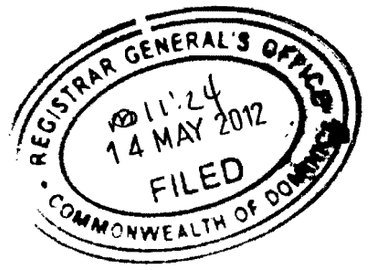
The Eastern Caribbean Supreme Court
In the High Court of Justice
Commonwealth of Dominica



DOM HCV 2010/0343

In the matter of an application by the applicant, Global Education Providers Ltd pursuant to part 56 of the CPR 2000

And

In the matter of an application by the applicant for leave to apply for an administrative order for judicial review of the decision of the cabinet of the Commonwealth of Dominica communicated to the applicant by letter under the hand of the Minister of Health dated the 10th day of August 2010 denying or refusing the application of the applicant for approval to establish a medical school in Dominica

And

In the matter of the applicant making an application for an order for judicial review for certiorari and a declaration to quash the said decision of the Cabinet of the Commonwealth of Dominica

Between: **GLOBAL EDUCATION PROVIDER LTD** **APPLICANT**

and

THE ATTORNEY GENERAL OF DOMINICA **RESPONDENT**

Before the Hon. Justice Brian Cottle

Appearances: Mr. Dwight Horsford for the Applicant
Miss Kimala Alfred for the Respondent

2011: March 18
2012: May 14

Judgment

[1] **Cottle, J:** The Commonwealth of Dominica is a small island nation in the Eastern Caribbean. On the island reside some 70,000.00 souls. Two medical schools already operate within the country. Students attending these institutions make use of the facilities of the two island hospitals and other health care providing facilities as part of their training in medicine.

[2] The applicant sought the permission of the Government of Dominica to establish a third medical school. By letter of 10th August 2010 the Minister of Education refused the application. The

expressed basis for the refusal was that Cabinet had taken a decision to limit the establishment of medical schools in Dominica to the existing schools.

[3] The applicant, having gotten leave to do so, brought the present claim seeking to have that decision reviewed. According to the claimant several issues fall for determination. These are listed as

i. ***Whether the Cabinet in considering the applicant application was guided by the provisions or policy of the Education Act of Dominica; and***

ii. ***Whether the Cabinet (Minister) in its determination of the application before it took into account or was influenced by irrelevant consideration and exceeded its jurisdiction by considering matters other than the merit of the matter remitted to it; and***

iii. ***Whether the Cabinet in its determination of the applicant's application asked itself a wrong question, that is whether two medical schools are enough rather than conference itself to the question of the merits of the application; so that the decision refusing the application was ultra vires, null and void and of no effect.***

iv. ***Whether the Government's policy of duopoly of medical schools in Dominica, articulated by the Honourable Minister for Education treats similarly circumstanced applicants unequally and differentially so as to unlawfully discriminate against the applicant preventing the legitimate business enterprise and pursuits of the applicant, while guaranteeing the sustenance and existence of only two medical schools rendering such policy arbitrary and unconstitutional***

v. ***Whether, in any event, the Cabinet fettered its discretion in respect of the application in the matter by blindly applying a policy of duopoly, so that the decision to refuse the said application was ultra vires, illegal null and void and of no effect in law.***

[4] It is accepted that decisions of the cabinet are susceptible to judicial review. Under the Education Act (1997) at section 91 persons wishing to operate a private school must obtain a permit from the Minister of Education in this regard. Section 96 sets out the conditions of which the Minister must be satisfied before he issues a permit. These include subsection (d) which reads

> ***That "efficient and suitable instruction equivalent to that provided in an equivalent public school is being or will be provided at the private school having regard to the ages and sex of the students attending the institution"***

and subsection (g) which reads

> ***"that the private school will have at its disposal the adequate human and material resources required for dispensing the educational services for which the permit is issued and sufficient financial resources for that purpose***

[5] The claimant contends that the letter of the Minister betrays a failure to follow the provisions, spirit and policy of the Act. The decision, says counsel for the applicant is thereby rendered ultra vires as outside of the jurisdictional competence of the Cabinet/ Minister. The thrust of this argument is that by taking the position to restrict the number of medical schools in Dominica to two the Cabinet/ Minister committed a reversible jurisdictional error.

[6] It is further submitted that the stated policy of duopoly offends the constitutionally guaranteed right of freedom from discrimination. The argument is put that by guaranteeing the survival and business interest of only two schools to the exclusion of the applicant, the stated policy is arbitrary and unconstitutional.

[7] The affidavit of Dr. Dorian Shillingford on behalf of the respondent and the affidavit of the Minister of Education reveal the matters which were considered in arriving at the decision to refuse the applicant a permit to operate a medical school. The Minister says that the purpose and spirit of the Education Act require him to attempt to maintain as high as possible a standard of education in the institution he allows to operate. He says the existing two medical schools completely exhaust the limited capacity of the available hospitals, two in number, and medical and health centers to accommodate the daily rotation of students from these schools.

[8] This position is not challenged by the applicant. Indeed it is clear that there must be some limit to the capacity of the local providers of health care services to provide teaching facilities to medical students. The Minister must be satisfied that the applicant would have at its disposal adequate material and human resources to dispense the educational services for which the applicant seeks a permit.

[9] It is not for this court to seek to substitute its own judgment for that of the Minister. The decision to refuse a license is one which could reasonably be arrived at by the Minister taking into account section 96 of the Education Act. I therefore dismiss the applicant claim under CPR 2000 36.13 (6) I apply the general rule and make no order as to costs.

[10] I must close with an explanation for the delay in delivery of this judgment. At the conclusion of this hearing the parties were ordered to file closing submissions in writing. The respondents did not file

their submissions by the date required. Instead they applied for an extension of time to do so. They still have filed no submissions. The file languished awaiting these submissions. Finally the applicant's counsel wrote to inquire. It was only at this stage the file was returned to me for determination.

High Court Judge

Brian Cottle