**EASTERN CARIBBEAN SUPREME COURT**
**IN THE COURT OF APPEAL**

**COMMONWEALTH OF DOMINICA**

**DOMHCVAP2012/0009**

**BETWEEN:**

**GLOBAL EDUCATION PROVIDERS INC.**

Appellant

**and**

**[1] THE HONOURABLE PETTER SAINT JEAN**
**[2] MINISTER OF EDUCATION**
**[3] THE ATTORNEY GENERAL OF DOMINICA**

Respondents

**Before:**

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| The Hon. Mr. Davidson Kelvin Baptiste | Justice of Appeal |
| The Hon. Mde. Louise Esther Blenman | Justice of Appeal |
| The Hon. Mde. Gertel Thom | Justice of Appeal |

**Appearances:**

Mr. Dwight Horsford for the Appellant
Ms. Tameka Burton with her, Ms. Arthlyn Nesty for the Respondents

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2018: March 20;
May 4.

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*Civil appeal – Judicial Review – Application for judicial review of Minister's decision refusing permission to establish medical school in Dominica – Section 96 of Education Act of Dominica – Interpretation of section 96(g) of Education Act – Whether learned judge erred in concluding that the Minister acted within section 96(g) in refusing permission – Whether Minister's decision illegal, irrational and unreasonable – Whether Minister took into account irrelevant factors and acted ultra vires the Act in refusing permission*

Global Education Providers Inc. ("Global"), a company incorporated in the Commonwealth of Dominica, applied to the Government for permission to establish a medical school in Dominica. The Minister of Education (the "Minister") rejected the application on the basis that he was not satisfied that Global would

have the adequate material resources for dispensing the requisite educational training. By letter dated 10th August 2010, the Minister communicated the refusal of the application to Global.

As a consequence of the Minister's refusal, Global obtained leave and issued judicial review proceedings against the Minister's decision on the bases that the Minister acted ultra vires the Education Act (the "Act") and that his decision was illegal, irrational and unreasonable. Before the learned judge, the Attorney General and the Minister submitted that it was within the Minister's purview to have regard to all of the material resources that were available and to not only consider Global's material resources which could have been accessed in the United States of America. The Minister, in his affidavit, deposed that the refusal was taken in light of evidence that Dominica could not appropriately accommodate more than two medical schools as the State's resources were already stretched. The learned judge dismissed Global's claim and found that the decision to refuse a licence could have reasonably been arrived at by the Minister taking into account section 96 of the Act, which deals with the requirements for registration.

Global, being dissatisfied with the learned judge's decision, appealed. The thrust of Global's argument was that the Minister was only entitled to pay regard to the material resources of Global in the exercise of his discretion under section 96(g) of the Act and that insofar as he purported to take into account the ability of the State to contribute to the material resources or provide facilities to the students, the Minister took into account irrelevant matters and acted improperly or ultra vires the Act. Global submitted that the Minister incorrectly and broadly interpreted the term "material resources" in section 96(g) of the Act to mean material resources generally to include the State's resources. In response, the Minister and the Attorney General said that section 96(g) of the Act should not be given a limited interpretation and it was quite proper for the Minister to take into account whether the State had available material resources to supplement the resources overseas to which Global had access. Accordingly, the main issue on appeal was: whether the learned judge erred in concluding that the Minister acted within section 96(g) of the Act in refusing the application. Importantly, the statutory interpretation of section 96(g) of the Act was brought into focus.

**Held**: dismissing the appeal and making no order as to costs, that:

1. The literal rule stipulates that in interpreting or construing an Act of Parliament, if the words are in themselves precise and unambiguous then no more can be necessary than to expound those words in their natural and ordinary sense. The words whose meaning is being ascertained must be read in the context of the whole statute. The words are not to be read in isolation of colour and context.

   **AG v Prince Ernest Augustus of Hanover** [1957] AC 436 applied; **The Sussex Peerage** (1844) 8 ER 1034 applied; **Re: Bidie (deceased); Bidie v General Accident, Fire and Life Assurance Corporation Ltd** [1948] 2

All ER 995 applied.

2. The relevant statutory provisions are clear and straight forward. The scheme of the Act is that the Minister, in deciding whether to grant permission, can properly have regard to all "material resources". There is nothing in section 96(g) of the Act which mandated the Minister to only take into account material resources in the United States of America to which Global had access. Thus, in determining the meaning of "material resources" in section 96(g), there is no basis for reading into the section words that would restrict it to material resources overseas to which Global had access. Neither was the Minister precluded from taking into account the availability or otherwise of the resources of the State to supplement those resources.

3. There can be no proper contention that the Minister took into account irrelevant matters or that he acted unreasonably in arriving at his decision. It would also be impossible to establish illegality or irrationality on the part of the Minister for doing precisely what he was enjoined to do, within the confines of section 96(g) of the Act. Thus, the learned judge did not err in the conclusions at which he arrived.

## JUDGMENT

### Introduction

[1] **BLENMAN JA**: This is an appeal by Global Education Providers Inc. ("Global") against the decision of the learned judge refusing judicial review of the Minister of Education (the "Minister") and the Cabinet's decision to decline to grant permission to Global to establish a medical school in the Commonwealth of Dominica.

### Factual Background

[2] Global is a company incorporated in Dominica. It applied to the Government of Dominica for permission to establish a medical school in the Commonwealth, which already has two medical schools. The application received the attention of the Minister and was rejected on the basis that the Minister was not satisfied that Global would have the adequate material resources for dispensing the requisite educational training. The Minister communicated his refusal to Global by letter dated 10th August 2010.

[3] As a consequence of the Minister's refusal, Global sought and obtained leave to issue judicial review proceedings against the decision of the Cabinet.[1] I will treat the decision as that of the Minister, simply because this is the way in which the matter appeared to have proceeded in the court of first instance and before this Court, the decision of refusal was treated by Global as being the Minister's.

[4] Global filed a fixed date claim and then an amended fixed date claim which was supported by an affidavit deposed to by Dr. Curvin Ferriera. At paragraphs 2.1 and 2.3 of his affidavit, Dr. Ferriera stated that Global had applied to the Government of the Commonwealth of Dominica for approval to establish a tertiary institution to be known as "St. Joseph's University" with a faculty of medicine or school of medicine. The application was made by letter addressed to the Minister and was accompanied by a bundle of documents which included the administrative structure, financing, academic policy, curriculum and business plan.

[5] At paragraph 4.1 of his affidavit, Dr. Ferriera stated that, on 10th August 2010, the Minister wrote to Global communicating the Cabinet's refusal of the application and indicated that Cabinet had taken the decision to limit the establishment of such schools to the two existing medical schools in Dominica.

[6] Dr. Ferriera also deposed, at paragraph 5.2 of his affidavit, that:

> "By indicating that the Cabinet took a decision to limit such schools to two, the Cabinet must have been influenced by or taken into account irrelevant considerations; asked itself a wrong question; and fettered its discretion in the matter by blindly applying a policy of duopoly; so that by its decision to refuse the Applicant's [Global's] application to establish a Medical School in Dominica, the Cabinet acted ultra vires, rendering such decision null and void and of no effect in law."

[7] In the amended fixed date claim, Global sought the following reliefs:

(a) "An Order of Certiorari to remove into this Honourable Court and quash as being *ultra vires*, null and void and of no effect in law, the decision made

[1] It is noteworthy that the Education Act of Dominica, Act No. 11 of 1997, Laws of the Commonwealth of Dominica, empowers the Minister and not the Cabinet to grant the requisite permission but nothing turns on this since the point has not been raised.

by the Cabinet of the Commonwealth of Dominica communicated to the claimant/applicant by a letter under the hand of the Minister of Education dated 10th August 2010, denying or refusing the Application by the applicant to establish a Medical School in Dominica.

(b) A Declaration that the decision made by the Cabinet of the Commonwealth of Dominica communicated to the Claimant/Applicant by a letter under the hand of the Minister of Education dated the 10th day of August 2010, denying or refusing the Application by the Applicant to establish a Medical School in Dominica was based on or influenced by irrelevant considerations; a blind application of a policy duopoly and was irrational, so that the said decision was *ultra vires*, null and void and of no effect in law.

(c) A Declaration that the Government's policy of duopoly of Medical Schools articulated in the letter of the Minister of Education dated the 10th August, 2010 is discriminatory, arbitrary and unconstitutional, rendering the decision refusing the Applicant's application to establish a Medical School in Dominica on that basis void, illegal and of no effect in law.

(d) An Order of Mandamus to require the Cabinet of the Commonwealth of Dominica to properly perform its duty to make a proper decision or determination of the Applicant's application made on the 10th day of June 2010 for approval to establish a University to be named St. Josephs University School of Medicine in Dominica, the Cabinet's decision or determination of the Applicant's said application being *ultra vires*, null and void, and of no effect in law.

(e) Damages

(f) Costs."

[8] In reply to Dr. Ferriera's affidavit, Dr. Dorian Shillingford, Chairman of the Dominica Medical Board and the Minister both deposed to affidavits before the court of first instance and provided the bases for arriving at their conclusions that the existing medical schools in Dominica were exhausting the State's resources.

[9] Dr. Shillingford indicated that he has the obligation to ensure that the institutions maintain as high as possible educational standards and that the two existing medical schools had completely exhausted the limited capacity of the available hospitals (two hospitals) and the medical and health centres to accommodate the daily rotation of students from these schools.

[10] At paragraph 6 of Dr. Shillingford's affidavit, he stated that:

> "… the two existing medical schools on island are currently utilizing the available resources to their limit and calls for expansion have been denied due to the unavailability of sufficient resources and facilities to support the additional pressures of expansion and increased numbers of students."

[11] Importantly, at paragraph 7 he stated that:

> "… Presently, with the two medical schools on island the local hospitals and health centres are well beyond their capacity limitations and resources are barely sufficient to meet the demands of the number of students needing training."

[12] In the Minister's affidavit in reply to Global's fixed date claim, he indicated that the Cabinet and his refusal to grant the permission to establish another medical school was taken in light of evidence that Dominica could not appropriately accommodate more than two medical schools.

[13] At paragraph 13 of the affidavit, the Minister stated that:

> "… The decision by Cabinet was taken after appropriate consideration of the two existing medical schools and the limited capacity at the Princess Margaret hospital, Portsmouth hospital and medical and health centres on island to accommodate the daily rotation of students from these schools."

[14] The Minister further stated that 'Cabinet was primarily concerned with upholding a high standard of quality education and ensuring that students were afforded equal access to the already limited resources on island'.

**The Court Below**

[15] Global raised several issues in the court of first instance. However, the main issue was in relation to its contention that the Minister acted ultra vires the **Education Act** (the "Act").[2] Global argued that the Minister's decision being ultra vires the Act, was 'therefore outside of the jurisdictional competence of the Cabinet Ministers and should have been set aside as a nullity'. Global took the position that the Minister's decision indicates that there is a clear failure to adhere to the

[2] Act No. 11 of 1997, Laws of the Commonwealth of Dominica.

spirit and policy of the Act.

[16] In opposition, the Attorney General and the Minister argued that the Minister acted intra vires the Act when the Minister rejected Global's application on the basis of his dissatisfaction with the material resources that were available to Global. The Attorney General and the Minister maintained that the Minister's decision was neither unlawful nor unreasonable. They submitted that it was within the purview of the Minister to have regard to all of the material resources that were available and to not only consider Global's personal resources which could have been accessed in the United States of America.

**Judgment Below**

[17] Having referred to Global's position, the learned judge at paragraphs 7, 8 and 9 of the judgment stated as follows:

> "[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 requires 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 orders as to costs."

[18] Implicitly, in the judgment, the judge was stating that it was open to the Minister, in

his section 96(g) determination, not to only assess the material resources that belonged to or were available to Global that were outside of the Commonwealth of Dominica, but to also assess the material resources that were available in Commonwealth of Dominica.

[19] It is clear to me that the judge had no doubt that the matters stated by the Minister in his affidavit and supported by Dr. Shillingford in the latter's affidavit were such that fell squarely in the area of relevance as contemplated by section 96(g) of the Act. This much can be inferred from the judgment.

**Grounds of Appeal**

[20] Against that judgment, Global has filed seven grounds of appeal and in his oral submissions learned counsel Mr. Horsford, who appeared on behalf of Global, indicated that he would not be pursuing one of the grounds. Initially, in the skeleton submissions filed on behalf of Global, Mr. Horsford advocated that the several grounds of appeal could properly be crystallised into one issue and I agree.

[21] Before this Court, and in the oral arguments, learned counsel Mr. Horsford stated that the issue that arises for this Court's determination is: whether the learned trial judge erred in concluding that the Minister of Education acted within the Act in the exercise of his discretion.

**Issue**

[22] With no disrespect to counsel, I have sought to further refine the issue as follows:

> "Whether the learned judge erred in concluding that the Minister acted within section 96(g) of the Education Act in refusing the application."

**On Appeal**

[23] Global renewed some of its arguments in the court below before this Court and contended that the Minister took into account irrelevant factors in refusing to grant the permission for the establishment of the medical school. Global also contended

that the Minister's decision was illegal, irrational and unreasonable and that the learned judge erred in not quashing the Minister's decision.

[24] Learned counsel Ms. Burton, on behalf of the Attorney General and the Minister, argued that the Minister did not take into account any irrelevant matters but took into account the relevant factors in coming to the decision at which he had arrived. Ms. Burton further submitted that the Minister had arrived at the decision by examining Global's documents in which it indicated that the facilities to be utilised were "mainly" in the United States of America. Ms. Burton therefore argued that it was quite proper for the Minister to take into account whether or not the State had available material resources to supplement Global's overseas material resources. Ms. Burton submitted that section 96(g) of the Act should not be given a limited interpretation as urged by Global since clearly that was not in the contemplation of Parliament.

[25] Ms. Burton further stated that the matters to which the Minister referred fell squarely within the issue of whether the Minister was satisfied that Global had at its disposal the requisite material resources. The Minister was dissatisfied with the totality of Global's resources and taking into account the fact that Dominica's resources were stretched declined to give permission. She said that the judge was correct to uphold the Minister's decision and that this Court should affirm the judge's decision.

[26] During oral arguments at the hearing of the appeal, the issue had been further refined to the extent that it was clear that at the heart of Global's complaint was that the Minister was wrong to take into account the State's resources in making his determination under section 96(g) of the Act as distinct from focusing exclusively on the material resources overseas to which Global had access.

[27] Against that background, Global has levelled several criticisms against the judgment of the judge. However, for the purposes of this appeal, it is clear that the

gravamen of the complaints was that Global had provided evidence to the Minister which indicated that the clinical rotations were to be undertaken "mainly" in the United States of America and therefore the Minister should not have concerned himself with the limited resources in the Commonwealth of Dominica that were available to potential students. In fact, Mr. Horsford argued that the resources that are available within the Commonwealth of Dominica are not within the purview of section 96(g) of the Act and the Minister was wrong to take them into account since they were irrelevant and improperly influenced his decision in refusing Global's application. Global advocated that its arguments ought to have fallen on fertile ground.

[28] The submissions advanced by learned counsel Mr. Horsford essentially boil down to two or three points:

(a) The main complaint is that the assessment of the State's resources that can be available to Global is incompatible with the section 96(g) "material resources" requirement.

(b) Global's second complaint was that it had available to it resources which its students could utilise to do rotation and that these are outside of the Commonwealth of Dominica. In this regard, learned counsel Mr. Horsford adverted the Court's attention to the fact that section D of the Business Plan St. Joseph's University School of Medicine, which accompanied its application to the Minister indicated at paragraph 3.0 that "Clinical Rotations will be done mainly in the United States of America at recognised hospitals. Already St. Joseph University School of Medicine has obtained sites for clinical rotations.

(c) Finally, its third complaint is that the Minister incorrectly and broadly interpreted section 96(g) of the Act to mean "material resources" generally and this evidently included the State's resources and as a consequence he took into account irrelevant considerations and fell into error.

[29] In view of those complaints, Mr. Horsford argued that the judge's decision can be assailed.

## Discussion

[30] I will now examine the relevant statutory framework to provide some context.

## The Statutory Frame Work

[31] It is common ground that the **Education Act** is applicable to the case at bar and before this Court it was agreed that the Minister is clothed with the power to grant the relevant permission.

[32] Section 91 of the Act states as follows:

> "A person may not operate a private school to which this Act applies unless that person is the holder of a permit issued by the Minister for the school or institution and the education services or categories of educational services mentioned in section 89."

[33] Section 95(1) provides that:

> "An application for a permit to establish a private school shall be made in the prescribed form by or on behalf of the proprietor of the private school and shall contain the prescribed information."

[34] Section 96 states:

> "Where a private school in respect of which an application is made under section 95 has been inspected, the Minister shall, subject to any condition that he may specify, cause the school to be issued a permit and registered if the Minister is satisfied that:
>
> (a) the premises are suitable for the activities intended by the private school;
> (b) the furniture is adequate and suitable having regard to the number and ages of the students attending the private school;
> (c) the accommodation provided is adequate and suitable having regard to the number, ages and sex of the students attending the private school;
> (d) efficient and suitable instruction equivalent to that provided in 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;
> (e) there is adequate land for the recreation of the students;
> (f) the proprietor or principal has not been convicted of or pleaded guilty to, an offence under this Act, or any criminal offence in the three years preceding the application;
> **(g) 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 the purpose; and**

(h) the applicant has paid the fee prescribed by Regulations. (My emphasis).

[35] Section 96(g) of the Act provides the conditions which the Minister must take into account in his determination of whether to grant the permission. These relate to whether the private school has at its disposal the adequate human and material resources for dispensing the educational services for which the permit is issued and sufficient financial resources for that purpose.

[36] It bears repeating that the thrust of Mr. Horsford's argument was that the Minister was only entitled to pay regard to the material resources in the United States of America to which Global had access in the exercise of his discretion under section 96(g). He further posited that insofar as the Minister purported to take into account the ability of the State to contribute to the material resources or provide facilities for the rotational training of the students, the Minister took into account irrelevant matters and acted improperly or ultra vires the Act.

[37] Mr. Horsford conceded that Global in its application to the Minister seeking permission to establish the tertiary institution or medical school had indicated that it had intended to utilise material resources "**mainly**" from the United States of America (emphasis mine). He accepted during his oral arguments that this meant that not all of the material resources that would be utilised by the students in the clinical rotations were to be obtained from the United States of America.

[38] This brings me now to determine whether there is any force in Mr. Horsford's complaint about the Minister's exercise of discretion and the judge's upholding of the Minister's decision. The judge's reasons for decision will of necessity have to be determined.

[39] In seeking to ascertain the reasons for the judge's decisions, care must be taken in cases such as these not to impose too high a burden on the court at first instance to achieve an entirely seamless and detailed judgment free of any minor blemish or inconsistency. The standard to be applied must not approximate to a counsel of perfection by the application of a minute textual exegesis. A scrutiny of the judgment together with the pleadings and affidavits would reveal the extent of the reasons for the judge's refusal to grant Global's claim. In this regard, I am cognisant of the well-known principles on the need to provide reasons for the decisions which were enunciated in **Flannery v Halifax Estate Agencies Ltd**[3] and need no repetition.

[40] There is no doubt that what the learned judge meant was that the Minister's decision to refuse to grant or permit Global to establish the medical school, based on the evidence that was adduced in the case, is one that was open to the Minister. It can also be inferred that he held that in the exercise of the Minister's discretion pursuant to section 96(g) the words "material reasons" are not confined to material resources that are owned by Global. It can also be inferred that the judge accepted that the Minister in the exercise of his discretion pursuant to section 96(g) was entitled to take into account the State's resources, if any, that were available to Global together with other private material resources to which Global had access in the United States of America. I am fortified in this view from a reading of paragraphs 7, 8 and 9 of the judgment quoted earlier.

[41] This brings me now to address the principle issue in this case frontally. In seeking to resolve the main issue raised, there is no doubt that this case brings into sharp focus the statutory interpretation or construction of section 96(g) of the Act. It is common ground that the resolution of that issue turns to a large extent on the meaning of the word in "material resources". This requires this Court to interpret and give effect to the meaning of those words. I am guided by the very helpful pronouncements in **Re: Bidie Bidie (deceased); Bidie v General Accident, Fire**

[3] [2000] 1 All ER 373.

**and Life Assurance Corporation Ltd**,[4] where Lord Greene MR stated:

> "The first thing one has to do, I venture to think, in construing words in a section of an Act of Parliament is not to take those words in vacuo , so to speak, and attribute to them what is sometimes called their natural ordinary meaning. Few words in the English language have a natural ordinary meaning in the sense that they must be so read that their meaning is entirely independent of their context. The method of construing statutes that I prefer is not to take particular words and to attribute to them a sort of prima facie meaning which you may have to displace or modify. It is to read the statute as a whole and ask oneself the question: In this state, in this context, relating to this subject matter, what is the true meaning of that word?"

The above is also known as the literal rule.

[42] Further, the words whose meaning is being ascertained must be read in the context of the whole statute. The words are not to be read in isolation of colour and context. This was given judicial recognition by Viscount Simmonds in **AG v Prince Ernest Augustus of Hanover**.[5]

[43] In **The Sussex Peerage**[6] it was held that the literal rule stipulates that in interpreting or construing an Act of Parliament, if the words are in themselves precise and unambiguous then no more can be necessary than to expound those words in their natural and ordinary sense.

[44] It is also equally trite that the sentence structure determines the meaning that is intended to be conveyed bearing in mind the idea that is intended to be expressed.

[45] Applying the above principles that were extrapolated from **Sussex Peerage**, **AG v Ernest Augustus** and **Re Bidie** in order to determine the meaning of "material resources", there is no basis for reading into the section words to restrict it to material resources overseas to which Global had access.

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4 [1948] 2 All ER 995.
5 [1957] AC 436.
6 (1844) 8 ER 1034.

[46] The Court cannot encroach on the legislative function of Parliament by reading in some limitation which might be thought could be included in the wording of the sub-section in the face of the clear and unambiguous words of the statute.

[47] In my judgment, the statutory provisions are clear and straight forward. The scheme of the statute is that the Minister can properly have regard to all of the material resources including the State's material resources and not only those that belong to Global in deciding whether to give permission. There is nothing in section 96(g) which mandated the Minister to only take into account Global's private material resources. There is nothing in the sub-section of the Act read in the wider context of the Act which precludes the Minister from taking into account the availability or otherwise of the State's material resources in determining whether he is satisfied that Global will have adequate material resources.

[48] In such cases, the role of the Minister is to be satisfied in general as to the material resources that are available to Global in order to determine whether in his deliberate view the applicant has satisfied him that the requisite material resources are available. There is absolutely nothing in section 96(g) of the Act that suggests that the phrase "material resources" should be accorded the restricted meaning as contended by Mr. Horsford.

[49] As an important corollary to the above conclusion and in my judgment, the decision of the judge is well founded on authority and sound in law. In my respectful view, the judgment shows an appreciation that it is critical to good governance to ensure that the Minister and not the court should exercise the discretion so as to ensure that the reputation of the country and the public interests are protected by the Minister being satisfied that an applicant has the requisite material and human resources. Anything short of this on the part of the Minister may well amount to an abdication of his responsibility.

[50] Accordingly, the Minister acted within the confines of section 96(g) and Global's ultra vires challenge fails. I am of the opinion that the statutory construction/interpretation section of section 96(g) of the Act is inextricably linked to Global's "illegality" "irrationality" and "unreasonableness" argument. In fact, I have no doubt that the determination of the statutory construction point effectively disposes of the appeal since it is clear that the exercise upon which the Minister embarked is precisely what he was mandated by the Parliament to do. It is evident therefore, based on the conclusion as foreshadowed, that there can be no proper contention that the Minister took into account irrelevant matters or that he acted "unreasonably' in arriving at his decision.

[51] It is therefore unnecessary to address the issues of irrationality, unreasonableness and illegality in any great detail, suffice it to say that a finding that the Minister did exactly what he was required to do amounts to a conclusion that he acted intra vires the Act. I have already discussed the relevant statutory framework in deciding whether the Minister's decision was reasonable or rational. The starting point is that the Court needs to act with great caution before making a finding of irrationality and unreasonable in relation to the Minister's exercise of his discretion. The reasons for this are obvious. In any event, it would be impossible to establish illegality or irrationality on the part of the Minister for doing precisely what he was enjoined to do. Neither is there any basis for concluding that the Minister's decision was Wednesbury unreasonable.

[52] And for the sake of completeness, I have no doubt that in view of the totality of the circumstances, the decision of the Minister was rational reasonable and lawful. In my view, the criticism of the Minister's decision is unjustified bearing in mind that in his affidavit he has carefully explained what are the relevant matters that were taken into account in his dealing with Global's application. The Minister's decision cannot properly be impugned.

[53] In addition, even on Global's case, and the concession that was made by learned

counsel Mr. Horsford that since Global had used the word "mainly" in its proposal documents, it is pellucid that it was open to the Minister to conclude that some of the material resources were expected to be derived from Dominica, or at the very least that all of the material resources were not to be obtained in the United States of America.

[54] From all that I have stated, it is apparent that I am of the view that the learned judge did not err in the conclusions at which he arrived and I for my part do not criticise his helpful approach in the circumstances of the case. His judgment is well justified.

[55] Accordingly, Global's appeal therefore fails.

**Conclusion**

[56] For the above reasons, I would dismiss Global's appeal and make no order as to costs. Indeed, I am not of the view that any costs should be awarded to the Minister of Education and the Attorney General of the Commonwealth of Dominica, in keeping with rule 56.13(6) of the **Civil Procedure Rules 2000**.

[57] I gratefully acknowledge the assistance of all learned counsel.

I concur
**Davidson Kelvin Baptiste**
Justice of Appeal

I concur
**Gertel Thom**
Justice of Appeal

**By the Court**

**Chief Registrar**