ANTIGUA AND BARBUDA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.30 OF 2003

BETWEEN:

FBO 2000 (ANTIGUA) LIMITED

Appellant

and

VERE CORNWALL BIRD JR.

First Respondent

ATTORNEY GENERAL OF ANTIGUA AND BARBUDA

Second Respondent

STANFORD DEVELOPMENT COMPANY

Third Respondent

Before:

The Hon. Mr. Brian Alleyne, SC	Chief Justice [Ag.]
The Hon. Mr. Michael Gordon, QC	Justice of Appeal
The Hon. Mr. Denys Barrow, SC	Justice of Appeal [Ag.]

Appearances:

Mr. Gerald Watt, QC with Mr. John Fuller for the Appellant
Sir Henry Forde, QC with Ms. Sharon Cort for the Third Respondent
Ms. Bridget Nelson for the First and Second Respondents

2005: July 7;
October 10.

JUDGMENT

[1] BARROW, J.A. [AG.]: The appellant invoked the equitable doctrine of proprietary estoppel to seek to remain in occupation of a ¼ acre parcel of land at the V.C. Bird International Airport in Antigua and continue to provide Fixed Base Operations service (FBO) [1] until a promised fifty-year term expires. The appellant's case

[1] Fixed Base Operations involve servicing aircrafts, diplomatic and VIP coordination, providing a crew rest lounge, immigration and customs clearance, FAA approved mechanics, car and limousine rentals, twenty-four hour security, gourmet catering, drive-up ramp access, weather briefings, charter and business flight brokerage, crew and passenger accommodation, commercial aircraft transfers, inter-island travel

was that acting in reliance on Government representations, acquiescence and encouragement it expended significant amounts of money in building on the land and making it suitable for its occupation. It would be unconscionable and a violation of the equitable doctrine, the appellant argued, for the Government and the third respondent, Stanford Development Corporation Ltd. (SDC), to whom the Government later sold the land, to oust the appellant consequent upon the purported withdrawal of the promised lease.

Genesis of the claim

[2] The promise upon which the appellant rested its case was a decision of the Cabinet of Ministers of Government made on 14th March 2001 summarized in these terms:

> "Lease of Land at VC Bird International Airport – Port Services Ltd
> Cabinet revisited its decision on the above subject and decided that Ports Services Ltd should be given permission for FBO 2000 (Antigua) Ltd to lease an area of land (1/4 acre) at the VC Bird International Airport for development and operation of FBO service in Antigua."

In its Amended Statement of Claim the claimant alleged that it was pursuant to that decision that it entered into actual occupation of a parcel of land at the airport.[2]

[3] By a letter dated 9th July 2002 the first named respondent, who held ministerial responsibility for Crown lands, wrote to the claimant as follows:

> "The terms and conditions for the lease at the Airport will be extended to FBO Antigua Ltd based on the area of ¼ acre as decided by the Cabinet. A lease period of fifty years is agreed upon, at a rate of $2,000.00 per year, paid annually.

arrangements, villa rentals, yacht charters, and emergency medical evacuation; see paragraph [3] of the Judgment of the High Court, Claim No.ANUCHV of 2003/0130.

[2] By way of background, before the Cabinet decision of March 2001 a predecessor company named Port Services Limited, controlled by the principal who later incorporated the appellant, had been conducting an FBO at the airport. It is for this reason that the Cabinet decision was expressed in terms that "Port Services Ltd should be given permission for FBO 2000 (Antigua) Ltd" to lease a parcel of land. This is part of the history behind the statement that "Cabinet revisited its decision" on the matter of a lease of land at the airport.

> "A draft lease accompanied by the survey is to be presented to the Ministry of Lands for execution."

[4] In reliance upon the cabinet decision and the letter, the claimant stated in its Amended Statement of Claim, it did certain acts and things. It prepared the land for the erection of a structure and obtained development permission for doing so. It erected a building and landscaped the surrounding area. It brought the supply of electricity to the parcel. It had drawings prepared. It obtained the approval of the aerodrome superintendent for its survey plans. It did other things and made the substantial expenditures that it detailed in its statement of case.

[5] The appellant conducted its FBO in the expectation that it would be granted a lease and then on 6th February 2003 the Cabinet decided to sell the land to the third named respondent, SDC, which was at that time implementing a major development project for the airport and had been negotiating a buy-out of the appellant's operation since November 2002. As part of that same decision Cabinet also gave SDC an exclusive 25-year right to build and operate an FBO at the VC Bird International Airport. The Decision stated in the clearest possible terms that

> "all prior rights granted to any third party and any prior Executive Cabinet Decisions, agreements, orders granting rights to build and operate other FBO's in Antigua and Barbuda are hereby terminated and revoked accordingly."

[6] The relief that the appellant sought in the claim that it brought included an injunction, a declaration of an overriding interest in the form of a binding agreement for a 50 year lease, specific performance, a declaration under the Constitution, compensation, damages and costs. At the end of its opening submissions on this appeal the appellant abandoned any claim for constitutional relief. It also stated that it did not seek to uphold the award of damages that the trial judge had made against SDC. What the appellant wanted was to be allowed to remain on the land and conduct an FBO.

Findings and challenges

[7] The central determination of the judge was that the appellant did not have an agreement for a lease. The judge based this conclusion on his finding that the precise area to be leased had not been identified in an authenticated survey, which he found to be a condition precedent to a binding agreement. It followed from that decision that the appellant failed in its claim for specific performance.

[8] The judge also decided that when the appellant moved on to the parcel of land without the benefit of a lease it was at best a tenant at will, at worst a mere licencee, liable at any time to have its tenancy terminated. The judge held that the appellant did not require permission of the Crown to conduct the business of providing the services that it did, but that it was indisputable that the business could be conveniently conducted only from the airport. The permission that had originally been given, the judge found, had been the permission of the landowner to conduct a business from its property.

[9] The judge drew a clear distinction between the user of land and the conduct of a business from the land. He held that a landowner can at any time revoke the permission given to a tenant at will and such a tenant thereby loses the benefit of any business it has been conducting with the landowner's permission. Even though the landowner has notice of the business the landowner will not be liable for any resulting financial loss. In this case, the judge found, the appellant took a business risk to go into occupation in the hope that a lease would be executed in due course. The action that the Government took, in terminating the tenancy and selling the land, it took not as the Crown exercising any right of eminent domain but as a common landowner. The appellant's business opportunity was lost to it but the Crown was not liable in these circumstances in damages for this loss, the judge held.

No agreement for a lease

[10] Even if the appellant could have gotten past the absence of an authenticated survey that the judge found was a condition precedent to the grant of a lease, which the appellant sought to do by arguing that the land was sufficiently identified by unauthenticated survey drawings, the absence of agreement on the terms of the lease was fatal, in my view. As counsel for SDC put it, this was not an agreement to lease a house plot somewhere in the country. This was an agreement to lease land in one of the most sensitive locations in virtually every country in the world: an international airport. The point was aptly expressed, in another context, in the submissions of the appellant itself: "any lease of lands at an airport would of necessity require particular conditions, to fit with existing and future plans of the airport, conditions as required by ICAO and other International Security Agencies." It is an important observation.

[11] It is to be seen, in light of that observation, as perfectly natural and, perhaps, inevitable that the Minister's letter of 9th July 2002 specifically required the appellant to submit a draft lease for execution (sic). That requirement showed a clear intention that there was to be a process for reaching agreement on the terms of a lease. The premise of an arrangement whereby one party to a proposed agreement is to send a first draft is that the other party is expected to make changes, including deletions and additions. That was the expected process, it is to be inferred from the Minister's letter, by which agreement on the terms of a lease was to be reached. Until there was agreement on the terms of a lease there could be no lease. The counter by counsel for the appellant, that the one-page prescribed form of a lease[3] supplied the terms, is risible.

[12] At a minimum, one would think, and the observation of the appellant confirms this thought, there would have had to be agreement on the special conditions necessitated by security requirements. Security considerations, one imagines,

[3] Contained in the Registered Land Rules, Ch.374 at Second Schedule Form

would have impacted the assignability of the lease of such a parcel of land, the acceptability of the persons who could be allowed to be shareholders and directors of the FBO company, and the severity of the consequence that the Government would have needed to stipulate for breach of conditions. Beyond security requirements, as also indicated in the appellant's observation, the Government would have needed, in a written lease, to provide for future development of the airport over the promised 50-year term. There is no need to speculate on the details of such provision; it is sufficient to recognize the possibility, at least, that the lease would have needed to provide for its termination before the expiry of the term. It is inconceivable, to my mind, that there could have been any lease of this parcel of land without provision being made for those considerations, among others, in the terms to be included in a formal document. In the circumstances I would uphold the decision of the judge that there was no enforceable agreement for a lease because, in my own view, there was no agreement on the terms of a lease.

Proprietary estoppel

[13] The appellant's claim to a proprietary estoppel, which emerged as the principal ground of appeal, was never identified as such in the Statement of Claim, although the equitable content of its claim received substantial treatment in the appellant's later skeleton argument in the High Court. It only became a ground of appeal when this court gave permission to add it, at the time that the appeal came on for hearing, although it was presaged in the appellant's submissions that had been delivered shortly before the hearing. Such a last minute change in case may, in some circumstances, be unfair and the court may refuse to allow it. In this instance we allowed the change because we were satisfied that there would be no unfairness.

[14] The decision to allow the new ground of appeal relied on the principle that a claimant may be entitled to relief that he does not ask for if all the material facts

that entitle him to a particular relief are before the court. This is the effect of the decision of the English Court of Appeal in Drane v Evangelou[4] where a claim was pleaded in contract and the court granted exemplary damages, which are only available in tort, notwithstanding that there was never pleaded any claim for damages in tort. The following remarks of Lord Denning MR[5] are apt:

> "The judge was right. The tenant in the particulars of claim gave details saying that three men broke the door, removed the tenant's belongings, bolted the door from the inside; and so forth. Those facts were clearly sufficient to warrant a claim for trespass. As we said in Re Vandervells Trusts[6]:
>
> > 'It is sufficient for the pleader to state material facts. He need not state the legal result. If, for convenience, he does so, he is not bound by, or limited to, what he has stated. He can present, in argument, any legal consequence of which the facts permit."

[15] In the instant case the Court's determination of the rights or interest in relation to the land to which the appellant was entitled could not be limited by the appellant's view of what such rights or interests were or by the relief that the appellant identified. The Statement of Claim clearly raised the issues of promise, reliance and detriment. As noted earlier, by the time that the appellant presented its written, closing submissions it had specifically focused on the court's jurisdiction "to extend relief in equity by way of equitable estoppel based on the unconscionable behaviour of the [Government]."[7] Indeed, it is difficult to see how the strong equitable underpinnings of the appellant's position could ever have been overlooked; the pleaded facts raised them squarely.

[16] It is also relevant, in this context, to refer to the manner in which the Government responded to the appellant's statement of case. A foundational element of the reform introduced by the Civil Procedure Rules 2000 is the imperative on a defendant "to set out all the facts on which the defendant relies to dispute the

[4] [1978] 2 All ER 437
[5] At p.440
[6] [1974] 3 All ER 205 at 213, [1974] CH 269 at 321, 322
[7] Record of Appeal, volume 2, at pp 358 to 361

claim".[8] If a defendant denies any allegation in the statement of claim the defendant must state the reasons for doing so and if the defendant wishes to prove a different version of events the defendant's own version of events must be set out in the defence.[9] Clearly a defendant is no longer permitted to rely on a bare denial or simply to put the claimant to proof. The Defence of the Government serially violated these principles: it claimed not to know even that the appellant was engaged in the business of providing FBO services at the airport, denied that the minister responsible for crown lands negotiated or entered into any agreement, failed to state what the minister did, declined to admit that the minister wrote the letter stating the basic terms of the intended lease, claimed not to know that the appellant entered into occupation of the parcel pursuant to the Cabinet decision to grant the appellant a lease, denied knowing that the appellant did any of the developments and other things that it listed or that the appellant did these things in reliance on the Cabinet decision and the minister's letter, and utterly failed to state its own version of events. The Defence even declined to admit the making of the Cabinet Decision of 6th February 2003 to sell the land to SDC and to grant exclusive FBO rights to SDC.

[17] Because of the contents of the appellant's pleading and argument I am clear in my view that the Government suffered no disadvantage from the failure of the appellant to raise by name its claim to a proprietary estoppel. If, contrary to that view, it did then I would think that such disadvantage was minimal compared to the disadvantage that it caused to itself by failing to comply with its obligations under CPR 2000 to set out its version of events. Had the Government's Defence stated the facts and matters that it ought to have stated all other material (if any) relevant to the doctrine of proprietary estoppel would have been before the court, notwithstanding the failure to identify the doctrine by name.

[8] Rule 10.5(1)
[9] Rule 10.5(4)

[18] As indicated at the outset, the essence of the claim based on proprietary estoppel is that the Government gave the appellant the belief that it would be granted a 50-year lease and that, acting in reliance on that representation, the appellant went into occupation and developed the land at substantial cost to itself. The Government permitted such entry and development. Agencies of government gave specific authorisations for the appellant to do certain things. Ministers of Government attended the appellant's launch of its operations in December 2002. Given the location of the land within the secure area of the airport compound – abutting a disused runway - the appellant could never have done any of the things that it did except with the approval of the Government.

[19] The classical situation that raises the equitable doctrine of proprietary estoppel, which grew out of the doctrine of "encouragement and acquiescence," is described in the dissenting speech of Lord Kingsdown in Ramsden v Dyson and Thornton[10]:

> "If a man, under a verbal agreement with a landlord for a certain interest in land, or, what amounts to the same thing, under an expectation, created or encouraged by the landlord, that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord, and without objection by him, lays out money upon the land, a court of equity will compel the landlord to give effect to such promise or expectation."

[20] There was no denial that the appellant did the things it stated. Neither did the respondents deny that Government permitted these things to be done and approved of what was being done. Instead the respondents concentrated on the failings of the appellant. The appellant failed to submit a draft lease and an authenticated survey, and the appellant failed to pay rent. The Government argued that it would not be unconscionable to allow it to rely on its legal rights in circumstances where the appellant failed to do these things.

[10] (1886) LR 1 HL 129 at 170

[21] For SDC, it was argued that the appellant was not misled into doing the acts it did; that the appellant acted in its own self-interest in pressing on with its commercial venture and decided to take a commercial risk in doing so without finalizing a lease. Much of the expenditure seems to have occurred before the Minister's letter of 9th July 2002, this respondent noted. SDC also pointed to the lack of any explanation by the appellant for its failures – to obtain an authenticated survey, to submit a draft lease or to pay rent. SDC contended that the appellant was negotiating a particular agreement, it knew what it had to do and it did not do so: circumstances having changed the appellant could blame no one for the outcome of events. It is a novel argument that the failure of the appellant to perfect its legal position disentitled it to rely on the equitable doctrine of proprietary estoppel and one that calls for an examination of the essentials of that doctrine.

Essentials of proprietary estoppel

[22] There was no disagreement between counsel as to the essentials that a claimant must prove to raise the equitable doctrine. The essentials, as submitted by SDC, are that there must have been (1) encouragement or acquiescence by the defendant, (2) detrimental reliance by the claimant, and (3) unconscionability in withdrawing the promised benefit. This formulation comes from a leading textbook.[11] It is observed that there is no requirement of blamelessness imposed on the claimant.

[23] As to the first essential - encouragement or acquiescence - counsel for SDC argued that the evidence in its totality does not show that there was any encouragement given to the appellant. It is an argument that I reject out of hand. The appellant was not simply encouraged to believe but was expressly told[12] that it would be granted a lease of a ¼ acre parcel of land, was permitted to enter into occupation and to develop the land, and was confirmed in the belief that it would

[11] Megarry and Wade Law of Real Property, 6th edition, 13-007 and following
[12] Through its precursor, Port Services Ltd

be granted a lease when the basic terms of the lease were communicated to it. Counsel's other submission was better founded: I agree that SDC did not encourage or acquiesce in the representation made to the appellant – Government alone made the representation to the appellant.

[24] As to the second essential, it was unarguable that the appellant acted to its detriment in reliance on the representation made to it by the Government. Expending money on another's land in expectation of a promised right is a typical example of detrimental reliance.[13] The submission that the appellant was also to blame for the detriment it suffered, because of its own failure to do certain things, does nothing to diminish the fact that the appellant acted to its detriment in reliance on the Government's representation and that this reliance was the effective cause of it so acting.[14]

[25] As to the third essential, unconscionability need not lie in the conduct of the representor in permitting the representee to assume it could act as it did; it is enough if, in all the circumstances, it is unconscionable for the representor to go back on the assumption which it permitted the representee to make[15]. This requirement is satisfied if it would be unconscionable to deny the appellant the right or benefit it expected to receive. The argument to rebut the appellant's contention that it would be unconscionable to allow the Government to go back on its representation to the appellant that it would be given a 50-year lease focused on the appellant's failure to procure a lease and, therefore, the absence of a legal right in favour of the appellant. But it is precisely when a claimant has no legal right on which to base its claim that equity intervenes to supplement the law, as

[13] See, for example, Inwards v Baker [1965] 1 All ER 446

[14] Notwithstanding that in argument the respondents sought to make them so, the appellant's failures were never in issue. There was never the slightest suggestion that Government resiled from its commitment to grant a lease to the appellant because the appellant had failed to submit a draft lease, or an authenticated survey or to pay rent. Had the Government thought that a reasonable time for performance of those obligations had passed it would have been obliged to give notice to the appellant. Not only did it not do so; it never sought to justify its conduct by reference to the appellant's failures. The reality seems to have been that performance of these obligations was of no moment.

[15] Per Lord Browne Wilkinson in Lim Teng Huan v Ang Swee Chuan [1992] 1 WLR 113 at 117.

the passage from Lord Kingsdown's speech[16] establishes, so this argument does not avail.

[26] It may well have been open to the Government, by adopting an appropriate procedure that would have made it consistent with good conscience, to have conscionably withdrawn from its promise to grant a lease. There was evidence that on the day of the Cabinet decision the appellant's representative attended a meeting with members of Cabinet, at the behest of SDC's representative, to discuss relevant matters. The appellant's attendance at a meeting that was to consider the termination of the appellant's operation, which attendance the judge found was procured by trickery on the part of SDC, may well have misled the Government into thinking that the appellant had an agreement with SDC that made it conscionable to terminate the appellant's occupation of the land and its business. There was no evidence from the Government to explain why it acted as it did; nothing to deflect the appellant's charge that there was an unconscionable withdrawal from a clear promise. Absent any material from the Government capable of pointing the other way I am satisfied that the appellant has established its entitlement to the benefit of the equitable doctrine of proprietary estoppel because it was unconscionable, in the manner in which it did so, for the Government to have gone back on its promise to the appellant that it would have been granted a 50-year lease.

Discretionary relief

[27] Because proprietary estoppel is an equitable doctrine the relief for breach of the promise of a lease that should be granted to the appellant is a matter of discretion. It has been said[17] that the court will look at the circumstances in each case to determine how the equity can best be satisfied, and it has a wide discretion as to the order, which it may make. Relief that has been granted[18] has included ordering

[16] See [19] above
[17] Megarry and Wade, op cit, 13-020
[18] For reference to the cases, see ibid

the owner of land to grant a term of years, to make a money payment by way of compensation, to grant a mere licence or not to assert its legal rights.

[28] What the appellant wishes in the instant case is the equivalent of specific performance – it wants to be allowed to remain on the land. However, if it is to be limited to compensation, the appellant says, then such compensation must be not just for wood and concrete but also for the loss of income that it will suffer from not being able to conduct its business, which it can only do from land within the airport.

Distinction between occupation of the land and conduct of the business

[29] A fundamental difficulty in the way of the appellant is revealed by a consideration of the nature of the relief that it seeks, because even if it were an appropriate case in which to order specific performance of the promise to grant a lease such an order would not extend to permitting the appellant to conduct an FBO business from the location. A lease of the land does not carry with it a permit to provide the FBO service, as the judge found. If there was any doubt about that proposition that doubt is laid to rest by the terms of the Cabinet Decision of February 2003 in favour of SDC: it terminated and revoked the appellant's permit to operate an FBO and it granted an exclusive permit for not less than 25 years to SDC to do so[19].

[30] The appellant did not seek judicial review of the decision to revoke its permission to operate an FBO and grant an exclusive permit to SDC so it is completely beyond the scope of this appeal to review the legality of that decision or to question its merits. So far as these proceedings are concerned, because there was never the appropriate challenge to it, the revocation of the appellant's permit to operate must be accepted as a valid and proper exercise of executive discretion, made by Cabinet in the context "of the enormous benefits brought to

[19] See paragraph [5] above

the country by the Airport Project being developed by " SDC and "after careful consideration of the other expressions of interest by other third parties."[20]

[31] The appellant, it is observed, brought private law proceedings against the Government and SDC, asserting a claim to an agreement for a lease. When the appellant amplified its claim to include public law remedies it was for constitutional relief for wrongful deprivation of property – a claim that the appellant has since abandoned as unsustainable. The appellant never challenged the fairness, proportionality or reasonableness of the Cabinet Decision as it affected the appellant and that is what it needed to have done to obtain relief against the decision to terminate its business.

[32] The reality is that the appellant's use of the land was always incident to the operation of the business; it was never the other way around. This reality is demonstrated by the fact that Port Services Ltd had been conducting the same business from a different location in the airport compound, before the permission to lease the particular parcel was granted after Cabinet revisited its decision on the matter, and before it was decided to incorporate the appellant. But for the conduct of the business the appellant would not have required the land. However, as noted, the appellant brought its claim in relation to its rights to the land and not in relation to its rights to carry on its business.

[33] The relief that the appellant obtains must therefore be confined to its loss in relation to the land alone because it has established no actionable loss in relation to its business. As a matter of discretion, it seems to me, no purpose would be served by allowing the appellant to remain on the land. The land is purpose-specific; there was no evidence to suggest that it can be used other than as part of the operations of the airport. The land is landlocked by other airport land. It seems inescapable that access to the land, as a matter of national security and international obligations, must be restricted and closely controlled. This conclusion

[20] The quotes are taken from Cabinet decision of 6th February 2003

is a matter of common knowledge to air travellers and is confirmed by the appellant's submissions.[21] I am satisfied, as a matter of discretion, in light of these considerations that this is not an appropriate case to order specific performance.

Equitable compensation

[34] I am left to consider compensation for the loss of the user of the land itself, with no reference to its value as a location from which the appellant could have conducted an FBO service. SDC now own the freehold and they are the only person permitted to operate an FBO in Antigua and Barbuda, so the appellant's equity in relation to the land is of no interest and has no value to SDC. There is no evidence from which to find that the land would have value to anybody else. It seems clear that the land has no value without the permission to operate a relevant business from there. It follows that I am unable to order any compensation for the value of the appellant's loss of the use of the land.

[35] The judge made an award of US$200,000.00 as compensation to the appellant for the loss of the developments on the land. The judge excluded from his award compensation for the value of the land itself or for the loss of the business. In light of my decision as to the limits of the compensation payable to the appellant I have no basis for interfering with the judge's award.

[36] The judge ordered SDC to pay the compensation he awarded because SDC had become the owner of the land and they were the ones evicting the appellant and taking the benefit of the improvements that the appellant has made. The appellant accepts SDC's contention on its cross-appeal that SDC should not be liable to compensate the appellant. The Government has not accepted that position.

[37] I find that it is the Government that should be liable to compensate the appellant. Compensation is awarded not for the benefit that the new landowner gets from the

[21] See paragraph [10] above

value of the improvements but for the loss to the appellant of what it had been promised. As part of that loss the appellant lost the benefit of the improvements. That loss was caused by the Government going back on its commitment to grant a lease to the appellant. Accordingly, it is the Government that should compensate the appellant.

[38] Counsel for SDC gave his client's undertaking to the court that it would allow the appellant to remove whatever it wished from the land. The court was advised that the building is removable. However, given that the Government is now made liable to compensate the appellant for the loss of the improvements it seems appropriate to order, and I would so order, that the Government be permitted to dispose of, for its own benefit, all improvements placed on the land by the appellant.

Conclusion and costs

[39] The appellant succeeds on its appeal in invoking the equitable doctrine of proprietary estoppel and in establishing that compensation is payable not by SDC but by the Government. SDC succeeds on its cross-appeal in establishing that it should not be liable to pay the compensation awarded. It appears from the notice of appeal that the appellant had always accepted that SDC should not be liable. The Government has lost on both the appeal and the cross-appeal. Accordingly it seems fair to order prescribed costs of both the appeal and the cross-appeal to be paid by the Government and I would so order.

Denys Barrow, SC
Justice of Appeal [Ag.]

I concur.

Brian Alleyne, SC
Chief Justice [Ag.]

I concur.

Michael Gordon, QC
Justice of Appeal