THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

SAINT LUCIA

SLUHCVAP2013/0001
(High Court Claim: SLUHCV2011/0025)

BETWEEN:

DENYS BARROW

Appellant

and

THE ATTORNEY GENERAL OF SAINT LUCIA

Respondent

Before:

The Hon. Mr. Davidson Kelvin Baptiste — Justice of Appeal
The Hon. Mde. Gertel Thom — Justice of Appeal [Ag.]
The Hon. Mde. Joyce Kentish-Egan, QC — Justice of Appeal [Ag.]

Appearances:

The Appellant in person with him Mr. Eamon Courtenay, SC and Ms. Naima Barrow
Mr. Deale Lee with him Ms. Cagina Foster for the Respondent

2014: April 8;
October 27.

Civil appeal – Judicial review – Interpretation of 'pensionable circumstances' within section 3(1) of the Eastern Caribbean Supreme Court (Rates of Pension) (Judges) Act – Whether section 3(1) of the Eastern Caribbean Supreme Court (Rates of Pension) (Judges) Act entitles a judge to be paid a pension on retirement as a judge having served in the public service of Saint Lucia for less than 10 years – Applicability of rule in Pepper v Hart – Legitimate expectation – Whether a judge has a legitimate expectation that a pension would be paid to him upon retirement at age 56 based on previous practices of the Judicial and Legal Services Commission – Pensions Act – Pensions Regulations – Supreme Court (Salaries, Allowances and Conditions of Service of Judges) Order

The appellant was appointed as a justice of appeal of the Eastern Caribbean Supreme Court ("ECSC") on 1st August 2005 and pursuant to section 13 of the Supreme Court Order, he was directed that he was to be in the service of the Government of Saint Lucia

for the purposes of pension. The appellant retired from the position of justice of appeal on 31st December 2008 at age 56, having served in the position for 3 years and 5 months.

By letters dated 13th December 2008 and 2nd February 2010, the appellant wrote to the Judicial and Legal Services Commission to make a claim for a pension. On 7th July 2009, the appellant had also written to the Accountant General to make a formal claim for a pension. The appellant received no response to his letters and as a result, on 17th May 2010, counsel for the appellant wrote to the Attorney General setting out the appellant's understanding of the relevant legislation and asking the Attorney General to apply the law and pay the appellant his benefits due. On 22nd May 2010, the Solicitor General responded to the appellant indicating that the Government of Saint Lucia was awaiting consideration of an Attorney General's Reference in relation to his claim for a pension.

The Attorney General referred a number of questions to the Court of Appeal and in an opinion delivered on 22nd September 2010, the Court stated that the appellant was not entitled to be paid a pension because he was not in pensionable service as a judge or otherwise for a period of at least 10 years.

The appellant filed a claim for judicial review against the respondent on 24th February 2011 seeking a declaration that he was entitled to a pension as a retired judge of the ECSC pursuant to the Eastern Caribbean Supreme Court (Rates of Pension) (Judges) Act ("Rates Act") and/or the Pensions Act and in the alternative, a declaration that he was entitled to be paid a gratuity in accordance with the Pensions Regulations; and an order for payment of the benefits so declared.

In her judgment dated 12th December 2012, the learned judge in the court below decided against the appellant in his claim for judicial review of the Government of Saint Lucia's decision not to pay him a pension on retirement as a justice of appeal, but held that he was entitled to be paid a gratuity. The learned judge made no order as to costs.

The appellant appealed against the learned judge's decision on 10 grounds based on her findings in his claim for judicial review of the Government of Saint Lucia's decision not to pay him a pension and on her failure to award him costs.

Held: dismissing grounds 1 to 9 of the appeal, ordering costs in the court below be assessed if not agreed and ordering the parties to bear their own costs of the appeal, that:

1. The expression 'pensionable circumstances' within section 3(1) of the Rates Act must be defined by reference to the provisions of the Pensions Act, including the Pension Regulations. A judge is said to retire in pensionable circumstances under section 3(1) of the Rates Act if he or she has reached the age of 55 years, as provided for by section 6(1)(a)(i) of the Pensions Act and has been in public service under the Government of Saint Lucia for 10 or more years, as provided for by regulation 4(1) of the Pension Regulations. The mere fact of the retirement of the appellant as a justice of appeal at the age of 56 did not place him in circumstances to be entitled to be paid a pension under section 3(1)(b) of the

Rates Act; he must also have served in public service under the Government of Saint Lucia for 10 or more years.

Section 6(1)(a)(i) of the Pensions Act, Cap 15.26 of the Revised Laws of Saint Lucian 2008 applied; Regulation 4(1) of the Pension Regulations, Cap 15.26 of the Revised Laws of Saint Lucia 2008 applied.

2. The underlying basis of the Pensions Act is to provide pension benefits to persons who have been in public service for a certain minimum number of years. No provision of the Rates Act or the Supreme Court (Salaries, Allowances and Conditions of Service of Judges) Order ("Salaries Order") displaces this basis. The Rates Act did not establish a new basis for paying pensions to judges by replacing regulation 4(1) as it relates to qualifying years of service for the payment of pension benefits to judges. Rather, the Rates Act had two objectives, the first, to introduce an enhanced rate of pension to be paid to judges by replacing the formula provided in regulation 4(1) of the Pension Regulations as amended by section 12 of the Salaries Order, with the formulae provided in section 3(1)(a), (b) and (c); and the second, to introduce a new entitlement to a gratuity and pension to the spouses of judges who die in office or who were entitled to or in receipt of a pension at their death.

3. The rule in Pepper v Hart applies only where the legislation in question is ambiguous or obscure or leads to absurdity. The words 'pensionable circumstances' within section 3(1) of the Rates Act were not ambiguous; the meaning of the words had to be garnered from the Pensions Act and Pensions Regulations. It was this inquiry which led to a discordant rather than ambiguous interpretation of the words 'pensionable circumstances' between the parties.

   Pepper (Inspector of Taxes) v Hart [1993] AC 593 applied; R v A (No. 2) [2001] UKHL 25 referred; Black Clawson International Ltd v Papierwerke Waldhorf-Aschaffenburg AG [1975] AC 591 referred; R v Z [2005] UKHL 35 referred.

4. Section 12 of the Salaries Order did not supersede regulation 4(1) of the Pension Regulations in relation to judges, but rather varied the formula for the calculation of the rate of pension for judges by providing an enhanced rate of pension by crediting a judge the with number of years stipulated in Schedule 1 to section 12 of the Salaries Order for the purpose of computing a judge's pension and not for the purpose of supplementing the number of years required for a judge to qualify for a pension. The previous interpretation and application of the Salaries Order by persons responsible for administering the Rates Act and Pensions Act had been incorrect.

5. A legitimate expectation cannot be formed on a newly recognized circumstance which was not previously subscribed to by a public authority in making a decision. Legitimate expectation is rooted in fairness and such a result would lead to unfairness to the public authority. The appellant, who retired as a justice of appeal at age 56, could not have a legitimate expectation that he would be entitled to a

pension on the basis of the previous erroneous practice of the Judicial and Legal Services Commission to recommend the payment of pensions to judges whose pensionable service on retirement fell short of the 10 years required by applying the add-on years in Schedule 1 to section 12 of the Salaries Order, because, this practice was only applied in circumstances where a justice of appeal retired at the compulsory retirement age of 65 as provided for by section 8 of the Supreme Court Order.

R v Inland Revenue Commissioners ex parte MFK Underwriting Agents Ltd [1990] 1 All ER 91 applied; Section 12 of the Supreme Court (Salaries, Allowances and Conditions of Service of Judges) Order, Cap 2.01 of the Revised Laws of Saint Lucia 2008 applied.

JUDGMENT

[1] KENTISH-EGAN JA [AG.]: This is an appeal against the judgment of Wilkinson J dated 12th December 2012 in which she decided against the appellant on his claim for judicial review of the decision of the Government of Saint Lucia ("the Government"), not to pay him pension benefits on his retirement as a justice of appeal of the Eastern Caribbean Supreme Court.

[2] The fixed date claim form seeking judicial review of the decision not to pay pension benefits was filed on 24th February 2011. The principal reliefs sought were:

(1) A declaration that the Claimant, as a retired Judge of the Eastern Caribbean Supreme Court (ECSC) is entitled to be paid a pension in accordance with the Eastern Caribbean Supreme Court (Rates of Pension) (Judges) Act[1] and/or the Pensions Act[2].

(2) In the alternative, a declaration that the Claimant is entitled to be paid gratuity in accordance with the Pensions Regulations.

(3) An order for payment of the pension benefits aforesaid.

[1] Act No. 12 of 1989, Laws of Saint Lucia.
[2] Cap. 15.26 of the Revised Laws of Saint Lucia 2008.

[3] The facts are not in dispute and are drawn from the Judgment of the trial judge. The appellant was appointed as a justice of appeal of the Eastern Caribbean Supreme Court on 1st August 2005. Pursuant to section 13 of the Supreme Court Order (formerly the West Indies Associated States Supreme Court Order 1967)[3], it was directed that he was to be in the service of the Government of Saint Lucia for the purposes of the grant of pension. His appointment was to a pensionable office in the public service. The appellant retired on 31st December 2008 at age 56 having served as a justice of appeal for 3 years and 5 months. Section 8 of the Supreme Court Order fixed the age for compulsory retirement of a justice of appeal at 65 years.

[4] The appellant first made a claim for his pension on 13th December 2008 to the Honourable Chief Justice as Chairman of the Judicial and Legal Services Commission ("JLSC"). The Secretary to the JLSC responded that his claim was being considered.

[5] In early July 2009, it became apparent to the appellant that the JLSC had no legal responsibility to pay his pension. He thought it prudent to make his claim for pension directly to the Government. By letter dated 7th July 2009, the appellant wrote to the Accountant General making a formal claim for pension and setting out the basis of his claim. The Accountant General did not respond and on 2nd February 2010, he again wrote to the Chairman of the JLSC and pointed out amongst other matters that one (1) year had passed since his claim to the JLSC and he had yet to receive a position from the JLSC on his claim for pension.

[6] Faced with no response to any of the prior communications, on 17th May 2010, counsel for the appellant wrote to the Attorney General. Counsel referred to the appellant's request of 13th December 2008. The letter set out the appellant's understanding of the various Acts that dealt with pension and asked the Attorney General to apply the law and provide the appellant with his benefits due.

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[3] Cap.2.01, Revised Laws of Saint Lucia 2008.

[7] On 22nd May 2010, the Solicitor General responded to the appellant's counsel's letter on behalf of the Attorney General. He indicated that it was not the intention of the Government to deny the appellant his rights but the demand for benefits was awaiting consideration under the Attorney General's Reference[4].

[8] By the Attorney General's Reference, the Government referred several questions to the Court of Appeal (the Special Appellate Court), for an opinion on the appellant's pension entitlements. The Special Appellate Court delivered its opinion on 22nd September 2010 and there opined that the appellant would not be entitled to be paid a pension for the reason that he was not in pensionable public service whether as a judge or otherwise for at least ten (10) years.

The Legislation Governing Judges' Pensions

[9] On the date when the appellant was appointed to pensionable office as a judge, pensions of judges employed in the public service of Saint Lucia were governed by the Pensions Act and the Pensions Regulations ("the Pensions Act"), the Supreme Court (Salaries, Allowances and Conditions of Service of Judges) Order ("the Salaries Order") and by Eastern Caribbean Supreme Court (Rates of Pensions) (Judges) Act ("the Rates Act").

[10] The Pensions Act applied to all officers employed in public service in Saint Lucia. The Salaries Order and the Rates Act applied to judges only. The following are the provisions of the Pensions Act that have a bearing on the core issues raised in this appeal:

> "2. INTERPRETATION
>
> (1) In this Act, unless the context otherwise requires, the following expressions have the meanings assigned to them, that is to say –
> "pensionable emoluments" –
> (a) in respect of public service under the Government of Saint Lucia include –
> (i) salary,
> (ii) personal allowance, and
> (iii) house allowance, and

[4] Saint Lucia, SLUHCVAP2010/0009, delivered 22nd September 2010.

(iv) inducement allowance,

but does not include duty allowance, entertainment allowance or any other emoluments whatever;

(b) in respect of other public service, means emoluments which count for pension in accordance with the law or regulations in force in such service;

"pensionable office" means –

(a) in respect of public service under the Government of Saint Lucia, an office which, by virtue of provisions in force in an order made by the Governor General and published in the Gazette, is declared to be a pensionable office; and any such order may be amended, added to, or revoked by an order so made and published; but where by virtue of any such amendment or revocation any office ceases to be a pensionable office, then so long as any person holding that office at the time of the amendment or revocation continues therein, the office shall as respects that person, continue to be a pensionable office;

(b) in relation to any other public service, an office which is a pensionable office under the law or regulations in force in respect of such service;"

"2. INTERPRETATION

In these Regulations, unless the context otherwise requires –

"pensionable service" means service which may be taken into account in computing pension under these Regulations."

"3. PENSIONS REGULATIONS

(3) Pensions, gratuities and other allowances may be granted by the Governor General in accordance with the regulations contained in the Schedule to this Act to or in respect of officers who have been in public service under the Government of Saint Lucia."

"(6) All regulations made under this Act have the same force and effect as if they were contained in Schedule 1 and the expression "this Act" shall, wherever it occurs in this Act, be construed as including a reference to the said Schedule."

"6. CIRCUMSTANCES IN WHICH PENSION MAY BE GRANTED

(1) Pension, gratuity or other allowances shall not be granted under this Act to any officer except on his or her retirement from the public service in one of the following cases—

(a) if he or she retires from public service under the Government of Saint Lucia—

(i) on or after he or she attains the age of 55 years, or in special cases, with the approval of the Governor General, acting after consultation with the appropriate service commission, 50 years."

"9. MAXIMUM PENSION

(1) Except in cases provided for by subsection (2), a pension granted to an officer under this Act shall not exceed 2/3 of his or her highest pensionable emoluments at any time while in the public service under the Government of Saint Lucia."

"PENSIONS REGULATIONS

PART 2

OFFICERS WITHOUT OTHER PUBLIC SERVICE

"4. PENSION TO WHOM AND AT WHAT RATES TO BE GRANTED

(1) Subject to the provisions of the Act and these Regulations, every public officer holding a pensionable office under the Government of Saint Lucia who has been in public service under the Government of Saint Lucia for 10 years or more may be granted on his or her retirement a pension at the annual rate of one four-hundred eightieth of his or her pensionable emoluments in respect of each completed month of his her pensionable service."

"5. GRATUITIES WHERE LENGHTH OF SERVICE DOES NOT QUALIFY FOR PENSION

Every officer, otherwise qualified for a pension who has not completed the minimum period of service qualifying for a pension, may be granted on retirement a gratuity not exceeding 5 times the annual amount of the pension which, if there had been no qualifying period, might have been granted to the officer under regulation 4(1)."

PART 4

GENERAL

"14. GENERAL RULES AS TO QUALIFYING SERVICE AND PENSIONABLE SERVICE

(1) Subject to the provisions of these Regulations, qualifying service shall be the inclusive period between the date on which an officer begins to draw salary in respect of public service and the date of his or her leaving the public service without deduction of any period during which he or she has been absent on leave."

"15. CONTINUITY OF SERVICE

(1) Except as otherwise provided in these Regulations, only continuous public service shall be taken into account as qualifying service or as pensionable service.

However, any break in service caused by temporary suspension of employment in the public service not arising from misconduct or voluntary resignation shall be disregarded for the purposes of this subregulation.

…"

[11] The material provision of the Salaries Order is section 12:

"12. PENSIONS

In computing the pension of a judge who on retirement from the service holds one of the offices mentioned in Schedule 1 to this Order the additions in the said Schedule mentioned shall be made to his or her period of service.

However, no addition shall be made which together with the number of years of his or her actual pensionable service amounts to more than 400 months.

SCHEDULE 1

Chief Justice …… 10 years
Justice of appeal…….. 7 years
Puisne judge…… 5 years."

[12] The relevant provisions of the Rates Act are sections 2, 3 and 6(3).

"2. In this Act —

"Judge" means the Chief Justice, a Justice of Appeal or a Puisne Judge of the High Court as the case may be.

"3. —(1) The pension payable to a Judge upon his retirement in pensionable circumstances shall be computed as follows:

(a) In the case of the Chief Justice, if he has had continuous service as a Judge for a period of not less than ten years, at a rate equivalent to his full annual pensionable emoluments at the date of his retirement. In any other case, he shall receive a pension at a rate equivalent to three-fourths of his full annual pensionable emoluments.

(b) In the case of a Justice of Appeal, if he has had continuous service as a Judge for a period of not less than twelve years, at a rate equivalent to his full annual pensionable emoluments at the date of his retirement. In any other case, he shall receive a pension at a rate equivalent to three-fourths of his full annual pensionable emoluments.

(c) In the case of a Judge of the High Court, if he has had continuous service as a Judge for a period of not less than fifteen years, at a rate equivalent to his full annual pensionable emoluments at the date of his retirement. In any other case, he shall receive a pension at a rate equivalent to three-fourths of his full annual pensionable emoluments.

"(2) Nothing contained in this Act shall operate to prevent a Judge from opting to have his pension computed under the provisions of the Pensions Act, 1967 in lieu of under the provisions of this Act.

"6 (1) …
(2) …
(3) A person who retires in circumstances other than under the provisions of this Act, shall be entitled to have his pension computed under the provisions of the Pensions Act, 1967."

[13] The two issues that the learned trial judge identified for determination were:

"1. Whether the Claimant is entitled to be paid a pension pursuant to either the Pensions Act or the ECSC (Rates of Pension) (Judges) Act or both.

"2. Whether the Claimant if he fails to qualify for a pension has made out a case of legitimate expectation that he would be paid a pension based on past recommendations of the Judicial and Legal Services

> Commission (JLSC) and payments made by the Government to retired judges pursuant to those recommendations."[5]

[14] Having reviewed the provisions of the Pensions Act and Regulations, the provisions of the Rates Act, as well as the Salaries Order, the learned trial judge found that the case had to be decided solely on the interpretation of the pertinent Acts. She found in respect of the first issue that the Rates Act simply does what its name suggests and that is provide a rate for computation of a judge's pension and does this by setting up the quantities to be applied for quantification to arrive at the pension amount payable. The Rates Act only seeks to increase the rate of pension. She therefore held that the appellant was not entitled to a pension pursuant to any of the Acts since he had not given ten (10) years' service.

[15] On the second issue, she held that while short period of service was a common factor on the evidence of the appellant and the JLSC, the JLSC only recommended payment of a pension on the achievement of 62 years for a Puisne Judge and 65 for a Justice of Appeal. No payments had been recommended to a judge retiring at the age of 55 years or 56 years, as was the case of the appellant. There could be no legitimate expectation since the factors were not on all fours with each other.

[16] The appellant has framed ten (10) grounds of appeal against the trial judge's findings and her failure to award him costs. The grounds of appeal are as follows:

1. Ground of Appeal 1: The learned trial judge erred in law, having correctly directed herself that in interpreting legislation the court must consider the legislative history of an enactment which is to say
    (1) the state of the law before the passing of the relevant legislation,
    (2) the history of the enacting of the legislation, and
    (3) the events which occurred in relation to the legislation subsequent to its passing,

[5] Judgment of Wilkinson J at para. 2.

in failing to consider or properly consider, and in failing to give any or any sufficient to the evidence and material placed before the court showing the legislative history of the Salaries Order and the Rates Act.

2. Ground of Appeal 2: The learned trial judge erred in law in failing to give any or any sufficient consideration to relevant material. In particular, the learned judge failed to give any sufficient consideration to statements set out in the *Hansard* for St. Lucia and for St. Vincent and the Grenadines, made by the legislator who promoted the Bill for the Rates Act (stating to Parliament that the intention of the Bill included providing a pension to judges who did not serve the minimum period to earn full pension) by concluding (at paragraph [36] Judgment), without reproducing or summarizing, or examining or analysing the actual statements, that these statements "add little to the discussion" and thereby completely failed to appreciate or consider or apply the Rule in *Pepper v Hart,* that such a statement may be relied on to arrive at the legal meaning of an enactment, the meaning of which is ambiguous.

3. Ground of Appeal 3: The learned judge misdirected herself in fact and in law and adopted a wrong approach by considering the Rates Act of 1989 ahead of the Salaries Order of 1975 and thereby wholly and substantially missed the significance and effect of, and excluded from her consideration the Salaries Order as part of the legislative history of the Rates Act and the necessity to consider and the importance of considering the state of the law in which the Rates Act was intended to operate and was intended to alter.

4. Ground of Appeal 4: The learned judge wholly mislead herself as to the case for the claimant in respect of the Rates Act, concluding (at paragraph [59] Judgment) that there was no dispute between the

claimant and the defendant as to the interpretation at which the Court arrived and implicitly, that the claimant held a similar view, that the Rates Act "only seeks to increase the rate of pension" (paragraph [58] Judgment). The Court thereby completely omitted any consideration of the claimant's case (in paragraphs 71 to 75 of his submissions) that the intention and effect of the Rates Act was to provide for the payment of a (reduced) pension "in any other case" where the judge had not served the stipulated period to earn a full pension and, therefore, without the need to serve for any qualifying period to earn a reduced pension.

5. Ground of Appeal 5: The learned judge accordingly arrived at a wrong interpretation of the Rates Act by entirely failing to consider that section 3(b) of the Rates Act, in providing that if a justice of appeal has served for not less than 12 years he shall receive a full pension, and "in any other case" he shall receive a ¾ pension, necessarily had to be interpreted as meaning that a justice of appeal shall receive a pension if he has served less than 12 years and need not serve any minimum period to be entitled to such reduced pension.

6. Ground of Appeal 6: The learned trial judge misled herself in failing to give any or any proper weight to the significance of the fact that the Salaries Order (1975), was made later than the Pensions Regulations (1967) and therefore was intended to amend the Pension Regulations as part of the purpose of the Salaries Order to create a special regime for judges that was distinct from the regime applicable to civil servants generally.

7. Ground of Appeal 7: The learned judge misled herself and erred in law in holding (at paragraph [63] Judgment) that the claimant's expectation that the added qualifying years of service given to judges under the previously applied interpretation of the Salaries Order could

not be a legitimate expectation because during the period when that interpretation was applied the added qualifying years of service were given only to judges who had reached the mandatory retirement age. The learned judge therefore wrongfully treated qualifying years of service as part of and inseparable form pensionable age and, therefore, failed to recognize and reason that the claimant could have a separate legitimate expectation in relation to qualifying years and at the same time challenge the then prevailing (and now commonly accepted as wrong) (see paragraph [52] Judgment) interpretation as to pensionable age.

8. Grounds of Appeal 8: The learned judge misdirected herself or erred in law and in principle in concluding that for the court to order payment of pension to the claimant, thereby giving him the benefit of the previously applied interpretation of the Salaries Order that would have added to his qualifying years of service, would be an "unlawful act" (at paragraph [64]). This conclusion was based on an erroneous proposition that a change by a court in the interpretation to be given to a law means that a previously applied interpretation was unlawful.

9. Ground of Appeal 9: The learned judge erred in law in failing to give any or any sufficient consideration to the principle of law that effect may be given to the rights or interests of persons that have arisen in the period before legislation, previously thought to be valid or previously applied in a certain way, has been declared invalid or is given a new interpretation.

10. Ground of Appeal 10: The learned judge erred when she failed to award costs to the claimant and failed to give any or any sufficient consideration to the issue of costs and the fact that the claimant was

successful at the hearing on the award of a gratuity and entitled to costs to be assessed pursuant to CPR[6] 56.13(4) and CPR 64.6(1).

[17] One of the two crucial questions for determination in this appeal is whether section 3(1) of the Rates Act entitles the appellant to be paid a pension on his retirement from public service having served as a justice of appeal for a period 3 years and 5 months. The appellant and the respondent are in agreement that this will depend on the proper interpretation to be given to the words 'pensionable circumstances' as used in section 3(1) of the Rates Act.

[18] The Rates Act does not define 'pensionable circumstances'. The only other provision of the Rates Act that refers to either of these words is section 6(3). I will consider the meaning of this provision later in this judgment.

[19] The Rates Act also does not define 'pensionable emoluments'. The learned trial judge took the position, correctly in my view, that the meaning of each expression must be gathered from the Pensions Act when she stated:

> "[56] … It is the Court's view that for completeness the Act must be read together with the Pensions Act for interpretation of such phrases as "pensionable emoluments" and "pensionable circumstances"."[7]

[20] The task is to garner what is meant by 'pensionable circumstances' in the context of the Pensions Act. Once this is understood it will shed light on the meaning of those words as used in section 3(1) of the Rates Act. The Pensions Act is referred to twice in the Rates Act. The first reference is in section 3(2) and the other reference is in section 6(3):

> "3. (1) …
> (2) Nothing contained in this Act shall operate to prevent a Judge from opting to have his pension computed under the provisions of the Pensions Act, 1967 in lieu of under the provisions of this Act."

[6] Civil Procedure Rules 2000.
[7] Judgment of Wilkinson J at para. 56.

"6. (1) …
(2) ….
(3) A person who retires in circumstances other than under the provisions of this Act, shall be entitled to have his pension computed under the provisions of the Pensions Act, 1967."

[21] These two provisions highlight the fact that the Rates Act was not intended to be independent of the Pensions Act. It is clear too that these references to the Pensions Act are intended to refer to the Pensions Act and Pensions Regulations and not simply to the provisions of the Pensions Act divorced from the Pensions Regulations. The Pensions Regulations are contained in Schedule 1 to the Pensions Act. Section 3(6) of the Pensions Act (set out above) expressly incorporates the Pensions Regulations as part of the Pensions Act. It is repeated here for convenience:

"3. (1)-(5)

(6) All regulations made under this Act have the same force and effect as if they were contained in Schedule 1 and the expression "this Act" shall wherever it occurs in this Act, be construed as including a reference to the said Schedule."

[22] It is the shared view of the appellant and the respondent that one must look to the Pensions Act for assistance in understanding the meaning of 'pensionable circumstances' and 'pensionable emoluments'. However there is a fundamental distinction in how they each invoke the Pensions Act and this distinction in my view is the source of the great divide between them on what is meant by 'pensionable circumstances'. The meaning of pensionable emoluments is not in issue. It is agreed that it has the meaning given to it in section 2(1) of the Pensions Act. Nowhere in the Pensions Act is 'pensionable circumstances' defined.

[23] The appellant appeared in person in this appeal. He contends that the meaning of 'pensionable circumstances' can be gathered by the statement in section 6 of the Pensions Act of the circumstances in which pension may be paid. He contends

that the circumstances enumerated in section 6 are the 'pensionable circumstances' within the meaning of the Rates Act.

[24] Section 6 of the Pensions Act enumerates a set of circumstances only one of which is relevant for the purposes of this appeal. Section 6(1)(a)(i) provides:

> "6. CIRCUMSTANCES IN WHICH PENSION MAY BE GRANTED
> (1) Pension, gratuity or other allowances shall not be granted under this Act to any officer except on his or her retirement from the public service in one of the following cases—
> (a) if he or she retires from public service under the Government of Saint Lucia—
> (i) on or after he or she attains the age of 55 years, or in special cases, with the approval of the Governor General, acting after consultation with the appropriate service commission, 50 years,"

[25] The appellant submitted that he met the requirement of retirement in pensionable circumstances in section 6(1)(a)(i) on his retirement at age 56. He submitted that a justice of appeal who retired at age 56 with service of less than 12 continuous years, came within the ambit of 'In any other case' in section 3(1)(b) of the Rates Act and was entitled to receive a pension computed at the rate of ¾ his full pensionable emoluments. He says section 3 of the Rates Act eliminated altogether a requirement for a minimum number of years of service in order for judges to be paid a pension. It is not a required circumstance that a person must have served for any qualifying period. The appellant's reference to qualifying period refers to Regulation 4(1) of the Regulations to the Pensions Act. Regulation 4(1) prescribes:

> "4. PENSION TO WHOM AND AT WHAT RATES TO BE GRANTED
> (1) Subject to the provisions of the Act and of these Regulations, every public officer holding a pensionable office under the Government of Saint Lucia who has been in public service under the Government of Saint Lucia for 10 years or more may be granted on his or her retirement a pension at the annual rate of one four-hundred eightieth of his or her pensionable emoluments in respect of each completed month of his or her pensionable service."

[26] The appellant says that one must exclude altogether a consideration of regulation 4(1) of the Pensions Regulations. The reason he submitted is that this regulation deals with qualifying years of service and with the rate for computation of pensions. As such it was replaced by section 3 of the Rates Act which introduced new rates of pension for judges and new criteria for qualifying years of service to receive a full pension depending on the judge's position within the judicial hierarchy.

[27] Based on his interpretation of 'pensionable circumstances', the appellant contends that the provisions of section 3 of the Rates Act establish a new method for paying pensions. He submits that it introduced four new provisions. First it introduced a higher threshold for full pension of 12 years in place of 10 years. Secondly, it increased full pension at the new rate of the equivalent of full pensionable emoluments (full pension). Thirdly, it introduced a new entitlement to pension 'in any other case' than a case of service for 12 years. And fourthly, it introduced, in such 'any other case', the new grant of a reduced pension at the rate of ¾ of pensionable emoluments (¾ pension).

[28] The Attorney General in his opposing submissions referred to the fact that under the Pensions Act, a pension is not granted as of right[8]. He contended that the Pensions Act established two conditions for receipt of a pension, namely (a) the appellant must have attained the age of 55 years, and (b) he must have served a minimum of ten years in a pensionable office. He submits that these two conditions must be satisfied to be in 'pensionable circumstances' within the meaning of section 3(1) of the Rates Act.

[29] Mention was made earlier of the great divide between the appellant and the respondent on what constitutes 'pensionable circumstances'. It is apparent that the divide stems from the fact that the appellant extracts the meaning of 'pensionable circumstances' from the context of section 6(1)(a)(i) of the Pensions

[8] Section 5(1) of the Pensions Act: "An officer shall not have an absolute right to compensation for past services or to pension, gratuity or other allowance;…"

Act only with no cross over into the Pensions Regulations. The respondent on the other hand extracts the meaning of that expression from the Pensions Act and Pensions Regulations read as one.

[30] On the respondent's approach, ascertaining the meaning of 'pensionable circumstances' requires that the provisions of the Pensions Regulations are considered and brought into account as they form part of the Pensions Act. It follows that the circumstances under which one can be granted a pension under the Pensions Act consists of the section 6(1)(a)(i) circumstance – retirement at 55 years as well as the regulation 4(1) circumstance – 10 unbroken years of service. The Attorney General contends that these two circumstances together constitute pensionable circumstances and combined they trigger the entitlement to payment of a pension. When one carries over this definition of 'pensionable circumstances' into section 3(1) of the Rates Act, the outcome is that the grant or payment of a pension under the Rates Act does not depend alone on attaining the qualifying age of 55 years, it depends as well on achieving 10 unbroken years of pensionable service.

[31] On the appellant's approach, the provisions of section 4(1) of the Pensions Regulations are treated as irrelevant. There is a single criterion, namely retirement at age 55. This supplies the meaning of 'pensionable circumstances' as used in section 3(1) of the Rates Act. Taking this argument to its logical conclusion it would mean that if a judge were employed in a pensionable office one month or less before turning 55 that judge can then retire one month later on attaining age 55 and thus be entitled to a pension.

[32] I agree with the learned trial judge that this issue has to be decided solely on interpretation of the pertinent Acts. In looking at the interpretation of the Acts under consideration, she took guidance from the interpretative criteria referred to in Halsbury's Laws[9]. They are reproduced here with the learned trial judge's underlining:

[9] 4th Edition, Re-issue, Volume 44(1).

"1373. Nature of the legal meaning. The legal meaning of an enactment, that is the meaning that corresponds to the legislator's intention, is the meaning arrived at by applying to the enactment, taken with any other relevant and admissible material, the rules, principles, presumptions and canons which govern statutory interpretation. These may be referred to as the interpretative criteria, or guides to legislative intention.

1374. Doubt as to the legal meaning. If, on an informed interpretation, there is no real doubt that a particular meaning of an enactment is to be applied, that meaning is to be taken as its legal meaning. If there is a real doubt, it is to be resolved by applying the interpretative criteria …

1393. Statement of the functional construction rule. Under the common law, an enactment must be construed so that significance is given to each component of the Act containing it according to its legislative function as such a component. This may be called the function construction rule.

1394. Interpretative significance of framework. The framework of an Act consists of its structure and format together with any outside enactments incorporated in it. In construing any provision of the Act it is necessary to bear its framework in mind, since the Act is to be treated as a whole.

1397. Interpretative significance of operative components of an Act. The significance of the operative components of an Act in its interpretative lies in the fact that they are the portions of the Act in which the legislative message principally resides.

1414. The informed interpretation rule. The informed interpretation rule is a rule under common law that the court must infer that the legislator, when settling the wording of an enactment, intended it to be given gully informed, rather than a purely literal, interpretation. Accordingly, the court does not decide whether or not there is any real doubt as to the legal meaning of the enactment, and if so in what way to resolve it, until it has first discerned and considered, in the light of the facts to which the enactment is being applied, the context of that enactment, including all such matters as may illumine the text and make clear the meaning intended by the legislator in the factual situation of the instant case ….

Additionally, the informed interpretation rule requires that, when construing an enactment as it is applies to the facts of the instant case, attention should be paid to any relevant aspects of (1) the state of the law before the Act containing the enactment was passed; (2) the history of the enacting of that Act; and (3) the events which occurred in relation to the Act subsequent to its passing. These may be described collectively as the

legislative history of the enactment, and individually as the pre-enacting, enacting and post-enacting history."

[33] In addition to the extracts from Halsbury's Laws relied on by the learned trial judge, this Court is also guided by the principles as they are expressed in the case law. It was reiterated in R v Secretary of State for the Environment, Transport and the Regions Ex parte Spath Holme Ltd.[10] that the overriding aim of the court must always be to give effect to the intention of Parliament as expressed in the words used.

[34] In Black-Clawson International Limited v Papierwerke Waldhof-Aschaffenburg AG,[11] Lord Reed opined:[12]

> "…We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words which Parliament used. We are seeking not what Parliament meant but the true meaning of what they said….."

[35] Sir Vincent Floissac CJ in Charles Savarin v John Williams[13] summarized the guiding principles in these words:

> "In order to resolve the fundamental issue of this appeal, I start with the basic principle that the interpretation of every word or phrase of a statutory provision is derived from the legislative intention in regard to the meaning which that word or phrase should bear. That legislative intention is an inference drawn from the primary meaning of the word or phrase with such modifications to that meaning as may be necessary to make it concordant with the statutory context. In this regard, the statutory context comprises every other word or phrase used in the statute, all implications therefrom and all relevant surrounding circumstances which may properly be regarded as indications of the legislative intention."[14] (emphasis added).

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[10] [2001] 2 AC 349.
[11] [1975] AC 591.
[12] at pp. 613, letter G.
[13] (1995) 51 W.I.R. 175.
[14] At pp. 78-79.

Discussion - Meaning of 'in pensionable circumstances'

[36] As stated before, the expression 'pensionable circumstances' is not defined in the Rates Act. The court must look to the Pensions Act and the language used in that statutory context to discern the meaning to be given to 'pensionable circumstances'. It is not in doubt that the Pensions Act includes the Pensions Regulations. This Court must seek the meaning of the expression 'pensionable circumstances' from the words used in the Pensions Act as well as the Pensions Regulations. The outcome of this exercise will in my view be dispositive of grounds 4 and 5 of the appeal and will have a substantial if not direct bearing on the view taken of those grounds of appeal which put in issue the learned trial judge's alleged failure to consider and give sufficient weight to the legislative history of the Rates Act (grounds of Appeal 1, 2 and 3), as well as ground of appeal 6.

[37] I embark on the exercise fully cognizant that the main thrust of ground of appeal 3 is a criticism of the learned trial judge that she adopted a wrong approach in considering the Rates Act ahead of the Salaries Order and thereby missed the significance of the Salaries Order as part of the legislative history of the Rates Act.

[38] The appellant's position is that section 6(1)(a)(i) of the Pensions Act is the gateway for him to be paid a pension pursuant to section 3 of the Rates Act. He says that 'pensionable circumstances' is the appropriate précis for the circumstances set out in section 6 of the Pensions Act. This submission has an initial force and attractiveness that diminishes when close attention is paid to the threshold words of section 6(1).

> "6(1) "Pension, gratuity or other allowance shall not be granted under this Act to any officer except on his or her retirement from the public service in one of the following cases— …". [emphasis added].

[39] Two points emerge as significant. Firstly, the language of section 6(1) creates a general bar against the grant of a pension to an officer except in certain defined

cases. Those cases are defined in section 6(1)(a) and section 6(1)(b). The effect of section 6(1) goes no further in my view than to place the appellant within one of the exceptions to the general bar against the grant of a pension created by the umbrella provision in section 6 in so far as he retired at age 56. Once he falls under the exception in section 6(1)(a)(i), the appellant satisfies the threshold circumstance to be pensionable. He has to satisfy the second and final circumstance in order to be paid a pension.

[40] This ties into the second point of significance. The words "under this Act" in the umbrella provision of section 6, automatically activates the provisions of the Pensions Regulations including regulation 4(1),[15] and applies regulation 4(1) to the exceptions carved out in section 6(1)(a) and section 6(1)(b). The result is that each exception is at all times controlled by the provisions in regulation 4(1) of the Pensions Regulations as it relates to the grant of a pension and any requirement laid down in regulation 4(1) for the grant of a pension is a circumstance which the appellant must also satisfy to be pensionable.

[41] For these reasons I have come to the conclusion that an officer who retires at age 55 must satisfy the additional circumstance of 10 years continuous service for the grant of a pension as provided by regulation 4(1) of the Pensions Regulations in order to retire in pensionable circumstances. It bears brief observation that both section 6 of the Pensions Act and regulation 4(1) of the Pensions Regulations are concerned with persons to whom a pension may be granted. There is a synergistic relationship between the two. The underlying premise of the scheme in the Pensions Act is to provide a benefit to persons who have given unbroken service for a certain number of years. In my view, nothing in the Salaries Order or the Rates Act displaces that premise.

[15] Section 3(6) of the Pensions Act which provides that "the expression "this Act" shall wherever it occurs in this Act, be construed as including a reference to the said Schedule." and section 3(3) which reads: "Pensions and gratuities and other allowances may be granted by the Governor General in accordance with the regulations contained in the Schedule to this Act to or in respect of officers who have been in public service under the Government of Saint Lucia."

[42] Applying the definition of 'pensionable circumstances' as garnered from the Pensions Act, the Court considers that the Rates Act had two statutory objectives. The first was to bring about a complete and highly enhanced revision in the rate of pension to be paid to judges who retired in pensionable circumstances by replacing the formula for computation laid down in regulation 4(1) of the Pensions Regulations as amended by section 12 of the Salaries Order with the formulae prescribed in section 3(1)(a), (b) and (c) of the Rates Act. The other objective was to introduce a new entitlement to a gratuity and pension for the spouse of a judge if the judge dies in office or who was at the date of his death entitled to or in receipt of a pension[16]. This was done in the sections 5 and 6 of the Rates Act.

[43] The position then is that a judge retires in pensionable circumstances for the purposes of section 3(1) of the Rates Act when he retires at age 55 or over and has served for at least 10 years in a pensionable office. It follows from this that the mere fact of retirement at the age of 56 years does not place the appellant in circumstances in which he has become entitled to be paid a pension under section 3(1)(b) of the Rates Act.

[44] Applying this definition of 'pensionable circumstances', the appellant's contention that the expression 'in any other case' in section 3(1)(a), (b) and (c), has the effect of eliminating the requirement for qualifying years of service must be rejected. In order to fall under 'in any other case', the appellant must first have served 10 years in the public service though not necessarily as a judge for the entire 10-year period. In that event, he would qualify for a ¾ pension as stipulated. While the learned trial judge may have incorrectly stated that there was no issue between the appellant and the respondent that the Rates Act only seeks to increase the rate of pension, she was correct in coming to precisely that conclusion. I would accordingly dismiss grounds 4 and 5 of the appeal.

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[16] See sections 5 and 6 of the Rates Act.

[45] As indicated earlier, for completeness I will explore the meaning of section 6(3) of the Rates Act having regard to the reference in this section to 'a person who retires in circumstances other than under the provisions of this Act …'. The interpretation of the Rates Act would be incomplete without a brief consideration of this provision.

[46] On a careful reading of the Rates Act as a whole, I have no doubt that the reference to 'a person' must be taken to be a reference to a 'Judge' as defined in section 2 of the Rates Act. The question is when for the purposes of section 6(3), is a judge said to have retired in circumstances other than under the provisions of the of the Rates Act? It is clear that an important distinction is intended between the circumstances referred in section 3(1) and section 6(3). Retirement in pensionable circumstances under sections 3(1) would give rise to the rate of pension prescribed by and computed under section 3(1)(a), (b) or (c). Section 6(3) of the Rates Act envisages that a pension may be granted to a judge under the Pensions Act who retires in circumstances other than in pensionable circumstances. There are several instances laid out in the Pensions Act and Regulations.

[47] There is section 6(10) of the Pensions Act, which makes allowance for the payment of a pension to an officer who is 45 years or more but less than 50 years and has served in the public service for more than 20 years. There is regulation 22 of the Pensions Regulations under which an officer with less than 10 years public service may be paid a pension if his retirement results from abolition or reorganization of his office. There is regulation 23 of the Pensions Regulations which makes allowance for the payment of a pension when retirement is necessitated or accelerated by injury sustained on the job or is necessitated or accelerated by a disease contracted on the job for which the officer was neither wholly or mainly by his responsible.

[48] Section 6(3) of the Rates Act dovetails with section 3(3) of the Pensions Act. Section 3(3) is the provision that empowers the Governor General to grant

pensions, gratuities and other allowances in accordance with the Pensions Regulations to officers who have been in the public service of Saint Lucia.. The result of this exercise serves to underscore that the crafting of the Rates Act was accomplished by an intentional interlocking of the provisions of the Rates Act with the provisions of the Pensions Act and Regulations.

Grounds of Appeal 1 and 2

[49] I turn to consider the grounds of appeal. Grounds 1 and 2 are considered together and allege in summary that the learned trial judge erred in law in failing to consider or give proper weight to the evidence and material before the court showing the legislative history of the Salaries Order and the Rates Act; that she failed to give sufficient consideration to the statements in Parliament of the promoter of the Bill for the Rates Act and thereby failed to apply the rule in Pepper (Inspector of Taxes) v Hart[17] that such statements may be relied on to arrive at the legal meaning of an enactment, the meaning of which is ambiguous.

[50] This legislative history he contends consists of a paper dated 10th May 1985, presented by Chief Justice Robotham to the OECS Authority, entitled "Payment of Judges' Pensions"; the recommendations contained in the 1988 Report of a Committee appointed by the Authority of the OECS to Consider a New Method for the Payment of Judges' Pension (the Jacob's Committee); as well as the *Hansard* of Saint Lucia and St. Vincent and the Grenadines which shed light on the mischief that the Rates Act was intended to cure and illuminated the intention of Parliament in passing the Rates Act.

[51] The legislative history of an enactment involves a consideration of (1) the state of the law before the Act containing the enactment was passed; (2) the history of the enacting of that Act; and (3) the events which occurred in relation to the Act

[17] [1993] AC 593.

subsequent to its passing.[18] It includes too the mischief the legislation was intended to address.[19] .

[52] The appellant argues that the mischief in this case was the unattractive level of remuneration and benefits provided to judges and the cure for the mischief, provided by the Rates Act was to make provisions that were "more favourable and advantageous than existing pension provisions". His point was that the unattractive level of pension benefits that needed to be more favourable, were already included in the add-on years by the Salaries Order.

[53] The learned trial judge at paragraphs [43] to [46] of the judgment made fairly detailed reference to the material and evidence said to comprise the legislative history in this case but made summary despatch of their relevance with her statement at paragraph 36 of her judgment that *"They add little to the discussion".*

[54] I agree for these reasons. The court is engaged in an exercise of statutory construction. Before the learned trial judge as well as in this appeal, the words that fall for interpretation are 'pensionable circumstances' as used in section 3(1) of the Rates Act. Under the rule in Pepper v Hart the court of construction is permitted to refer to Parliamentary material as an aid to construction if three conditions are satisfied:

(a) the legislation is ambiguous or obscure or leads to an absurdity;

(b) the material relied on consists of one or more statements by a Minister of other promoter of a Bill together if necessary, with such other parliamentary material as is necessary to understand such statements and their effects; and

(c) the statements relied upon are clear.

[18]Halsbury's Laws, 4th Edition, Re-issue, Volume 44 (1) para 1414.
[19] R. (on the application of Electoral Commission) v Westminster Magistrate's Court, [2010] UKSC 40.

[55] The words used in the enactment in section 3(1) of the Rates Act are not ambiguous. There was simply a failure by the draftsman to define the expression 'pensionable circumstances'. It meant that one had to look to and be guided by the provisions of the Pensions Act in order to identify the set of circumstances that made an officer pensionable. This task was not the unravelling of an ambiguity, it was simply to search for and identity those provisions in the Pensions Act that could be said reasonably and reliably to indicate what were the circumstances that made an officer pensionable on his retirement. Put another way, the task was to determine which provision(s) of the Pensions Act identified the circumstances in which an officer could be paid a pension on his retirement.

[56] This inquiry has led to discordant (as opposed to ambiguous), meanings being given to the expression 'pensionable circumstances' because on the one hand, the appellant confined the focus of his inquiry to section 6(1) of the Pensions Act whereas the respondent correctly broadened the inquiry to include the provisions of the Pensions Regulations as well.

[57] I am fortified that this is the correct conclusion when it is checked against the Hansard and the statements made by Prime Minister Mitchell as the promoter of the Bill. What Prime Minister Mitchell said about the intended benefits or advantages of the Rates Act may have been clear enough but his remarks do not assist with the point of construction that engages this Court. His commentary does not shed light on the meaning of the words that this Court has to interpret. He did not allude to the words 'pensionable circumstances' or to what meaning they should carry.

[58] Lord Hope of Craighead in R v A (No. 2),[20] circumscribed the resort to the exception in Pepper v Hart in this way:

> "I consider that the effect of the exception to the rule that resort to Hansard is inadmissible for the purpose of construing an Act which was recognised in *Pepper v Hart [1993] AC 593* is that, strictly speaking, this exercise is available for the purpose only of preventing the executive from

[20] [2001] UKHL 25 at para. 81.

> placing a different meaning on words use in legislation from that which they attributed to those words when promoting the legislation in Parliament."

[59] The present case is not a case of a different meaning being attributed to the words 'pensionable circumstances' than the meaning given to them by Prime Minister Mitchell when he introduced the Bill that would be the Rates Act in Parliament.

[60] I also echo the caveat of Lord Reid in Black-Clawson International Ltd. v. Papierwerke Waldhorf-Aschaffenburg A.G.:[21]

> "We often say we are looking for the intention of Parliament … but the difficulty goes deeper. The questions which give rise to debate are rarely those which later have to be decided by the Courts. One might take the views of the promoters of a Bill as an indication of the intention of Parliament but any view the promoters may have about the questions which later come before the court will not often appear in Hansard and often those questions have never occurred to the promoters." [my emphasis].

[61] Finally, full cognisance should be taken of what Lord Bingham said in R v Z[22] that:

> "… the interpretation of a statute is a far from an academic exercise. It is directed to a particular statute, enacted at a particular time, to address (almost invariably) a particular problem or mischief."

[62] The appellant asserts that the problem or mischief in this case was the unattractive level of remuneration and benefits provided to judges and the cure for the mischief provided by the Rates Act, was to make provisions that were 'more favourable and advantageous than existing pension provisions'.

[63] I agree with this formulation of the mischief but cannot agree with the further thesis that the add-on years in the Salaries Order were already included in the unattractive level of pension benefits that needed to be more favourable (the previously applied interpretation of the Salaries Order). For this to be so, the court would have to find that in enacting section 12 of the Salaries Order, the add-on years were intended to form part of a judge's period of qualifying service. I

[21] [1975] AC 591 at 613-615..
[22] [2005] 2 AC 645 at 655 (para. 17).

do not consider that this was the intended legal meaning of section 12 of the Salaries Order.

[64] I acknowledge the subtlety of appellant's point, which is that in passing the Rates Act, Parliament must have known of the previously applied interpretation of the Salaries Order and must have considered the practice to be part of the unsatisfactory existing state of the law to be improved upon or changed altogether by the Rates Act. This requires drawing an inference that is not justified on the evidence before the court.

[65] As I have found, section 12 of the Salaries Order operated on regulation 4(1) not to supersede it, but to vary the formula and augment the rate of pension to be paid to a judge by adding months to his pensionable service. Section 12 however still imposed a ceiling by placing a cap of 400 months on the number of months of pensionable service that could be used in computing the rate of pension. The 400 months would equate to 33 and 1/3 years.

[66] Parliament's cure for the mischief was to introduce a simpler formula that enabled full pension to be assessed at the rate of the judges' full pensionable emoluments on condition that he or she had served the specified number of continuous years' service as a judge. So that if a justice of appeal had 12 years of unbroken public service, albeit not continuously as a judge, his rate of pension was ¾ of his full pensionable emoluments and not full pension. Part of the cure was also to provide a gratuity and pension for the wives of judges.

Ground of Appeal 3

[67] The appellant posits in this ground of appeal that the learned trial judge missed the significance of the Salaries Order as part of the legislative history of the Rates Act by considering the Rates Act ahead of the Salaries Order.

[68] The Salaries Order came into effect in 1975 some 14 years before the Rates Act. Since it came into effect the practice of the JLSC was to apply the Schedule to

section 12 of the Salaries Order in a way that the respective number of years was added to the period of service of judges on mandatory retirement. Mandatory retirement age for High Court judges is 62 years and 65 years for justices of appeal. The Chief Justice would have 10 years added to his or her period of service. A justice of appeal would have seven years added and a High Court judge would have 5 years added. These add-on years were used as qualifying years.

[69] The appellant contends that when the Rates Act was passed in 1989 it did not purport to affect the way the Salaries Order had been interpreted and applied but to build on the law that was in existence.

[70] Section 12 of the Salaries Order conveys its meaning in straightforward language. It says and means that when the pension to be paid to a retired judge is being computed, one must increase his or her months of completed service by the number of years specified in the Schedule. The intention is to give the judge a better rate of pension by crediting him with years of service. It did not change the pension law by modifying regulation 4(1) to do away with the 10-year minimum public service requirement. The learned trial judge underscored the marked differences where the Acts spoke to qualifying and computing. It is useful to set out her succinct analysis and finding.[23]

> "[61] To reflect on the earlier Acts discussed, the Court observes that there were marked differences where the Act spoke to qualifying and computing. In regards to the Pensions Regulations there is [a] definition of "qualifying service' which speaks of service to be taken into account and it is measureable by length and whereas the definition of "pensionable service" cited above speaks of 'computing", the Pensions Act section 18(1) speaks of "computing", the ECSC (Rates of Pension)(Judges) Act section 3(1) speaks of "computed".
>
> "[62] With such clear distinctions being made in the other related Acts to qualification and computation the Court finds that it must find that the phrase 'in computing" must be interpreted not as adding

[23] Judgment of Wilkinson J at para, 61-62.

> to service to qualify for a pension but rather as part of the quantities used to find the sum payable as pension. …"

[71] I agree with the trial judge's finding. The language used in section 12 of Salaries Order is clear and precise. The legal meaning to be given to section 12 is the one arrived at by the learned trial judge. Section 12 of the Salaries Order did not change the pension law by modifying regulation 4(1). It merely singled out retiring judges (who met the eligibility criteria), for an enhanced rate of pension by crediting to their months of pensionable service the additional years mentioned in the Schedule subject to the rider to section 12. I have no doubt that the credit of years was for the purpose of computing the amount of pension to be paid as opposed to crediting additional years for the purpose of supplementing the qualifying years of service. The rider to section 12 puts the matter beyond doubt. For over 30 years the Salaries Order had been wrongly interpreted and wrongly applied by the persons responsible for administering the Rates Act and the Pensions Act.

[72] The fact that the learned trial judge considered the Rates Act ahead of the Salaries Order would not in my view have affected the interpretation she gave to section 3(1) of the Rates Act. I would accordingly dismiss ground of appeal 3.

Ground of Appeal 6

[73] The appellant contends that the learned trial judge misdirected herself in failing to give any weight to the significance of the fact that the Salaries Order (1975), was made later than the Pensions Regulations (1967) and therefore was intended to amend the Pension Regulations, as part of the purpose of the Salaries Order was to create a special regime for judges that was distinct from the regime applicable to civil servants generally.

[74] Undeniably the Salaries Order was intended to amend regulation 4(1) of the Pensions Regulations as it applied to judges. Regulation 4(1) established the formula for calculating pension payable to all civil servants including judges. The formula was one-four hundred eightieth of the salary and benefits multiplied by the

actual number of completed months of service. Section 12 of the Salaries Order effected an amendment to the formula which would be applied to judges only; namely that in applying the formula add 120 months to the months of service actually completed by the Chief Justice; add 84 months to the months of service actually completed by a Justice of Appeals and add 60 months to the months of service actually completed by a Judge of the High Court. It cannot be said that this was the introduction of a special pension regime for judges that was distinct from the regime applicable to civil servants. It created an enhanced rate of pension benefit for judges. I would accordingly dismiss ground of appeal 6.

Legitimate Expectation – Ground of Appeal 7

[75] The second issue posed by the learned trial judge was whether the appellant if he fails to qualify for a pension has made out a case of legitimate expectation that he would be paid a pension based on past recommendations of the JLSC and payments made by the Government to retired judges pursuant to those recommendations.

[76] The learned judge held that while short period of service was a common factor on the evidence of the appellant and the JLSC, the JLSC only recommended payment of a pension on the achievement of sixty two (62) years for a Puisne Judge and 65 for a Justice of Appeal. No payments had been recommended to a judge retiring at the age of fifty five (55) years or fifty six (56) years, as was the case of the appellant. There could be no legitimate expectation since the factors were not all fours with each other.

[77] The appellant in his skeleton arguments contended that the learned trial judge misconceived his claim. His case was that he qualified for a pension on the state of the existing law and that the Government was not to be permitted to adopt a new and different interpretation of the pension legislation, to his detriment and contrary to his legitimate expectation. The point I understand the appellant to be making is that based on past settled practice or conduct of the JLSC, he had a substantive right to receive a pension. The respondent could not rely on the

opinion of the Special Appellate Court[24] to change its practice and so frustrate his legitimate expectation. Even if there is a material difference in the two approaches, the bottom line is that this Court has to decide whether in fact he held such a legitimate expectation.

[78] The Attorney General had two pithy responses to this. The first was that even if a legitimate expectation arises from the previous practice of the JLSC, the appellant at his retirement had not attained the minimum age of 65 and therefore failed to meet the relevant qualification in order to benefit from any such legitimate expectation. The second was that the paramount principle that a legitimate expectation cannot be used to subvert the procedural requirements set out in a statutory scheme remains. By this he meant simply that the appellant had not retired in pensionable circumstances as found by the learned trial judge, and I may add, as I have now found. This second response does not provide a complete answer to the legitimate expectation argument of the appellant.

[79] Learned senior counsel Courtenay SC argued this ground of appeal on behalf of the appellant. He submitted in essence that selecting the mandatory retirement age of 65 years as a key comparator for establishing the legitimate expectation was a distraction. It distracted from the true principle that underpinned the previously settled practice of the JLSC to treat the add-on years as qualifying years. The practice was informed by the principle that if a justice of appeal retired at pensionable age with only 3 years of pensionable service, he or she would be paid a pension on the footing that 7 years would be added to get him or her to the 10 years qualifying mark. He cites by way of example the payment of a pension to retired Justice of Appeal Gordon who had served only 3 years as a justice of appeal. The JLSC had assumed over the years that pensionable age in all jurisdictions of the Organization of Eastern Caribbean States ("OECS") was synonymous with mandatory retirement age. Justice of Appeal Gordon retired at age 65.

[24] On this issue, the opinion of the Special Appellate Court was that "the additional years' service for which section 12 of the Salaries Order provides are relevant to the computation of pension, but cannot be brought into account for the purposes of enabling a judge to qualify for a pension."

[80] In a nutshell, I understand learned senior counsel Courtenay to be saying that when this wrong assumption was corrected by the Special Appellate Court which opined that pensionable age for a judge assigned to Saint Lucia was 55 years, this meant no more than that the practice had to be adjusted and tailored to the newly recognized and accepted pensionable age of 55 years. Contrary therefore to the learned trial judge's finding, the factors did not have to be on all fours for the appellant to make out the legitimate expectation that he would be paid a pension. This is an impressively crafted argument.

[81] What is the practice that conclusively engendered the legitimate expectation? R v North and East Devon Health Authority, ex parte Coughlan,[25] sets the compass. There Lord Justice Woolf said:[26]:

> "… the starting point has to be to ask what in the circumstances the member of the public could legitimately expect. In the words of Lord Scarman in *Findlay v Secretary of State for Home Department* [1948] 3 All ER 801 at 830, [1985] AC 318 at 338: 'But what was their legitimate expectation?'"

[82] In Regina (Bibi) v Newham London Borough Council Lord Justice Schieman took this approach[27]:

> "In all legitimate expectation cases, whether substantive or procedural, three practical questions arise. The first question is to what has the public authority whether by practice or by promise, committed itself; the second is whether the authority has acted or proposes to act unlawfully in relation to its commitment; the third is what the court should do."

[83] The right to the legitimate expectation will only be found when there is a clear and unambiguous representation on which it was reasonable for appellant to rely.[28]

[84] The appellant relies on the previously settled practice to pay pensions to justices of appeal whose pensionable service on retirement at pensionable age fell short of

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[25] [2000] 3 All ER 850.
[26] At p 871 letter e to f.
[27] 2002] 1 WLR 237 at 244, para 19.
[28] R v Devon County Council ex parte Baker [1995] 1 All ER 73, per Lord Justice Simon Brown at p. 88, letter f-g.

the minimum 10 years. It is not in dispute that there was a previously applied settled practice. From the evidence the following were the features of the practice: (1) the JLSC construed and applied the add-on years in the Salaries Order as qualifying years; (2) the add-on years were used to qualify a judge to receive a pension if he or she retired at the mandatory age of 62 (for a High Court judge), or 65 (for a justice of appeal);

[85] It is apparent that a judge could claim that these elements of the practice combined had given rise to a substantive legitimate expectation in his or her favour. In order to agree with the appellant that he held such a legitimate expectation, he must discharge the burden very succinctly enunciated by Sir John Dyson SCJ in Paponette v Attorney General of Trinidad and Tobago[29]:

> "The initial burden lies on the applicant to prove the legitimacy of his expectation. This means that in a claim based on a promise, the applicant must prove the promise and that it was clear and unambiguous and devoid of relevant qualification. If he wishes to reinforce his case by saying that he relied on the promise to his detriment, then obviously he must prove that too. Once these elements have been proved by the applicant, however, the onus shifts to the authority to justify the frustration of the legitimate expectation. It is for the authority to identify any overriding interest on which it relies to justify the frustration of expectation. It will then be a matter for the court to weigh the requirements of fairness against that interest."

[86] The promise or representation held out to the appellant based on the practice of the JLSC was this: on his retirement as a justice of appeal at the mandatory age of 65 with 3 years' service, 7 years would be added to his service to give him the necessary qualifying years. The promise or the practice was built on the fulfilment of an essential condition, attaining the mandatory retirement age of 65. The appellant could readily prove the legitimacy of his expectation to be paid a pension if, based on this practice, he had retired at age 65 and had served for only 3 years and 5 months.

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[29] [2010] UKPC 32 at paragraph 37.

[87] I found the submission of senior counsel Courtenay alluring indeed. However for it to succeed, the Court would have to bypass the factual matrix or specific parameters within which the practice was at all times invoked and applied. The outcome would be that the appellant's legitimate expectation is forged on a newly discerned circumstance, retirement at age 55, which was not subscribed to by any conduct, promise or representation on the part of the JLSC. What results is not merely uncertainty but a shift in the goal post as to be unfair to the JLSC and to the respondent who acted on the recommendations of the JLSC.

[88] That there could not be such unfairness to the public authority, was expressed by Lord Justice Bingham in R v Board of Inland Revenue, ex parte MFK Underwriting Agencies Ltd[30] in these words:

> "The doctrine of legitimate expectation is rooted in fairness. But fairness is not a one-way street. It imports the notion of equitableness, of fair and open dealing, to which the authority is as much entitled as the citizen."

[89] The evidence showed that for its part, the JLSC unequivocally applied the practice so that a High Court judge or justice of appeal who retired before reaching the mandatory retirement age did not get the benefit of the add-on years and was not paid a pension. I agree with the finding of the learned trial judge that the appellant could have no legitimate expectation in this case. I would accordingly dismiss ground of appeal 7.

[90] Grounds of appeal 8 and 9 are not free standing grounds. Their resolution is intertwined in the disposition of ground of appeal 7. In relation to ground of appeal 8, the JLSC's previously applied interpretation of the Salaries Order would not have netted the appellant a pension. He did not meet the criteria in order to come under the umbrella of the previously applied interpretation and take away the benefit. The question therefore whether it would be lawful or unlawful for the court to order payment of pension to the appellant, thereby giving him the benefit of the previously applied interpretation of the Salaries Order becomes abstract.

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[30] [1990] 1 All ER 91 at 111..

[91] As to ground of appeal 9, having found that the appellant was not in 'pensionable circumstances' within the meaning of section 3(1) of the Rates Act, that the add-on years in the Salaries Order could not be used as qualifying years and that no legitimate expectation had arisen in his favour, the appellant cannot be regarded as a person who enjoyed a right or had an interest in the period before the new interpretation was given to the Salaries Order and to the Rates Act.

[92] It is therefore unnecessary to address the complaint raised in ground of appeal 9 that the learned trial judge failed to give any or any sufficient consideration to the principle of law that effect may be given to the rights or interests of persons that have arisen in the period before legislation, previously thought to be valid or previously applied in a certain way, has been declared invalid or is given a new interpretation. Had the trial judge found that the appellant held a legitimate expectation to which effect could no longer be given as to do so would be unlawful, it would have been essential to consider in full this ground of appeal. I also having arrived at the same conclusion as the learned trial judge, there is no need to address this ground of appeal.

[93] I would accordingly dismiss this appeal for the reasons given.

Costs - Ground of Appeal 10

[94] At first instance, the appellant claimed in the alternative to be entitled to a gratuity. The learned trial judge correctly held that he was entitled to be paid a gratuity. She made no order as to costs and the appellant appeals against this. He asserts that success on this limb of his claim entitles him to an order for costs to be assessed pursuant to rules 56.13(4) and 64.6(1) of the Civil Procedure Rules 2000 ("CPR 2000"). There was no appeal against the appellant's successful claim for gratuity. He is entitled to his costs in the court below on this claim to be assessed if not agreed.

[95] The appellant has failed on grounds 1 to 9 of his grounds of appeal. The rule of thumb is that costs follow the event with costs being awarded to the successful

party. However in the totality of the circumstances, the Court is of the view that each party should bear their own costs of this appeal. The relevant considerations that give rise to exceptional circumstances are these.

[96] The judicial review proceedings brought by the appellant can sensibly be said to have been provoked by the previous interpretations of the Salaries Order and the practice that evolved for determining the payment of pension to judges pursuant to the Rates Act. This cast much doubt and uncertainty in the law such that it was reasonable for the appellant to ventilate the issues and to test the first instance judgment at appellate level. Additionally, the trial judge did create three significant areas of confusion in her judgment that were also obvious triggers for the appeal.

[97] First, at paragraph [52] the learned trial judge stated, "The debate is whether the Claimant is entitled to a pension or the lesser, the payment of gratuity". She proceeded to obscure the issue to be decided for resolving the debate, when she directed herself that:

> "This is to be determined by looking at the factors to be taken into consideration for computation and calculation of the actual sum payable as pension."[31]

Quite to the contrary, the meaning of the expression "pensionable circumstances" was the real issue that would resolve the debate.

[98] Second, after an analysis of what regulation 4 of the Pensions Regulations provides, the learned trial judge concluded that "both sides up to this point are in agreement."[32] In reality both sides were diametrically opposed on whether regulation 4 had any role to play in whether the appellant was qualified for a pension. So while she came to the right finding that the appellant is not entitled to a pension, the learned trial judge digressed from the core issue, misconstrued the appellant's case on the relevance of regulation 4 and in consequence paved the way for an appeal.

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[31] Judgment of Wilkinson J at para 52.
[32] See para. 53-54 of the judgment of Wilkinson J.

[99] Third, the learned trial judge embarked in paragraphs [55] to [57] of her judgment, on an examination of the Rates Act and at paragraph [58] determined correctly that the Rates Act only seeks to increase the rate of pension payable to a judge. However the learned trial judge declares most erroneously at paragraph [59] that there is no dispute between the parties on the court's interpretation of the Rates Act. In fact it could not have been clearer from the appellant's case as argued before her, that there was utter polarization on the issue of what effect the Rates Act had on judges' pension.

[100] For the reasons given in paragraphs [96] to [99], it is ordered that each party do bear their own costs of this appeal.

Joyce Kentish-Egan, QC
Justice of Appeal [Ag.]

I concur.

Davidson Kelvin Baptiste
Justice of Appeal

I concur

Gertel Thom
Justice of Appeal [Ag.]