

Grenada Privy Council (Establishment) Bill

Explanatory document

General purpose:

The primary purpose of the bill is to establish a cross-partisan and deliberative method of appointment for the office of Governor-General of Grenada to ensure the office's independence, non-partisanship and political neutrality. This is to be achieved by the establishment of a Grenadian Privy Council which is to have a membership consisting of the Prime Minister, the Leader of the Opposition, the Minister for Carriacou and Petite Martinique Affairs, the Chairperson of the Public Service Commission, the most senior resident judge of the High Court, and two independent representatives appointed by the Governor-General after consultations with the Prime Minister and the Leader of the Opposition. The Privy Council is to take over the Prime Minister's present responsibility and authority of advising the King in the appointment of the Governor-General, ending the executive's unilateral influence in the appointment of the King's representative.

The Privy Council will additionally be able to advise the Governor-General on any matter which the Governor-General may request. The Privy Council in this capacity will act as a body of non-binding advisors which the Governor-General can turn to regarding any of the Governor-General's discretionary or reserve powers, or any other matters which the Governor-General finds pertinent. In this capacity the Privy Council will have a similar function to the Privy Council of Barbados, as established by Section 76 of the 1966 Constitution of Barbados.

Reasoning:

The present situation whereby the Prime Minister is alone responsible for advising the King on the appointment of the Governor-General is a sub-optimal situation which should be rectified for multiple reasons. The Governor-General, as the executor of the Grenadian head of state's powers and responsibilities, is an office of great importance both constitutionally and ceremonially.

The office holds important discretionary reserve powers regarding for example the appointment and dismissal of the Prime Minister (*Section 58 of the Constitution*), the dissolution and prorogation of Parliament (*Section 52 of the Constitution*), the granting

of assent to legislation (*Section 45 of the Constitution*), the appointment of Senators (in those instances, such as in 1999, 2013 and 2018, where there is no elected opposition in the House of Representatives) (*Sections 24 and 62 of the Constitution*), the appointment of the Leader of the Opposition (*Section 66 of the Constitution*) and the appointment of the Supervisor of Elections (*Section 35 of the Constitution*). These powers are vested in the Governor-General in the expectation that they be exercised in a nonpartisan and independent manner to allow the Governor-General to uphold the Constitution and the principles of responsible parliamentary government. Particularly the appointment of the Supervisor of Elections is a direct and crucial authority delegated to the Governor-General's discretion, and the perception of partisanship and pressure from the Prime Minister's Office (in the case of the 2013 dismissal of Judy Benoit) has in the past caused great controversy and uncertainty which undermines the legitimacy of the electoral system. Strengthening the independence and certain non-partisanship of the Office of the Governor-General would assuage such potential controversy and thus strengthen Grenada's constitutional safeguards and our democratic system.

The Governor-General additionally holds great ceremonial importance as the most senior office in the country (bar the King himself when present in Grenada). As the representative of the Crown, it is supposed to stand as a symbol of national unity across party lines and to represent the Grenadian state independent of political affiliations. The Governor-General undertakes numerous important ceremonial duties such as the annual opening of Parliament, granting National and Royal honours to deserving Grenadians, giving patronage to a number of non-governmental organisations and groups, and representing the state at other important ceremonial occasions such as Independence Day.

It is therefore of paramount importance, both regarding the office's constitutional role as well as its ceremonial functions, that the Governor-General be an implacably impartial and politically independent officer who does not have overt ties to any political party or organisation. While the office has largely succeeded in fulfilling this role, there have been instances where Governors-General who have been perceived as partisan have been appointed, causing great controversy. These specifically being the 1996 appointment of Sir Daniel William, a former Member of Parliament and minister of government, and the 2008 appointment of Sir Carlyle Glean, a former Senator and

government minister. Both appointees were seen as too closely associated with and partisan towards the government of the day who recommended their appointment and were rapidly replaced upon the opposing party subsequently coming to power. By contrast our current Governor-General, Dame Cécile La Grenade, had no previous political roles or partisan affiliations and has thus garnered great respect across political lines and remained in office even after the defeat of the previous government. This has fostered a greater amount of stability and continuity.

The Prime Minister alone having the power to advise the King on who to appoint as Governor-General enables politicisation of the office and fosters a perception among the public that the Governor-General is subordinate and beholden to the Prime Minister. This undermines the office's legitimacy both constitutionally and as a symbol of national unity. It creates fertile ground for accusations of unfair play, undermining trust in our constitutional system.

Reforming the method by which the King is advised as to how the Governor-General is appointed to ensure the office's independence is thereby in everyone's interest. While the government of the day may in the short term enjoy having a partisan Governor-General, it is an inevitability that they will one day be in opposition, in which case they would be greatly disadvantaged by a partisan of the rivalling party occupying the office, and vice versa. It is therefore in the interest of both the government and the opposition to have a Governor-General who is always assuredly nonpartisan. It is in the general interest of all Grenadians that our highest national representative be a truly unifying figure, and that the constitutional checks and balances, of which the Governor-General is a part, operate impartially and properly without interference.

Enacting the proposed reform would not require any changes to the Constitution and thus would be no more complicated than enacting regular legislation. The Prime Minister's power to advise the King on appointing the Governor-General is merely a convention, not a codified part of the constitutional order, and can thus be changed without any changes to the text of the Constitution of Grenada.

While Grenada retains the Judicial Committee of the Privy Council in London as our final court of appeal, this does not preclude us from having our own Privy Council, nor would we be the first Commonwealth country besides the United Kingdom to have our own

Privy Council. As previously noted, Section 76 of the Barbados Constitution of 1966 establishes the Privy Council of Barbados as a body to advise the Governor-General (now President) of Barbados. Likewise, Section 82 of the Jamaican Constitution of 1962 establishes the Privy Council of Jamaica as a body to advise the Governor-General of Jamaica in the exercise of the Royal Prerogative of Mercy and discipline of public officers. Section 11 of the Canadian Constitution of 1867 establishes the King's Privy Council for Canada as the formal body of advisors to the Governor-General of Canada. While none of these councils fulfil the functions envisioned by the Grenadian Privy Council regarding the appointment of the Governor-General, it is nonetheless illustrative of the fact that Grenada having its own Privy Council would not be without precedent or in contravention of the Judicial Committee of the Privy Council remaining our court of final appeal.

Thus, there is nothing constitutionally or procedurally standing in the way of the enactment of the proposed bill. It would require nothing more than a regular act of parliament, would not interfere with the Judicial Committee of the Privy Council's position as our court of final appeal, and having a Grenadian Privy Council would indeed not be without precedent in the Commonwealth Caribbean.

Bill provisions

Section 1:

Section 1 establishes the short title of the bill and the time of commencement.

Section 2:

Section 2 establishes the definition for various terms used in the bill.

Section 3:

Section 3 constitutes the Privy Council and establishes its role.

Subsection 1 establishes the Privy Council and confers upon it the formal name of “His Majesty’s Privy Council of Grenada”.

This formal name is to illustrate the Privy Council’s widened authority in giving direct advice to the King himself, as opposed to the Privy Council of Barbados or the Privy Council of Jamaica which only advise the Governor-General and has no ability to advise the King himself.

Subsection 2 specifies that in granting advice to the King regarding the appointment of the Governor-General or an Acting Governor-General, the Privy Council shall do so pursuant to the First Schedule of the act.

This provision codifies the process by which the Privy Council is to reach a decision on appointment, ensuring that the candidate appointed is impartial and agreeable to all members of the council.

Subsection 3 specifies that the Governor-General can request the Privy Council’s opinion and advice on any matter which the Governor-General personally finds necessary.

This provision allows the Privy Council to act in a similar manner to the Privy Council of Barbados, which can give the President (previously Governor-General) general advice and consultation on any matter which the President considers necessary.

Section 4:

Section 4 outlines the membership of the Privy Council and how members are to be appointed.

Subsection 1 establishes that the Privy Council's membership consists of the Prime Minister, the Leader of the Opposition, the Minister for Carriacou and Petite Martinique Affairs, the Chairperson of the Public Service Commission, the most senior resident Judge of the High Court, and two members appointed by the Governor-General after consultation with the Prime Minister and Leader of the Opposition.

The rationale behind this composition is to ensure the council will have a broad membership representing the government, the opposition, Carriacou and Petite Martinique, the Public Service, the Judiciary, and independent interests.

Subsection 2 establishes when the judicial position on the council becomes vacant.

Subsection 3 establishes the terms of the two members appointed after consultations with the Prime Minister and Leader of the Opposition and the mechanism by which they may be dismissed.

Subsection 4 establishes that in cases of a vacancy in the office of Leader of the Opposition for the reasons of there being no elected opposition in the House of Representatives, the Governor-General shall appoint a member to represent the interests of the would-be opposition.

Subsection 5 establishes when the position of a member appointed under subsection 4 becomes vacant.

Section 5:

Section 5 establishes that the Prime Minister shall be responsible for conveying to the King the advice the Privy Council gives regarding the appointment of the Governor-General.

The Prime Minister would in this framework go from being the person directly advising the King on the appointment of the Governor-General (as presently) to instead simply being the conduit for delivering the Privy Council's advice. The Prime Minister, as the head of government and paramount responsible advisor to

the Crown under the Constitution, is the most appropriate authority through which the Privy Council's advice can be delivered to the King.

Section 6:

Section 6 establishes the styles entitled to the Prime Minister and the Leader of the Opposition via their membership of the Privy Council.

Subsection 1 establishes that the Prime Minister and Leader of the Opposition shall be entitled to the style of "The Right Honourable" for life.

This provision is included to solve a current anomaly whereby Prime Minister Dickon Mitchell only holds the rank of "The Honourable" via his position as a Member of Parliament, while the Leader of the Opposition Dr. Keith Mitchell holds the higher rank of "The Right Honourable", through his membership of the British Privy Council, to which he was appointed in 2004. This anomaly previously also occurred when Dr. Mitchell was Leader of the Opposition between 2008 and 2013, and then-Prime Minister Tillman Thomas was only accorded the style of The Honourable. This provision will prevent such an anomaly from occurring in the future by guaranteeing both the Prime Minister and the Leader of the Opposition the same rank and dignity, as is the case in for example the United Kingdom (where both Prime Minister and Leader of the Opposition are appointed to the British Privy Council) and Canada (where both are appointed to the King's Privy Council for Canada).

This will additionally elevate our leaders to the same rank of international peers such as the Prime Ministers of the United Kingdom, Canada and New Zealand, who all hold the style of The Right Honourable, and the Prime Ministers of Jamaica and The Bahamas, who hold the style of The Most Honourable. The specification that the style is granted by virtue of "being or having been" members of the Privy Council entails that former Prime Minister Tillman Thomas will not be entitled to the style, nor will former Leaders of the Opposition who held office before the commencement of the act.

Subsection 2 establishes that the member appointed to represent the opposition in the eventuality of the office of Leader of the Opposition being vacant shall not be entitled to the style of The Right Honourable.

Subsection 3 specifies that only the Prime Minister and Leader of the Opposition shall be accorded the style of The Right Honourable and that other members of the Privy Council are not entitled to this style purely for being or having been members.

Section 7:

Section 7 establishes the position of Secretary of the Privy Council.

Subsection 1 establishes that the Private Secretary to the Governor-General (also known as the Personal Assistant to the Governor-General) shall be the Secretary of the Privy Council.

Subsection 2 establishes that the Secretary shall maintain records of all Privy Council meetings.

Section 8:

Section 8 establishes that members of the Privy Council are entitled to no salary or remuneration purely for reasons of being members of the Privy Council.

This is in order to ensure the Privy Council as a body will not impose upon the state any undue financial burden.

Section 9:

Section 9 details the process and authority by which the Privy Council shall be summoned.

The section establishes that the Privy Council shall only be summoned by the Governor-General, acting in their own deliberate judgement. Exceptions to this are however established if the Privy Council is being summoned to fulfil its duties in advising the King on the appointment of the Governor-General or Acting Governor-General. In these instances, the King and the Governor-General shall both have the power to summon the Privy Council in their own deliberate judgement, and the Prime Minister and Leader of the Opposition shall both also have the power to bindingly advise the Governor-General to summon the Privy Council.

The rationale behind granting the King the prerogative to personally summon the Privy Council is intended to be an emergency measure. It will allow the Privy Council to be validly summoned in situations where for instance the office of

Governor-General is vacant, such as if the Governor-General dies. It will also allow the Prime Minister or Leader of the Opposition to in an emergency appeal directly to the King to summon the Privy Council if a situation were ever to arise where for instance the Governor-General refuses to follow advice from either authority to summon the council to deliberate their own dismissal.

The Governor-General being able to personally summon the Privy Council is intended to allow the Governor-General to convene the council if they wish to retire from office and organise for the appointment of a successor.

Granting the Prime Minister and the Leader of the Opposition the power to bindingly advise the Governor-General to summon the Privy Council is intended to allow for both government and opposition to summon the council to discuss the dismissal of the Governor-General, if they perceive the current occupant of the office to be acting in a partisan manner or otherwise grossly contrary to the spirit of the office.

An exception is also established regarding a Demise of the Crown (the death of the monarch). Paragraph b. establishes that upon a Demise of the Crown the Privy Council shall, together with the Cabinet, form an Accession Council, which is to bear witness to the proclamation of the new monarch.

This provision is included to somewhat regularise the procedure for the proclamation. At the 2022 proclamation of King Charles III following the death of Queen Elizabeth II, the Governor-General read the proclamation before the Cabinet, resident British High Commissioner, the Commissioner of Police and other dignitaries. Under this bill the Cabinet and Privy Council will together constitute a formal body to witness the proclamation, just as the British Privy Council meets as the Accession Council in the United Kingdom. This does not entail that other dignitaries who are neither members of cabinet or of the council will or should be excluded from future proclamations.

Section 10:

Section 10 specifies that the Governor-General is to, whenever possible, preside at meetings of the Privy Council. It further provides that if the Governor-General cannot personally preside, the Deputy to the Governor-General shall preside in their stead. If

the Deputy to the Governor-General is also unable to preside, the duty to preside over meetings of the Privy Council falls to the Prime Minister.

Section 11:

Section 11 establishes the regulation of procedure in the Privy Council

Subsection 1 establishes that the Privy Council is free to regulate its own procedure

Subsection 2 establishes that the functions of the Privy Council are non-justiciable.

Section 12:

Section 12 establishes that members of the Privy Council must swear or affirm the Oath of Allegiance before entering into office. It additionally mandates that members must swear or affirm an additional Privy Council Oath, as is customary in other jurisdictions such as Canada, the United Kingdom or Jamaica.

Section 13:

Section 13 establishes that the Governor-General shall have the ability to regulate symbols for the Privy Council.

A Coat of Arms for the Privy Council has been designed and proposed, consisting of the shield of the Grenada Coat of Arms, surrounded by the collar of the Order of Grenada, and surmounted by Saint Edward's Crown (image is attached at the bottom of this document).

Section 14:

Section 14 establishes that any potential expenses incurred under the act are to be allocated from the consolidated fund.

First Schedule:

The First Schedule lays out the process by which the Privy Council is to advise the King on the appointment and dismissal of the Governor-General under section 3 of the Act.

Section 1 of the schedule makes clear that advice to the King regarding the appointment of the Governor-General or Acting Governor-General can only be given after the Privy Council has come with a unanimous vote in favour of the proposed candidate.

This is to ensure that the proposed Governor-General has very broad support and is considered as sufficiently nonpartisan, independent and fit for office that all members of the Privy Council agree with their appointment. This model is designed to ensure the highest possible standards for the occupant of the office and assuage any possible accusations of bias. It will encourage compromise and collaboration to find a highly respectable candidate.

Section 2 of the schedule establishes that a two-thirds majority vote among all members of the Privy Council is required for the council to advise the King to dismiss the Governor-General.

The rationale behind establishing a lower threshold for advising dismissal than for appointment is to allow for the removal of a Governor-General who is acting in a partisan or unfit manner, without giving either the government or opposition an automatic veto.

Under this provision, five votes in favour of removing the Governor-General would be required. This would enable the opposition to advise the dismissal of a Governor-General who is partisan in favour of the government even if the Prime Minister and Minister for Carriacou and Petite Martinique Affairs are opposed, if they successfully convince the two independent representatives, the judicial representative and the Chairperson of the Public Service Commission.

Likewise, it would allow the government, if they can convince three other members of the Privy Council, to advise the dismissal of a Governor-General perceived to be biased in favour of the opposition.

It additionally prevents the two independent members, who are appointed by the Governor-General, from blocking dismissal if all other members support such a move.

The provision nonetheless keeps the threshold for dismissal of the Governor-General very high, making dismissal for merely political and unreasonable reasons highly unlikely. The high threshold for advising the appointment of a new Governor-General additionally acts as a factor deterring removing the Governor-General for any other reason than it being strictly necessary.

Section 3 of the schedule stipulates that all members of the Privy Council may make proposals to the council as regarding candidates for the office of Governor-General or Acting Governor-General.

This is to allow for free debate and a multitude of potential candidates being presented, in the hope of finding a satisfactory and suitable candidate which meets with the approval of all members of the Privy Council.

Section 4 of the schedule establishes that only the Prime Minister or the Leader of the Opposition may propose the dismissal of the Governor-General or Acting Governor-General.

This is to ensure that both the government and the opposition will have the ability to facilitate the removal of a partisan Governor-General as laid out in section 2 of the schedule. The reason for limiting the ability to propose dismissal to the Prime Minister and Leader of the Opposition, rather than allowing all members to propose such a move, is to signify that the Governor-General's role is ultimately a constitutional and political one and debating the dismissal of the Governor-General should only take place for the most serious of reasons as seen by either the government or the opposition.

Advising the dismissal of the Governor-General would regardless not reach the required two-thirds majority if neither the government nor opposition support dismissal, meaning there would be little reason for members other than the Prime Minister or Leader of the Opposition to be able to propose such a step anyway.

Second Schedule:

The Second Schedule specifies the formulation of the instrument of appointment of the judicial member of the Privy Council.

Third Schedule:

The Third Schedule specifies the formulation of the instrument of appointment of the two independent members of the Privy Council appointed after consultations with the Prime Minister and Leader of the Opposition.

Fourth Schedule:

The Fourth Schedule specifies the formulation of the instrument of appointment of the opposition member of the Privy Council in those instances where the office of Leader of the Opposition is vacant for lack of an elected opposition in the House of Representatives.

Fourth Schedule:

The Fifth Schedule specifies the wording of the Privy Council Oath.

Proposed Coat of Arms for His Majesty's Privy Council of Grenada

