

SAINT LUCIA

IN THE COURT OF APPEAL

SLUHCVP 2010/0009

IN THE MATTER of the *Attorney General's Reference (Constitutional Questions)*
Act Cap 17.18 of the Revised Laws of St Lucia

And

IN THE MATTER of the Attorney General referring to the Court for hearing and consideration important questions relating to the *Pensions Act Cap 15.26 of the Revised Laws of St Lucia 2006* and the *Supreme Court (Salaries, Allowances and Conditions of Service of Judges) Order Cap 2.01 of the Revised Laws of St Lucia*

And

IN THE MATTER of Part 61.1(1)(a) of the Civil Procedure Rules 2000

The Attorney General of St Lucia

Applicant

Before:

[Ag.]	The Rt Hon Lord Neuberger of Abbotsbury	Justice of Appeal
[Ag.]	The Rt Hon Sir Martin Moore-Bick	Justice of Appeal
[Ag.]	The Honourable Edward Bannister	Justice of Appeal

Appearances:

Mr Rawlston Glasgow, Solicitor General, and Mr Dwight Lay for the Attorney General
Mr Sydney Bennett QC and Ms Anthea Smith for the Judicial and Legal Services Commission
Mr Anthony Astaphan SC, Mr Peter Foster and Ms Renee St Rose for Justice Denys Barrow SC
Mr John Carrington for the interested parties

2010: 20th and 21st September;
22nd September.

OPINION

- [1] **Lord Neuberger of Abbotsbury:** This is the Opinion of the Court to which all members have substantially contributed.
- [2] This matter comes before the court by way of a reference by the Attorney General of St Lucia under section 3 of the **Attorney General's Reference (Constitutional Questions) Act**, Cap 17.18 of the Revised Laws of St Lucia 2006.
- [3] By this reference the Attorney General refers to the court the following questions:
- (a) whether a judge of the Eastern Caribbean Supreme Court who demits office by his voluntary act before reaching the constitutionally mandated retirement age is entitled to be paid a pension;
 - (b) if the answer to (a) is 'Yes', what is the minimum number of years of service that the judge must serve to become entitled to be paid a pension taking into consideration the provisions made in section 3(1) of the Eastern Caribbean Supreme Court (Rates of Pension) (Judges) Act (Number 12 of 1989), the Pensions Act Cap. 15.26 of the Revised Laws of St Lucia 2006 and/or any other relevant legislation;
 - (c) also, if the answer to (a) above is 'Yes', at what age should the entitlement be realized;
 - (d) whether the meaning of the word "retire" in section 6 of the Pensions Act is confined to the compulsory departure from the public service upon attainment of a specified age;

- (e) if the answer to (d) above is 'No', then whether a person can be regarded as having retired from the public service if s/he leaves the service of his/her own volition and therefore is entitled to receive a pension under the Pensions Act; and
- (f) whether a judge of the Eastern Caribbean Supreme Court who retires/resigns or demits office by his or her voluntary act before having attained the constitutionally mandated retirement age is entitled to have added to their actual years of service a specified number of years, according to their level of service, in the computation of their qualifying length of service.

[4] The parties represented on this reference, in addition to the Attorney General (who is represented by Mr Rawlston Glasgow, Solicitor General, and Mr Dwight Lay) are the Judicial and Legal Services Commission ("the JLSC", which is represented by Mr Sydney Bennett QC and Ms Anthea Smith), Justice Denys Barrow SC, a retired Justice of Appeal (who is represented by Mr Anthony Astaphan QC, Mr Peter Foster and Ms Renee St Rose) and certain Puisne Judges as interested parties (who are represented by Mr John Carrington).

[5] Before turning to the legislation and arguments, we would like to express our gratitude to all counsel and other people responsible for the high quality of the written and oral arguments presented on behalf of each of the parties who have taken part in this case. Thanks to the clarity and thoroughness of the written arguments, we were able to start the hearing on a fully informed basis, and the succinct and elegantly advanced oral arguments ensured that the hearing was effectively and efficiently conducted.

The legislative context

- [6] The Eastern Caribbean Supreme Court (“ECSC”) is a transnational court serving six independent states and three British Overseas Territories in the Eastern Caribbean. It was established in 1967 by section 4(1) of the Eastern Caribbean Supreme Courts Order No. 223 of 1967 (Cap 2.01 of the Laws of St Lucia), which is now consolidated into the Supreme Court Act St Lucia, 1996 (“the Supreme Court Act”). The tenure of judges is dealt with in section 8: subject to the possibility of extensions of up to three years in total, an Appeal Judge “shall hold office until he or she attains the age of 65 years” and a Puisne Judge 62 years. Under section 11, the judges are to be paid the salaries provided for in schedule 3 to the Order, and they are to have such terms and conditions of office as may be determined from time to time by the JLSC. Section 11(1)(b) provides that the salary and allowances of a judge shall not be reduced, and his or her terms and conditions of office shall not be rendered less favourable, during the currency of his or her engagement.
- [7] Section 13 of the Supreme Court Act provides that for the purposes of laws relating to the grant of pensions the judges are to be in the service of such State as the Chief Justice may direct and that his direction is to have effect as an appointment to a pensionable office in that service. It is agreed that the questions raised by the present reference are to be determined on the assumption that the judges whose position is under consideration have by virtue of the Chief Justice’s directions been appointed to pensionable office in

the State of St Lucia, whose legislation therefore governs their pension rights. Similar legislation is in force in the other member states and territories.

- [8] **The Pensions Act 1967 of St Lucia**, Cap. 15:26 of the Revised Laws of St Lucia, (“the Pensions Act”) came into effect on 1st December 1967. It replaced previous legislation governing public service pensions, namely the **Pensions Act 1945** and the **Pensions (Amendment) Acts 1961 and 1963**. Those Acts were repealed by the Pensions Act: see section 21 and schedule 2.
- [9] Section 2 of the Pensions Act is concerned with interpretation, and section 2(1) contains a number of definitions of expressions used “[i]n this Act”, including a detailed definition of “pensionable emoluments”. Section 3 is concerned with the “Pension Regulations”, which are set out in schedule 1 to the Act, and subsection (3) states that “pensions, gratuities and other allowances may be granted ... in accordance with the regulations contained in the schedule ...”. Section 4 provides that pensions “under this Act” should be “charged on and paid out of the Consolidated Fund”.
- [10] Section 5 of the Pensions Act is headed “Pensions not of right”. Subsection (1) states that there is “no absolute right ... to pension”, and subsection (2) enables a pension to be “reduced, suspended or altogether withheld” where the person otherwise entitled to it has committed “negligence, irregularity or misconduct”. Section 6 sets out the circumstances in which pensions may be granted to those who have been in the public service, i.e. to those who are described as public “officers”. Section 6(1) provides that a pension shall not be granted under the Act to any officer except on his or her retirement in one or

other of a number of defined cases. The primary condition is that the officer in question has retired from public service on or after attaining the age of 55 years, but subsections (7) to (12) make provision for those who have served for at least 10 years and have retired before attaining the age of 55 to receive a reduced pension. In the interest of clarity, this Opinion will proceed on the basis that section 6 requires a person to retire after attaining the age of 55 – i.e. we will disregard subsections (7) to (12).

[11] The Pensions Regulations, in Schedule 1 to the Act, came into effect on the same day. Regulation 2 defines “qualifying service” as “service which may be taken into account in determining whether an officer is eligible by length of service for pension, gratuity or other allowance”. The Regulation also defines “pensionable service” as “service which may be taken into account in computing a pension under these Regulations”.

[12] Regulation 4(1) of the Pensions Regulations provides for every person who has been in the public service for ten years or more to be granted a pension on his or her retirement of 1/480th of pensionable emoluments for each month of service. At least under normal circumstances, therefore, ten years is the minimum qualifying period of service for a pension. Ten years’ service would entitle an officer to a pension of one quarter of his full pensionable emoluments, as it would amount to 120 months of service. Those who have served for less than 10 years may receive a gratuity under Regulation 5.

[13] Regulation 14(1) of the Pensions Regulations defines “qualifying service” by reference to what is in effect actual service. Regulation 14(2) provides that “[a]

period which is not qualifying service ... shall not be taken into account as pensionable service". The effect of Regulation 15(1) is that, at least in general, "only continuous public service shall be taken into account as qualifying service". Regulation 18(1) deals with cases where an officer has served in different jobs, and it refers to "an officer who has had a period of no less than 3 years' pensionable service before his retirement". The Pensions Act and Regulations cover all the judges of the ECSC.

- [14] In 1975, the **Supreme Court (Salaries, Allowances and Conditions of Service of Judges) Order**, Cap 2.01 of the Laws of St Lucia (the "Salaries Order") came into force. It is mainly concerned with various allowances payable to judges in addition to their salaries. For present purposes, its important provision is section 12, which is in these terms:

"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."

- [15] One of the two central questions that arises for determination on this reference is whether section 12 of the Salaries Order is concerned with computing the

amount of the pension payable to a judge (limited to 400 months of pensionable service) or whether it is also relevant to the calculation of the period of service that will qualify a judge for a pension – i.e. whether it falls to be taken into account for assessing qualifying service as well as pensionable service.

- [16] In 1989 the legislature of St Lucia enacted the **Eastern Caribbean Supreme Court (Rates of Pension) (Judges) Act**, No 12 of 1989 (the “Rates Act”), the long title of which was ‘An Act to provide for pensions for Judges of the Eastern Caribbean Supreme Court and for matters connected therewith or incidental thereto.’ Section 3(1)(a) provides as follows:

“(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.”

Paragraphs (b) and (c) make identical provision for Justices of Appeal and Puisne Judges, save that, instead of ten years, the periods referred to in the first sentence are twelve years and fifteen years respectively.

- [17] The second of the principal issues in this case revolves around the meaning of the expression “retirement in pensionable circumstances” in section 3(1) of the Rates Act: does it refer back to the Pensions Act and Regulations, and if so to what extent, and if not, what meaning does it have?

- [18] Section 3(2) of the Rates Act provides that “nothing contained in this Act shall operate to prevent a judge from opting to have his pension computed under the Pensions Act ... in lieu of under the provisions of this Act”.
- [19] Section 4 of the Rates Act enables a Judge to commute up to one quarter of his pension into a lump sum, and sections 5, 6(1) and 6(2) are concerned with the rights of widows of judges or former judges. Section 6(3) states that “[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 ... in lieu of under the provisions of this Act”.
- [20] Each of the other member states and territories has enacted laws in terms almost identical terms to, and to precisely the same effect as, the Rates Act, save that the Anguillan legislation omitted section 6.
- [21] As the argument developed, it became apparent that, as we have indicated, there were really two main issues. The first is whether the Rates Act is a self-contained piece of legislation, which permits of no, or very limited, reference to the Pensions Act and Regulations for the purpose of determining its meaning and effect. The particular issue is the effect of the words “retirement in pensionable circumstances” in the opening part of section 3(1). The second issue is whether section 12 of the Salaries Order can be relied on by a judge to increase his or her actual period of service for the purpose of establishing an entitlement to a pension under the Pensions Act and Regulations and/or under the Rates Act, and whether it can be relied on to bring a judge within the

first, as opposed to the second, sentence of paragraphs (a), (b) or (c) of section 3(1), as the case may be.

- [22] We shall consider those two principal issues in turn, and then we will give our answers to the six specific questions which have been raised in the Attorney General's reference.

The first main issue: the ambit of the Rates Act

- [23] Three different interpretations of the words "retirement in pensionable circumstances" in section 3(1) of the Rates Act have been advanced.

- [24] The JLSC contended that it means retirement at, as opposed to retirement before, the mandatory retirement age, as specified in section 8(1) of the Supreme Court Act – i.e. retirement, irrespective of length of service, on attaining the age of 62 or 65. The Puisne Judges argued that it refers to retirement in circumstances in which a judge would be entitled to receive a pension under the Pensions Act and Regulations – i.e. retirement aged at least 55 with at least ten years' public service. Justice Barrow contended that it means retirement aged at least 55 with no minimum period of service – i.e. retirement at any time after 55, with no other requirement.

- [25] The Rates Act is far simpler in its terms than the Pensions Act, no doubt because it is dealing with a much narrower class of persons, and, in general, its provisions do not admit of much debate once its operation has been established. A Justice of Appeal, for example, is entitled to a pension equal to his full annual pensionable emoluments if he or she has served twelve or more

continuous years as a judge; if less, to a pension of three quarters of his full annual pensionable emoluments.

[26] However, there is plainly room for argument as to the meaning of the expression “retirement in pensionable circumstances” in section 3(1). On that issue, we have reached the firm view that the Puisne Judges’ contention is correct. The JLSC’s interpretation, although attractive on policy grounds, involves attributing to the expression a meaning which it cannot support, and it also wrongly treats the Rates Act as embodying a free-standing pension scheme. Justice Barrow’s interpretation involves an impermissibly partial incorporation of the requirements of the Pensions Act and Regulations into section 3(1) of the Rates Act.

[27] In the absence of any definition in the Rates Act of the expression “in pensionable circumstances”, its meaning must, it seems to us, be determined by reference to the legislative and other context existing at the time that the Rates Act was passed, that is, by reference to the requirements of the Pensions Act and Regulations. Giving the language of section 3(1) its natural meaning, it is very hard to see what else the legislature can have intended. If that is correct, a judge must have attained the age of 55 and must have been in the public service (though not exclusively as a judge, whether of the ECSC or otherwise) for at least ten years in order to retire “in pensionable circumstances”.

[28] This interpretation of the words “in pensionable circumstances” ties in well with the use of another undefined expression, “pensionable emoluments”, in

section 3(1)(a),(b), and (c). The Rates Act gives no guidance as to how one assesses such emoluments, and it is very hard to see an answer to the point that the obvious way to determine a Judge's "pensionable emoluments" for the purposes of section 3(1) is by referring back to the Pensions Act and Regulations, which use and define that expression. If one refers to the Pensions Act and Regulations to determine the extent of a Judge's "pensionable emoluments", it is not easy to discern why one should not perform the same exercise to determine whether a Judge has retired "in pensionable circumstances".

[29] Similarly, as Mr Carrington pointed out, there is nothing in the Rates Act which provides how a judge's pension payable thereunder is to be paid. If the Rates Act is seen as introducing a self-contained regime, that is a problem. If, however, it is seen as constituting an alternative basis of assessing the level of pension payable to a judge under the umbrella of the Pensions Act and Regulations, no problem arises: section 4 of the Pensions Act applies.

[30] The title of the Rates Act and the provisions of section 3(2) also provide some support for this conclusion. The title suggests that it is concerned with changing the rate, or amount, of pension, not the qualification for a pension. Section 3(2), with its reference to computation, seems to assume that a judge who is within section 3(1) will also have a right to a pension under the Pensions Act and Regulations, which is consistent with our conclusion.

[31] Despite the fact that (albeit in very rare circumstances) a retiring judge could be better off under the Pensions Act and Regulations than under the Rates

Act, our conclusion is not, as was suggested, contrary to section 11(1)(b) of the Supreme Court Act. That is because section 3(2) of the latter Act entitles a judge in such a case to opt for a pension under the former legislation rather than under the Rates Act.

[32] However, subject to the application of the Salaries Order, one consequence of that interpretation would be that a person not previously in the public service who was appointed as a puisne judge at the age of, say, 53 would be unable to earn a pension, even if he served to the mandatory retirement age of 62. Conversely, a person who had previously been in the public service might be entitled to retire at the age of 55 on a pension of three quarters of his full pensionable emoluments after only a short period of service when he might have been expected to serve as a judge until the age of 62.

[33] Considerations of this kind lend real support to the argument of the JLSC, which was attractively advanced by Mr Bennett, that section 3(1) applies only to those cases in which a judge has reached the mandatory retirement age. It submitted that the purpose of the section is to make provision for the pensions of judges who retire having served for as long as possible, but not for judges who choose to retire at an earlier age. Their pensions are computed by reference to the number of years' continuous service they have accrued. A judge who chooses to retire before he reaches the mandatory retirement age does not come within section 3(1); his pension rights are determined under the Pensions Act pursuant to section 6(3).

[34] Despite the attraction of the JLSC's argument in practice, we are unable to accept it. Quite apart from the difficulties of treating section 3(1) of the Rates Act as wholly independent of the requirements of the Pensions Act and Regulations, it is, in our view, simply impossible to derive that interpretation from the language of the opening words of section 3(1) of the Rates Act. Retirement "in pensionable circumstances" is just not capable of meaning retirement which is only at the compulsory retirement age, irrespective of whether there would then otherwise be an entitlement to a pension.

[35] The JLSC contended that some support for its case can be found in section 6(3). It submitted that a "person" falling within that section must by definition have retired in pensionable circumstances, if that expression is to be given a meaning based on the application of the Pensions Act, but that since he or she must also by definition fall outside the provisions of the Rates Act, it is necessary to identify some factor that accounts for that distinction. In our opinion, the short answer to this point is that section 6(3) was included in the Rates Act out of an abundance of caution. The draftsman of the Act may well have been concerned to make it clear that a person who, having been a judge, went on to undertake public service in another capacity (e.g. an ambassador), and therefore could not rely on the Rates Act, was nonetheless not precluded from relying on the Pensions Act and Regulations. Some support for that view is to be derived from the reference in section 6(3) to a "person" rather than a "judge" or "person ... holding office as a judge" elsewhere in sections 5 and 6 of the Rates Act.

[36] It seems well arguable that, in the light of section 3(2) of the Rates Act, section 6(3) adds nothing significant even on the JLSC's argument. The point is less clear in the light of the closing words of section 3(2), "in lieu of under the provisions of this Act". However, it is not necessary to decide that hypothetical point. Even if section 6(3) has no meaning on the interpretation which we favour, but can be given a meaning if the JLSC is correct, that would be quite insufficient to justify rewriting the meaning of "retirement in pensionable circumstances" in the way in which the JLSC's argument requires.

[37] We were referred to the report of the committee on judges' pensions ("the Report"), which preceded the passing of the Rates Act. We do not think that it can be relied on for the purpose of construing the Rates Act, but it is of some comfort to note that, in paragraph 9, it lends some support to the argument that the expression "in pensionable circumstances" refers to the requirements of the Pensions Act and Regulations. At the time of the Report, judicial pensions were governed exclusively by the Pensions Act and Regulations, and it is clear from the Report that it proceeded on the assumption that the qualifying age and period of service would remain, even under the new legislation.

[38] For Justice Barrow it was submitted that the words "retirement in pensionable circumstances" in section 3(1) of the Rates Act only require a judge to have attained the age of 55 when he retires. This submission can be said to avoid the problem faced by the submission of the JLSC, as it gives the words "in pensionable circumstances" a meaning which imports into section 3(1) of the

Rates Act the requirement of section 6(1) of the Pensions Act that a person is at least 55 when he or she retires. However, it disregards the requirement of Regulation 4(1) of the Pensions Regulations that a person has been in public service for at least ten years when he or she retires. That is very hard to justify: Regulation 4(1) specifies a condition which requires to be satisfied by a person seeking a pension just as clearly and firmly as section 6(1).

[39] There is nothing in the suggestion (advanced in writing but not pursued orally) that Regulation 4(1) is invalid as it somehow conflicts with section 6(1) or any other provision of the Pensions Act. The Pension Regulations are to be found in Schedule 1 to the Pensions Act and derive their force from it. They were enacted as a single body of law and were clearly intended to be read together. The Act lays down general rules which the Regulations implement in greater detail. Requirements contained in the Regulations cannot be disregarded simply because they do not appear in the Act itself.

[40] Mr Astaphan submitted that Regulation 18 of the Pensions Regulations recognises that a person may be entitled to a pension after only 3 years' service. We do not agree. Regulation 18 does not deal with qualification for pension but with its computation. Its purpose is to link the amount of the pension to the emoluments enjoyed by the officer immediately before retirement. Three years' pensionable service in the same office prior to retirement entitles the officer to a pension calculated by reference to the full pensionable emoluments at the date of retirement. That reflects a policy that a reasonable period in office carrying a certain level of remuneration is required

to support a pension based on that level of remuneration. Provision is made for those who have transferred between offices carrying the same emoluments and those who have transferred from a lower to a higher paid office during that period. None of this has anything to do with the minimum period of service required to qualify for a pension. In our view the provisions of the Pensions Act and Regulations together demand that in the ordinary way ten years' service is required to qualify for a pension.

[41] The argument most forcefully advanced by Mr Astaphan at the hearing was that section 3(1) of the Rates Act by implication excluded the requirement of Regulation 4(1) of the Pensions Regulations for ten years' service when deciding whether a judge had retired "in pensionable circumstances". In support of that submission he drew our attention to the heading to section 6 of the Pensions Act which refers to "Circumstances in which pension may be granted" and to the fact that section 3(1) of the Rates Act contains no requirement of a minimum period of service. It is certainly true that section 3(1) does not in terms require a judge to have served for a specified minimum period in order to qualify for a pension, but the right to receive a pension is subject to the condition that he or she should have retired in pensionable circumstances. The natural meaning of that expression is that he or she should have retired in circumstances that give rise to an entitlement to a pension, which inevitably imports the requirements of both the Pensions Act and the Pensions Regulations.

[42] We would add that Justice Barrow's interpretation is not particularly attractive in practice. It would mean that a person appointed as a judge at the age of 55, with no previous pensionable public service, could resign, for reasons of self-interest, one day after appointment, and be entitled to a pension equal to 75% of his salary for life. It is true that this would, on our reasoning, apply to a person appointed a judge aged 55, who had ten years pensionable service, but that is not so surprising, as it is inherent in the Pensions Act and Regulations that a person will be entitled to a pension if he or she retires after ten years in pensionable service. Of course, in either case, he would lose the opportunity of earning a pension equal to 100% of his salary.

The second main issue: section 12 of the Salaries Order

[43] The JLSC submitted that section 12 of the Salaries Order relates only to the computation of the amount of a judge's pension and does not have any bearing on the period of service necessary to qualify for a pension. The distinction between qualifying service and pensionable service is clear from Regulation 2 of the Pensions Regulations. The Puisne Judges and Justice Barrow submit that the additional period is to be taken into account in calculating qualifying service as well as pensionable service under the Pensions Act and Regulations, and, moreover, it is to be taken into account in determining pension rights under section 3(1) of the Rates Act.

[44] We propose to deal first with the interrelationship between section 12 of the Salaries Order and the Pensions Act and Regulations, and then turn to the position under the Rates Act. The purpose of the Salaries Order was to make

additional provision for judges' emoluments and allowances. Section 12, which deals with pensions, must be interpreted in the light of the Pensions Act and Regulations which was the only legislation governing judicial pensions then in force. It provides that the additional periods set out in the schedule are to be added to the judge's period of service in "computing" his or her pension. It also provides that the total pensionable service shall not exceed 400 months. That provision has to be read and understood in the context of Regulation 4 of the Pension Regulations, which provides for a pension to be computed at the rate of 1/480th of pensionable emoluments for each month of pensionable service. It follows that the maximum pension which can be achieved by the operation of section 12 is 5/6ths of pensionable emoluments at the date of retirement.

[45] In our view, section 12 is concerned solely with the computation of pensionable service, that is, the determination of the number of months a judge is treated as having served for the purposes of calculating the amount of his or her pension and is not directed to the period that must be served in order to qualify for a pension. In effect, it is a means of enhancing judicial pensions, not a means of accelerating them. That seems clear from the natural meaning of the opening words of section 12, "In computing the pension of a judge": the section is concerned with the computation of the pension, not with the question of entitlement to a pension, and it assumes that there is a right to a pension.

[46] This interpretation of section 12 derives support from the fact that it uses the same word, "computing", as is found in the definition of "pensionable service"

(and which is not to be found in the definition of “qualifying service”) in Regulation 2 of the Pensions Regulations. The interpretation is also supported by the last sentence of section 12, which is aimed solely at the quantum of a judicial pension, not the entitlement to such a pension. In other words, section 12 does not bestow a right to a pension where none existed before.

[47] Our conclusion is also supported by the reference to the number of years of his or her “actual pensionable service”. That expression harks back to section 14(1) of the Pensions Regulations which defines qualifying service in terms of the period actually served. The section therefore draws a distinction between actual service and the additional years in a way which suggests that they are not intended to count as years of service that would affect qualification for a pension.

[48] Mr Carrington pointed out that this conclusion would mean that there would be a difference between qualifying service and the pensionable service for judges, which, he said, would be inconsistent with Regulation 14(2) of the Pensions Regulations. Ingenious though that point is, we reject it. There is no difference between the two periods of service: one merely is required to add the period stipulated in section 12 of the Salaries Order to the pensionable service in order to assess the quantum of the pension for a particular judge.

[49] Mr Carrington also referred to section 31 of the Pensions Act of Antigua and Barbuda, Cap 311 of the Laws of Antigua and Barbuda (“the Antigua Act”), on the basis that it is very likely to have reflected similar legislation in St Lucia. He said that the provisions of that section, when read together with the second

schedule to the Antigua Act, supported the contention that section 12 of the Salaries Order was intended to augment the qualifying service for the purposes of the Pensions Regulations. With respect to him, there is nothing in the argument. In so far as the St Lucia legislation was in the same terms as the Antigua Act, it was repealed by the Pensions Act – see schedule 2 thereto. In any event, the provisions of section 31 of the Antigua Act do not assist on the point at issue: in so far as they can be relied on at all, they are neutral on the issue which we have to determine.

[50] We are also unable to accept Mr Carrington's submission that section 12 of the Salaries Order has any part to play in relation to the operation of section 3(1) of the Rates Act. Section 12 is only concerned with pensionable service (which is solely relevant for calculations under the Pensions Act and Regulations), and has nothing to do with periods mentioned in the first sentences of section 3(1)(a), (b) and (c).

[51] We were presented with some extra-statutory material (which was not relied on by Mr Astaphan or Mr Carrington in argument) consisting of the Report briefly referred to above, which preceded the passing of the Rates Act. The Report referred to submissions made by the Chief Justice, which stated that the effect of section 12 of the Salaries Order "is that the Chief Justice acquires pensionable status on the day after his appointment, a Justice of Appeal after three years service, and a Puisne Judge after 5 years service". The Report was referred to by the Prime Minister in Parliament when introducing the Bill which became the Rates Act.

[52] The Report and Parliamentary debate, both in 1988, plainly cannot be relied on to construe the Pensions Act and Regulations which were enacted more than a decade earlier. We are also unpersuaded that the contents of the Report can be relied on in relation to the interpretation of the Rates Act, although the point is not quite so straightforward. As Mr Bennett said, what the Chief Justice said outside court about certain legislation, though deserving of respect, is not admissible in court when construing that legislation. Further, it is one thing to interpret legislation by taking into account express and unambiguous statements made in Parliament by the member sponsoring that legislation; it would be quite another to rewrite legislation to accord with a mistake in interpretation of an earlier statute which that member made according to what he said in Parliament. The rule in *Pepper v Hart* is concerned with the construction of statutes, not with the equivalent of rectification of statutes.

[53] Quite apart from this, it is not by any means clear that the committee accepted the Chief Justice's argument as recorded in paragraph 3 of the Report. The Report followed an earlier "Report and recommendations", which we have not seen, and which may throw further light on the issue. Anyway, it is the understanding of the Prime Minister, and indeed the legislature, not the understanding of the Committee, which would be relevant for the purpose of this argument. Although the Prime Minister stated that the Government was seeking to implement the recommendations of the Committee in the Rates Act, it does not follow that he, or the Government, agreed with the view of the Committee as to the effect of the Pensions Act and Regulation. Quite apart

from this, as Mr Astaphan fairly pointed out, the Rates Act did not in fact implement the recommendations of the Committee – at least if those recommendations were as contained in the Report.

- [54] In contending that section 12 can be relied on to augment the qualifying period of service under the Rates Act, the interested Puisne Judges relied on the decision of Mitchell J in the High Court of St Vincent and the Grenadines in the case of *Joseph v Attorney General* (October 19, 1999). The decision in that case was based on legislation which is materially identical to that of St Lucia. The court held simply that the Order gave the plaintiff a vested right to have 5 years added to the period of her service for the calculation of pension under the Rates Act and rejected the argument of the Attorney General that it was relevant only to the computation of a pension under the St Vincent and Grenadines equivalent of the Pensions Act and Regulations. In our view, that decision was not correct, essentially for the reasons already given, namely that it gave no weight to the requirement in section 3(1) of the Rates Act that, in order to rely on its provisions, a judge must have retired “in pensionable circumstances”.

Conclusions on the six issues

- [55] Having dealt with the arguments raised on the two principal issues, we turn to give our answers to the questions contained in the reference.

(a) Is a judge who voluntarily leaves office before reaching the mandatory retiring age entitled to be paid a pension?

[56] The JLSC, the Puisne Judges and Justice Barrow all submit that this question is to be answered in the affirmative. We agree. Although the word “retire” can properly be used to denote the compulsory relinquishment of office on grounds of age or ill-health, it is and can be at least as commonly used to describe voluntary withdrawal from any form of activity at any age and for any reason. None of the legislation dealing with pensions draws a distinction between leaving office voluntarily and under compulsion, and there is no reason to think that the policy of the legislature was to benefit only those who continued in office until the last possible moment. On the contrary, notwithstanding section 5 of the Pensions Act, a pension is traditionally regarded as part of a person’s remuneration, and one would therefore expect the legislation to provide benefits for those who have provided a substantial period of service, whether or not they have chosen to leave office before the mandatory retirement age. In our view the concept of retirement in the Pensions legislation is not limited to compulsory withdrawal from office.

(b) What is the minimum number of years a judge must serve to become entitled to a pension?

[57] In order to claim a pension, whether under the Pensions Act and Regulations or under section 3(1) of the Rates Act, a judge must have been in pensionable public service (whether as a judge or otherwise) for at least ten years.

(c) At what age is a judge entitled to draw a pension?

[58] A judge is entitled to be paid a pension under the Rates Act, or, at his choice, under the Pensions Act and Regulations, on his retirement, provided, and only provided, that, as at the date of his retirement, he satisfies two conditions, namely (a) he has reached the age of 55, and (b) he has performed at least ten years actual pensionable service under the Pensions Act and Regulations.

(d) Is the meaning of the word “retire” in section 6 of the Pensions Act limited to compulsory retirement by reason of age?

[59] It follows from what we have said earlier that the answer to this question is ‘No.’

(e) Is a person who leaves the public service of his own volition to be regarded as having retired so as to be entitled to receive a pension under the Pensions Act?

[60] It follows from what we have said that the answer to this question is ‘Yes’, subject to satisfying the two requirements identified in paragraph 58 above.

(f) Is a judge who retires voluntarily before having reached the compulsory retirement age entitled to have added to his years of service the number of years specified in the Conditions of Salaries Order for the purposes of determining his entitlement to a pension?

[61] The answer to this question is ‘No’, both under the Pensions Act and Regulations and under the Rates Act. 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.

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The Rt Hon Lord Neuberger of Abbotsbury

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The Rt Hon Sir Martin Moore-Bick

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The Honourable Edward Bannister