

**IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction**

ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS

CCJ Appeal No. BBCV2017/005

BETWEEN

PATRICK HILL

APPLICANT

AND

SAGICOR LIFE INC

RESPONDENT

Before The Honourables

**Mr Justice Saunders, President
Mr Justice Hayton
Mr Justice Anderson
Mme Justice Rajnauth-Lee
Mr Justice Barrow**

Appearances

Mr Clement Lashley QC and Ms Honore Chase for the Applicant

Mr Patterson Cheltenham QC, Mr Alrick Scott QC and Ms Richel Bowen for the Respondent

JUDGMENT

of

**The Honourable Justices Saunders, Hayton,
Anderson, Rajnauth-Lee and Barrow**

Delivered by

**The Honourable Mr Justice Hayton
on the 18th day of July, 2018**

Introduction

[1] When the Applicant, Mr Patrick Hill, applied to the Court of Appeal seeking leave to appeal its decision of 1st September 2017 to the Caribbean Court of Justice, a dispute arose as to whether or not this Court had jurisdiction to hear the substantive appeal. The Court of Appeal decided that this Court had to resolve the dispute - and we agree - because s 79D(1)(b)(ii) of the Constitution of Barbados states, “The Caribbean Court of Justice... shall have exclusive jurisdiction ...where there is a dispute as to whether the Court has jurisdiction in a matter, to decide whether the Court has such jurisdiction.” On hearing this dispute we dismissed the application with costs to the Respondent and gave judgment that the Caribbean Court of Justice had no jurisdiction to hear the substantive appeal. We stated that our written reasons would follow. These are those reasons.

The scope of s 39 Severance Payments Act as affected by s 63 Supreme Court of Judicature Act

[2] The Court of Appeal had allowed an appeal by Sagicor Life Inc (“Sagicor”) from the Severance Payments Tribunal, having considered whether Mr Hill was constructively dismissed and whether he was disentitled to a severance payment because of the operation of ss. 4(3), 4(4), 9(2) and 16(2) of the Severance Payments Act (“SPA”), Cap355A. It is trite law that, as specially created statutory tribunals are outside the normal courts’ structure, rights of appeal from such tribunals do not exist unless they are expressly conferred by a statute that determines the scope and nature of any appeal.¹ In the interests of providing a simple, speedy and cheap procedure it is common to find rights of appeal restricted, especially where the members of the tribunal will have plenty of specialist experience in the matters coming before them. Thus, there may be no appeals on questions of fact, only on points of law, and it may well be that only one tier of appeal is available on points of law², as in s 39 of the SPA.

[3] Section 39 states as follows (with added emphases in italics).

- (1) Any person who is dissatisfied *on a question of law* with a decision of a Tribunal under this Act *may*

¹ New Zealand Law Commission Issues Paper 6 at 8.1

² See the readiness of the Privy Council to find this in *De Morgan v The Director of Social Welfare* [1998] AC 275,281.

- (a) within thirty days after the date of the decision; or
 - (b) within twenty-one days after receipt, in accordance with section 38, of the reasons for the decision whichever is the longer period, *appeal to the High Court* from the decision in accordance with rules of Court made for the purposes of this section.
- (2) *The decision of the High Court* in any appeal under this section *shall be final*.

[4] It is plain here, as accepted by counsel for the Applicant, that “shall be final” means shall be unappealable beyond the High Court, just as it was held in *Lunns v Licensing Control Commission*³, that “final” in s 144 of the New Zealand Summary Proceedings Act 1957 meant unappealable beyond the Court of Appeal in “The decision of the Court of Appeal on any appeal under this section shall be final.” In the context of the need for appeals to be specified by statute as explained in [2] above it is clear that the statutory appeal is restricted to questions of law.

[5] Section 63 of the Supreme Court of Judicature Act (“SCJA”) Cap 117A, enacted in 1991, subsequently stated as follows (with added emphases in italics).

Where *under any enactment* passed or made before the 4th November 1991, *it is provided that an appeal*, either by way of case stated or upon a point of law only -

- (a) *lies from any inferior Court to the High Court* or to a Judge of the Supreme Court, *and*
- (b) *the decision of that Court* or a Judge *is expressed by such enactment to be final*

that appeal lies instead to the Court of Appeal.

[6] Clearly, on a literal and purposive interpretation of s 63, “the decision of the Court of Appeal” is inserted in s 39(2) of the SPA instead of “the decision of the High Court”, with the advantage of having a judicial panel of three judges, and incorporating the s 39(1) time limits for the appeal to the substituted Court

³ [1958] NZLR 57, NZCA.

of Appeal from inferior courts like the Severance Payments Tribunal. As stated in obiter dicta of the Barbados Court of Appeal in *Eastmond v Rayside Concrete Works Limited*⁴, “The Court of Appeal was therefore substituted for the High Court as the Court exercising the right of final appeal from decisions of the Severance Payments Tribunal. We bear in mind that the right of appeal to this Court is final and on a point of law only.”

The impact of replacing the Privy Council by the CCJ

[7] Even if this be the case, Mr Hill’s counsel argues that all “final” decisions, in the sense of unappealable decisions, can now be appealed to the Caribbean Court of Justice by reason of s 79D(1)(c) of the Constitution sweepingly stating, “The Caribbean Court of Justice... (c) shall be the final Court of Appeal from any decision given by the Court of Appeal.” One might wonder, however, why Court of Appeal decisions that were final unappealable decisions when the apex court was the Privy Council should cease to be such merely because the Privy Council is being replaced by the Caribbean Court of Justice. If there were to be any exceptional intention to extend rights of appeal from statutory tribunals all the way up to the CCJ, so detracting from the speed and cost-effectiveness of a tribunal system, surely such extension would need to be spelled out.

[8] Sagicor’s counsel, indeed, argues that s 79D(1)(c) was simply a key general provision, a grand statement, to put the CCJ in 2005 at the apex of the Barbados court structure in place of the Judicial Committee of the Privy Council without any intention to interfere with appeal procedures from the specialist statutory tribunals. There is the well-known maxim of statutory interpretation “*Generalia specialibus non derogant*” as found as section 88 of the Code in *Bennion on Statutory Interpretation*. It is encapsulated as follows⁵, “Where the literal meaning of a general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one. Accordingly, the earlier specific provision is not treated as impliedly repealed.” Indeed, in context it is necessary to read the

⁴ BB 2012 CA 12 at [17]

⁵ Butterworths LexisNexis 7th edition p 306, endorsed by the English Court of Appeal in *R v Secretary of State for the Home Department ex p Hockey* [1995] QB 43, 56 when in the 2nd edition.

general clause as implicitly making the CCJ the final court of appeal “from any decision given by the Court of Appeal *that is appealable.*”

[9] In support, Sagicor’s counsel referred to s. 4(3) of the Caribbean Court of Justice Act (“CCJA”), Cap 117, that states (with added emphases in italics), “Nothing in this Act shall confer jurisdiction on the Court to hear matters in relation to any decision of the Court of Appeal which at the time of entry into force of this Act was *declared to be final by any law.*” As indicated above, the decision of the High Court was originally declared to be final by s 39 of the SPA before Parliament decided it would be better to replace the finality of a decision of a single High Court judge with the more reliable finality of a decision of a three-member Court of Appeal. Section 63 of the SCJA required s 39 to be interpreted as substituting the decision of the Court of Appeal for the decision of the High Court, so that the decision of the Court of Appeal is declared to be final.

[10] This needs to be considered in the context of the jurisdiction-conferring subsections (1) and (2) of s.4 where the “Court” is the CCJ.

(1) The Court shall have -

(a) original jurisdiction provided for in this Act as is conferred on it in accordance with the provisions of Part II of the Agreement [and detailed in s 5 of this Act];

(b) appellate jurisdiction provided for in this Act as is conferred on it in accordance with the provisions of Part III of the Agreement [and detailed in ss. 6,7 and 8 of this Act]; and

(c) jurisdiction in respect of any matter concerning the removal from office of a judge of the Supreme Court, upon a referral of the matter to the Court by the Governor-General.

(2) The decisions of the Court shall be final.

[11] It follows that s 4(3) excludes from the above appellate jurisdiction in s 4(1)(b) as Court of Appeal decisions “*declared to be final by any law*” (at the time of entry into force of the CCJ Act on 8th April 2005⁶) Court of Appeal decisions declared final by s 39 SPA as amended by s 63 of the SCJA. It is therefore

⁶ Proclamation SI 2005 No 44: further see *Barbados Rediffusion Service Limited v Mirchandani* [2005] CCJ 1 (AJ) at [18].

declared that the CCJ has no jurisdiction to hear any appeal by Mr Hill from the Court of Appeal's judgment allowing Sagicor's appeal from the judgment of the Severance Payments Tribunal.

[12] Mr Hill must pay the Respondent costs of Barbados \$4,000, the equivalent of basic costs on a special leave application.

/s/ A. Saunders

The Hon Mr Justice A Saunders

/s/ D Hayton

The Hon Mr Justice D Hayton

/s/ W Anderson

The Hon Mr Justice W Anderson

/s/ M Rajnauth-Lee

The Hon Mme Justice M Rajnauth-Lee

/s/ D Barrow

The Hon Mr Justice D Barrow