THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

MONTSERRAT

CLAIM NO. MNIHCV 2023/0022

BETWEEN:

[1] Ottley Laborde

[2] Julian Wade

[3] Albert C. Williams

Claimants

and

[1] Human Resources Management Unit

[2] Office of the Governor

[3] The Honourable Attorney General

[4] Royal Montserrat Police Service

Defendants

Appearances:

Mr. Rushaine Cunningham for the 1st and 2nd Claimants

Ms. Chivone Gerald for the 3rd Claimant

Mrs. Sheree Jemmotte-Rodney, Attorney General for the Defendants

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2024: NOVEMBER 21, 29

2025: APRIL 7

RULING

COTTLE [AG.]:

[1] The Claimants have filed a claim for Judicial Review against the decision of the Defendants, to compulsorily retire them from the Royal Montserrat Police Service upon attaining the age of 55 years in accordance with the Police Act, rather than in accordance with the Pensions Act. The Claimants are seeking among other things declarations that the Defendant acted illegally, irrationally and improperly in informing the Claimants of their imminent compulsory retirement by letters. They are seeking an order of certiorari to quash the decision, along with an order of mandamus for immediate reinstatement, and a prohibitory injunction.

[2] The facts of this contest are agreed. The Claimants were senior police officers in the Royal Montserrat Police Service. Upon reaching age 55 they were required to retire. They have brought the present action seeking a determination of the retirement age for police officers in Montserrat. The only issue for this court to decide can be easily encapsulated as follows.

Issue:

[3] Whether the mandatory retirement age of police officers, from the rank of Inspector and above, in the Royal Montserrat Police Service is governed by the Police Act or the Pensions Act?

[4] The Claimants contend that the applicable legislation in determining their age of retirement from the Royal Montserrat Police Service is section 7 of the Pensions Act 2011.

The Legislation

[5] The relevant pieces of legislation which fall to be considered in this matter are listed below. They are:

a. The Pension Act (Cap. 6.07) 2008 Revised Edition. This is Act 12 of 1947 as amended. The last amendment to this Pension Act was by Act 13 of 1992.
b. The Police Act (Cap. 10.01) 2008 Revised Edition. This is Act 12 of 1951 as amended. The last amendment to this Act was by Act 9 of 2000 .
c. The Pension Act 2011 Act No. 3 of 2011. This Act was passed by the Legislative Assembly on 5th May 2011 and came into force on 23rd May 2011. This Act repealed the former Pensions Act 12 of 1947 and Part V of the Police Act (Cap. 10.01). This Act is included in the 2019 Revised Edition Act as the Pension Act (Cap. 6.07).

d. Police (Amendment) Act No. 11 of 2011. This Act was passed by the Legislative Assembly on the 5th August 2011 and came into force on 17th August 2011. This Act amended sections of the Police Act (Act 12 of 1951) (Cap. 10.01).

[6] Section 7 of the Pensions Act 2011 provides as follows:

"Normal Retirement
7. (1) A pensionable officer may take normal retirement if he has ten years or more service and –

(a) is an existing officer who-

(i) was born in a year set out in Column 1 of the Schedule; and

(ii) has attained the corresponding age set out in Column 2 of the Schedule; or

(b) is a new officer who has attained the age of sixty-five.

(2) For the purpose of this section, a person does not have the required years of service unless he served consecutively at least five of the required number of years."

[7] Section 50 of the Police Act (Cap. 10.01) [2019 Revised Edition] provides as follows:

"Retirement from the Service
50. Every constable and subordinate police officer may be required to retire from the Service on attaining the age of fifty years and every officer shall be required to retire from the Service on his attaining the age of fifty-five years:
Provided that, the Governor in special cases may permit an Inspector to retire on or after attaining the age of fifty years:
Provided further that, the Governor may re-employ a retired Inspector for a period of two years."

[8] The Police Act first came into force on the 1st of January 1952 and the relevant section 50 of the current 2019 Revised Edition was amended by Acts 24 of 1975 and Acts 9 and 11 of 2011. The last two amendments came into effect on 27th September 2011.

[9] At the time the amendments came into effect, Section 50 of the Police Act was the law of the land. Officers, like the Claimants, were required to retire at age 55.

[10] The Pensions Act 2011 (Act 3 of 2011) first came into force on the 23rd of May 2011 and was subsequently amended by Act 9 of 2011. The Pensions Act expressly repealed part V of the Police act. Section 50 which is not included in Part V was not expressly affected. Part V of the Police Act carried the subheading "Pensions and Gratuities".

[11] The Claimants also point to section 21 of the Pensions Act which reads as follows.

"Protection of persons with twenty years of service
21. A pensionable officer with twenty or more years continuous service (within the meaning of the Pensions Act 1947, (Act 12 of 1947) repealed by section 23) at the date of commencement of this Act, at any time after the commencement of this Act may elect to receive pension benefits under Part 2 as if they were an existing officer born in 1961. (Amended by Act 9 of 2011)" They point out that they are all pensionable officers with more than 20 years service and are entitled to elect to receive pension benefits under the Pensions Act."

[12] As I understand the argument of the Claimants, the effect of the Pensions Act is to impliedly repeal Section 50 of the Police Act. All matters of pension eligibility now fall to be determined by the Pensions Act and it is to that legislation at section 7 that one must turn to ascertain the retirement age of the Claimants.

Implied repeal of legislation

[13] The law in this area is settled. It is generally presumed that legislation is not to be taken as having been repealed unless Parliament expressly repeals it. The Court of Appeal of the Eastern Caribbean Supreme Court in the case of **The Permanent Secretary of the Ministry of Finance v. Financial Investment and Consultancy Services Limited, GDAHCVAP2016/0001**, examined the test of whether there has been a repeal by implication by subsequent legislation and restated the test thus: Are the provisions of the later act so inconsistent with, or repugnant to, the provisions of the earlier act that the two cannot stand together and effect cannot be given to both at the same time? The test is subject to the exception embodied in the old latin maxim generalia specialibus non derogant.

[14] The Court of Appeal again in the case of **Sylvester Spencer et al v. Regino Nicholas ANUHCVAP2019/0022**, in its further examination of the maxim generalia specialibus non derogant and its function in strengthening the presumption against implied repeal, endorsed the extract from Bennion on Statutory Interpretation (7th Edition), referencing the case of **Blackpool Corp v Starr Estate Co Ltd** and quoted Viscount Haldane who said:

"…wherever Parliament in an earlier statute has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent statute the Legislature lays down a general principle, that general principle is not to be taken as meant to rip up what the Legislature had before provided for individually, unless an intention to do so is specially declared. A merely general rule is not enough, even though by its terms it is stated so widely that it would, taken by itself, cover special cases of the kind I have referred to. An intention to deal with them may, of course, be manifested, but the presumption is that language which is in its character only general refers to subject-matter appropriate to a class as distinguished from individual treatment. Individual rights arising out of individual treatment are presumed not to have been intended to be interfered with unless the contrary is clearly manifest."

[15] The question is whether Section 7 of the Pensions Act is so inconsistent with Section 50 of the Police Act that the two legislative provisions cannot stand together and effect be given to both at the same time.

[16] Parliament clearly had the Police Act in mind when the Pensions Act was passed. The legislature expressly repealed part V of the Police Act. In the later provision part V dealt with the way in which pension entitlements for specified police officers were to be calculated. From the date of passage of the Pensions Act the calculation of pension entitlements was to be made as provided for in the Pensions Act and no longer under the Police Act. No mention was made of repeal of section 68 of the Police Act which appeared in Part VIII of that Act. Section 68 has now been renumbered as section 50. Section 50 (then Section 68) set out the retirement age for some police officers while others were omitted. Subsequent to this, Parliament passed Act 11 of 2011. That legislation expressly amended Section 50 of the Police Act to make it applicable to other police officers than those already covered under the Police Act. Act 11 of 2011 was passed shortly after the Pensions Act came into force. This begs the question, why would Parliament pass legislation to amend Section 50 if this section had already been repealed impliedly by the Pensions Act.

[17] When one examines the position as at the date the Pensions Act came into force, Section 50 set out the retirement age for certain ranks of police officers, while the retirement age of other officers stood to be dealt with under the Pensions Act. The Police Act at section 50 deliberately did not apply to the Superintendent of Police. It did not apply to the Commissioner of Police or the Deputy Commissioner of Police. They stood to be dealt with under the Pensions Act for the purposes of prescribing the age of retirement. The later amendment to the Police Act simply expanded the categories of officers whose retirement age stood to be calculated under the Police Act. In my view the two provisions can be read as not being inconsistent. The Pensions Act shows how pension entitlements are to be calculated while the Police Act sets out the retirement age of police officers. Consequently, there is no scope for the doctrine of implied repeal to operate.

Generalia Specialibus Non Derogant.

[18] Section 50 of the Police Act is an example of specific legislation. It set out the retirement age of certain police officers. It was later amended to embrace and apply to other officers. The Pensions Act is general legislation. It sets out the position of pensionable officers in the public service generally. Where Parliament has taken the trouble to enact specific legislation and to amend it

after having passed general legislation the presumption is that the general legislation should not be interpreted in a manner so as to derogate from the extant specific legislation. There is specific legislation, the Police Act which sets out the age of retirement of Police Officers. This specific legislation cannot be read as having been impliedly repealed by the general legislation that is the Pensions Act when it comes to setting out a retirement age for police officers.

[19] For the reasons I have set out, I conclude that in Montserrat the retirement age of police officers is established by the Police Act and not the Pensions Act. That disposes of the single issue to be determined. The claim is thus dismissed. Generally, the successful party in civil litigation is entitled to an award of costs. However, in applications for judicial review the court will not order the unsuccessful applicants to pay costs if the court considers that the claim was reasonably brought and prosecuted. This approach has been set out in the CPR 2023 at part 56.11. In this case I make no order as to costs.

The Hon. Brian Cottle
(Ag) High Court Judge

By the Court

REGISTRAR