ancillary thereto, irrespective of ownership, used for the purposes of Court;

“**Members of the Family**” means the following persons who are part of the household of a person entitled to benefit under these Protocols—

- (a) the spouse of a person entitled to benefit under these Protocols;
- (b) the children of a person entitled to benefit under these Protocols, if more than half of their financial support is provided by the person entitled to benefit under these Protocols;
- (c) the parents and grandparents of a person entitled to benefit under these Protocols, if more than half of their financial support is provided by the person entitled to benefit under these Protocols; and
- (d) unmarried brothers and sisters age 18 and under of a person entitled to benefit under these Protocols, if more than half of their financial support is provided by the person entitled to benefit under these Protocols;

“**Official of the Court**” (official) means such consultants, experts or other persons performing functions for the Court as may be notified to the Governments by the Chief Registrar as persons entitled to benefit under these Protocols;

“**Property**” means all forms of property including funds and assets belonging to or held or administered by the Court and all income accruing to the Court;

“**Senior Officers**” means the Chief Registrar and Deputy Chief Registrar, the Court Administrator and Deputy Court Administrator, Program Director of the Judicial Education Institute attached to the Eastern Caribbean Supreme Court, and any other officer, designated by the Chief Justice in consultation with the Governments.

PROTOCOL II

STATUS OF THE COURT

1. The Court possesses full juridical personality and, in particular, full capacity to—
 - (a) contract;
 - (b) acquire and dispose of immovable and moveable property;
 - (c) institute and defend legal proceedings.
2. In all legal proceedings, the Court shall be represented by the Chief Registrar.

PROTOCOL III

THE COURT OFFICE

1. The Court Office shall be inviolable and shall be under the authority of the Chief Registrar who may delegate this responsibility to the Registrar of the High Court.
2. Officials of the Government, whether administrative, judicial, military or police, shall not enter the Court Office to perform any official duties therein except with the consent of and under conditions agreed by the Registrar of the High Court

under the delegated authority of the Chief Registrar. However, in the case of fire or other emergency requiring prompt protective action, or in the event that the Government has reasonable cause to believe that such an emergency has occurred, the consent of the Registrar of the High Court to enter the Court Office by the officials of the Government shall be presumed if the Registrar of the High Court cannot be reached in time.

3. The Service of legal process including the seizure of private property, may take place within the Court Office only with the consent of and under the conditions approved by the Registrar of the High Court under the delegated authority of the Chief Registrar.

4. Neither the Chief Justice nor the Chief Registrar shall permit the Court Office to become a refuge either for fugitives from justice or for persons who are endeavouring to avoid service of legal process or judicial proceedings under the laws of the Member State or Territory or against whom an order of extradition or deportation has been made by the competent authorities.

5. The Court Office shall not be used in any manner incompatible or inconsistent with the functions of the Court.

6. The Registrar of the High Court under the delegated authority of the Chief Registrar may expel or exclude persons from the Court Office for reasonable cause.

PROTOCOL IV

PROPERTY, FUNDS AND ASSETS OF THE COURT

1. The property of the Court, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in cases arising out of or in connection with the borrowing of money or the acquisition or disposal of immovable property or in so far as in any particular case the Chief Justice has expressly waived their immunity. No waiver of immunity shall extend to any measure of execution.

2. Save as otherwise provided in paragraph 1 of this Protocol, the property of the Court, wherever located or by whomsoever held, shall be immune from search, acquisition, confiscation, expropriation or any other form of interference, whether by executive, administrative or judicial actions.

3. Nothing in the Protocol shall be construed as preventing the governments from taking appropriate action in connection with the investigation into accidents involving motor vehicles belonging to or operated on behalf of the Court.

PROTOCOL V

ARCHIVES OF THE COURT

The archives of the Court and in general all documents held by the Court shall be inviolable wherever located.

PROTOCOL VI

EXEMPTION FROM FOREIGN EXCHANGE CONTROLS

1. Without being restricted by financial controls, regulations or moratoria of any kind, the Court shall be entitled for its official use only:
 - (a) to purchase from authorised dealers, hold and make use of freely usable currencies, operate foreign and external accounts and purchase through authorized dealers, hold and make use of funds and securities;
 - (b) freely transfer their funds, securities and foreign currencies to or from the Member State or Territory or within the Members State or Territory and to convert any currency held by it into other currency.
2. The Court in executing its right under paragraph 1 of this Protocol shall pay due regard to any representations made to the Government and shall give effect to such representation to the extent that such representation may be taken into account without detriment to the interests of the Court.

PROTOCOL VII

EXEMPTION FROM TAXES, CUSTOMS DUTIES AND IMPORT OR EXPORT DUTIES

1. The property of the Court shall be exempt from—
 - (a) any form of direct or indirect taxation but the Court will not claim exemption from taxes which are, in fact, no more than charges for public utility services;
 - (b) customs duties and from prohibitions and restrictions on imports in respect of articles imported or exported for its official use, subject to the condition that articles imported under such exemption shall not be sold within the Member State or Territory except under conditions agreed to between the Chief Registrar and the respective Government of the Member State or Territory;
 - (c) Customs duties and other levies and prohibitions and restrictions in respect of the import, sale and export of its publications.
2. For the purpose of this Protocol, indirect taxation means customs and excise duties, consumption tax, stamp duties, withholding tax on interest, value added tax, finance charges and imposts with equivalent effect.

PROTOCOL VIII

FACILITIES IN RESPECT OF COMMUNICATIONS

1. The Court shall enjoy in the Member State and Territories, freedom of communication for its official communications.
2. Official correspondence and all other forms of official communications shall be inviolable.

3. The Court shall have the right to use codes and to dispatch and receive correspondence by courier in sealed bags, which shall not be searched or detained unless the competent authorities have serious reason to believe that the sealed bags contain items other than correspondence documents or articles for the official use of the Court exclusively, in which case the bag may be opened only in the presence of the Registrar of the High Court under the delegated authority of the Chief Registrar or other person designated by the Chief Registrar.

4. Nothing in the Protocol shall be construed so as to preclude the adoption of appropriate security measures in the interest of the Governments.

PROTOCOL IX

EXEMPTION FROM TAXES IN RESPECT OF SALARIES EMOLUMENTS AND INCOME FROM OUTSIDE THE MEMBER STATES AND TERRITORIES

1. No tax shall be levied on or in respect of salaries and emoluments paid by the Court to the Chief Justice, Judges, Masters, Senior Officers, and officials of the Court.

2. No tax shall be levied or income derived by the Chief Justice, Judges, Masters, Senior Officers or officials of the Court from sources outside the Member States and Territories, subject to the right of the Government to impose tax in respect of such income on employees of the Court who are citizens or permanent residents of that Member State or Territory.

PROTOCOL X

THE CHIEF JUSTICE, MASTERS, SENIORS OFFICERS AND OFFICIALS OF THE COURT

The Chief Justice, Judges, Masters, Senior Officers, and officials of the Court, when engaged on the business of the court, in the Member State and Territories, shall enjoy—

- (a) immunity from personal arrest or detention in relation to acts performed by them in their official capacity;
- (b) immunity from seizure of their personal and official baggage, except in cases of *flagrante delicto*. In such cases, the competent authorities shall immediately inform the Chief Justice or Chief Registrar or other person designated by the Chief Registrar. Inspection of personal baggage shall be conducted in the presence of the person concerned or his authorized representative;
- (c) immunity from legal process of any kind 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;
- (d) the same repatriation facilities and the same right to protection by the authorities of the Member State and Territories in respect of themselves, their families and dependants as are accorded to members of diplomatic missions in times of international crises;

- (e) inviolability of all papers, documents and materials related to the work of the Court;
- (f) exemption from alien registration requirements and national service obligations;
- (g) freedom to acquire or maintain within the Member State or Territories or elsewhere, foreign securities, external accounts and movable and immovable property, and on the termination of their employment or end of their contract with the Court as the case may be, the right to take out of the Member State or Territories, without restriction, funds accruing to them in connection with their employment or contract with the Court after taking into account a reasonable amount of living expenses together with any amount brought into or transferred to the Member State or Territory by them through authorized dealers;
- (h) the right, for the purpose of all communications with the Court, to use codes to dispatch or receive papers, correspondence or other official materials by courier or in sealed bags;
- (i) exemption from airport departure tax or travel tax, travel ticket tax, hotel and restaurant tax;
- (j) the right to import for their personal use, free of duty and other taxes, prohibitions and restrictions on imports—
 - i. their furniture and effects, including one automobile, in one or more separate shipments and thereafter to import necessary additions thereto;
 - ii. one automobile every five years after the last importation; and
 - iii. reasonable quantities of foodstuff and other articles for their personal use or consumption and not for sale,

subject to the condition that articles imported under such exemption shall not be sold or distributed within the Member State except under conditions determined by the Government of the Member State.

PROTOCOL XI

CO-OPERATION WITH COMPETENT AUTHORITIES

1. Privileges and immunities are recognized and granted by these Protocols in the interest of the Court and not for the personal benefit of persons entitled thereto. The Authority, in the case of the Chief Justice, and the Chief Justice, 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 interest of the Court.

2. The Chief Justice and the Chief Registrar, as the case may be, shall co-operate at all time with the competent authorities to facilitate the proper administration of justice, secure respect for the laws of the respective Member States and Territories and to avoid the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in these Protocols.

3. Without prejudice to the privileges and immunities accorded by these Protocols, it is the duty of all person enjoying such privileges and immunities to respect the laws of the respective Member States and Territories.

4. If the Government of a Member State or Territory considers that an abuse has occurred in enjoyment of any privilege or immunity conferred by these Protocols, the Chief Registrar shall, at the request of the respective Government, consult with the competent authorities to determine whether such an abuse has occurred. If such consultations fail to achieve results satisfactory to the Chief Registrar and the respective Government, the issues shall be settled in accordance with the procedure laid down in Protocol XIII.

PROTOCOL XII

FACILITATION OF TRAVEL

1. Subject to the laws or regulations restricting entry or movement for reasons of national Security, the Governments shall extend all facilities for the uninterrupted passage within the Member States and Territories as well as for the entry and departure there from of the categories of person indicated below—

- (a) the Chief Justice, Judges, Masters, senior officers and officials of the Court and members of the families of the Chief Justice, Judges, Masters, senior officers and officials of the Court; and
- (b) other persons invited to the Court on official business.

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

3. This Protocol 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. Applications for Visas were accompanied by a certificate that the official or the senior official is travelling on business of the Court shall be granted expeditiously and free of charge.

PROTOCOL XIII

SETTLEMENT OF DISPUTES

1. The Chief Justice shall make appropriate provision for settlement of—

- (a) disputes arising out of contracts and other disputes of a private law character to which the Courts is a party;
- (b) disputes involving the Chief Justice, any Judge, Master, Senior Official or official of the Court;

2. Any difference between the respective Government of a Member State or Territory and the Court arising out of the interpretation or application of these Protocols or any protocols supplementary thereto or any question connected with the premises of the Court Office which is not settled by negotiation or other agreed mode of settlements shall be referred for final decision to a Tribunal of three arbitrators at

the instance of either party: one to be appointed by the respective Government of the Member State or Territory, one to be appointed by the Chief Registrar, and the Third, who shall be the Chairman of the Tribunal, to be chosen by the first two arbitrators. If either 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 Authority. If the first two arbitrators within three weeks of their appointment fail to agree upon the third, the Government of the Member State or Territory or the Chief Registrar shall request the Authority to choose the third arbitrator. The Tribunal shall make a determination within six months from the date of its constitution. A majority vote of the arbitrators shall be sufficient to reach a decision, which shall be final and binding. 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.

3. Notwithstanding the above, where an official or senior official of the Court is the subject of a flagrant and obvious violation of the laws of the respective Member State or Territory, the Government may declare that officer *persona non grata*. In any such case the Court shall either recall the concerned officer or terminate his functions within 7 days.

PROTOCOL XIV

ACCOMMODATION AND FINANCE OF THE COURT OFFICE

1. The Government in the Member State or Territory shall provide and maintain for the Court adequate and appropriate office accommodation, accommodation for Court of Appeal Chamber hearings and accommodation for the library and archives for the Court.

2. The Government of each Member State or Territory shall provide adequate security to protect the accommodation specified in paragraph 1 of this Protocol.

3. The Government of each Member State or Territory shall bear the capital cost involved in providing and maintaining in that Member State or Territory the accommodation specified in paragraph 1 of this Protocol.

4. Arrangements between the Chief Registrar and the Government of the Member State or Territory relating to providing and maintaining the accommodation specified in paragraph 1 of this Protocol and the services connected with the accommodation shall be agreed by exchange of letters between the Chief Registrar and the Government.

5. The Government shall, when requested by the Chief Registrar, assist the Court in obtaining suitable accommodation for the Chief Justice, Judges, Master, Senior Officers and the officials of the Court.

PROTOCOL XV

RESIDENCE, WORK AND STUDY PERMIT FOR MEMBERS OF THE FAMILY OF THE CHIEF JUSTICE, JUDGES, MASTERS, SENIOR OFFICERS AND OFFICIALS OF THE COURT

Residence permits or visas required by members of the family of the Chief Justice, Judges, Masters and Senior Officers to allow them to reside in the Member State or Territory or to attend school or college in the Member State or Territory shall be granted expeditiously and free of charge.

PROTOCOL XVI

ENTRY INTO FORCE

1. These Protocols and any protocol supplementary thereto shall enter into force immediately upon signature.
2. Consultation in respect of any amendment to these Protocols may be initiated in writing by either the Governments or the Chief Registrar.

PROTOCOL XVII

TERMINATION

1. These Protocols and any amendment thereto shall cease to have effect six months after any of the Contracting Parties has given notice in writing to the other of its decision to terminate these Protocols.
2. These Protocols shall cease to be in force if the Member State or Territory is no longer part of the Eastern Caribbean Supreme Court, except for such provisions as may be applicable in connection with the orderly termination of the operations of the Court at the accommodation provided in Protocol XIV and the disposal of its property therein.

PROTOCOL XVIII

APPLICABLE LAW

In any case of dispute or interpretation the applicable law shall be the law of the respective Member State or Territory.

IN WITNESS THEREOF the representatives of the Governments and the Eastern Caribbean Supreme Court being duly authorized in that behalf have executed these Protocols which have been done in ten copies at Kingstown, St. Vincent on the 20th day of May 2010 each party signing in the presence of each other.

Honourable Baldwin Spencer

Prime Minister of Antigua and Barbuda

Honourable Hubert B. Hughes
Chief Minister of Anguilla

Honourable Roosevelt Skerrit
Prime Minister of the Commonwealth of Dominica

Honourable Tillman Thomas
Prime Minister of Grenada

Honourable Reuben T. Meade
Chief Minister of Montserrat

Honourable Dr. The Rt Denzil L. Douglas
Prime Minister of St. Kitts and Nevis

Honourable Ralph Gonsalves
Prime Minister of St. Vincent and the Grenadines

Honourable Ralph O'Neal
Premier of the Territory of the Virgin Islands

The Chief Registrar
Eastern Caribbean Supreme Court
