



Press Summary

8 October 2025

The Corporation of Hamilton (Appellant) v Attorney General of Bermuda and another (Respondents) (Bermuda)

[2025] UKPC 50

On appeal from the Court of Appeal for Bermuda

Justices: Lord Reed (President), Lord Lloyd-Jones, Lady Rose, Lady Simler, Dame Janice Pereira

Background to the Appeal

The Corporation of Hamilton challenges the compatibility of certain provisions of, and proposed amendments to, the Municipalities Act 1923 (“the **1923 Act**”) with the rights conferred by Chapter 1 of the Constitution of Bermuda.

In broad terms, the Corporation administers the City of Hamilton, the capital of Bermuda. It is a corporate body with a long and complex history. In recent years, the relationship between the Corporation and the central Government of Bermuda has been turbulent. However, this appeal does not concern the reasons for their disagreements, and the Board has not formed any view on them. Instead, the Board has been asked to consider the proper interpretation of the Constitution and its application to the facts presented to it, which are largely not disputed.

The 1923 Act has been amended by successive Municipalities Amendment Acts over many years. In 2015, section 7AA was inserted into the Act. This empowers a Government Minister to give directions to the Corporation if he considers it to be in the best interests of Bermuda for him to do so. It also imposes a corresponding obligation on the Corporation to carry out those directions. An amendment introduced in 2018 deems anything required to be done by, or in fact done by, the Corporation in compliance with a Ministerial direction to be for a municipal purpose and to be a function of the Corporation.

Further amendments were proposed in the Municipalities Reform Act (No 2) 2019 (“the **2019 Reform Bill**”). If it had been passed, this Bill would have had the effect of transferring control from the current elected members of the Corporation to Ministers in central Government or to new members who would have been appointed by those Ministers, in place of those elected to office by the voters of Hamilton. It also purported to expand the scope of the deeming provision introduced in 2018. The Corporation submits that this would have enabled a Government Minister to direct the Corporation to act beyond its powers.

The Corporation asserts that these recent and proposed amendments amount to an expropriation of the Corporation's property without compensation contrary to sections 1 and 13 of the Constitution. The Corporation contends that they also interfere with the residents of Hamilton's right to freedom of expression contrary to section 9 of the Constitution, by removing their current right to vote for the Corporation's members.

The Chief Justice dismissed the Corporation's claim in his judgment of 31 March 2021. The Court of Appeal dismissed the Corporation's appeal on 18 March 2022. The Corporation now appeals to His Majesty in Council.

Judgment

In a judgment of the Board, the Judicial Committee advises His Majesty to dismiss the Corporation's appeal.

Reasons for the Judgment

The first issue addressed in the judgment is whether section 1 of the Constitution confers free standing rights or is an introductory section only. The Corporation argues that the reference in section 1(c) to the right to protection from deprivation of property without compensation confers a broader right than is conferred by section 13 which refers to property being "compulsory taken possession of" or "compulsorily acquired". The Board reviews the authorities from the Bermuda courts and from the Board on appeal from other jurisdictions some of whose constitutions have introductory sections in similar terms to section 1. The Board concludes that section 1 is not separately and independently enforceable. The opening word "Whereas" indicates that section 1 is in the nature of a preamble or recital. There are other textual elements in the section and in later sections which also indicate that it is not separately enforceable. Further, to construe it as having independent force would give rise to difficulties, in particular as to the effect of important limitations, qualifications and exceptions contained in the later provisions of the Constitution which set out in more detail the scope of the individual rights that are introduced by section 1 [82]-[89].

Secondly, the Board considers whether the right conferred by section 1(a) of the Constitution to "the protection of the law" may be independently enforceable even if, in general, section 1 is not. This is relevant to the current and proposed provisions in the 1923 Act which appear to limit the jurisdiction of the court to review the legality of the Corporation's actions because they deem whatever action the Corporation takes to be within its statutory powers, if it takes that action in compliance with a Ministerial direction. The Board considers that the protection of the law referred to in section 1(a) may be independently enforceable even though section 1 is generally not [109]-[111]. However, it is premature to determine that issue in light of the Attorney General's acceptance in his submissions to the Board that the exercise of the powers conferred by section 7AA, both with its current wording and as it would have been amended by the 2019 Reform Bill, would be subject to the normal public law constraints imposed on a statutory body with limited powers [112], [119]-[123], [127].

The third issue addressed was raised with the parties by the Board prior to the hearing [42]-[47]. That issue is whether the Corporation is a body which enjoys rights conferred by the Constitution at all. Since the Board has come to clear conclusions on the other issues in the appeal, it does not express a concluded view on the Corporation's standing [131]. However the Board notes the lack of relevant case law on this issue, explains its doubts as to whether the Corporation does enjoy constitutional rights of its own and describes some of the consequences that might follow if it did [144], [146], [156]-[157].

Fourthly, the Board considers whether the provisions of the 1923 Act which take away the effective management of the Corporation from its current elected Mayor and Corporation members who are independent of the Government and which give control instead to Government Ministers amount to taking of property without compensation. The Board decides first that the scope of section 13(1) is not influenced by the apparently broader wording of section 1(c). Although the case law establishes that constitutions protecting fundamental rights and freedoms should be construed generously, the wording of section 1(c) cannot create rights or expand the rights conferred by section 13(1) [170]-[174]. The Board further decides that the authorities relied on by the Corporation do not establish that a change in the management and control of an enterprise in these circumstances can amount to a taking of property or of an interest in property [175]-[188].

The Board concludes that there has been no “taking” of the Corporation’s property without compensation in breach of section 13(1) of the Constitution. The Corporation has limited powers and rights in relation to the property owned by it; it can use and enjoy its property only to the extent it is empowered to do so by the 1923 Act. The Corporation continues to own its land and property and it also continues to have day to day control over that land and property. Regulatory measures which are introduced in the public interest do not amount to the taking of property even if they have an adverse economic effect on the property owners. The Board accepts that the “taking” of property does not have to involve a transfer or change of ownership or possession from one person to another. But the measure being challenged has to be a really serious interference with the owner’s rights before it can amount to a “taking” for the purposes of section 13(1). The Minister’s powers to direct the Corporation in the legislation which the Corporation challenges does not meet that threshold of seriousness and so does not amount to a “taking” within the meaning of section 13(1) [191]-[197].

Finally, the Board rejects the Corporation’s submission that the 2019 Reform Bill would have stifled the opportunity for political expression by the current electors of Hamilton, contrary to section 9 of the Constitution. The Board considers the jurisprudence of other courts including the European Court of Human Rights on the corresponding provision in article 10 of the European Convention on Human Rights and article 3 of the First Protocol to that Convention. The Board concludes that it is very doubtful whether there is a right to vote in elections in relation to municipal authorities [218]. Even if there were such a right, that does not prevent the legislature from abolishing elections or voting rights for municipal bodies that the legislature has created. The Board rejects the distinction that the Corporation sought to draw between the right to vote for a forum that currently exists and the failure to create a forum [224]-[225].

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Cases - JCPC](#)