THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

SAINT LUCIA
CLAIM NO. SLUHCV 2011/0456

BETWEEN:

TREASURE BAY (ST LUCIA) LIMITED
Claimant

And

[1] THE GAMING AUTHORITY
[2] THE CABINET OF SAINT LUCIA
[3] THE NATIONAL LOTTERIES AUTHORITY
[4] THE MINISTER FOR SOCIAL TRANSFORMATION YOUTH AND SPORTS
Respondents

And

CAGE ST. LUCIA LIMITED
Interested Party

Appearances

Mr. Peter Foster Q.C. with Ms. Renee T. St. Rose for the Claimant
Ms. Esther Greene-Ernest for the First Respondent, The Gaming Authority
Ms. Brenda Portland Reynolds Solicitor General (Ag.) with Ms. Cagina Foster Lubrin for the Second Respondent, The Cabinet of Ministers
Mr. Callistus Vern Gill for the Third Respondent, The National Lotteries Authority
Mr. Garth E. W. Patterson Q.C. with Ms. Eugenia Dixon and Ms. Tammi Pilgrim for the Interested Party CAGE

2014: 22, 23, 24, 25 and 26 March
(Written Closing Submissions filed 28 April)
25 September

Judicial Review – Leave Granted to Commence Judicial Review Against Specific Parties – Fixed Date Claim Amended to include Additional Party – Additional Party a Minister in Cabinet –

Claimant Uncertain Whether Cabinet of Minister Made Alleged Decision – Cabinet of Minister Already a Party - Whether Joinder of Minister Necessary

Judicial Review - Locus Standi – Permission and Trial Stage – Approach of the Court - Alleged Misconduct of Claimant – Alleged Improper Motive of Claimant – Premature Claim – Claim Lacking Merit – Whether Matters Affecting Standing or Giving Rise to Discretionary Bar to Relief.

Gaming Control Act of St. Lucia – National Lotteries Authority Act of St. Lucia – Statutory Definition of Lottery - Video Lottery Terminals – Whether Gaming Device - Whether Lottery or Gaming – Whether Caught by the Provisions of the Gaming Act.

In 2005, the claimant, Treasure Bay (St. Lucia) Limited ('Treasure Bay'), received the approval in principle of the Government of St. Lucia to operate casino gaming operations in St. Lucia. Treasure Bay was then required, as part of a protracted and extensive application process, to prove among other things, the financial integrity of all its owners and key employers and it was subjected to a due diligence investigation by the Gaming Control Authority under the regulatory regime of the Gaming Control Act, Cap 13.13 of the Laws of St. Lucia. It was only in October 2010, that Treasure Bay was first issued with a Gaming Operators Licence which was valid for an initial period of six months and its continuation was made subject to the completion of a favourable report on the due diligence investigations. In December 2010, Treasure Bay commenced casino gaming operations at its Treasure Bay Casino at Bay Walk, Rodney Bay. In April 2011, the Gaming Operators Licence was extended to June 2011, and at the date of the trial in this matter, Treasure Bay was the holder of a current Gaming Operator's Licence. This has been, to date, the sole Gaming Operator's Licence issued to anyone under the Act to conduct gaming in St. Lucia. During the licensing process, Treasure Bay had been advised by the Government that the extensive application process was necessary under the Gaming Act as Government wanted to be cautious to ensure the integrity and reputation of St. Lucia was maintained with regards to gaming. It would appear that Treasure Bay believed that having regard to the kinds of financial investment they were required to make, and stringent due diligence requirements to which they were subjected, that they would more or less be the sole operators of gaming in St. Lucia as the market space would hardly make it financially feasible for any competition.

Shortly after it received its Gaming Operator's Licence, that is, in February 2011, Treasure Bay became aware that the Interested Party CAGE had imported a large number of video lottery terminals (VLTs) into St. Lucia. Further investigations on their part revealed that CAGE had not only received permission from the Cabinet of Ministers of the Government of St. Lucia to deploy and operate these machines which Treasure Bay considered to be gaming machines, but had also entered into a ten-year management agreement with the National Lotteries Authority to manage the VLTs as 'lottery games' under the Lotteries Authority Act, for the Lotteries Authority. It was later revealed that the then Minister for Youth and Sports had written to the CAGE that he had been directed by the Cabinet to instruct the Lotteries Authority to execute this management agreement with CAGE under the Lotteries Authority Act. Treasure Bay became very concerned that gaming machine were about to be deployed and operated in St. Lucia outside of the regulatory regime of the Gaming Act and saw this adversely affecting the returns on their financial investment; competition had arrived.

From as early as February 2011, Treasure Bay began writing letters to the Gaming Control Authority requesting that it investigate the intended use of these VLTs in St. Lucia. As part of its complaint, Treasure Bay expressed its view that the VLTs would have a negative impact on the gaming industry in St. Lucia. The Prime Minister, the Attorney General and the Lotteries Authority were soon drawn into the discussions that followed. By March 2011, the VLTs had been deployed and put into operations at various locations in and around the Castries Market and Gros Islet. On the 14th of April 2011, Treasure Bay caused its attorneys to formally request of the Gaming Authority that it enforce the provisions of the Gaming Control Act by prohibiting the continued operation of the VLTs. Throughout all of this, it complained that the VLTs could not be considered lotteries and could only fall under the regulatory regime of the Gaming Control Act.

On the 27th April 2011, Treasure Bay applied ex parte to the court for leave to apply for judicial review of a purported decision of the various entities of Government to allow VLTs to operate unlawfully in St. Lucia, and the failure of the Gaming Authority to enforce the Gaming Control Act. The court granted leave to proceed against the named respondents on the leave application, namely, the Gaming Authority, the Attorney General and the Lotteries Authority. This application for judicial review was filed on the 6th July 2011 against those three named respondents and was subsequently amended to include as a fourth respondent, the Minister for Youth and Sports. Shortly thereafter, CAGE applied to be joined, and was joined as an Interested Party to the claim. During the course of the proceedings the Cabinet of Ministers was also substituted in place of the Attorney General. The clamant is primarily contending on this application, that the court should quash the decision, whether of the Cabinet, the Minister or the Lotteries Authority to cause the VLTs to be imported and operated in St. Lucia as a lottery. On this application, Treasure Bay also seeks an order of mandamus compelling the Gaming Authority to enforce the provisions of the Gaming Control Act as against CAGE and its operations of VLTs.

The claim for judicial review has been vigorously defended. On behalf of the first respondent, the Gaming Authority, it was contended the claimant had acted precipitously in seeking to compel the Authority to enforce the provisions of the Gaming Control Act, as it did not allow the Gaming Authority a reasonable period within which to perform its statutory duties. The Gaming Authority argued that it had been acting on the complaint by the claimant, and in was the process of discussions with the various arms of the Government when the claim was filed.

On behalf of the Cabinet of the Government of St. Lucia, it has been argued that the Cabinet did not appropriate to itself the right to authorize the importation, distribution and operation of the VLTs, and that it did not direct the Minister of Youth and Sports to instruct the Lotteries Authority to enter into a management agreement with CAGE. The Cabinet accepted that it had made a policy decision and that the Minister had acted pursuant to the decision to 'advise' the Lotteries Authority under the Lotteries Act that CAGE was a suitable entity to enter into a management agreement with.

The Lotteries Authority's position was that it had been advised of the policy decision of government and government's keen interest to allow CAGE to run lotteries on behalf of the Lotteries Authority in St. Lucia. The Lotteries Authority further contended that it took the Minister's advice but acted independently, carried out its own investigations, which included a visit to Barbados to see VLTs in operation there, and even met with the principal of CAGE to discuss and negotiate the terms of the agreement. It also contended that it took its own decision to enter into the management agreement

with CAGE as it was satisfied that it was a proper decision having regard to its investigations both into VLTs and CAGE and the fact that it considered that VLTs were properly lotteries under the Lotteries Act.

The fourth respondent, the Minister for Social Transformation, Youth and Sports never entered an appearance, did not file any pleadings or affidavits, and was not represented at the trial. The learned Solicitor General and Mr. Patterson Q.C. for the Interested Party CAGE took arguments at the trial that one of the attorneys for the claimant, who was no longer with the matter, had agreed to withdraw the proceedings against the fourth respondent at an earlier stage of the proceedings. Mr. Foster Q.C., who appeared at the trial for the claimant, disputed this. All sides firmly believed in their respective positions and asked the court to resolve the matter by having regard to the transcripts of the relevant portions of the proceedings. In any event, the Learned Solicitor General and Mr. Patterson Q.C. argued that leave had never been granted to the claimant to proceed against the fourth respondent and the claim against him should not be allowed to continue.

On behalf of CAGE, it was contended that it had entered into discussions with the Government to introduce VLTs in St. Lucia and been issued with a letter of intent by the Government of St. Lucia on the 19th of September 2009 to discuss and negotiate the design, deployment and operations of video lottery games in St. Lucia. Discussions then followed with various entities of Government, and CAGE was then written to by the Minister for Social Transformation, Youth and Sports and advised that the Cabinet of Ministers had 'taken a decision to authorize' him to 'instruct the National Lotteries Authority to execute a ten year exclusive contract with one ten year ten year exclusive option term with CAGE'. It accepted that it had entered into a professional services contract dated the 12th of August 2010 with the Lotteries Authority to essentially operate video lottery games on behalf of the Lotteries Authority. It said that it was granted a number of concessions and on the basis of these and the agreement, CAGE imported, deployed and has been operating over 600 VLTs (at the date of the trial) at various locations around St. Lucia. CAGE took the position that its understanding was that the VLTs were properly lotteries under the Lotteries Act, and that it was not in breach of the Gaming Act. At the trial, CAGE raised further arguments that the claimant lacked standing to be granted any relief in this matter.

Held:

1. The question of the proper joinder or misjoinder of the fourth named respondent could not be resolved on the transcripts of the earlier proceedings when this issue had been raised. Its resolution will therefore have to turn on a more fundamental approach, namely whether it is proper to join a party subsequent to the grant of leave with the approval of the court. An application for leave to apply for judicial review, apart from weeding out hopeless cases and to ensure that the applicant has a sufficient interest, is designed to ensure that it is both necessary and appropriate to join those parties against whom leave is being sought. The administrative functioning of the government would be better served if an application for judicial review is allowed only against such decision makers or other persons whose presence in the claim serve a proper and relevant purpose to the resolution of the claim for judicial review. If this process if not screened properly, the joinder of improper or unnecessary parties, apart from increasing unnecessarily the costs of the litigation, may well have the effect of slowing the machinery of government, and impose an unnecessary burden on its financial and other resources. It is for this reason that, as a general rule, any

claimant who seeks leave to apply for judicial review should, at that stage, include in his application, all those persons against whom he wishes to proceed. This is not to say that a court may not at this stage consider whether it would be proper to allow the claim to proceed against such a party. There may be cases when this would be appropriate. In this case, however, there is no utility in joining either the Minister in his public service capacity or in his personal capacity. The fourth named respondent is therefore removed from these proceedings.

2. Notwithstanding the removal of the fourth respondent, in this case the claimant seeks to judicially review a decision of the Cabinet of Minister, and if it is found that the Minister was the one who made the decision, it will not bar declarations or at the very least findings being made that the Minister made the decision and in the appropriate case find that the Government or the Cabinet should be held responsible. This conclusion is based on the doctrine of the collective responsibility of government, which means that as far as this case is concerned, any act of the Minister must be seen as an act of Government. This is especially where that Minister was acting with full knowledge and approval of the Cabinet. In these types of cases, if the Government chooses not to call the Minister as a witness to answer to the allegations being made, or to explain any act he may have done, then they could hardly be entitled to say that the court should be slow to make any finding against him. When a decision of the Cabinet of Ministers or the government is challenged, it may be prudent for them to ensure that all the relevant witnesses are before the court.

3. In clear and simple cases, the question of standing may be determined at the application for leave stage independent of a full consideration of the case on its merits. In most cases, however, the court is often required to assess whether the claim has merit which in turn determines whether the claimant indeed has standing. These principles make it clear that anyone who can show a sufficient nexus or a sufficient interest between himself and the subject matter, must be entitled to seek relief by way of judicial review. A distinction is to be made between finding a sufficient interest between the claimant and the subject matter of the claim, and whether relief should be refused as a matter of discretion. As has been accepted, the 'requirement of a sufficient interest is a jurisdictional threshold, and whether a person has a sufficient interest is a matter of judgment, not a matter of discretion.'

   Dicta of Justice Darby in ***R. (on the application of O) v Secretary of State for International Development*** *2014 WL 3387699 Queen's Bench Division (Administrative Court) approved;* ***IRC v National Federation of Self Employed and Small Business Ltd.*** *[1982] AC 617;* ***The Attorney General v Martinus Francois*** *Civil Appeal No. 37 of 2003 St. Lucia;* ***Spencer v The Attorney General of Antigua and Barbuda*** *(1999) L.R.C. 1; Re Blake (1994) 47 WIR 174;* ***R. (on the application of Cherkley Campaign Ltd) v Mole Valley*** *DC [2014] 1 P. & C.R. 12 Queen's Bench Division (Administrative Court)*

4. In cases where an argument is being made that the judicial review court should not grant relief on the basis of the claimant's misconduct, the question for the court is whether the claimant's right to relief has been obtained by such misconduct. What a court has to be minded about is to ensure that in considering this issue of misconduct it does not usurp the function of the decision maker. Where a court begins to consider whether the claimant has

committed some act of misconduct, it might be in danger of moving into the realm of substantive decision making instead of looking to form; substantive decision-making should be left to the decision maker.

Considered: Tum and Dari v Home Secretary [2004] EWCA Civ 788, [2007] ECR I-07415; R. (on the application of Marley Administration Services) v Commissioner of City of London 2013 WL 3811113 Queen's Bench Division (Administrative Court); R (on the application of Temiz) v Secretary of State for the Home Department [2006] All ER (D) 156

5. In this case, the facts that the claimant had failed to apply for and to obtain the Gaming Bond, was not employing the required number of employees, and had failed to have a proper accounting system in place, are not enough, all other things being equal, for this claimant to be denied relief; these matters do not amount to 'misconduct' in the context of this case. It is the claimant's Gaming Operator's Licence that gives it that sufficient interest. In fact, this could hardly be relied on by the Interested Party Cage, when the Gaming Authority, the Cabinet of Ministers of the Government of St. Lucia has not raised any issue with the lawful operation of the claimant's business. From all of the evidence, the Gaming Authority and the Government are clearly of the view that the claimant is operating a lawful business in this country. For these same reasons, there is no need to consider the clean hands principles in the context of this case. In these circumstances therefore, Cage has no business raising such an issue.

6. The mere presence of what appears to be an improper motive or purpose in a case where the claimant also has an otherwise legitimate and sufficient interest in the subject, should not in any case, operate to deny the claimant standing. The presence of an improper purpose, if it is to be determinative, should really fall to be the overriding motive of the claimant and which has the effect of diluting his claim to a sufficient interest before the court would send him away. In this case, the claimant was pursuing what it considered a legitimate course to prevent unregulated gaming on a large scale and which in turn would have a detrimental impact on its investment. From the claimant standpoint, it had taken a very practical business decision in assuming the risk that there would hardly be any other competitor willing to invest as substantially a sum to compete in the same market. It was reasonable for it therefore, having regard to its belief that the VLTs were unlawful except with a Gaming Licence, to challenge the Cabinet and or Lottery Authority decision. If it wished in addition to quash the competition by whatever means, and this court finds that it did not intend to do so, that would still not divest it of its belief that it was pursuing this case for a proper motive.

Considered: Halsbury Laws of England 5th Edn Volume 61 at para. 656 footnote 2; IRC v National Federation of Self Employed and Small Business Ltd. [1982] AC 617 at 642 to 643 per Lord Diplock

7. A claimant for judicial review must not seek to employ the court to usurp the functions of any decision making body. It is imperative that a court allows every public law body or other decision-maker to perform their administrative functions without the unnecessary interference or oversight of the court peering over their shoulders. The court must be very

cautious in intervening by way of judicial review with the statutory functions of bodies except in very clear cases. In this regard, a claimant for judicial review must only seek such relief when it is appropriate to do so and must allow the decision maker sufficient reasonable time to make their decision before invoking the court jurisdiction to review any lack of action or decision. If, in these circumstances, a claimant moves the court by way of judicial review prematurely, this would be a matter affecting the claimant's standing.

8. It may be that the Gaming Authority in this case could have acted with greater haste, but this is not one of those clear cases where it is shown to the satisfaction of this court that the Gaming Authority abdicated its responsibility and refused to act. Here the court has to be cautious of inserting itself in the machinery of Government and to dictate, when meetings should be held and legal opinions sought, especially when there is no good reason to doubt that steps were being taken and that the Authority in question was acting in a bono fide manner. It would require this court and any court to have before it clear evidence that it was possible to convene meetings earlier and that it would have been appropriate at an earlier stage to employ financial resources to seek legal opinions, and that there was an unreasonable failure to perform these acts – this is especially so when cross agencies discussion may have resolved the problem obviating the need for financial expenditure. The Gaming Authority should have been left to get on with it. The claim against the Gaming Authority lacks merit as it was precipitously brought. On this point, whether it is looked at as a matter of standing, which it clearly is, or whether it is approached from the standpoint of whether the claim against the Gaming Authority has any merit (The Gaming Authority's position), the claim against the Gaming Authority is dismissed.

9. In a claim for judicial review if it is shown that the claim lacks merit it will mean that the claimant really did not have any sufficient interest in pursuing the claim. The Lotteries Authority is not subject to the direction or control of any other person or entity; these powers are to be exercised independently of anyone including the Cabinet and the relevant Minister. If the Authority wishes any of its management functions under the Act to be performed by a third party, then it only has the power to give such management responsibilities when the relevant Minister so advises; this is the only role which the relevant Minister has under the Act with regards the direct operations and conduct of lotteries.

   Considered: The Attorney General v Martinus Francois Civil Appeal No. 37 of 2003 St. Lucia; Spencer v The Attorney General of Antigua and Barbuda (1999) L.R.C. 1; Re Blake (1994) 47 WIR 174.

10. Under the constitutional structure of government in St. Lucia when a Minister is tasked with his or her individual and various statutory obligations and is given statutory power to perform these functions under specific pieces of legislation, it is expected that when he or she perform these functions he or she would follow the general directions or in instances even the specific directions and decisions of the Cabinet. It is therefore a normal aspect of government that whenever important matters of policy are to be decided on, matters which ultimately Cabinet would be responsible to parliament for, such matters are brought to Cabinet for their consideration and collective approval. The constitutional and statutory

scheme of governance therefore, clearly allows a Minister to accept his Cabinet's decision on a matter of policy, and properly perform his functions under the relevant statute without abdicating his statutory mandate. The Cabinet of Ministers did make a decision in this case, but having regard to how they went about this task and the administrative functioning of government, especially collaborative approach of the various arms of government and relevant statutory bodies, this was no more than decision on a matter of policy. This decision expressed the policy that the Government was prepared to allow CAGE to conduct video lottery games in St. Lucia, and to grant it certain concessions to facilitate this process. There is no doubt that the Cabinet of Minister expected the Lotteries Authority to act in accordance with this policy decision, and in keeping with its mandate to be collectively responsible did in fact properly direct the Minister to perform functions under section 5(3) of the Lotteries Act to advise the Lotteries Authority to consider exercising its powers to enter into a management contract with Cage to import, distribute and operate VLTs in St. Lucia. In any event whether or not Cabinet or the Minister intended to direct or instruct the Lotteries Authority to execute the management agreement with CAGE, the Lotteries Authority proceeded independently in carrying out its functions under the Act, and the execution of the management agreement with CAGE was the independent act of the Lotteries Authority.

11. Outside of statutory or other prescriptive rules required to be followed by any decision maker in the decision making process, a court should be slow to dictate to any decision maker what steps and measures it must take or rules it must follow before any decision taken may be a lawful one. By statute there are no prescriptive requirements that must be obeyed by the Lotteries Authority when it is deciding on matters such as this. All that is expected of it therefore, is that it must act in a reasonable manner. In so doing it is entitled to consider the general policy of government. The Lotteries Authority in this case had taken the relevant matters into consideration. It sought advice from Canadian Bank Note who had their experts and who were also opposed to the introduction of VLTs. It considered those social ills that were being discussed in the public domain. The chairman and members journeyed to Barbados and saw the VLTs being operated first hand. Among other things, it was satisfied that measures would be put in place to ensure that the environment where these VLTs were to be operated would be a controlled one. It did appear in good faith to consider the costs and benefits. It may be that when a Lotteries Authority seek to introduce new forms of gambling into the country, one such as this, it might be prudent to seek scientific and credible studies to better appreciate the possible effects whether adverse or positive, that such introduction may have on the social fabric of society. Maybe it could have done more, but that is a matter for them, and not for this court. What has not been shown to this court is that the Lotteries Authority has acted unreasonably in the manner in which it acted.

12. As defined by section 2 of the Lotteries Act, a lottery in St. Lucia is 'any scheme, method, game or device where money or money's worth is distributed as prizes by lot or by chance. There is no statutory requirement that a lottery must distribute prizes from a common pool of funds from all the players. Nothing in the language of the legislation allows for such a limitation to be read into the provisions. There is no constitutional prohibition against lottery and gambling as exists in some jurisdictions that may lead to any narrow constructions of the legislation. Once the overall scheme was that for the distribution of money or money's

worth by chance, the prizes could be simply paid out of the profits collected by the organizers of the lottery, or even from a pre-allocated budget. It could be a car or a boat. Logically, therefore, if the 'prize fund' could be pre-allocated, it would be sufficient that the games were being played as part of a scheme that collected funds from all the players, which funds eventually translated into profits, which was then used to pay out to each winner. This is not a case in which there was any one on one betting against the house. Whilst each player was playing a game on a single machine, each game being played on machine is part of a scheme run by CAGE on that machine into which the losing stakes of all the players on that machine are paid into. The scheme on that single machine is also part of a larger scheme comprising of several hundred machines in which the funds collected from the games on all the machines are channeled. It would be artificial to regard the scheme within which the lottery is played as being the single game being played by any one player. The statutory definition in section 2 allows for this distinction when it separately speaks of a 'scheme' as distinct from a 'game'. It is really one player playing on a single machine but playing within a scheme from which prizes were paid out of the profits collected from all the players playing on that machine. As the evidence shows, the prizes were arranged by way of a 'pay-table' that always ensured that the prizes were paid out from a percentage of the funds received from all the players on a single machine. Having set the pay-tables in accordance with fixed percentages each player is thereafter playing within a scheme to which all other players have contributed funds out of which prizes would be paid out to winners. As a direct result of the configuration of the pay table fixed minimum percentage payouts, CAGE is in no sense putting up any property that is to be shared out as prizes. CAGE simply shares out prizes from the revenue collected from all the games. Its own revenue coming from the players who lost their stakes, that is, the profits. There can hardly be any distinction between lotteries and games that involve wagering, that is where a party has a chance not only to win, but also to lose his stake. The fact that the player on each VLT stand to have his stake forfeited if he loses is not determinative as to whether the VLT is being operated as a part of lottery scheme. There is no practical or real difference between a stake being forfeited in a wagering contract and a player losing his stake in a lottery scheme.

Considered ***Atkinson v Murrel*** *[1973] A.C. 289;* ***Imperial Tobacco Ltd. v Attorney General*** *[1981] A.C. 718;* ***Whitbread & Co. Ltd. v Bell*** *[1970] 2 Q.B. 547;* ***Readers Digest Association Ltd. v Williams*** *[1976] 1 WLR 1109;* ***Morris v Blackman*** *[1864] 2 H & C 912;* ***Bartlett v Parker [1912] 2 K.B. 497;;*** ***McCollom v Wrightson*** *1968 WL 22933;* ***Smith v Wyles*** *[1959] 1 Q.B. 164;* ***Hardwick v Lane*** *[1904] 1 K.B. 204;* ***Lockwood v Cooper*** *[1903] 2 K.B. 428;* ***Poppen Walker*** *520 N.W 2d 238;* ***R v McNiven*** *[1994] 1 WWR 127;* ***Marino v King*** *[1931] S.C.R. 482;* ***Lee Sun v Conolly*** *(1905) 24 NZLR 553;* ***John Gee v Williams*** *(1907) 26 NZLR 1016;* ***Camelot Group Plc. V William Hill London Ltd et al*** *Decision of Deputy Magistrate, Bow Street Magistrate Court, 18th August 1997 unreported.* ***Halsbury Laws of England Vol. 4, 4th edn. para. 4;*** *Distinguished* ***Western Telcon, Inc. v California State Lottery*** *917 P. 2d 651 (Cal. 1996)*

13. In any event, the statutory definition of lottery in St. Lucia is sufficiently wide to ensure that once those expressed statutory elements of a lottery are present in the game, it would matter not whether there was an element of wagering in that game. Nowhere in the legislation, is there is any expressed limitation that such games of chance, which might

involve wagering are not to be considered 'lotteries'. The Act itself speaks of 'lotteries', 'pools' and 'games of chances', but whilst 'lotteries' are defined, the terms 'pools' and 'games of chance' are not defined by the Act. Even the Gaming Act does not define a 'game of chance'. This is a case that requires the interpretation of the definition of a 'lottery' under section 2 of the Lotteries Act. The task of statutory interpretation must start with the statutory provision in context of the whole Act, which is to be interpreted. If, in its literal and plain sense, it is clear and unambiguous then this meaning must be given to the provision. The fact that the Act separately speaks to 'games of chance' cannot be considered as any context which gives rise to any ambiguity in the language used in the definition section. In providing separately of 'pools' and 'games of chance', the Act is clearly providing for 'pool betting' that fall properly to be considered 'betting', and more importantly providing for those 'games of chance' that may either contain some material element of skill which takes it out of the statutory definition of a 'lottery' or those games of chance which are not run by the Lotteries Authority as 'lotteries'. For practical purposes if a game of chance which possessed all the elements of a lottery and was a game which was not operated by or through the Lotteries Authority, then it would simply fall to be a 'game of chance', and would be caught by the regulatory ambit of the Gaming Act, as that Act only excluded 'lotteries' from its operation.

Interpreting the term 'lottery' as contained in section 2 of the ***National Lotteries Authority Act****, Cap 13.13 of the Laws of St. Lucia; Considered: Smith v Wyles [1958] 3 All ER 279 "Statutory Interpretation', Francis Bennion 4th edn. Butterworth at page 393;* ***Carnival Games: Walking the Line Between Illegal Gambling and Amusement****" by J. Royce Fichtner Drake Law Review Volume 60*

14. The proposition that the VLTs are nothing but slot machines and therefore can only fall to be governed by the Gaming Act is an argument of no merit. It is true that the Gaming Act does expressly states that no one should manufacture, distribute or operate gaming devices without first obtaining a Gaming Licence under the Act. Breach of these provisions is considered an offence under the Gaming Act. The same Act defines 'gaming devices' as including any machine or device which can be converted into a slot machine. Whilst there is no doubt that the VLTs are capable of being converted into slot machines, the Gaming Act itself excludes any game which is a 'lottery'. It would be absurd to read this exclusion as being only limited to any lottery other than a lottery played on a device which is capable of being converted to a slot machine.

    Considered: ***Territory v A. W. Beeson*** *23 Haw. 445;* ***State v Marck*** *(1995) 220 P. 1017;* ***State of Washington v Brotherhood of Friends*** *(1952) 41 Wn.2d 133;* ***G. McCann v The Commissioner of Customs and Excise*** *[1987] VATTR 101*

15. There is nothing in the Lotteries Act or in particular sections 4(2)(a) or section 5(3) of the same Act, which requires that the Lotteries Authority must approach management contracts in an inflexible manner, or that there must be some feature of management over particular lottery operations which must be retained by the Lotteries Authority. It is sufficient under the Act, that the Lotteries Authority does not, by virtue of a management contract, divest complete responsibility for the operation of lottery in St Lucia, to a third

party. Save for this, these management contracts which gives the third party the right to 'conduct lottery operations' in St. Lucia could properly give to the third parties all aspects of management in the conduct of such lottery operations, retaining for the Lotteries Authority some right of oversight over such operations.

16. The management agreement in this case stipulated in its recital clause that the '[Lotteries Authority] desires that CAGE develops, supplies and operates VLTs, on an exclusive basis, for the [Lotteries Authority] consistent with the terms and conditions of the 'St. Lucia Business Plan (Revised)…as provided by CAGE to the [Lotteries Authority]…' the management agreement further provided *inter alia* that CAGE will 'implement and maintain all reasonable quality control and security procedures requested by the [Lotteries Authority] or its authorized representatives'.' The management agreement also imposed on CAGE the obligations 'establish a central office' in St. Lucia that would serve as a central system link and have the capacity to manage the information from all of the VLTs. CAGE is also required by the management agreement to seek the approval of the Lotteries Authority, not to be unreasonably withheld, for the location of 'sites for the computer center, back-up facilities, warehouse facilities and main office for the VLT system' as well. CAGE is also obligated to provide auditable evidence of its net payments, and it is required to pay a service fee of EC$250,627.00 or 20% of Net Income whichever is greater to the Lotteries Authority. The Lotteries Authority also has the right on reasonable notice to conduct site visits on the premises of CAGE and examine the online system and inspect and take copies of the records pertaining to the operation of the VLTs. This management agreement is of the kind contemplated by section 5(3) of the Lotteries Act which gives the third party the right to conduct lottery operations, but still allows the Lotteries Authority to retain overall control over lotteries in St. Lucia. On the basis the VLTs system conducts a lawful lottery and on the basis of section 5(3) As a matter of law and fact, the Lotteries Authority was perfectly entitled to enter into a management agreement of this nature with CAGE.

17. The claim for judicial review is therefore dismissed. The parties are to provide the court with written submissions on the issue of costs on the 27th October 2014. A decision on this issue is reserved.

JUDGMENT

[1] RAMDHANI J. (Ag.) This claim goes to the core of whether Video Lotteries Terminals ('VLTs') will be allowed to continue to operate as a Lottery under the National Lotteries Authority Act Cap 13.02 of the Revised Edition of the Laws of St. Lucia (the Lotteries Act), or whether operators of such gaming machines shall be required to seek a gaming licence from the Gaming Authority under the regime of the Gaming Control Act Cap. 13.13 of the Revised Edition of the Laws of St. Lucia (The Gaming Act).

Parties

[2] The claimant in this matter is a company duly incorporated under the Companies Act of St. Lucia and the owner and operator of Treasure Bay Casino located at Bay Walk Mall, in Rodney Bay, St. Lucia. It is the sole holder of a Gaming Operator's Licence issued under the Gaming Act, which was granted to it on the 19 September 2005.

[3] The first respondent, the Gaming Authority, is a statutory corporate Authority established by virtue of section 4 of the Gaming Act, and it is administered by a Board appointed by the second respondent, the Cabinet of Ministers of the Government of Saint Lucia ('the Cabinet'). The statutory function of the Gaming Authority is to regulate and oversee gaming devices in accordance with the Gaming Act.

[4] The third respondent, the National Lotteries Authority ('the Lotteries Authority'), is a statutory corporate body established under the Lotteries Act, with the power *inter alia,* to govern, regulate and supervise the operation of lotteries in St. Lucia.

[5] The Interested Party, CAGE, is a limited liability Company duly incorporated under the Companies Act of St. Lucia. CAGE carries on the business of operating and managing what has been deemed to be 'video lottery games' by the Lotteries Authority, on its behalf on a exclusive basis, pursuant to a professional services Contract dated the 12th August 2012, ('the Management Agreement') made between the Lotteries Authority and Cage Holding Company Cyprus Limited ('Cage Holding'). The Interested Party, 'CAGE' is a wholly owned subsidiary of Cage Holding.

The Claim for Judicial Review

[6] In its Amended Fixed Date Claim for judicial review dated 13th October 2011, the claimant has primarily challenged an alleged decision of the Cabinet of Saint Lucia and or the Minister for Social Transformation, Youth and Sports, ('Minister for Youth and Sports') to instruct the Lotteries Authority to enter into a management agreement with Cage Holding

to facilitate the importation, distribution and operations of the VLTs under the guise of them being deemed lotteries. The claimant also seeks administrative and declaratory relief including: (i) an order that the Gaming Authority be required to enforce the provisions of section 7 of the Gaming Act as it relates to the importation, distribution and operation of gaming devices, particularly video lottery terminals, by CAGE and or the Lotteries Authority; and that the Gaming Authority ensures that the importation, distribution and or operation of these gaming devices shall cease until a licence is issued in accordance with the Gaming Act; (ii) a declaration that the video lottery terminals imported and operated by CAGE and or the Lotteries Authority are gaming devices under the Gaming Act; and (iii) a declaration that the importation, distribution and operation of the video lottery terminals by the Lotteries Authority is unlawful and in breach of the Lotteries Act and the Gaming Act.

[7] All of the respondents and the Interested Party have strenuously defended this matter, arguing that the claimant is not entitled to any of the relief sought. Primarily the common position of the respondents and the Interested Party is that the importation, distribution and operation of the video lottery terminals are not unlawful or contrary to the Gaming Act and the Lotteries Act. They say that the VLTs and the video lottery games do not fall within the regulatory scheme of the Gaming Act as they do not constitute 'gaming devices'. They say that the Lotteries Authority is empowered under section 4(1) of the Lotteries Act to carry out or provide for the operation of lotteries in Saint Lucia. The VLTs and the video lottery games fall within the definition of 'lottery' contained in the Lotteries Act, and as such, the operation of the VLTs and the video lottery games were implemented and are regulated under the Lotteries Act. Consequently, no gaming operator's licence is or was required by the Lotteries Authority or CAGE for the importation, distribution or operation of the VLTs and or the video lottery games. The Gaming Act has no application to the video lottery operations carried on by CAGE on behalf of the Lotteries Authority.

Factual Background Leading up the Claim

[8] On or about 2004, the parent company of the claimant entered into negotiations with the Government of St. Lucia and the Gaming Authority seeking permission to establish and run a casino in St. Lucia. During these discussions, the parent company was told by the government that that they would have some level of exclusivity in the gaming industry, having regard to the kind of fees/investments and licensing processes that they would have to respectively make and undergo to start up their business in St. Lucia; others would not be expected to compete at this level as any other newcomer would be required to make similar investments to share in the relatively small market; an unlikely possibility. These negotiations bore fruit and after being subjected to a very stringent due diligence and licensing process the claimant was granted a Gaming Operator's Licence under the Gaming Act to conduct the business of gaming in St. Lucia. It was the first and only Gaming Operator's Licence ever granted to anyone since then.

[9] After the grant of the Gaming Licence, the claimant constructed and established the Treasure Bay Casino at Rodney Bay where it continues to run its casino and entertainment centre. The casino games are typical table games and video games including video slots, video poker, video blackjack, reel slots, multi games and multi-denomination slots.[1]

[10] As part of the licensing requirements, the casino is not permitted to allow local nationals to enter and play games in the casino. Further, the claimant is required to comply with a number of conditions including the payment to the Gaming Authority of a security in the form of a Gaming Bond, the employment of the minimum number of local nationals to work in the casino. When the claim was filed the claimant had 129 St. Lucian nationals employed at the casino.

[11] The Gaming Operator's Licence when initially granted, was for several short periods, primarily it seemed, because the Gaming Authority was awaiting a favourable due diligence report on the owners and key employees of the claimant. At the date of the trial,

[1] Paragraph 11 of Jeff Prusinowski dated 23rd September 2011.

there was a valid and subsisting Gaming Operator's Licence in favour of the claimant. There was no Gaming Bond secured by the claimant, but this matter was under discussion between the government, the Gaming Authority and the claimant. It would also seem that the claimant did not meet its quota of local employment. Up until the date of the trial, however, neither the issue of the Gaming Bond, nor the issue of the number of employers was ever raised by either the Government or the Gaming Authority as an issue with the claimant, affecting its ability to lawfully run its casino.

[12] As fate would have it, by the events which began even before the claimant has been licensed, the claimant's de facto sole operation in the gaming world in St. Lucia was not to last. On the 16th September 2009, Cage Holding submitted a proposal to the Prime Minister of St. Lucia to establish and operate a 'world class Video Lottery Route System' for the benefit and development of tourism or for those purposes deemed to be a priority recipient by the Government. The letter proposed a ten-year contract with a deployment of up to 1000 terminals with a 20% fee to government and a 25% fee to the retail operator.

[13] By a 'letter of intent' dated the 19th September 2009, the Prime Minister wrote to Cage Holding to advise among other things, the intent of the Ministry to negotiate a management agreement or Professional Services Contract with Cage Holding to set up, operate and manage a VLT route system with a maximum of up to 1000 VLTs with an exclusive right over a ten year period where the government of St. Lucia would receive 20% of net wins and the retailer 25% of the net wins. The 20% annual fee to the Government would be in lieu of all other, direct or indirect, taxes, fees, revenue enhancement, customs duties and fees or excise taxes. This letter of intent also advised Cage Holding of a number of technical gaming terms among others, on which a contract would be negotiated, in keeping with the proposal made by Cage Holding and stated the Ministry's intention to negotiating a management agreement or Professional Services Contract with Cage on those specific terms.[2]

[2] The significant portion of this letter is as follows:
"As this Government looks to increase its revenue, the Ministry of Tourism and Civil Aviation has been evaluating the introduction of Video Lottery Games as a means to introduce new revenue into our economy and enhance the current Lottery System's game offerings.

[14] Sometime between November 2009 and the 15th December 2009, the then Minister of Tourism and the then Minister for Social Transformation, Youth and Sports met with Mr. Alison Mathurin, the then Chairman of the Lottery Authority. A representative of Cage Holding, Mr. Raphael de La Cruz, also attended that meeting at which the Cage proposal was presented to Mr. Mathurin.[3]

International studies show that Lotteries has served many countries as a means to reduce the participation of the public in illegal gaming and in turn, increase the public participation in Government sponsored gaming as a means to contribute to social programs. As part of our continued effort toward finding new sources of predictable and recurring revenue for our economy, we have been looking for a company, with proven experience, that can design, develop, implement and operate a highly sophisticated Online Video Lottery Gaming System under the current Government's Lottery operations.

T*he Ministry of Tourism and Civil Aviation has reviewed Video Lottery Systems in other jurisdictions and researched the limited number of companies available in the market that offers the services CAGE and its strategic partners provide to governments.*

This letter of Intent us subject to the following assumptions that shall be included in your written proposal as follows:

1. *CAGE would be authorized and empowered under a management agreement between CAGE and the Government of St. Lucia to set up, operate and manage a VLT route system with up to a maximum of 1000 video lottery terminals on St. Lucia for the benefit of tourism and or any other beneficiary designated by the Government.*
2. *The VLT installations and deployment would be based on a three [hased program, starting with up to 300 terminals over a six (6) month period after the execution of the management contract. Phases II and III will rollout in 2010 and in 2011 with a total of up to 1000 terminals.*
3. *CAGE shall be granted the exclusive right to anage and operate the VLT Route System on St. Lucia under a management agreement for an initial term of ten (10) years and an additional ten (10) year option term.*
4. *The Government of St. Lucia shall receive an annual fee of twenty (20%) percent of Net Win Per Day which fee shall be paid monthly in arrears. The annual fee shall be in lieu of all other, direct or indirect, taxes, fees, revenue, enhancement, custom duties and fees or excise taxes.*
5. *The retailer locations at which terminals are deployed shall be paid commissions of twenty five (25%) percent of the Net Win Per Day from the terminals located at their businesses.*
6. *The proposed VLT System shall have a central computer system that continually monitors the network of video lottery terminals and validation equipment to ensure maximum security and accuracy.*
7. *The VLT system shall provide: 1) an accounting and audit system that ensures prompt and accurate revenue collections with weekly electronic fund transfer (EFT); 2) an audit system for verification fo revenues, government fees and retailer taxes; and 3) an internationally acceptable random number generator for each terminal.*
8. *CAGE and one of its strategic partners, Hard Rock Hotels and Casino will also begin to explore the possibility of creating a hotel and casino properly on St. Lucia on such terms and conditions as are mutually acceptable including the contribution of land into the project by government, hotel concessions, exemptions from certain taxes and duties and other considerations.*

After careful research and consideration, the Ministry has concluded that the public interest will be best served by negotiating a Management Agreement or a Professional Services Contract for the design, development, implementation and operation of an Online Video Lottery Gaming System with CAGE Holding Company Cyprus Limited or its designated subsidiary company to be formed under the laws of St. Lucia….

This Letter of Intent will remain effective until December 31st 2009. If for whatever reason a Management Agreement or a Professional Services Contract has not been duly executed by said date any and all obligations under this Letter of Intent shall expire. …."

[3] Board Meeting Minutes of the 15 December 2009

[15] At a Lotteries Authority board meeting held on the 16th February 2010, the Authority discussed the Cage Holding Proposal and stated their wish to review and scrutinize this proposal. At this meeting, the Board decided that they would research the VLTs and Cage Holding further. The minutes show that the Board was made aware that the Minister for Tourism and the Prime Minister continued to have an interest in the contract with Cage Holding being executed.

[16] On or about the 12th July 2010, Cabinet received a 'report' on the proposal from Cage Holding to the Lotteries Authority for the introduction of electronic gaming to St. Lucia. At that meeting Cabinet had regard to the 'potential benefits' of electronic gaming and decided that the Minister for Youth and Sports should engage in the company in discussions with a view to making a proposals to Cabinet for a formal agreement to be signed between the company and the Government of St Lucia.[4]

[17] On or about the 22 July 2010, the Cabinet of Ministers met and decided that the Minister for Youth and Sports (Minister Montoute) would instruct the Lottery Authority to finalise a contract for the ten-year term in accordance with the proposal from Cage Holding and the Letter of Intent from the Prime Minister.

[18] By a letter dated the 22nd July 2010 from Minister Montoute to Mr. Robert B Washington of Cage Holding, the Minister advised Cage Holding of a 'Cabinet Decision to authorize the Minister to instruct the Lotteries Authority to execute a ten year contract with one ten year exclusive renewal option term with Cage St. Lucia (CAGE) which was to be executed by July 30 2010. This letter made specific reference to the 'Letter of Intent' which had been sent by the Prime Minister.[5]

---

[4] Cabinet Conclusion No. 616 of 2010 dated the 12th July which states as follows: *"Cabinet received a report on a proposal from Cage Ltd. to the Saint Lucia National Lotteries Authority for the introduction of electronic gaming to Saint Lucia. Based on potential benefits Cabinet agreed that the Ministry of Social Transformation, Youth and Sports should engage the company in discussions, with a view to making proposals to Cabinet for a formal agreement to be signed by the company and the Government of St. Lucia."*

[5] The letter is captioned: "Re Cabinet Decision Authorizing Minister of Sports to instruct the National Lotteries Authority of St. Lucia to Execute a Ten (10) Year Contract with CAGE". The letter in full reads: *"However, after very careful review of your proposal and the extensive discussion and negotiations with CAGE, the Cabinet of Ministers has taken a decision ('Cabinet Decision') to authorize this Minister of Government to instruct the NLA to execute a ten (10) year*

[19] The matter came back before the Lotteries Authority Board on the 27 July 2010 where the Chairman informed members that the Cabinet was placing pressure on Minister Montoute to make a decision.

[20] The Lotteries Authority Board again met on the 11 August 2010, when the Chairman informed the Board that at a meeting with the Minister on that date it was agreed that the signing of the CAGE Contract would take place the next day, the 12th August 2010, at Coco Kreole. The Board members expressed that they felt they were being rushed and were not comfortable with the signing taking place so soon.

[21] The next day, the 12th of August 2010, the Lotteries Authority and Cage Holding entered into a Professional Services Contract (the 'Management Agreement') with effective date 12 August 2010, to 'Design, Develop, Implement and Operate an On-Line Video Lottery System', in Saint Lucia. On the 14 December 2010, CAGE was issued with a Trade Licence effective 26 November 2010 to 25 November 2011 to engage in the business of: "Creating an expanded lottery gaming experience for the local population in a particular market that can be shared secondarily by tourists/visitors'.

[22] Significantly, the Management Agreement contained provisions which appeared to bind the Government of St. Lucia to grant to CAGE an exemption from, for the ten year term and any extension thereto, taxes, duties, fees, charges, impositions or revenue enhancement of any kind levied or imposed directly or indirectly in connection with the management of the lottery games and business and the importation of its hardware, equipment, telecommunication devices and equipment, gaming equipment, and supplies, games, video lottery terminals and other goods, services and matters ancillary thereto. Having regard to the fact that it was the Minister who advised the Lotteries Authority to execute the Management Agreement, and the 'Letter of Intent', it is clear to the court that it

---

exclusive contract with one (1) ten-year exclusive option term with CAGE ('Contract'). It has been decided that this Contract between the NLA and CAGE be executed by July 30, 2010."

was the Cabinet who also agreed on the concessions which was contained in the Management Agreement.

[23] CAGE was then issued with a Trade Licence, dated the 14th December 2010, and approved by the Ministry of Commerce, which licensed it to trade in St. Lucia for the 'specific purpose of creating an expanded lottery gaming experience for the local population in a particular market that can be shared secondarily by tourists/visitors.

[24] In January of 2011, the Minister for Youth and Sports submitted a memorandum to the Cabinet by which he advised that pursuant to the Cabinet Conclusion No. 616 of 2010 which had authorized him to engage CAGE with a view to finalizing an agreement to be signed by the company and the Government of St. Lucia for the introduction of electronic gaming to St. Lucia, a formal Management Agreement had been executed between the Lottery Authority and CAGE on the 12th August 2010. The Minister further stated that Clause 4.15 of the Management Agreement referred to exemptions from all taxes, duties, fees, charges associated with the management and operation of the Video Lottery Business and he requested that Cabinet grant a 100% waiver of import duty, consumption tax, environment levy and service charge in accordance with the Management Agreement. The Minister further requested that the Cabinet approve the exemptions on the items listed on Appendix 2 of the Management Agreement.

[25] By a Cabinet Conclusion No. 44 of 2011 dated the 17th January 2011, the Cabinet agreed and authorized the 100% waiver of import duty, consumption tax and environment levy to CAGE for use in electronic gaming and declared CAGE exempt from service charge and by so doing proceeded to confirm their authorization of the importation, distribution and operation of VLTs in St. Lucia.

[26] By a letter dated the 17th January, the Ministry of Social Transformation wrote to the Customs Department requesting an early release of the goods of CAGE with reference to the Management Agreement and Cabinet Conclusion No. 44 of 2011.

[27] In a news report published in the local media on the 21st April 2011, the Minister for Social Transformation advised the public that CAGE had been granted Cabinet Approval to import a number of VLTs into the country.

[28] By virtue of the Management Agreement and the Trade Licence, CAGE has imported and now operates 369 Video Lottery Terminals ('VLTs') at approximately 64 locations in Saint Lucia. (A primary question in this case is whether they are doing so on behalf of the Lotteries Authority and pursuant to the Lotteries Act.)

[29] When the claimant learnt of the introduction of the VLTs, it became very concerned, and it held the view that these machines were gaming machines and apart from cosmetic differences, were essentially identical to the Casino gaming machines, and were not really lotteries at all. '*The claimant sent a written complaint to the Prime Minister and the First, third and Fourth Respondents on the 16th February, 2011 requesting that the First Respondent immediately investigate the proposed agreement by the Third Respondent to allow the Interested Party to engage in video gaming operations. A follow up letter was sent by the claimant to the Prime Minister and the First, Third and Fourth Respondents on February 23, 2011. In response to the complaint a meeting was convened and chaired by the Prime Minister, which meeting was attended by the Fourth Respondent, the Attorney General, the Cabinet Secretary, the Secretary of Finance, a representative of the Third Respondent and Mr. Michael Gordon [Q.C.] and members of the First Respondent.'*

[30] *By letter dated the 11 March 2011, the First respondent responded to the letters of the applicant advising it of the meeting that had been convened by the Prime Minister, and of the fact that, under the directions of the Prime Minister, representatives of the First and Third Respondents were to meet with the Attorney General to chart a possible way forward and to make proposals to the Cabinet of Ministers.*

[31] *On the 14th April 2011 the claimant again wrote to the First Respondent, demanding that the First Respondent 'immediately enforce the provisions of the Act and to therefore cause all operations and distribution of VLTs to cease immediately pending the necessary*

application under the Act'. It further threatened to commence legal proceedings 'should the operation and distribution of the VLTs continue within the next three (3) business days.

[32] On the 27th April 2011, now complaining that the VLTs had adversely affected its earnings by being allowed to compete in the gaming industry without being required to comply with the stringent licensing requirements of the Gaming Act, the claimant filed a without notice application pursuant to Part 56.3 of the Civil Procedure Rules 2000 (CPR 2000) and sought leave to apply for certain administrative orders and declarations against the Gaming Authority, the Attorney General and the Lottery Authority. In this application the claimant cited an alleged decision of the Government of Saint Lucia and or the Cabinet of Ministers to authorize the importation, distribution and operation of the VLTs by CAGE or the Lotteries Authority into St. Lucia without a Gaming Operator's Licence.

[33] On the 14 June 2011, Her Ladyship Justice Rosalyn Wilkinson granted leave to apply for the said orders against the three named parties.

[34] On the 6th July 2011, the claimant filed a fixed date claim applying for relief against these three parties. The claimant then, on the 13th October 2011, filed an Amended Fixed Date Claim and for the first time added a fourth respondent in the person of the Minister for Social Transformation Youth & Sports. This Amended Fixed Date claim also sought reliefs which had not been the subject of the leave application. Several applications later, and even an excursion to the Court of Appeal, the Cabinet of the Government of Saint Lucia was substituted in place of the Attorney General, and CAGE was added an Interested Party. An application to remove the newly added fourth respondent was withdrawn and discontinued without a ruling by the court.

[35] The claimant's stated case, which it maintained at the trial, is that the VLTs operated by CAGE under the Management Agreement with the Lotteries Authority, are gaming devices under the Gaming Act and should be regulated by the Gaming Authority. The claimant is primarily asking the court to quash the decision, whether of the Cabinet, the Minister of the Lottery Authority to cause the VLTs to be imported and operated in St. Lucia as a lottery

without a Gaming Operator's Licence, is unlawful and in violation of the Gaming Act and the National Lotteries Act. The claimant contends that the Management Agreement was imposed on the Lotteries Authority by the Cabinet of Minister and the Minister of Youth and Sports acting on the authority of the Cabinet of Ministers. It further contends that the Management Agreement is not an agreement contemplated by the Lotteries Act and is a colourable device calculated to permit gaming and gaming devices under the guise of a lottery. It also contends that the Cabinet and or the Minister of Youth and Sports had no authority to grant, authorize or permit the importation, operation and distribution of VLTs in St. Lucia, and that the decision to do so was arbitrary and based on no material, data or factual basis whatsoever. It also argued that the Cabinet and or the Minister for Youth and Sports had no authority to grant to CAGE a licence to conduct a business or concessions unless CAGE had applied for and obtained a licence from the Gaming Authority. The claimant argues that the Gaming Authority has abdicated its statutory duties and that the court should grant a mandamus to compel them to enforce the provisions of the Gaming Act.

[36] The claimant has relied on the evidence of Ms. Susan Varnes, the President of the claimant,[6] Ms. Jeff Prusinowski, the Corporate Vice President of Gaming Operations of the Claimant,[7] and a United States of America Attorney at Law, Mr. Scott Redman.[8] All of the witnesses also gave oral evidence and were cross-examined. The claimant also relied on the expert evidence of Mr. Marco Marano apart from presenting his opinion in written reports, also attended the trial and gave oral evidence.

[37] The claim for judicial review has been vigorously defended. On behalf of the first respondent, the Gaming Authority, it was contended the claimant had acted precipitously in seeking to compel the Authority to enforce the provisions of the Gaming Act, as it did not allow the Gaming Authority a reasonable period within which to perform its statutory duties. The Gaming Authority argued that it had been acting on the complaint by the claimant, and

[6] Ms. Varnes swore to five affidavits in this matter, dated the 27th Aril 2011, 6th July 2011, 15th August 2011, 23 September 2011, 7th March 2012.
[7] He swore to one affidavit dated the 23rd September 2011.
[8] He swore one affidavit dated the 26th September 2011.

in the process of discussions with the various arms of the Government when the claim was filed. It relied on the evidence of Mr. Michael B.G. Gordon Q.C. the former chairman of the Gaming Authority at the relevant times.[9]

[38] On behalf of the Cabinet of the Government of St. Lucia, it has been argued that the Cabinet did not appropriate to itself the right to authorize the importation, distribution and operation of the VLTs, and that it did not direct the Minister of Youth and Sports to instruct the Lotteries Authority to enter into a Management Agreement with CAGE. The Cabinet accepted that it had made a policy decision and that the Minister had acted pursuant to the decision to 'advise' the Lotteries Authority under the Lotteries Act that CAGE was a suitable entity to enter into a Management Agreement with. The Cabinet relied on the evidence of Mr. Darrel Montroupe, the Secretary of the Cabinet appointed to that post on the 1st of June 2012.[10]

[39] The Lotteries Authority's position was that it had been advised of the policy decision of government and government's keen interest to allow CAGE to run lotteries on behalf of the Lotteries Authority in St. Lucia. The Lotteries Authority further contended that it took the Minister's advice, but acted independently, carried out its own investigations, which included a visit to Barbados to see VLTs in operation there, and even met with the principal of CAGE to discuss and negotiate the terms of the Management Agreement. It also contended that it took its own decision to enter into the Management Agreement with CAGE as it was satisfied that it was a proper decision having regard to their investigations, both into VLTs and CAGE and the fact that they considered that VLTs were properly lotteries under the Lotteries Act. The Lotteries Authority relied on the evidence of Mr. Alison Mathurin, who had been the Chairman of the Authority at the relevant time.[11]

[40] The fourth respondent, the Minister for Social Transformation, Youth and Sports never entered an appearance, did not file any pleadings or affidavits, and was not represented at the trial. The learned Solicitor General and Mr. Patterson Q.C. for the Interested Party

[9] Affidavit dated 7th September 2011.
[10] He swore to two affidavits, both sworn to on the 22 October 2012.
[11] He swore to two affidavits, both sworn to on the 21st September 2011.

CAGE took arguments at the trial that one of the attorneys for the claimant, who was no longer with the matter, had agreed to withdraw the proceedings against the fourth respondent at an earlier stage of the proceedings. This was disputed by Mr. Foster Q.C., who appeared at the trial for the claimant. All sides firmly believed in their respective positions and asked the court to resolve the matter by having regard to the transcripts of the relevant portions of the proceedings. In any event, the Learned Solicitor General and Mr. Patterson Q.C. argued that leave had never been granted to the claimant to proceed against the fourth respondent and the claim against him should not be allowed to continue.

[41] On behalf of CAGE, it was contended that it had entered into discussions with the Government to introduce VLTs in St. Lucia and been issued with a letter of intent by the Government of St. Lucia on the 19th of September 2009 to discuss and negotiate the design, deployment and operations of video lottery games in St. Lucia. Discussions then followed with various entities of Government, and CAGE was later written to by the Minister for Youth and Sports, and advised that the Cabinet of Ministers had 'taken a decision to authorize' him to 'instruct the National Lotteries Authority to execute a ten year exclusive contract with one ten year exclusive option term with CAGE'. It accepted that it had entered into a Management Agreement dated the 12th of August 2010, with the Lotteries Authority to essentially operate video lottery games on behalf of the Lotteries Authority. They said that they were granted a number of concessions, and on the basis of these and the agreement, CAGE imported, deployed and has been operating over 600 VLTs (at the date of the trial) at various locations around St. Lucia. CAGE took the position that its understanding was that the VLTs were properly lotteries under the Lotteries Act, and that it was not in breach of the Gaming Act. At the trial, CAGE raised further arguments that the claimant lacked standing to be granted any relief in this matter. Cage relied on the evidence of Mr. Raphael De La Cruz, the Executive Vice President of Caribbean Cage, an affiliate of the Interested Party CAGE, the evidence of Mr. Gareth Stuart Phillips, the Chief Technical Officer of Global Draw Limited, the manufacturer and

suppliers of the VLTs used by CAGE, and also the expert reports and testimony of Mr. Brian Tolladay.[12]

The Issues Raised

[42] Having regard to the pleadings, the evidence and the submissions made in this matter, there are a number of issues raised for consideration.

[43] First, as a preliminary matter, whether the fourth respondent should have been properly joined as a party to the Amended Fixed Date for administrative Orders when leave was not obtained to pursue any orders against this respondent.

[44] Second, whether the claimant has *locus standi* to maintain this claim and obtain any of the relief sought?

[45] Third, is a pure merit based issue, and it is whether the Cabinet of Saint Lucia or the Government of Saint Lucia made a decision to authorize, permit or acquiesce in the importation, distribution and or operation of gaming devices in Saint Lucia by CAGE and or the Lotteries Authority? And if there was such decision, was it contrary to the Gaming Act and or the Lotteries Act?

[46] Fourth, is another merit based issue, and this is whether the video lottery terminals and the video lottery games operated by CAGE on behalf of the Lotteries Authority qualify as a 'lottery' under the Lotteries Act? If they do, are they then excluded from the scope of the Gaming Act?

[12] After much ado, the trial in this matter began on the 24 March 2014, and lasted the entire week, ending into late hours of the evening of Friday the 29th March 2014. This was an unusual matter if simply on the basis the parties felt compelled to seek leave to call all the deponents who had sworn affidavits to give sworn testimony and be cross examined. It must have been more out of an abundance of caution than anything else the court must have granted leave for oral evidence to be part of this matter. It is indeed rare that such oral evidence, and the calling of witnesses for cross-examination is allowed in judicial review matters.

[47] Fifth, is another pure merit based issue, and it is whether the Management Agreement entered into between CAGE and or the Lotteries Authority was contrary to or in violation of the provisions of the Lotteries Act in that it allowed CAGE to operate the VLTs as lotteries and not the Lotteries Authority which the claimant contends, is the only entity permitted by law to 'operate lotteries in St. Lucia.

Analysis Discussion and Findings on the Issues

Issue No. 1 - Whether the fourth respondent should have been properly joined as a party to the Amended Fixed Date for administrative Orders when leave was not obtained to pursue any orders against this respondent?

[48] The court was faced with this issue frontally at the trial. The fourth respondent, the Minister for Youth and Sports, was not present, and had never filed any pleadings or affidavits. This Court, coming into this matter for the first time on the date of trial, on its own motion, raised the issue as to whether the Solicitor General was appearing on behalf of the fourth respondent who was on the face of the pleadings not named in his personal capacity but was named as 'The Minister for Social Transformation Youth & Sports'.

[49] This enquiry revealed that in the minds of the parties, this issue had not been settled in any consensual way. The claimant was of the view that the fourth respondent was being pursued in his official capacity, though agreeing that on an earlier application to remove him from the claim, there had been some 'considerations' given as to whether he was being pursued in his personal capacity. The Solicitor General (and the other respondents) was of the view that Senior Counsel Mr. Astaphan, who had previously appeared for the claimant, had, in the course of preliminary hearings in this matter, intimated to Her Ladyship Justice Wilkinson that the fourth respondent was being pursued not in his official capacity, but in the person of the individual who held the post at the relevant time, that is, Mr. Montoute.

[50] All the parties sought to rely on the transcript of the hearing of the application to remove the fourth respondent which had been filed by the learned Solicitor General, and which came before the court for a hearing on several occasions, for their respective positions. I have looked at the available transcripts. I find that there is some merit to the position held by the learned Solicitor General that the claimant may have reasonably led the opposite side and perhaps even the learned judge that the claim was being pursued against Mr. Montoute personally and not the Minister; there is even some reference by the Learned Judge to the need to see a change of the pleadings to reflect this. Notwithstanding, I can also see some merit in the view held by the claimant that there was no concession, and that the fourth respondent was being pursued in his official capacity. The claim against Mr. Montoute in his personal capacity does not make sense, as no relief can be sought and obtained against him.

[51] The resolution of this issue must therefore turn on a more fundamental approach urged on this court by some of the respondents and the Interested Party, namely that having regard to the fact that the application to remove the fourth respondent was never heard on its merit and was withdrawn, the issue is still ripe for this court to determine. I have been asked to determine this issue. Having come to the view that this issue was left unresolved and that both sides held opposite views on it, I will decide this issue.

[52] The learned Solicitor General has argued in closing submissions, that the fourth respondent is not a proper party to this claim for judicial review, the claimant never having obtained leave pursuant to Part 56.3 (1) to join this respondent. That there is a need to meet a threshold is important, the learned Solicitor General argues. 'This threshold has been established in contemplation of the risk of public officials and bodies being subject to lengthy and costly court proceedings for frivolous, vexatious or hopeless claims brought by 'busybodies with misguided or trivial complaints of administrative errors'.' (The learned Solicitor General relies on R v Inland Revenue Commissioners, Ex parte National Federation of Self Employed and Small Business Ltd. [1980] 2 All ER 378). It is argued that it is procedurally wrong and a breach of Part 56.3 to join a party to judicial review proceedings without the leave of the court.

[53] The learned Solicitor General argues that 'the numerous prerequisites of Part 56.3, setting out mandatory matters which an application for leave must outline, are to enable the court to sift through all the information on which an applicant intends to rely in order to ultimately decide whether the case is fit for further investigation at a full substantive claim for judicial review. In this process, it is submitted, the court will have to assess (i) whether there is a decision capable of being reviewed, (ii) what are the permissible grounds for challenge, (iii) what would be the right time for challenge? (iv) what judicial review would achieve? (v) Whether it can be achieved by any other means? It is clearly crucial for the court to assess whether the named respondents are also appropriate for joinder.

[54] I agree with the learned Solicitor General in this point. An application for leave to apply for judicial review, apart from weeding out hopeless cases and to ensure that the applicant has a sufficient interest, is designed to ensure that it is both necessary and appropriate to join those parties against whom leave is being sought. The administrative functioning of the government would be better served if an application for judicial review is allowed only against such decision makers or other persons who serve a proper and relevant purpose to the claim for judicial review. If this process if not screened properly, the joinder of improper or unnecessary parties may well have the effect of slowing the machinery of government, and impose an unnecessary burden on its financial and other resources. It is for this reason that, as a general rule, a claimant who seeks leave to apply for judicial review should, at that stage, include in his application all those persons against whom he wishes to proceed. This is not to say that a court may not at this stage consider whether it would be proper to allow the claim to proceed against such a party. There may be cases when this would be appropriate. In this case, however, I see no utility in joining either the Minister in his public service capacity or in his personal capacity. I will therefore strike out the fourth named respondent.

[55] However, I must now make it very clear, having regard to how this case was pleaded and prosecuted, the claimant have proceeded on the basis that either the Cabinet of Ministers or the government of Saint Lucia made an unlawful decision, a decision which was put into

effect by the now excluded fourth named respondent. Having regard to the doctrine of collective responsibility, any act of the Minister must be seen as an act of Government. This is especially where that Minister was acting with full knowledge and approval of the Cabinet. In this context if a claimant seeks to judicially review a decision of that Government or Cabinet and it is found that the Minister was the one who made the decision, it will not bar declarations being made that the Minister made the decision and in the appropriate case find that the Government or the Cabinet should be held responsible. In these types of cases, if the Government chooses not to call the Minister as a witness to answer to the allegations being made, or to explain any act he may have done, then they could hardly be entitled to say that the court should be slow to make any finding against him. When a decision of the Cabinet of Ministers or the government is challenged, it may be prudent for them to ensure that all the relevant witnesses are before the court. It is for these reasons, that I consider that it is unnecessary to join the Minister in this claim.

Issue No. 2 - Whether the Claimant has *Locus Standi* to Maintain this Claim and Obtain any of the Relief Sought?

[56] The Interested Party, Cage, through its counsel Mr. Patterson Q.C. raised the issue of standing for the first time at the trial, and one aspect of the standing issue was the subject of some cross-examination of Ms. Varnes on Cage's behalf at the trial.

[57] Mr. Patterson has argued at the trial, that any party was entitled to raise at any stage the issue of standing for the court to consider. Now, this is indeed the case, but the manner in which this issue was raised at this trial, that is, the cross-examining expedition that learned Queen's Counsel, Mr. Patterson embarked on during the course of this trial is to be frowned upon. These arguments may well be raised at any stage in the trial, but Mr. Patterson actually attempted to elicit information from the claimant during cross-examination without warning, to ground much of his arguments on this issue. This court very reluctantly, mostly as a time saving device, allowed this line of questioning, but this sort of conduct is to be discouraged; in judicial review matters, if cross examination is going to be allowed of any of the deponents, the scope of and limitations to such cross-

examination should be clearly circumscribed as a preliminary matter during the case management stage. In any event, having regard to the fact that this issue will have to be considered by the court in any event in any matter such as this, I have considered all of the points raised in this regard.

[58] Learned Queen's Counsel Mr. Patterson's arguments', that the claimant should not be regarded as possessing the necessary *locus standi* to pursue this matter and to be granted any relief in this claim, proceeded on a number of basis.

[59] First, he argues that standing may be affected where no unlawful action or decision has been shown. He submits that the case law has shown that where the decision maker or other respondent has acted lawfully or has not failed in performing their lawful duties, a claimant for relief would not possess sufficient interest. He states that there has been no unlawful action in this case, and so the claimant lacks standing. In making this point, he relies on the case of IRC v National Federation of Self Employed and Small Businesses Ltd. [1982] AC 617.

[60] Second, he argues that standing would also be affected when the claim has been commenced prematurely. He argues essentially that the case law shows that the courts should allow the statutory bodies and the decision makers whose conduct is being challenged, a proper opportunity to perform there functions, without prematurely stepping into the administrative arena to take over the functions of such bodies or persons. He states that the gravamen of the claimant's case is that CAGE and or the Lotteries Authority have illegally imported gaming devices in breach of the Gaming Act, and that the Gaming Authority, the body charged with enforcing the provisions of the Gaming Act, have failed or refused to perform its duties in this regard. He states that the evidence shows that the claimant acted precipitously in commencing the claim when it did, as it had now allowed the Gaming Authority sufficient time to perform its functions. In making this point he relies on the case of Chief Constable of North Wales Police v Evans [1982] All ER 141, R v Peterborough City Council and others, ex parte London Brick Property Ltd. [1988] 1 PLR 27, R v Securities and Futures Authority ex parte Bernard Panton 20th June 1994

(unreported), and R v Commissioners of Customs and Excise, Ex parte International Federation for Animal Welfare and Another 8th July 1996 (unreported).

[61] Third, he argues that the claimant has no sufficient interest to when it is itself acting in breach of the Gaming Act. He states that having regard to the discretionary nature of judicial review, the claimant should not be allowed any relief for any breaches of any of the respondents having regard to the fact of its own misconduct. He states that the claimant must come to court with clean hands as it is seeking a mandatory injunction to compel the Gaming Authority to shut down the video lottery operations being operated by the Lotteries Authority and Cage. In this regard Mr. Patterson Q.C. submits that the claimant is operating without a Gaming Bond, and had failed to fulfill all the other conditions of the Gaming Operator's Licence (the employment of a minimum number of St. Lucian nationals) and is therefore in breach of the Gaming Act.[13] In making this submission Mr. Patterson relies on R (on the application of Temiz) v Secretary of State for the Home Department [2006] All ER (D) 156, and Halsbury Laws of England, Judicial Review (Volume 61 (2010) 5th Edn. Para. 656)

[62] Fourth, he argues that the claimant should not be accorded standing having brought this claim for improper motives. In making this submission, Mr. Patterson Q.C. relies on R

[13] On cross-examination of Ms. Varnes, Cage raised this as a new issue which had not been previously raised on any of the papers before the court. Cage traversed, by way of cross-examination, whether the claimant was in compliance with the Gaming Act. Mr. Patterson Q.C. for Cage taxed Ms. Varnes about whether the claimant had in fact executed a 'Gaming Bond' as required by the Gaming Act. Ms. Varnes' responses were essentially that this bond had not yet been executed but that discussions were ongoing between the claimant and the Gaming Authority, which discussions also involved the Office of the Prime Minister. She made it clear that there is in fact a valid licence issued to the claimant, and that neither the Gaming Authority nor the government had ever raised, as a sticking point, the Gaming Bond issue with the claimant.
Mr. Patterson Q.C. also cross-examined Ms. Varnes on the claimant's compliance with the taxing laws and whether there was proper monitoring of the claimant's business from a taxation standpoint. This was also a new point, never before raised on the pleadings, but very hesitantly allowed to be by traversed by the court having regards to the earlier leave to call and cross examine all witnesses. The court did not quite agree with the arguments of Mr. Patterson Q.C. that he was entitled to cross-examine the witnesses of the claimant on the issue of standing even at this stage, since this was not a matter really dealt with by the affidavits filed on behalf of Cage. I did allow this line of cross-examination, and it did consider it as part of the case. As regards the cross-examination on this issue, Ms Varnes stated that there was also a monitoring system attached to the casino slot machines which facilitated the accounting by recording the net win – this in turn facilitated the payment of the appropriate taxes. There was some bit of cross-examination by the counsel for the second respondent, but this did not take the case any further.

(Freakins) v Secretary of State for the Environment, Food and Rural Affairs [2003] EWCA Civ 1546.

[63] The claimant resisted all the above arguments by Mr. Patterson Q.C., with Mr. Peter Foster Q.C. arguing that the court should find that it in fact has the necessary standing to maintain this claim and to be granted the relief it seeks.

[64] Learned Queen's Counsel Mr. Foster first referred this court to the fact that Cage had even attempted to argue at the trial that the claimant did not have a valid gaming licence, which argument was put to rest when a Gaming Operator's Licence for the period the 1st September 2012 to 30 August 2014 in favour of the claimant was admitted into evidence at the trial.

[65] Mr. Foster Q.C. went on to point out that the claimant had expended considerable sums by way of investment and was subjected to a vigourous licensing process to do business in St. Lucia. He submitted that the Gaming Licence issued to them gave them a vested interest in the gaming industry so that if third parties were allowed to operate without undergoing the same level of scrutiny and without having to expend similar substantial sums to be allowed to do business in the gaming industry, it would clearly be prejudicial to their interest. As the court understands the argument, the playing field would not be level and there would be no fair competition.

[66] Learned Queen's Counsel went on to point out that it was a matter of particular importance that none of the respondents had ever taken issue with the claimant's standing up until the trial when CAGE alone raised it. Mr. Foster Q.C. points out that even at trial, neither the Gaming Authority nor the Cabinet took any issue with the claimant's standing in terms of whether it was duly issued with any Gaming Licence or whether it was in breach of the Gaming Act. All of the other respondents treated the claimant as being lawfully entitled to operate a casino in St. Lucia and not to be regarded as being in any breach of the Gaming Act as far as the Gaming Authority and the Government was concerned.

Analysis and Findings

The Scope and Nature of Standing in Judicial Review Proceedings

[67] The arguments taken by Mr. Patterson Q.C. have covered most if not all the various attacks, which can be made on a claimant's standing in these types of matters. Having regard to my conclusions in this matter, the question of standing plays an important role as I am convinced that this case substantially turns on the merits of the claim, that is whether there was any unlawful decision made by the Cabinet, and whether either the Lotteries Authority or the Gaming Authority acted unlawfully which conduct is amenable to review by the court, and whether the VLTs are in fact operating as a 'lottery' under the Lotteries Act. It would have been sufficient for me to proceed to deal with the merits and perhaps even avoid this issue of standing, but having regard to the substantive submissions filed in this matter, I will treat with this matter from both a 'standing' point of view and from a merit-based approach.

[68] In clear and simple cases, the question of standing may be determined at the application for leave stage independent of a full consideration of the case on its merits.[14] In most cases, however, the court is often required to assess whether the claim has merit which in turn determines whether the claimant indeed has standing.[15]

[69] Speaking of the court's role in relation to standing at both stages the Master of the Rolls, Sir John Donaldson stated in R. v Monopolies and Mergers Commission Ex p. Argyll Group Plc 1986 WL 407772 Court of Appeal (Civil Division) that:

> *"The first stage test, which is applied upon the application for leave, will lead to a refusal if the applicant has no interest whatsoever and is, in truth, no more than a meddlesome busybody. If, however, the application appears to be otherwise arguable and there is no other* ***discretionary bar****, such as dilatoriness on the part of the applicant, the applicant may expect to get leave to apply, leaving the test of*

[14] Halsbury Laws of England 5th Edn Volume 61 at para. 656; see also IRC v National Federation of Self Employed and Small Business Ltd. [1982] AC 617

[15] See The Attorney General v Martinus Francois Civil Appeal No. 37 of 2003 St. Lucia; Spencer v The Attorney General of Antigua and Barbuda (1999) L.R.C. 1; Re Blake (1994) 47 WIR 174.

interest or standing to be reapplied as a matter of discretion on the hearing of the substantive application. At this second stage, the strength of the applicant's interest is one of the factors to be weighed in the balance."

[70] As was noted by Rawlins J.A. (Ag.) as he then was, in The Attorney General v Martinus Francois:[16]

> *An applicant for a declaration can have no locus standi in an unmeritorious claim. On the other hand, in a meritorious case, it must be necessary to canvass the issues and the facts in order to determine whether there is sufficient nexus between an applicant and the subject matter of the claim to give him or her locus standi."*

[71] The scope of the rules relating to standing are captured in Civil Procedure Rules 2000 (CPR), at CPR 56.2 which provides as follows:

> *"56.2 (1) An Application for judicial review may be made by any person, group or body which has sufficient interest in the subject matter of the application.*
>
> *(2) This includes –*
> - *(a) any person who has been adversely affected by the decision which is the subject of the application;*
> - *(b) any body or group acting at the request of a person or persons who would be entitled to apply under paragraph (a);*
> - *(c) any body or group that represents the views of its members who may have been adversely affected by the decision which is the subject of the application;*
> - *(d) any body or group that can show that the matter is of public interest and that the body or group possesses expertise in the subject matter of the application;*
> - *(e) any statutory body where the subject matters falls within its statutory limit; or*
> - *(f) any other person or body who has a right to be heard under the terms of any relevant enactment or Constitution.*

[72] Justice of Appeal Rawlins (Ag.) in his analysis in the case of Attorney General v Martinus Francois stated:[17]

---

[16] Civil Appeal No. 37 of 2003, St. Lucia at paras 145 and 145; Rawlins undertook an examination of the case law citing *Spencer v The Attorney General of Antigua and Barbuda (1999) L.R.C. 1 and Re Blake (1994) 47 WIR 174*

[17] *Martinus* (n. 4) at para 151.

> *"Part 52.2 of the Rules then provides very liberal and relaxed rules of standing for applications for judicial review. These, as we have seen, relate to applications for prerogative orders. Interest groups and bodies are particularly facilitated. There is still a required that the person or body should be 'adversely affected' by the decision. Interestingly, Part 56.2(d) of the Rules confers standing on a body or group that can show that the matter that is complained of is of public interest, and the body or group possesses expertise in the subject matter of the application."*

[73] These principles make it clear that anyone who can show a sufficient nexus or a sufficient interest between himself and the subject matter must be entitled to seek relief by way of judicial review.[18] I am of the view that even in saying that the rules relating to standing are very liberal and relaxed, Rawlins J.A. may have actually interpreted the rules in a somewhat narrow manner when he stated that there is still a requirement to show that the applicant has been 'adversely affected'. CPR 56.3 is not an exhaustive rule, but merely sets out different categories of claimants who may be regarded as possessing the requisite standing. The authorities actually show in certain types of cases, even where an applicant may not be 'adversely affected' in the normal sense, he may still be regarded as possessing standing.[19]

[74] As has been noted 'sufficient interest' is a broad flexible concept and is a mixed question of fact and law. Halsbury Laws of England accepts that:

> *'The determination of any issue as to whether the claimant has a sufficient interest to bring the challenge in question will depend on a consideration of the relationship between the claimant and the matter to which the claim relates, having regard to all the circumstances of the case.'[20] 'In appropriate cases the court may also have regard to broader concerns, including the merits of the challenge, the importance of enforcing the law, the importance of the issue raised, the presence of absence of any other person with sufficient interest, the nature*

[18] The liberal nature of the rule is seen vividly in cases when a company was formed after a decision was made simply to challenge the decision. This was the case in R. (on the application of Cherkley Campaign Ltd) v Mole Valley DC [2014] 1 P. & C.R. 12 Queen's Bench Division (Administrative Court) where the court held inter alia: "Longshot's objection to the claimant's standing was artificial and unreal. Proof of active participation in the process of objection was not a sine qua non to standing, but merely strong evidence that such persons would ordinarily be regarded as aggrieved. Numerous directors of and individual subscribers to Cherkley Campaign Ltd not only lived in the Mole Valley area but were also involved in the objection process through various bodies. There was nothing unfair or improper about a group of aggrieved individuals forming a limited company to bring a claim."

[19] IRC v National Federation of Self Employed and Small Business Ltd. [1982] AC 617; see also the discussion in Wade and Forsythe 'Administrative Law 10th edn at page 598 on 'The New Law of Standing'.

[20] Halsbury Laws of England 5th Edn Volume 61 at para. 656; see also IRC v National Federation of Self Employed and Small Business Ltd. [1982] AC 617

of the unlawful conduct alleged and the role of the claimant in relation to the issues under consideration.' [Emphasis supplied]

[75] The point is made that these latter factors are most likely to be considered 'relevant where the claimant is an interest group (or acting in a similar capacity)'.[21]

[76] A distinction is to be made between finding a sufficient interest between the claimant and the subject matter of the claim, and whether relief should be refused as a matter of discretion. As Justice Darby in R. (on the application of O) v Secretary of State for International Development[22] has pointed out, the 'requirement of a sufficient interest is a jurisdictional threshold, and whether a person has a sufficient interest is a matter of judgment, not a matter of discretion.' Lord Diplock himself has made the point in the National Federation case that the sufficient interest requirement allows the court "to decide what in its own good judgment it considers to be a 'sufficient interest' on the part of [a claimant] in the particular circumstances of the case before it."

[77] To my mind, Argyle also appears to support this view that at the substantive hearing, a court may well find that the claimant who at first blush appeared to have possessed sufficient standing may be found to be no more than a busy body who should be sent away from the court on the ground of a lack of sufficient standing, not on the basis of the court's exercise of discretion to refuse relief.

[78] These principles are very applicable to the case at bar. Therefore, in considering the various arguments by Mr. Patterson Q.C. on the issue of standing, the court must be careful to give due regard to that distinction to those matters which relate to whether the claimant has a sufficient interest, and those matters which really arise after a finding of a sufficient interest, and which are within the court's discretion which might have the effect in a court refusing to grant relief. With these principles in mind I turn to an examination of each of the points raised.

---

[21] Halsbury Laws of England 5th Edn Volume 61, footnote 6; citing with approval R v Secretary of State for Foreign Affairs, ex parte World Development Movement Ltd. [1995] 1 WLR 386 DC; R v Hammersmith and Fulham London Borough Council, ex p People Before Profit [1981] JPL 869

[22] 2014 WL 3387699 Queen's Bench Division (Administrative Court)

Whether Claimant is Guilty of Misconduct - Whether a Matter of Standing or a Discretionary Bar to Relief

[79] Assuming for the moment that a sufficient degree of nexus has been shown between the claimant and the subject matter of this claim and that there is merit to this claim, the initial question for me is whether as a matter of law, misconduct on the part of a claimant for judicial review may operate to affect his standing or as a discretionary bar to him obtaining relief. I will also go on to address whether this claimant is guilty of such misconduct, which should operate to affect his right to the grant of relief.

[80] In answering this first question, I turn first to the case commended to this court by Mr. Patterson Q.C. in making his point that misconduct relates to standing. He stated that in that in R (on the Application of Temiz) v Secretary of State for the Home Department,[23] 'the applicant, a Turkish national, applied for judicial review of the Secretary of State's decision to reject his application for asylum. It was held that the application for judicial review would be dismissed because of the applicant's unlawful conduct when he engaged in business in breach of the terms of his temporary admission.'

[81] With respect to learned Queen's Counsel, I disagree that this was the ratio of this case. In Temiz, the applicant lost his claim for judicial review not because it was found that he had a right to relief from the court and that as a matter of the court's discretion, relief would be refused to him because of his unlawful conduct of overstaying illegally and working in breach of the terms of his admission. Temiz surely did not make the point that the refusal of relief related to the lack of any standing on the part of the applicant. He was refused relief because the court found as a fact the Secretary of State had acted properly when he, the Secretary of State had refused to allow the applicant to remain in the United Kingdom under the Community Law. Commenting on this decision-making approach of the Secretary of State, the court stated:

[23] [2006] All ER (D) 156

> *"The Secretary of State has a discretion to consider an application notwithstanding that the applicant is in the United Kingdom unlawfully, whether as an illegal entrant or an overstayer. That discretion must not be fettered, but the Secretary of State is entitled to regard any unlawful activities as weighing against the exercise of discretion in favour of an applicant. Thus, for example, absconding or failing to comply with any conditions of admission would clearly weigh against an applicant.* ***If the delay in dealing with a particular case was not the fault of the applicant and he did nothing which was contrary to any conditions of his admission, it might be that discretion could be exercised in his favour.*** *It seems possible that Mr Tum may have had a good case in this context. But in my view, while fraud will almost inevitably mean that an applicant must fail, illegal entry or overstaying even without fraud produces the same result."* [Emphasis supplied]

[82] In sifting through learned Queen's Counsel's arguments, on this particular point, I can discern that he really is urging this court to take a public policy approach which must be integral to any discretionary relief, and which is designed to prevent abuse of the court's process. It would be the same approach the court must take when applying the clean hands principle when a claim for judicial review includes a claim for equitable relief. In this latter regard, Mr. Patterson Q.C. states that the court should consider whether this applicant has come to the court with clean hands having regard to the fact that it is really seeking a mandatory injunction against various statutory bodies.

[83] A claim for judicial review is a claim that seeks relief of a discretionary nature, and for this reason, every court must guard against abuse. Generally, the cases have approached this matter of applicant's misconduct from the point of view of the decision maker's decision. Where the decision maker has refused some benefit to an applicant on the basis that the applicant has acted illegally or fraudulently, and that applicant later applies for judicial review, the court would generally only be concerned with whether the decision maker was proper to take that illegal or fraudulent conduct into consideration. It is instructive to note the decision in ECJ in Kondova v United Kingdom [2001] ECR I – 6427. In this case, the appellant had set up a business by working in breach of a visa condition and the Home Secretary had consequently refused to grant him leave to remain under the Agreement. The case was a judicial review of the refusal, not an immigration appeal. As a result the only question for the court, was whether the Home Secretary had acted within the law. It was said that he had not because he had not followed his own internal guidance. Laws LJ, giving the leading judgment, explained that it was relevant under the Rules that an

applicant had, albeit without fraud, been able only by reason of his own wrongdoing to meet the criteria for establishment.' He stated:

> *"17. This, if I may say so with great respect, is an application of the abuse of rights principle which is well established in the jurisprudence of the Court of Justice. There is a plain affinity with the common law rule (if I may express it very broadly) that a man may not profit from his own wrong and the linked principle expressed in the Latin phrase ex turpi causa non oritur actio . There is in the present context no reasonable distinction, I think, between abuse of rights and fraud. Such a distinction if it were asserted could not in my judgment survive the reasoning of the Court of Justice in Kondova and Dari v Tum. This conclusion is, I apprehend, in line with first instance decisions in the Administrative Court, notably Yilmaz and Temiz to which I have made reference. I will not, with respect, cite those judgments.*
>
> *18. What then is the position here? I have concluded that the Secretary of State was entitled to deny the applicant the benefit of paragraphs 30 to 32 of HC 509 because his reliance on those provisions was in truth only viable by virtue of his own wrongdoing — the establishment of a business in 2004 in plain contravention of a then extant prohibition against his doing so. It is true that the focus of the argument this morning has been the fact that from October 2006 onwards, successive forms IF96 did not repeat this restriction on their face. However, the applicant had made his application to enter as a businessman in January 2005 and he relied on the business he had established from June 2004 onwards. That essentially remained the case. The Secretary of State in paragraph 7 of the decision letter, which I have already set out, is plainly addressing his attention to the basis on which or the circumstances in which the business of the applicant had historically been established. Even if (which I am bound to say I doubt) in October 2006 the applicant was entitled to think that the restriction was not then being insisted on, the basis on which his application had been put forward and on which indeed it depended remained the historic establishment of a business in violation of his conditions.*
>
> *19. In these circumstances it seems to me that the Secretary of State's decision was lawfully arrived at, and for my part I do not find it necessary to decide whether the Secretary of State was also entitled to rely on the applicant's fraudulent asylum claim. …"*[24]

[84] In cases where an argument is being made that the judicial review court should not grant relief on this basis, I would be content to say only this much – in a case such as the present one, a court should be slow to reward any claimant with relief where that claimant's right to relief has been obtained by illegality or fraud.[25] A usual example when

[24] See also Sonmez v Secretary of State for the Home Department 2009 WL 1657126 Court of Appeal (Civil Division)
[25] See Tum and Dari v Home Secretary [2004] EWCA Civ 788, [2007] ECR I-07415;

the court may deny relief to an applicant for misconduct is in a case of material non-disclosure. Where the claim for judicial review also seeks equitable relief, I agree with Mr. Patterson Q.C. that principles of equity will apply and in particular, the court would be entitled to consider whether such a claimant's hands are sufficiently clean to entitle him a grant of that relief.[26] What a court has to be minded about is to ensure that in considering this issue of misconduct it does not usurp the function of the decision maker. Where a court begin to consider whether the claimant has committed some act of misconduct, it might be in danger of moving into the realm of substantive decision making instead of looking to form; substantive decision making should be left to the decision maker.

[85] These principles relate more to the court's exercise of its discretionary powers to grant relief as against a finding that the claimant lacks standing to pursue the claim and be entitled to relief on the basis of having a sufficient interest.

[86] Turning to the instant case, I am of the view that even if the evidence did in fact show that the claimant had failed to apply for and obtain the Gaming Bond, was not employing the required number of local employees, and had failed to have a proper accounting system in place, it would not have been enough, all other things being equal, for this claimant to be denied relief. These would not have been matters which would have adversely affected this claimant's sufficient interest to seek relief; it is the claimant's Gaming Licence which gives it that sufficient interest. In fact, I can hardly see how any of this can be relied on by the Interested Party CAGE, when the Gaming Authority and the Cabinet of the Government of St. Lucia have not raised any issue with the lawful operation of the claimant's business. From all of the evidence, the Gaming Authority and the Government are clearly of the view that the claimant is operating a lawful business in this country. For these same reasons, I hardly need to discuss the clean hands principles in the context of this case. In these circumstances therefore, CAGE has no business raising such an issue. I consider this point raised by Mr. Patterson Q.C. to be of no merit whether on the basis of lack of standing or on the basis of a discretionary bar to relief.

---

[26] R. (on the application of Marley Administration Services) v Commissioner of City of London 2013 WL 3811113 Queen's Bench Division (Administrative Court)

Whether a Claimant Improper Purposes in Making Claim For Judicial Review Goes to Standing or Discretionary bar to Relief – Whether Improper Purpose Proven

[87] As noted above one of the limbs of Learned Queen's Counsel Patterson's argument that the claimant should not be accorded any standing where the claim has been brought for an improper purpose. He states the claimant real motive behind this claim is to destroy its competitor, the Interested Party, Cage. He said that the evidence shows that the claimant invested considerable sum in St. Lucia and the Casino business on the assumption that there would be no competition even though it had not been promised exclusivity. This claim, Learned Queen's Counsel Mr. Patterson argues, is to discourage competition and not to redress any perceived public wrong. This is an improper purpose and the claimant should not be accorded any standing.

[88] The claimant's position of course, is that it has a sufficient interest in seeking to ensure that the gaming industry is properly regulated so that competition is fair, and that gaming machines should not be allowed to operate unless those operators are also required to be licensed and regulated under the stringent requirements of the Gaming Act.

[89] There is no doubt in my mind that in certain circumstances, where a claimant commences a claim for judicial review for an improper purpose, the court may be entitled in its judgment to find that such a claimant does not have a sufficient interest. The cases show that the issue of an improper purpose may arise in certain cases to be considered in the context of an abuse of the court's process and is typically seen where the requirement operates to guard against claims by 'busybodies', 'cranks' or other 'mischief makers' or trivial complaints of administrative errors'.[27] The passage from R v (Feakins) v Secretary of State for the Environment, Food and Rural Affairs[28] is relevant to this issue where the court stated:

[27] Halsbury Laws of England 5th Edn Volume 61 at para. 656 footnote 2; see also IRC v National Federation of Self Employed and Small Business Ltd. [1982] AC 617 at 642 to 643 per Lord Diplock
[28] [2003] EWCA Civ 1546

> *"In my judgment, if a claimant has no sufficient private interest to support a claim to standing, then he should not be accorded standing because he raises an issue in which there is, objectively speaking, a public interest. As Sedley J said in R v Somerset County Council ex p Dixon [1997] JPL 1030, when considering the issue of standing, the court had to ensure that the claimant was not prompted by an ill motive, and was not a mere busybody or a trouble-maker.* ***Thus if a claimant seeks to challenge a decision in which he has not private law interest, it is difficult of conceive of circumstances in which the court will accord him standing, even where there is a public interest in testing the lawfulness of the decision, if the claimant is acting out of ill-will or for some other improper purpose****. It is an abuse of process to permit a claimant to bring a claim in such circumstances. If the real reason why the claimant wishes to challenge a decision is which, objectively, there is a public interest is not that he has a genuine concern about the decision, but some other reason, then that is material to the question whether he should be accorded standing."*

[90] As a matter of principle, as the above passage itself shows, a court would hardly turn away anyone who has a sufficient private law interest. The mere presence of what appears to be an improper motive or purpose in a case where the claimant also has an otherwise legitimate and sufficient interest in the subject, should not in any case, operate to deny the claimant standing. The presence of an improper purpose, if it is to be determinative, should really fall to be the overriding motive of the claimant and which has the effect of diluting his claim to a sufficient interest before the court would send him away.

[91] In this case, I find that the claimant was pursuing what it considered a legitimate course to prevent unregulated gaming on a large scale and which in turn would have a detrimental impact on its investment. From the claimant standpoint, it had taken a very practical business decision in assuming the risk that there would hardly be any other competitor willing to invest as substantial a sum, to compete in the same market. It was reasonable for it therefore, having regard to its belief that the VLTs were unlawful except with a Gaming Licence, to challenge the Cabinet of Ministers' and or Lotteries Authority's decision. If it wished in addition to quash the competition by whatever means, and I find that it did not intend to do so, that would still not divest them of their belief that they were pursuing this case for a proper motive.

Whether Claim for Judicial Review Premature - Whether a Matter of Standing or a Discretionary Bar to Relief

[92] A claimant for judicial review must not seek to employ the court to usurp the functions of any decision making body. It is imperative that a court allows every public law body or other decision-maker to perform their administrative functions without the unnecessary interference or oversight of a court peering over their shoulders. In this regard, a claimant for judicial review must only seek such relief when it is appropriate to do so and must allow the decision maker sufficient reasonable time to make their decision before invoking the court jurisdiction to review any lack of action or decision.

[93] In context of the discussion earlier, the question here too must be whether, if there was any such prematurity in moving to the court, this would be a matter affecting the claimant's standing or be a matter relating to the court's discretion to grant or refuse relief?

[94] In the context of the arguments made here on this point I apprehend that Mr. Patterson Q.C. - as has been his style throughout these proceedings, being really interested in every issue and point – has taken these points more specifically for the Gaming Authority more than for itself or any other respondent. I say this because I can hardly see how this claim for judicial review was precipitous in relation to the Cabinet or to the Lotteries Authority as by the date of the claim the Cabinet had already made the decision complained of, and the Lotteries Authority had allegedly abdicated its responsibility when it allegedly followed the Minister's directive blindly to execute the Management Agreement allowing for the importation and use of the VLTs in St. Lucia seemingly contrary to the Gaming Act. If there was any precipitous action on the part of the claimant in filing this claim for judicial review, it must be for the reason that it did not allow the Gaming Authority a reasonable opportunity to perform its policing functions under the Gaming Act before it filed its claim. So is this the case?

[95] In his closing arguments Mr. Patterson Q.C. relying on the factual background, argued that the application for leave to apply for judicial review was filed just two months after the

claimant first complained to the Gaming Authority and just a month after it had been advised that the matter was under consideration by the government and the relevant regulatory bodies. The Gaming Authority, he says, 'had commenced investigations and the Attorney General, as Principal Legal Advisor to the Government had been asked to meet with the two regulators to chart a path forward.' Before the Gaming Authority 'had completed its investigations, or the regulators had a reasonable opportunity to meet, the claimant filed its application for leave to apply for judicial review.

[96] Mr. Patterson Q.C. further argued that the Gaming Authority and the Lotteries Authority as regulators, had each had a statutory duty to perform with regards the complaint raised. He submits that the 'allegation by the claimant that the VLTs imported and operated by the Lotteries Authority and the Interested Party were gaming devices to be regulated by the First Respondent in accordance with the Gaming Act was, on the face of it, one which fell within the powers and duties of the First Respondent to investigate; and, if it was satisfied that the VLTs fell within the scope of the Gaming Act, it would have been entitled to take such action as it deemed necessary to enforce the provisions of the Gaming Act.'

[97] On this same note he points out that the Lotteries Authority, 'as the body charged with the regulation of lotteries, was equally entitled to make a determination as to whether the VLTs were lotteries for the purposes of the Lottery Act; and if it was satisfied as to that, it was entitled to assert the right to operate the VLTs as Lotteries under the Lottery Act, and to treat them as beyond the reach of the Gaming Act, by virtue of the Gaming Act excluding lotteries.'

[98] He further submits that 'at the time of the commencement of this action, therefore, the two regulators of gaming in St. Lucia had the powers and duty to look into the matter, and to make decisions relative to the complaint. To be sure, there were competing interests, and the matter was not one which readily lent itself to simple or straightforward solution. What is clear however is that it was an issue that fell within the legal and regulatory competence of the two regulators to resolve.'

[99] This is the crux of his argument as he submits that against this background the claimant had no standing to bring a claim at this stage. Doubtless if the two regulators had become deadlocked over the issue, they would have sought the court's assistance in resolving the legal issue on which they were divided. Similarly, if a decision was reached to which the claimant objected, the claimant would have been entitled to test the matter in the courts, provided it could demonstrate a flaw in the decision making process.' Moving the court at this stage was an attempt to have the court usurp the functions and duties entrusted to the Gaming Authority and the Lotteries Authority as they relate to the regulation of gaming in St. Lucia.

[100] The Gaming Authority itself did not treat with this point as a matter of standing, but they essentially requested that the claim for judicial review should be viewed as being precipitously filed since the Gaming Authority had not abdicated it functions. In closing arguments for the Gaming Authority, Ms. Ester Greene-Ernest of Counsel, submitted that the proceedings for judicial review against the [Gaming Authority] was premature, as the Authority had been unable to complete its investigations and conduct its necessary meeting with the Attorney General when the claim was commenced; this led the Gaming Authority to pause their investigations to await the outcome of the court matter. Learned Counsel contends that even though the Gaming Authority remains obligated to enforce the provisions of the Gaming Act, it cannot exercise powers not conferred on it by Statute and cannot in particular extend its authority to regulate lotteries operating under the National Lotteries Act. Apart from arguing that it is a matter of statutory interpretation as to whether VLTs falls to be considered lotteries, and that this is a matter which has been placed squarely before the court, the Gaming Authority's position is that it did not have a reasonable opportunity to properly perform its functions under the Gaming Act before the claim was filed.

[101] Mr. Foster Q.C in his closing arguments asked this court to have regard to the evidence of Mr. Gordon Q.C. the former chairman of the Gaming Authority. 'His evidence was that on receipt of the claimant's letter, he too at first blush thought the VLTs were gaming machines. As such, on or about the 11 March 2011, he attended a meeting with the Prime

Minister, the Cabinet Secretary, the Attorney General, the Minister for Youth and Sports, Mr. Leonard Montoute and a representative of the National Lotteries Authority. He stated under cross-examination by the Interested Party that not all relevant parties were present at this meeting as the claimant and the Interested Party were not represented.'

[102] Mr. Foster Q.C. pointed out the Former Chairman of the Gaming Authority did say in his evidence that before they could seek a legal opinion or complete their investigations, the claimant's proceedings had started.

[103] Learned Queen's Counsel Mr. Foster argues that the 'evidence before the court shows that subsequent to the letter from the Gaming Authority advising of the direction of the Prime Minister, the VLTs were deployed and operating (sic) in St. Lucia. By letter dated 14 April 2011, the claimant wrote to the Gaming Authority to advise of this and to request that they enforce the provisions of the Gaming Control Act and to therefore cause all unlawful operations and distributions of VLTs to cease immediately pending the necessary application.' He argues that there is no evidence that there was any response to this correspondence or any action undertaken by the Gaming Authority.

[104] Mr. Foster Q.C. also points out that the evidence shows that the Order of the court granting leave to apply for judicial review and the Application and supporting document were served on the Gaming Authority on the 1st of July 2011. He urges this court to find that the Gaming Authority had failed to make any enquiries, investigations or take any steps to determine the lawfulness of the operations of VLTs in St Lucia and abdicated its authority and jurisdiction. This was, in essence, his argument that there was no premature application for relief in this matter and in particular against the Gaming Authority.

[105] The question of whether the Gaming Authority failed to act within the confines of its mandatory duty to enforce the provisions of the Gaming Act, must be assessed with regards not only the period which had elapsed but also on a consideration of what they were being called upon to do in the context of this case

[106] I must say that I prefer the arguments of Mr. Patterson Q.C. on these points, and that in consequence I also agree with the Gaming Authority. I have considered the evidence generally. In particular, I have accepted the evidence of Mr. Michael Gordon Q.C. former Chairman of the Gaming Authority, who spoke of the events at the relevant time. I am of the view that when the claimant made the complaint to the Gaming Authority on the 16th February 2011, the Gaming Authority would have immediately recognized that a sister regulatory body had already deemed the VLT system as a 'lottery' under the Lottery Act of St. Lucia. Even though, there was this 'first blush' take on the VLTs (that they were believed to be gaming machines), it was proper that, having regard to the provisions of the Gaming Act which excludes from its operation any device which is deemed a lottery, that the Gaming Authority did seek to engage the Lottery Authority on this matter. The Gaming Authority in fact, went further obviously in recognition that Cabinet was also involved in this process and sought and met, not only the Lottery Authority, but also with the Prime Minister and the Attorney General to start discussions on this matter. I do not consider that it was unreasonable at this preliminary stage to have either the Interested Party Cage or the claimant present at this initial meeting. In fact there would have been really no need for them to ever be present, as it was really, from the point of view of the Gaming Authority, a question of whether as a matter of law the Lottery Authority has properly determined that VLTs were in fact lotteries under the Lotteries Act.

[107] As I have found, the facts show that a few weeks after the first complaint, the Gaming Authority had called for this meeting with the Prime Minister, the Lottery Authority and the Attorney General to chart the way forward and by the 11th March 2011, it had advised the claimant of this meeting and of their intentions to investigate the matter.

[108] I consider that it is important to appreciate that by the time the Gaming Authority became involved, the Management Agreement had been executed between the Lotteries Authority and Cage and the VLTs were in the jurisdiction. The fact the claimant was making a complaint to the Gaming Authority, could not have automatically caused it to do as the claimant was requesting without the proper investigations, and legal advice on the points of law. The Lotteries Authority, who at that stage, would have considered that they had

acted properly, could not have very well, simply on the meeting being called by the Gaming Authority, take any precipitous decision to put a pause on the deployment and operation of the VLTs.

[109] The proceedings were instituted some two months after the initial complaint was made. Is this an unreasonably long time leading to the more probable inference that the Gaming Authority had abdicated its functions? Even if one considers that it was not until the 1st July 2011, that the Gaming Authority was served with court papers thus leading to the inference that it was not until this date that it became aware that the claimant had commenced proceedings, would this lead to the more probable inference that an unreasonably long period had elapsed? Is it clear that from this passage of time that the Gaming Authority had refused to carry out its statutory duties so that a court should intervene and compel it to perform those functions?

[110] I agree with Mr. Patterson Q.C. and the Gaming Authority, that it was prudent that the Gaming Authority pursue discourse with all the relevant players in this matter. I have considered carefully the evidence Mr. Gordon Q.C. and I am of the firm view that the Gaming Authority had taken an independent and *bona fide* approach to treating with and investigating the complaint. I am satisfied that the Gaming Authority was still pursuing the matter when it became aware that the claim was filed in court. Assuming that this was not until July 2011, I cannot safely find that this was such an unreasonably inordinate delay on their part to rise to a finding that they had acted in such an unreasonable manner, so much so that it was an abdication of their duties under the Gaming Act. I find a portion of the passage in ExParte London Brick Property case as commended by Mr. Patterson Q.C. to be relevant, albeit used in a slightly different context. In this case Kennedy J treated with the need for the court to be cautious in avoiding unnecessary interference in administrative actions. He stated:

> *"If there are clear indications that a body is going to act unfairly then the court may intervene,… …this court must be astute not to usurp the functions which parliament has entrusted to others, even when it is possible that if the court does not intervene an error may ensue."*

[111] I also find the analysis of the court's role vis-a-vis the functions of the United Kingdom Securities and Futures Authority by Sir Thomas Bingham MR in R v Securities and Futures Authority Ex Parte Bernard Panton[29] to be instructive. The Master of the Rolls stated:

> *"It seems to be quite plain that they are bodies over whom the court can, in appropriate circumstances, and will, exercise a supervisory jurisdiction, but recognition of that jurisdiction must in my judgment be combined with a clear recognition that the clear intention of the Act is that the bodies established under the Act should be the regulatory bodies and it is not the function of the court in anything other than a clear case to second guess their decisions, or as it were to look over their shoulders. Thus, the position that I think we end up with is that these bodies amendable to judicial review but are, in anything other than very clear circumstances, to be left to get on with it. It is for them to decide on the facts whether it is, or is not, appropriate to proceed against a member as not being a fit and proper person and it is essentially a matter for their judgment as to the extent to which the complaint is investigated."*

[112] Finally, the last case relied on by Mr. Patterson Q.C., R v Commissioners of Customs and Excise, Ex parte International Federation for Animal Welfare and Another[30] dealing as it did with a statutory enforcement Authority's alleged failure to enforce certain regulations, makes the point even more forcefully. In dismissing the claim for judicial review, the English Court of Appeal stated:

> *"As will be seen, Customs were in a curious position. Animal welfare groups were judicially reviewing them for not treating the regulations as if they had immediate effect despite all the matter canvassed above. Yet, if they had brought prosecution proceedings against any individual against that background, the likelihood is that the decision to prosecute would have been made the subject of a judicial review challenge from the would-be importers whose goods had been turned away. It illustrates the particular difficulty that arises when an enforcement or prosecuting authority's failure to act is queried by judicial review. While such a failure to act is theoretically justiciable, as those authorities make clear, it is jurisdiction very sparingly exercised, only in what would have had to be a truly exceptional situation."*

[113] The passages quoted above make the point that the court must be very cautious in intervening by way of judicial review with the statutory functions of bodies unless in very clear cases. It may be that the Gaming Authority in this case could have acted with

[29] 20th June 1994 (unreported)
[30] 8th July 1996 (unreported)

greater haste, but this is not one of those clear cases where it is shown to the satisfaction of this court that the Gaming Authority abdicated its responsibility and refused to act. Here the court has to be cautious of inserting itself in the machinery of Government and to dictate when meetings should be held and legal opinions sought especially when there is no good reason to doubt that steps were being taken and that the Authority in question was acting in a *bono fide* manner. It would require this court, and any court to have before it, clear evidence that it was possible to convene meetings earlier and that it would have been appropriate at an earlier stage to employ financial resources to seek legal opinions, and that there was an unreasonable failure to perform these acts – this is especially so when cross agencies discussions may have resolved the problem obviating the need for financial expenditure. The Gaming Authority should have been left to get on with it.

[114] Having regard to my conclusions on this matter, I am of the view that the claim against the Gaming Authority lacks merit as it was precipitously brought. On this point, whether it is looked at as a matter of standing, which it clearly is, or whether it is approached from the standpoint of whether the claim has any merit (the Gaming Authority's position), the claim against the Gaming Authority is dismissed. I agree that if I had so found in this case that Cabinet and or the Lotteries Authority had acted unlawfully which resulted in an unlawful decision to deem VLT system as lottery operations, when they were in fact no more than gaming machines governed exclusively by the Gaming Act, then my ruling on that point ought to guide the Gaming Authority to seek to enforce the provisions of the Gaming Act in a timely manner.

Whether the Claimant has No Standing on the Basis that the Claim has no Merit

[115] I have chosen to deal with this last, as it is really the crux of the case against the remaining respondents, having dismissed this claim against the Gaming Authority. Here the respondents have argued that the Cabinet and or the relevant Minister had not usurped functions of the Lotteries Authority, and that this latter body in turn had not acted

improperly and unlawfully when it executed the Management Agreement with Cage Holding when it allowed it the right to manage on its behalf the VLTs in St. Lucia.[31]

[116] There is no doubt in my mind in law that in a claim for judicial review, if it is shown that the claim lacks merit it will really mean that the claimant really did not have any sufficient interest in pursuing the claim.[32] I will now address this issue in detail.

Issue No. 3 - Whether the Claim has Merit – The Arguments on The Role of the Cabinet, The Minister and the Lotteries Authority in the decision to deploy Video Lottery Terminals in St. Lucia under the Statutory Authority Of the Lottery Act.

[117] The claimant's case here is that 'one or more arms of the government of St. Lucia (whether it be the Cabinet of Ministers, one or more Ministers, The Gaming Authority, or the National Lottery Authority) permitted, authorized or acquiesced in the importation, distribution and operation of the VLTs without having the necessary legislative authority to do so.

The claimant relies on Attorney General v Kenny D. Anthony Claim No. 31 of 2009; de Freitas v Permanent Secretary of the Ministry of Agriculture, Fisheries, Land and Housing and Others (1998) 53 W.I.R. 131; Common Cause, A Registered Society v Union of India (1996) 3 S.C.J. 432

[118] With regards to the Cabinet's role in this matter, Mr. Foster Q.C. argues that it was clear from the evidence in this case, that it was the Cabinet of Ministers who decided and authorized the Minister to instruct the Lotteries Authority to execute the Management Agreement in terms of the 'Letter of Intent'. He states that when the Cabinet did this, the Lotteries Authority had not yet been aware that a decision had been taken for it, and that really it was the last to know that a decision had been made for it by the Cabinet. Even

[31] The court also considered the written arguments of Mr. Anthony Astaphan S.C. dated the 23 February 2013 and filed in court on the 26th February 2013 on behalf of the claimant.
[32] Discussed above. See The Attorney General v Martinus Francois Civil Appeal No. 37 of 2003 St. Lucia; Spencer v The Attorney General of Antigua and Barbuda (1999) L.R.C. 1; Re Blake (1994) 47 WIR 174.

when the Minister, pursuant to this decision of the Cabinet, communicated to the Lotteries Authority that the Management Agreement was to be signed on the 12th August 2010, Board members felt that they were being rushed and that they were not comfortable with the signing taking place so soon.[33]

[119] In closing arguments, filed on its behalf by the Attorney General Chambers, the Cabinet accepted that it was the Lotteries Authority which had responsibility for the operations of lotteries in St. Lucia, and that no intention could be found in the Lotteries Act and in particular section 5(3) thereof, that the Minister responsible had the right or authority to in any way, encroach upon, dictate or fetter the supervisory power of the Lotteries Authority. It was submitted that section 5(3) of the Lotteries Act allows the Minister to advise the Lotteries Authority to enter into negotiations with any entity, and in this case with CAGE, to operate lottery machines on its behalf. The advice or prompting by the Minister can either be followed or not followed by the Lotteries Authority, which has the final say on whether it will enter a management contract with any other entity; this was the position in this case, argues the Cabinet. Arguments by the Attorney General Chambers for the Cabinet, to the effect that Cabinet never made a decision to authorize the Minister to do as he did, have already been rejected by this court, and so what is left of the Cabinet's arguments on this point is that the Lotteries Authority having received the Minister's communication on the Government wishes, proceeded to meet with, and discuss the matter with CAGE over several months. This court is then asked to find that the Lotteries Authority never abdicated its functions over to either the Minister or the Cabinet, and it only acted and executed the Management Agreement after it had satisfied itself that the benefits to be gained by St. Lucia outweighed the disadvantages.

[33] (As to issue number three, there is no need for me to rehash the evidence in this matter, as I have already stated above, I have found as a fact that it was the Prime Minister who was first engaged by Cage by way of a proposal to introduce electronic gaming in St. Lucia, and after the Prime Minister issued his 'Letter of Intent' to Cage, a decision was taken by the Cabinet that the Minister For Social Transformation would instruct the Lottery Authority to execute a Management Agreement for Cage to be allowed to run VLTs in St. Lucia. The Minister did in fact do this, and the claimant asks that this court find that the decision of the Minister to 'instruct' the Lottery Authority to execute a contract with Cage thereby authorizing the importation, distribution and operation of VLTs in St. Lucia was made pursuant to the Cabinet Decision and that the decision of the Minister was unlawful.)

[120] Mr. Patterson Q.C., on behalf of CAGE, developed these arguments resting his submissions on the 'collective responsibility of Government'. Learned Queen's Counsel accepted that the Lotteries Authority is the 'authority in St. Lucia upon which statutory authority has been conferred to operate lotteries in St. Lucia and it also has the power to enter management contracts with another party, authorizing that party to conduct lotteries. The role of the [Minister] under section 5(3) of the Lotteries Act is advisory; the Minister's advice is a necessary precondition to the Lotteries Authority' power to enter into a Management Agreement.

[121] Learned Queen's Counsel submits that section 5(3) of the Lotteries Act 'plainly contemplates that the Minister himself has a discretion as to which entity he has found satisfactory, so that he may advise the [Lotteries Authority] that it may enter a management contract with that entity.' He submits that 'the practical effect of this section is that the decision-making is, in this sense, collaborative, since the [Lotteries Authority] will not otherwise, and in the ordinary sense of things, have power to delegate management functions with respect to lottery operations to third parties.'

[122] Learned Queen's Counsel further submits that despite the Minister's collaborative role as to Management Agreements, section 5(3) must be read subject to section 5(1) of the Lotteries Act which gives the Lotteries Authority the overarching discretion to operate lotteries. Therefore, ultimately, the [Lotteries Authority] conducts lottery operations independently of the Minister. It is only if the [Lotteries Authority] intends to enter into a management contract that it will need to obtain the advice of the Minister.' He submits that the Lotteries Authority's 'duty is to seek the advice, but not necessarily to act in accordance with it; it retains a discretion not to exercise its powers under section 5(3), or to follow its own path, if it disagrees with the Minister's advice.

[123] Mr. Patterson Q.C. goes on to submit that the Cabinet has 'no formal role to play within the statutory framework in the decision-making process relative to the entry into of a management contract authorizing any person to conduct operations of lotteries in St. Lucia.'

[124] However, he further submits, 'Minister of Government in discharge of their functions, will usually act in a manner that is concordant with policy established by the Cabinet of Ministers.' 'When a Minister accepts the post of Minister, he accepts that post against the underlying principle of collective responsibility, and with the understanding that the Minister would act in accordance with government policy. This is arrived at in a collective process. If a policy is arrived at with Cabinet they agree to execute it as it relates to their particular responsibility.'

[125] Mr. Patterson Q.C. points to the evidence of the Cabinet Secretary Mr. Montroupe when he spoke of the collective responsibility of government and further submits that in discharge of his advisory functions under the Lotteries Act, the Minister would have regard to any policy decision made by Cabinet.

[126] Learned Queen's Counsel then submitted that there was no irregularity in the decision making process, that the Lotteries Authority never surrendered its independent judgment to the Cabinet nor the Minister.

[127] In completing his response on the claimant's attack on the decision-making process when the claimant also argued that the decision was irregular for lack of sufficient enquiry, Mr. Patterson Q.C. submitted that the claimant has failed to demonstrate that the Lotteries Authority was in effect 'rubber-stamping' a decision made by the Cabinet and the Minister. He essentially submits that the preponderance of evidence shows the *intra vires* actions of both the Lotteries Authority and the Minister under the Lotteries Act, and further the claimant has failed to discharge their burden to prove that that any decision of the Cabinet had usurped or superseded the independent judgment of the Lotteries Authority.

Analysis and findings

[128] The Lotteries Authority of St. Lucia is a statutory body established by the National Lotteries Act, Cap 13.20 of the Laws of St. Lucia and generally it is that public body with the

overriding responsibilities for the operation of lotteries in and out of St. Lucia to raise funds for the purposes authorized by the Act and towards youth and sports as may be authorized by the relevant Minister[34], namely the Minister with responsibility for youth and sports[35].

[129] The specific ambit of the scope of the Lotteries Authority functions are set out in a number of statutory provisions contained in the Lotteries Act, two of which have been referred to above, and I will now set out these as they are important to this discussion. They are as follows:

> *Section 4 Powers and Duties of the Authority*
>
> *(1) The Authority shall have power to carry out or provide for the operation of lotteries in Saint Lucia.*
> *(2) Without prejudice to the generality of subsection (1) the Authority shall –*
>
> *(a) organize, provide, conduct and control the operation of lotteries in or outside Saint Lucia either alone or in conjunction with any other companies or organisations in or outside Saint Lucia or associate with any other company or organisation concerned with the business of lotteries.*
>
> *Section 5 Responsibility for Operating Lotteries*
>
> *(1) The Authority shall be the body responsible for operating lotteries in Saint Lucia.*
> *(2) …*
> *(3) The Authority shall on the advice of the Minister have the power to enter into management contracts with any other entity authorizing that other entity to conduct lottery operations in Saint Lucia.*
> *(4) …*

[130] A literal reading of these sections makes it clear to me that the Lotteries Authority is the overriding body responsible for the operation of lotteries in St. Lucia. I agree with Mr. Patterson Q.C. when he says that in performing its functions under the Act, the Lotteries Authority is not subject to the direction or control of any other person or entity; these powers are to be exercised independently of anyone, including the Cabinet and the relevant Minister. In accordance with its powers under section 4(2), the Lotteries Authority may collaborate with any other entity whether in or out of Grenada to organize, provide,

[34] Section 23 of the Lotteries Act
[35] The relevant 'Minister' under the Act is the 'Minister responsible for youth and sports' – section 2 of the Act.

conduct and control the operation of lotteries whether in our outside St. Lucia. However, if section 5(3) is to make sense and to add anything to the Act, if the Authority wishes any of its management functions under the Act to be performed by a third party, then it only has the power to give such management responsibilities when the relevant Minister so advises; this is the only role which the relevant Minister has under the Act with regards the direct operations and conduct of lotteries.[36]

[131] It is to be noted that the Lotteries Authority is required in the performance of its functions to follow general directions as to policy issued to it by the Minister after he has consulted with the Chairman of the Board. These policy directions must concern matters, which appears to the Minister to concern the public interest.[37]

The Cabinet and the Minister

[132] It is therefore plain to me that the Minister's role is key with regards certain important aspects of the Lotteries Authority's functions. The Lotteries Act itself does not detail how the Minister should act in terms of making his own decisions. How, for instance does a Minister decide whether a matter is of public interest so that he may issue general policy directions? More important, in the context of this case, how does he approach his functions under section 5(3) to 'advice' the Lotteries Authority as regards management contracts with third parties to conduct lottery operations in St. Lucia.

[133] Mr. Patterson Q.C. has relied substantially on the evidence of the Cabinet Secretary to make the point that Ministers of the Cabinet are collectively responsible. He hardly needs this evidence to make this point as section 61(3) of the Constitution of St Lucia provides that: *"The functions of the Cabinet shall be to advise the Governor General in the*

[36] Note that by section 18 the Minister has a power, after consultation with the Chairman, to give the Board general directions as to policy to be followed in performance of its functions in matters appearing to the Minister to concern the public interest. There are a number of other sections which give the Minister various duties and powers under the Act. These include section 6 which gives the Minister has a power of appointment of permanent and temporary Board Members as well as the Chairman. He also has the power of revocation of such appointments. By section 11 the Minister also has the power to appoint various committees from among the Board Members to report on any matters connected with functions arising under the Act. The Minister has the power to wholly reject such reports. By section 13 the Ministers decides on the remuneration of members.

[37] Section 18 of the Lotteries Act.

government of Saint Lucia and the Cabinet shall be collectively responsible to Parliament for any advice given to the Governor General by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his or her office."

[134] Whilst every Minister is tasked with their individual and various statutory obligations and are given statutory power to perform these functions under specific pieces of legislation, it is expected that when they perform these functions they would follow the general directions or, in instances, even the specific directions and decisions of the Cabinet. Any other approach to government, especially an approach where individual Ministers act without concurrence of the Cabinet or even consultation could very well, to say the least, lead to a very untidy state of affairs in the administration of government. It is therefore a normal aspect of government that whenever important matters of policy are to be decided on, matters which ultimately Cabinet would be responsible to parliament for, such matters are brought to Cabinet for their consideration and collective approval. It is of course very possible that all other members of the Cabinet may decide on a course contrary to the Minister's view. In such a case, the particular Minister may well be within his statutory right to ignore their disapproval and proceed on his own; under section 61(3) of the Constitution, Cabinet would still be collectively responsible for his action. It would be a sign, however, that government is not acting cohesively. This could have many adverse consequences for Cabinet and the government as a whole. For one thing, this may well lead to conflicting policy directions in related departments of the administration.

[135] On the other hand, the constitutional and statutory scheme of governance clearly allows a Minister to accept his Cabinet's decision on a matter of policy, and properly perform his functions under the relevant statute without abdicating his statutory mandate. As often happens, and as happened in this case, very often interested investors will make contact with some member of government other than the specific Minister who might be responsible for being able to statutorily move the proposed project forward.[38] When such

[38] Many jurisdictions now have established Investment and or Development Units which is the contact point for all investors. When the system functions as it should, even when investors seek out the Ministers of other officials with their proposals, they are sent to these Development or Investment Units.

matters are discussed by the Cabinet, and the investment project is viewed favourably by the Cabinet, it is expected that the proper department and Minister of Government would be identified to take the necessary and agreed steps to see whether the project would come to fruition. It is also expected that the relevant Minister would act in accordance with the applicable statutory scheme with a view of realizing the project. Where independent agencies or statutory bodies are integral to the proposal, it is also expected that they would be engaged with a view of securing the necessary approvals, permissions, or licences which may be necessary, as the success of such projects will in most if not all cases depend on all the various stakeholders coming on Board with the proposal in accordance with the general policy of the Government. It is also very possible that there are instances when government policy as established by Cabinet might come into conflict with the specific functions of a statutory body which is tasked with performing some function for the public good within the scheme of its statutory powers. In these cases, it is expected that such a statutory body would exercise its powers in an independent and proper manner. Where it is statutorily required that the body would act in accordance with policy directions from a Minister, it is proper that the body exercise its powers in accordance with those directions. Even in instances when the statutory body does not have a statutory duty to comply with policy directions of the Cabinet, it is expected that such a body would consider general policy matters that are relevant and take them into account in the performance of its functions. A statutory body may find its decision subject to a successful review if it were to ignore the relevant policies of government for an improper reason.

[136] In this case, the start of discussions in the Cabinet about the introduction of electronic lottery games in St. Lucia can be identified by the proposal contained in a the letter dated the 16th September 2009 which was submitted to the Prime Minister by Cage. At this stage, only the Casino was authorized to conduct games, but this proposal expressly pointed the Prime Minister to the possibility of establishing and operating a 'World Class Video Lottery Route System' for the benefit of Tourism or for those purposes deemed a priority recipient by the Government. It was clear that the Prime Minister took the proposal seriously, and that Cabinet did discuss the matter. I can hardly make any finding that they were precipitous in being ready to provide Cage with a Letter of Intent three days later. I do

not think it is the place of any court to say to any Government that three days cannot ever be a sufficient and reasonable time for a Government to consider in a matter such as this. The irony is that litigants often complain that a government would delay the decision-making process stalling viable investment projects. This Cabinet acted swiftly and there is not even an iota of evidence to suggest that within the three days they failed to take any relevant matter into consideration in formulating this very detailed Letter of Intent. In fact, it is to be noted that two Ministers were initially identified to lead on the process towards realizing this project; these were the Minister of Tourism (relevant because the proposal actually spoke about the Tourism project) and the Minister For Social Transformation, Youth and Sports (obviously relevant because the project related to lotteries and under the Lotteries Act, the proceeds from lotteries were expected to be used for the youth and sports related matters). This shows to my mind that the Cabinet was working out the details of this project in a logical manner and from very early on, the Members of Cabinet must have been aware of the public considerations involved in this project and the relevant statutory body which would be required to be on board if the Project were to go anywhere.

[137] It is for this reason, and this is the relevance of the meeting which was held by the Minister of Tourism and the Minister for Social Transformation, Youth and Sports with the Chairman of the Lotteries Authority between November 2009 and the 15th December 2009. It was at this meeting that the Cage proposal was presented to the Chairman of the Board. This is very instructive to me. If the Cabinet or any of the Ministers were intending to direct or instruct in the true sense of the word, the Lotteries Authority to sign a Management Agreement with Cage, there would have been no need for them to present the Lotteries Authority with Cage's proposal; they would have been simply told to sign. It is also instructive that the Lotteries Authority thereafter in accordance with their statutory duties convened a Board Meeting at which this proposal was shared with the members of the Board.

[138] A little over two months later, the Lotteries Authority held another Board meeting at which the Cage proposal was discussed. At this meeting the members was informed by the Chairman that the Minister for Tourism and the Prime Minister continued to have an

interest in the Management Agreement being executed. There could not be anything improper in this information being conveyed to the Board members. This is how Government must work, that is, together with the various inter connected statutory agencies which perform these relevant and vital public functions. It would have always been relevant and important that the Board be advised that this Management Agreement continued to be on the table for Government. What is also of considerable significance here, is that at this meeting, it was very obvious that the members understood that a decision was required of them, and that they were responsible for this decision as they clearly expressed their view that they needed to research not only the Video Lottery Terminals which were being considered, but also the proposed operator, Cage. To my mind, regardless of how the Government saw their role, the Lottery Authority was clearly proceeding to exercise their own judgment on the matter.

[139] I consider that the testimony of Mr. Allison Mathurin, the Chairman of the Lotteries Authority, did shed light on what transpired after the Lotteries Authority received the report in 2009. I considered that he was a very credible witness and I had no reason to doubt his evidence. He stated that when the proposal was passed to the Board, he personally had concerns. He stated that this was because there were some negative things about the VLTs in the public domain, and they were concerned about bringing something which was described as being such an evil on St. Lucia. He pointed out that it took almost a year for the agreement to be finally executed by the Lotteries Authority, and he explained this period by saying that the Board wanted to ensure that even though the VLTs were going to be profitable, thereby providing the much needed help for youth and sporting activities, they also needed to know whether, if there were any disadvantages in deploying VLTs in St. Lucia, those disadvantages were minimal and outweighed by the benefits which they would bring. Here the Board was really considering the 'costs and benefits' to St. Lucia, and acting in a reasonable manner. At first, the Board had some serious 'head bumping' with Cage, having regards to the approach that the Board was taking.

[140] The Board considered that research was needed and to this end they used the expertise of 'Canadian Bank Note', one the strategic partner of the Lotteries Authority, who were the

operators of the traditional lotteries in St. Lucia, and who were opposed to the idea of the introduction of the VLTs as it would affect their own business. From his evidence I understood that they raised concerns about the social ills of the VLTs. He stated that while they did get information about the VLTs from Canadian Bank Note, they felt that they did not receive credible information on the ills of the VLTs. He stated that Canadian Bank Note[39] had the Lotteries Authority in a stranglehold, that 'things were not getting better' and that for these reasons also they needed to find a way for the Lotteries Authority to raise more funds.

[141] He stated that he and Board Members, Mr. Elizier and Ms. Augustine had journeyed to Barbados to see first hand the operations of VLTs in that country.[40] He said that it was a very enlightening experience in Barbados. They visited a dozen locations in Barbados and spoke to operators who shared their revenue details. He said that when they went to Barbados, they had had their perceived notions. He stated that they did not see any negatives. They saw people, normal people playing and having fun.

[142] He was firm that by the time the Management Agreement was signed, the Board was convinced that the 'negatives were insignificant compared to the benefits' which would be brought to St. Lucia. I am satisfied that the Board had the relevant matters into consideration as Mr. Mathurin made it clear that they had addressed their minds to the possible social ills and that their final position was that they were comforted that measures would be put in place to ensure that the environment where these VLTs were to be operated would be a controlled one, and the stipulation that there was to be a distance requirement to schools and also the employment of 'lotto police' to monitor the operation of the VLTs across the island. There was also a prohibition against children playing on the VLTs. It may be that when a Lotteries Authority seek to introduce new forms of gambling into the country, one such as this, it might be prudent to seek scientific and credible studies to better appreciate the possible effects whether adverse or positive, that such

[39] Who was already a strategic partner of the Lotteries Authority.
[40] He did at first say that he was unsure when they had visited Barbados, but he later expressed that he was sure it was before the agreement was signed. From the details given as to what they did in Barbados, it is clear to me that the Barbados visit was a fact finding mission and it would have been strange indeed had they gone after the agreement was signed.

introduction may have on the social fabric of society. A court, however, should be slow to dictate to any government or statutory body what steps and measures they must take before that decision may be a lawful one. There are no statutory prescriptions which must be obeyed by the Lotteries Authority when they are deciding on matters such as this. All that is expected of them is that they must act in a reasonable manner. In so doing it is entitled to consider the general policy of government. What has not been shown to this court is that the Lotteries Authority has acted unreasonably in the manner in which it acted. It sought advice from CBN who had their experts and who were all opposed to the introduction of VLTs. It considered those social ills that were being discussed in the public domain. The chairman and members journeyed to Barbados and saw the VLTs being operated first hand. Maybe it could have done more, but that is a matter for it, and not for this court.

[143] From the point of view of the Cabinet, it was just under five months later that a report was returned to Cabinet from the Lotteries Authority on the Cage proposal which had been presented to the Lotteries Authority during the latter part of 2009. On the basis of this report, on the 12th July 2010, the Cabinet considered the potential benefits that would flow from the introduction of the VLTs in St. Lucia and agreed that the Minister of Social Transformation, Youth and Sports should engage the company in discussions with a view to making proposals to Cabinet for a formal agreement to be signed by the Company and the Government of St. Lucia. The choice to exclude the Minister of Tourism was clearly on the basis that the VLTs were no longer being considered for the tourism sector but for raising funds for youth and sports under the lottery regime. As noted above, it was on the 22 July 2010, that Cabinet made a decision to authorize the Minister to 'instruct' the Lotteries Authority to execute the Management Agreement with Cage which should include certain specified terms.

[144] The inference for me here, which I draw, is that based on the evidence given by Mr. Mathurin, by July 2010, on the Lotteries Authority's evolved or evolving position, Cabinet was comfortable that any decision taken by them would have been given the necessary support of the Lotteries Authority. It is significant that Cabinet did not make any final

decision until they had received a report from the Lotteries Authority. Cabinet must have known or reasonably anticipated that the Lotteries Authority was taking its own steps in performing its statutory functions and that they would all be on the same page by any expected date of the Management Agreement. This is the context in which the 'decision' made by Cabinet is to be viewed. It is not to be viewed as that decision which was taken for the Lotteries Authority under the statutory mechanism of the Lotteries Act. This was a decision that related to the way forward for the Cabinet and the Government of St. Lucia. This was a decision of policy which the Cabinet was entitled to take. Cabinet's approach to this policy position has followed one of the well-established approaches to the formulation of governmental policy. This approach is characterized by various submissions and memoranda being submitted and considered by Cabinet from relevant stakeholders (Ministries and Departments of Government) with regard to the proposed direction. The next step would be for Cabinet to discuss and deliberate these submissions and memoranda, and decide whether more information (whether or not of a technical nature) is needed, and or whether the stance of any particular statutory body should be ascertained if it is relevant. Any further information which is received is then considered and deliberated upon. The final step is the decision on policy.

[145] I have noted here that the Cabinet did not itself sign the Management Agreement, but gave the Minister directions on it. Arguments have been taken in the use of the word 'instruct'; that this meant that the Minister forced the Lotteries Authority to abdicate its functions. One however, has to sift through what is sometimes public political rhetoric and to discover what remains to be the true legal position having regard to all that is said and done.[41] I do not believe that the Minister gave the Lotteries Authority any 'instruction' such that they were forced to follow. I believe Mr. Mathurin in this regard when he said that the Board was not forced to make this decision. From the Board meeting's note, I clearly see that some degree of pressure was being brought by the Minister to bear to move things along, but

[41] See the House of Lords decision in Attorney General v Luncheon and Another [1929] AC 401 where Lord Buckmaster examining the nature of certain transactions and noting how they were referred to by certain parties, stated: "The rules say that they are made with other members, and though if that were a manifest cloak for the true transaction, no court would be misled by mere colouable words, but would seek the true bargain underneath…"; There are other classical example in the law of Leases when parties seek to call certain agreement 'licences' when in fact the agreement is truly a tenancy.

this is not the same as the Board relinquishing its statutory decision making function, which I find it did not do. For that matter, it really is irrelevant whether the Minister did in fact instruct the Lotteries Authority to execute the Management Agreement, for even if he did, I find as a fact that the Lotteries Authority, having regard to all it did, acted of its own independent judgment in finally executing the Management Agreement with Cage.

[146] I do not consider that the fact that there are clauses in the Management Agreement which speaks to concessions to be granted to by government to make this agreement any less the agreement of the Lottery Authority. The Lotteries Authority would have been acting on what they considered to be clear advice from the Minister including the expressed policy position of the Government. The Lotteries Authority would have appreciated that those clauses relating to concessions were matters which the government had already taken a position on. It is instructive to note that the Chairman did negotiate and flesh out certain provisions in the agreement with Cage. I accept the evidence of Mr. Raphael de La Cruz from CAGE in this regard, when he states that all of the contractual negotiations in relation to the agreement took place between Cage Holdings and the Lotteries Authority. He stated that the Management Agreement had been prepared by Cage for the Lotteries Authority's consideration and that the agreement had been sent to the Board of the Lotteries Authority. He also stated that in relation to the contract he met with the Chairman and the other Board members of the Lotteries Authority.

[147] The events, which led to this Management Agreement, are examples of classic Government collaborative efforts at work. These events may be summarized as follows:

(1) Cage proposal to the Prime Minister;
(2) Proposal Considered and Approved in principle by Cabinet (policy in its formative state);
(3) Directions Given to two possible relevant Ministers to move the matter along;
(4) Ministers presenting proposal on the shoulders of the Lotteries Authority (under section 5(3)) so that the Lotteries Authority may perform its statutory functions towards making a decision under the Act.

(5) Lotteries Authority causes report to be presented to Cabinet for further consideration.

(6) Cabinet taking decision on policy and giving direction to Minister to execute his powers under section 5(3).

(7) Lotteries Authority, considering the Minister's advice, government's expressed policy on the issue of VLTs, and their own research and findings, acted independently in making a decision to execute the management agreement

[148] Having regards to my analysis on these matters I find that Cabinet did make a decision on a matter of policy to direct the Minister to perform functions under section 5(3) of the Lotteries Act to advice the Lotteries Authority that to consider exercising its powers to enter into a Management Agreement with Cage to import, distribute and operate VLTs in St. Lucia. I find that as far as the approach to the decision it made, the Lotteries Authority did in fact act lawfully and had regard to relevant matters in coming to its decision in executing the Management Agreement with Cage.

[149] That now brings this court to treat with perhaps the matter of most merit in this case, which is whether or not the Video Lottery Terminals may be considered a lottery under the Lotteries Act?

Issue No. 4 - Whether the video lottery terminals and the video lottery games operated by CAGE on behalf of the Lotteries Authority qualify as a 'lottery' under the Lotteries Act? If they do, are they then excluded from the scope of the Gaming Control Act?

[150] This is the issue that has triggered these proceedings. The claimant is firmly convinced that the video lottery terminals are gaming machines and that they are not lotteries under the lottery laws of St. Lucia. Throughout the proceedings and in its closing arguments, the claimant has argued that the legislation would be determinative of whether the VLTs qualify as a lottery, but that in St. Lucia, the legislation is vague and does not contemplate the type of systems and games utilized with video games.

[151] In putting these arguments in context I am of the view that it is now appropriate that I set out the court's findings on the technical operations of the VLTs in St. Lucia.

The VLT System and the Video Lottery Games Operated by CAGE and the Lotteries Authority

[152] The VLTs which were deployed at various business places in St. Lucia and operated by CAGE pursuant to the Management Agreement with the Lotteries Authority, were all designed and built by Global Draw Limited which company[42], has been in the business of manufacturing and supplying such machines to many operators around the world.

[153] The VLT is a gaming device, which (as operated in St. Lucia) is centrally monitored, in that it allows the operator of the games to centrally monitor all transactions in each gaming device on the central server. The VLT network is hardware and the games played on them are software. The VLTs execute a scheme representing the algorithmic execution of the game. The scheme consists of the pay table, the Random Number Generator (RNG) and symbols (which are shown to the player to show who is a winner or a loser).

[154] The VLTs in ST. Lucia play following games, 'Roulette, Beat the Banker, Keno, Bonus Poker, Deuces Wild Poker, Jacks or Better, Poker, Pyramids of Giza, Madame Fortune, Excalibur's Choice, Lions Luck, Crown Gems, Dynamite Wins, Blazing Reels'. The VLTs are all centrally monitored but each has its own locally located RNG that determines the outcome of that terminal's game without reference to any other terminals on the network. This means that when a player sits in front of any terminal and commences a game, he is not playing against any other player, and whether he wins or not is not affected by whether any other player wins or loses or how many players are playing on the system at any given time.

[155] It is to be noted even where there is a centrally located RNG serving all the terminals connected to the central server, the games being played on each terminal are still being

[42] With headquarters in New Jersey, USA and offices in a number of countries including Africa, Asia and Australia.

played without reference to the games played on any other terminal. With the centrally located RNG, 'every player on a terminal that is connected on the server will be executing their version of the game in the server. This is called a multi-threading position. If, for example, there are 100 terminals on the network, the server in the real sense executes 100 games in a multi-threading situation, using the RNG to determine the random outcome of prizes.' From a technical standpoint, what the central server does really is to run 100 games on 100 terminals in the same mathematical manner as if each of the 100 terminals had its own RNG.

[156] On each of these machines there is a pay table that is configured to ensure that scheme operates in a manner that is financially feasible to the operators. It is essentially the operator's code which is built into the system software and which sets the mathematical algorithm of the game. Essentially it is the pay table that is configured to determine what percentage of the 'take' from all the players on that machine, is paid out to the winners whenever the RNG makes any player a winner.

[157] It has been accepted by both the claimant and CAGE, through their respective experts Mr. Marco Marano[43] and Mr. Brian Tolladay, that the VLT system constitutes a scheme, game method or device, and that the video lottery games are primarily games of chance. With the exception of the video poker games, both experts agree that none of the video lottery games operated by CAGE involve any element of skill in the selection of the winner, and the outcome of the games is based entirely on the RNG.

[158] The claimant's expert Mr. Marano, did speak to the element of skill involved in the video poker games and pointed out that there was an ongoing debate in the gaming industry on whether a degree of skill was implicated.[44] He accepted in cross-examination that the element of skill in video poker and blackjack was minimal and estimated it at 2% and that the outcome of the games was determined on 98% chance. It was accepted by Mr.

[43] Mr. Marano's assistance in this matter as an expert was very limited. He admitted that he was no expert of lottery theory. Most of his statements of opinion in his Report were based on his understanding of lottery theory. None of this was very helpful.
[44] Mr. Marano's Report at page 12.

Tolladay that whether a player won any of these video poker games or blackjack was purely a matter of chance but that after winning, a player could use some degree of skill to affect the quantum of his winning. In fact he states that after winning by pure chance, the player may actually be able to reduce his payout if thereafter he makes a 'less advantageous choice'.[45]

The Submissions

[159] Mr. Foster Q.C for the claimant has submitted throughout this matter that the VLTs do not operate games that may be considered lotteries under the Lotteries Act. Learned Queen's Counsel accepts that it is the legislation which has the enabling power to deem any game a lottery but forcefully submits that the present legislation in St. Lucia is vague and does not contemplate the type of systems and games being utilized with video lotteries.

[160] By written submissions[46] filed earlier in the proceedings on behalf of the claimant it was also contended that the public policy and laws of St. Lucia generally rejected the idea of gambling and gaming, as the Criminal Code Cap 250[47] had made betting, playing games of chance, gaming and gaming establishment, unlawful. It was argued that it is against this backdrop that the Gaming Act and the Lotteries Act must be viewed, that these were limited exceptions against gambling.

[161] Learned Queen's Counsel, Mr. Foster, stated that the new laws could not have envisaged the VLTs would fall under the Lotteries Act.[48] He argues that what compounds the issue, 'is the technical aspect of the way VLTs operate and games played on the VLTs. When one examines the type of system and games involved,…in St. Lucia, it becomes clear that the system does not conduct a lottery at all, at least not one that is within the definition of a

[45] Expert Report of Mr. Brian Tolladay filed on the 3rd September 2012.
[46] Submissions of Mr. Astaphan S.C. dated 23rd February 2013, and filed on the 26th February 2013.
[47] This Act was replaced by the New Criminal Code which came into force on the 1st January 2005. Now section 152 of the Criminal Code Cap 3.02 appears to speak to 'Preventing or Delaying the Police Entry into suspected Gaming House – it is noted that the actual wording of the section does not speak to any 'Betting Houses'. Section 525 of the new Code makes it an offence for the owner or occupier, or employee of the owner of occupier of any house, shop, room or other place of public resort to permit gambling. Section 1043 of the new Code allows the instruments of any illegal game to be used in evidence.
[48] He points to the WINLOTTO Amendment to the Lotteries Act to allow for WINLOTTO.

lottery under the National Lotteries Act, as that definition should be interpreted by the court.'[49]

The claimant also relies on Reader's Digest Association Ltd. v Williams [1976] 1 WLR 1109; Whitebread & Co. v Bell [1970] 2 WLR 1025; The Oxford English Dictionary definitions of the words: 'scheme', 'method', 'game, and 'device'; AG v HRH Prince Ernest Augustus of Hanover [1957] 1 All 49 at 53; Poppen v Walker 520 N.W. 2d 238 (1994); West Virginia ex rel. Mountainer Park v Polan 438 S.E. 2d 308 (1993); Johnson v Collins Entertainment 508 S.E. 2d 575 (1998); Western Telcon, Inc. v California State Lottery 13 Cal. 4th 375, 53 Cal.Rptr. 2d 812 (1996)

[162] Mr. Foster Q.C. for the claimant submits that the court should consider the decision of Camelot Group Plc v William Hill London Limited et al a decision out of the Bow Street Magistrate's Court delivered on the 18th August 1997 by Mr. R.D. Bartle, the Deputy Chief Magistrate, which Mr. Foster Q.C. submits is relevant not only for its holding, but the methodology used by the court in deciphering the concept of a lottery.

[163] 'In Camelot, the operator of the United Kingdom's national lottery (i.e. Camelot) brought a challenge to the legality of a game of chance operated by three of the UK's leading bookmakers, called '*49's*' on the basis it constituted a lottery. The *49's* game was fixed odds game whereby the players choose numbers, wagered an amount on their chosen numbers, and then compared those numbers to one randomly drawn by the game's operator. If the player won, his wager was multiplied by the appropriate fixed odds pay-table and he was paid his winnings together with a return of his stake; if he lost, the stake was taken by the operator.'

[164] Mr. Foster Q.C. commends the common sense approach taken by the Deputy Chief Magistrate, who having noted that there was not a 'decisive definition distinguishing

[49] Mr. Astaphan S.C. has also argued that a lottery cannot mean 'any game of chance'. He submitted that the 'court is generally expected to construe a statute in order to show that Parliament did not intend a statute to have consequences that are objectionable, or undesirable; or absurd; unworkable or impracticable. R (Edison First Power Ltd.) v Secretary of State for the Home Department [2007] 1 AC 70

between lotteries and betting', preferred the common sense approach to an analytical or academic one in determining where a lottery ended and betting began.

[165] The essence of this decision is that the court found that the *49's* game could not be a lottery; it was in fact betting. He reasoned that the game could not be a lottery because, (1) there was a bilateral contract between the player and the operator, (2) the bets are fixed odds; (3) there is no distribution of anything that could be called a prize; (4) there is no scheme as such; (5) the player's bet is not affected by how many other persons are involved in the same activity; (6) the stake (i.e. wager) is only forfeited if the player loses his bet.

He also relies on Western Telcon Inc. et al v California State Lottery 13 Cal. 4th 475; Hotel Employees and Restaurant Employees Union v Gray Davis and Others 21 Cal. 4th 585

[166] On the issue of the 'distribution' on behalf of the claimant, it was submitted that the word 'distribution' should be given its natural and ordinary meaning. Here, reliance was placed on the Oxford English Dictionary that defines 'distributed' as 'to give share or a unit of (something) to each of a number of recipients'. Reliance was placed on R v McNiven [1944] 1 WWR 127; Marino v King [1931] S.C.R. 482.

[167] On the issue of the distribution of a 'prize' the claimant is also saying that the games played on the VLTs, which each contain their own 'Random Number Generator', do not involve the distribution of any prize, but only one on one wagering between CAGE and each of the players. A wager may be won or lost by either of them, the player and CAGE; each has a stake in the outcome, and each may win the stake of the other. This is not a lottery as a lottery is where the winner is paid from the contribution of the other players, and the house really has nothing to lose.

[168] Mr. Foster Q.C. has asked that this court apply these principles to this case, in finding that the Cage VLTs are merely a device for Cage to accept fixed odds bets from players where

each player is playing bilaterally (one on one) with Cage, as opposed to conducting a lottery.

[169] Learned Queen's Counsel submits that on an examination of the evidence, it is clear that the claimant is correct that:

> *(i) Each of the Interested Party's technical witnesses (its expert, Brian Tolladay, and the manufacturer's representative, Gareth Phillips – 'the technical witnesses') testified that Cage VLTs play fixed odds betting games and each player is playing one on one with the machine (bilateral wagering).*
> *(ii) Each of the technical witnesses testified that the outcome of one player's game is not in any way dependent on the outcome of any other player's game.*
> *(iii) The player's wager is not forfeited until he loses.*

[170] Learned Queen's Counsel for the claimant further goes on to submit that although 'much smoke was made by the Interested Party in an attempt to confuse the issues surrounding the location of the RNG, there is no possibility that the various players on the VLT system can be competing for the same 'winning card' and therefore are merely engaged in bilateral wagering with Cage.' This, learned Queen's Counsel argues, demonstrates that the Cage VLTs are not conducting lotteries.

[171] Mr. Foster Q.C. completes his arguments by submitting to the court that the Cage VLTs are really slot machines,[50] and that they should not be regarded as lotteries. He submits that even Mr. Tolladay, the expert witness for Cage agrees that the VLTs can be converted to slot machines.

[172] All of the respondents agreed that it is primarily a matter of statutory construction to determine, having regard to the experts' evidence, whether the games played on the VLTs fall to be considered lottery.

[173] It is Mr. Patterson Q.C. who placed considerable emphasis on this issue in his closing arguments. He first asked this court to consider the relevant statutory provisions and in particular sections 3(2) of the Gaming Act which states that the Gaming Act does not apply

[50] He attempted here to rely considerably on the evidence of Mr. Marco Murano who in fact did not get to examine the VLTs, but who himself relied on the information contained in the brochures from the manufacturers of the VLTs to say that this showed that these machines worked identical to slot machines and were merely disguised slot machines.

to a lottery provided for by the Lotteries Act. He also asks this court to have regard to the various definitions of 'gaming device' and 'gaming machine', and 'game' and 'gaming' under the Gaming Act. He proffers to this court that a 'gaming machine' under the Gaming Act 'does not include a machine used in the conduct of a lottery'.

[174] Learned Queen's Counsel submits therefore that any game which is deemed to be a lottery fall outside the scope of the Gaming Act. The necessary consequence of this is that one must therefore turn to the Lotteries Act in order to determine what games may be considered and deemed to be lotteries. He points out that the term 'lottery' is defined by the Lotteries Act to mean '*any scheme, method, game or device where money or money's worth is distributed as prizes by lot or by chance.*'

[175] Mr. Patterson Q.C. submits that this definition represents a codification of the English common law meaning of the term 'lottery' as decided by the cases over the last 100 years. He submits that the definition makes it clear that for a lottery to exist there must be (i) a scheme, game, method or device; (ii) the distribution of prizes of money or money's worth; and (iii) the distribution must be by lot or chance.

[176] He submitted that the English cases have shown that the term 'by lot or chance' that the outcome of the game must be determined by chance, and that notwithstanding the presence of some element of skill, if chance predominates, the game is a lottery. For this he relies on Scott v Director of Public Prosecutions [1914-15] All ER Rep 825; Coles v Odhams [1935] All ER Rep 598; Moore v Elphick [1945] 2 All ER 155; Boucher v Rowsell [1947] 1 All ER 870; Stoute v DaCosta & Co. (1964) 8 WIR 13; The Attorney General v John Healy [1972] IR 393; National Football League v The Governor of The State of Delaware Civ. A. No. 76-273. Learned Queen's Counsel submitted on this point that the outcomes of the games on the VLTs are determined simply on the basis of chance requiring no degree of skill. In treating with the video poker games run on some of the VLTs with regards to which there had been some evidence of some skill associated with it, he submitted that, 'Gareth Phillips says that the choice of winner in entirely random. This is confirmed by Mr. Tolladay. Such skill as may be deployed by the player, is relevant only to

the extent that he is randomly selected as a winner. If so, the exercise of skill or lack of it could impact the quantum of his winnings. On this analysis, the random selection of a winner predominates so as to bring the video poker game within the definition of a lottery."

[177] On the term 'money or money's worth distributed as prizes', Learned Queen's Counsel submitted that it is not statutorily required by the Lotteries Act that the 'distribution of prizes must be from a common pool or prize fund. He argued that it did not matter whether the player was playing one on one with the house. On this issue therefore, he argues, the location of the Random Number Generator is immaterial. Mr. Patterson Q.C. submitted that the 'decided cases establish that, for a scheme for a distribution of prizes to constitute a lottery, it is not necessary that money paid by the participants should be used to provide the prizes or paid into a fund out of which the prizes are provided. What is essential is that there should be a distribution of prizes by lot or chance and that the chance of winning is secured by a payment. In making this submission, he has relied on a number of cases, including Imperial Tobacco v Attorney General [1981] AC 718; Atkinson v Murrel [1973] A.C. 289; Lee Sun v Conolly (1905) 24 NZLR 553; John Gee v Williams (1907) 26 NZLR 1016.

[178] As regards the claimant's 'slot machines' arguments, Mr. Patterson Q.C. submitted essentially that whether or not the VLTs could be modified to operate as slot machines, they were in their present state, not slot machines. He states that the VLTs differ significantly from slot machines, since they differ physically, operationally and legally. He further submits that 'even if the claimant's assertion that the VLTs are indistinguishable is correct, a number of previously decided cases have conclusively established that slot machines qualify as lottery. He relies in this regard on Territory v A.W. Beeson 23 Haw. 445; State v Marck (1950) 220 P. 2d 1017; State of Washington v Brotherhood of Friends (1952) 41 Wn.2d 133; G McCann v The Commissioners of Customs and Excise [1987] VATTR 101

Analysis and Findings

[179] Prior to May 2001, and beginning in December 1998, only lotteries, pools and games of chance were the subject of statutory regulation, and this was by virtue of the Lotteries Act which came into force on the 31st December 1998. All other forms of gambling, betting and games went primarily unregulated. Before the 1st January 2005, the old Criminal Code, Chapter 520, made it an offence to keep a 'gaming house', and this meant any place where any person 'without lawful authority' and for the purpose of making a gain, provided facilities for the playing of any game of chance for money or money's worth. This Act was replaced by the new Criminal Code, which made gambling in any house, shop, room or other place of public resort illegal.[51] On the 21st May 2001, government intending to introduce casino gambling in St. Lucia, through parliament enacted the Gaming Act, which provided the regulatory framework, including a stringent licensing regime, to govern the gambling, betting and such other games that the Casino gambling world would bring to St. Lucia. It is under this Gaming Act that the claimant has been licenced to run its casino, and it is under this Act it is allowed to run its various games including slot machines at its casino in Rodney Bay.

[180] The issues in this case have brought vividly into focus the interplay between these two pieces of legislation. The immediate question is whether and what extent, the Gaming Act has impacted on the scope and effect of the Lotteries Act?

[181] The Lotteries Act came into force on the 31st December 1998 and is expressed as: 'An Act to provide for the promotion and regulation of lotteries, pools and games of chance in Saint Lucia and for connected purposes. The Lotteries Act created the "National Lotteries Authority' and gave it certain expressed functions under the Act and stated that the 'Authority shall be the sole body responsible for operating lotteries in Saint Lucia.'[52] It is instructive to note section 4 of the Act that gives the Authority the general '*power to carry out and provide for the operation of lotteries in Saint Lucia.'* The Authority is also given a

[51] Section 525 of the Criminal Code, Cap 3.01
[52] Section 5 of the Lotteries Act

power to enter into management contracts with third parties to conduct lotteries in St. Lucia, where the Minister so advises.[53]

[182] Section 4 further goes on to detail certain powers of the Authority with regards to lotteries, and also specifically makes mention of the Authority's role in relation to 'pools', 'betting' and 'games of chance'. By section 4(2)(b) the Authority is given the power to carry on such forms of pool betting business as may be approved by the Minister. Section 4(2)(d) further provides that the Authority shall 'promote and oversee public education related to lotteries, pools, betting and games of chance in collaboration with relevant government bodies' and section 4(2)(e) provides that it shall 'advise the Minister on the development on all forms of games of chance in the State.'

[183] The scope of the Gaming Act is to be gleaned in part from its long title which states that this is: "An Act to permit gaming in Saint Lucia, to regulate gaming activities and related matters.' This Act established a 'Gaming Authority' and gave it responsibility *inter alia* to oversee the industry to receive, vet and make recommendations to the Minister who has the power to grant licenses under the Act. The licensing regime under the Act is elaborate and stringent, and includes an 'advertisement and objections' process, and is also marked by a due diligence investigations process as regards the applicant. The Act creates several categories of licenses and also creates offences for the unlawful conduct of games outside of the regulatory and licensing regime of the Act.

[184] The Gaming Act, intending as it did to treat with casino related gambling and games, however, did not intend to encroach on lotteries that fell under the statutory framework of the Lotteries Act. This intention was expressed by section 2 of the Gaming Act where it provided that a 'game' – "does not include a game played at a private residence where no betting takes place[54], or a lottery within the meaning given under the National Lotteries Authority Act'. [emphasis supplied] Section 3(1) of the Gaming Act states that the Act 'does not apply to a lottery provided for under the National Lotteries Act.'

[53] Section 5(3) of the Lotteries Act

[54] Excluding 'friendly card games' and other gambling type games played socially at private residence without the betting element.

[185] The effect of this exclusion is that any game, that is to be properly considered a lottery under the Lotteries Act, will fall outside the scope of the Gaming Act. There can be no doubt that lotteries are games, and that they are capable of being played on machines.[55] This logically therefore means that when the Gaming Act speaks of 'gaming device' and 'gaming machine'[56], it must be taken to exclude any such devices or machines which play lotteries pursuant to the lotteries Act.

[186] It is to be noted that the Lotteries Act does not define what is 'pools' nor does it define what may be regarded as a 'game of chance'. I will later return to this issue as to whether the Gaming Act only excludes from its regime the conduct of 'lotteries' that is separately defined by the Lotteries Act?

[187] So what is a lottery under the Lotteries Act? Section 2 of the Lotteries Act state that a 'lottery' is *"any scheme, method, game or device where money or money's worth is distributed as prizes by lot or chance."*

[188] The opposing parties have had their own view of this statutory definition of a lottery. In seeking to persuade the court to their own positions, they have made various submissions that the court should really have regard to (1) English Common Law approach, and (2) the United States of America (USA) common law approach, and even the statutory approaches of various states in the USA. It is for this reason, I have decided to set out briefly, my view and understanding of these two common law approaches.

[189] In the United Kingdom[57], from as early as 1698 a law was passed[58] outlawing various schemes designed to lure the socially vulnerable to part with their money on the basis of

---

[55] Section 2 of the Lottery Act states: 'lottery' means any scheme, method, game or device…'

[56] Section 2 of the Gaming Act states: *"gaming device' includes a gaming machine, any electronic, or other device that can be converted into a slot machine and a system for processing information that can alter the normal criteria of random selection that affects the operation of a game or determines the outcome of a game. Further 'gaming machine' under the Act means a machine used in the conduct of a game.'*

[57] Where it is an accepted principle of law that everything which is not forbidden is allowed.

[58] William III, 1698 An Act for suppressing of Lotteries. [Chapter XXIII. Rot. Parl. 10 Gul. III. p. 4. n.8.]. Prior to this Act, lotteries were allowed as a means to build ships and ports and various other public projects, but overwhelming fraud

hope in the act of providence; that fate would make them the winner of their chance.[59] As Lord Widgery CJ stated in the Readers Digest Case:

> *'the evil which the lottery law has sought to prevent was the evil which existed where poor people with only a few pence to feed their children would go and put these few pence into a lottery and lose it, and this sociologically was a bad thing.'*[60]

[190] Most of the cases that came before the courts involved complaints against the organizers of schemes that they were operating illegal lotteries in breach of the various prohibitions. The variety and manner of schemes in which lotteries have manifested themselves have been proffered as the reason why there has never been any statutory definition in the UK. It was so that the courts would have the latitude to approach the cases in a practical manner to ensure that however the scheme was devised, if it went to the root of the mischief, it was so declared.[61]

[191] It is today accepted, that the common law definition of a lottery in the UK, *"is the distribution of prizes by chance where the persons taking part in the operation, or a substantial number of them, make a payment or consideration in return for obtaining their chance of a prize."*[62] The UK courts have accepted that: *"[T]here are really three points one must look for in deciding whether a lottery has been established: first of all, the distribution of prizes; secondly, the fact this was to be done by means of a chance; and thirdly, that there must be some actual contribution made by the participants in return for*

---

led to the 1698 Act. Even after the Act it seemed that some Royal lotteries continued; see also Halsbury Laws of England Vol. 4, 4th edn. at paras. 7 and 8.

[59] As one US court puts it: chance is "the evil principle against which all [gambling] laws are aimed." See State v. Shorts, 32 N.J.L. 398, 401 (N.J. 1868). The point has been made that this element reflects the states' desire to protect its citizens from "spending money blindly" without any control over what they will receive in return. see 'Carnival Games: Walking the Line Between Illegal Gambling and Amusement" by J. Royce Fichtner Drake Law Review Volume 60 at page 41 footnote 46.

[60] Readers Digest Association v Williams [1976] 1 W.L.R. 1109 at page 1114.

[61] In the UK quite of few of the schemes dressed up as competitions got past the lottery test. This led to the passage of new laws to catch these. As Viscount Dilhorne stated in Imperial Tobacco Limited v The Attorney General at pp. 728 to 729: "There is nothing to show that the social evil constituted by a lottery has in any way changed during the centuries, and indeed, on a perusal of the authorities decided before the 1934 legislation the indications are that it was intended not that there should be any change in the mischief aimed at but that those who had got round the mischief should be brought within the legislation so as to make ingenious schemes which were in reality lotteries but dressed up as competitions, nonetheless unlawful. The mischief is still the same: inducing persons to part with money when they ought not to be so induced on the basis of a chance. This is the fundamental mischief…"

[62] Per Lord Widgery C.J. in Readers Digest Association v Williams [1976] 1 W.L.R. 1109 Divisional Court

their obtaining a chance to take part in the lottery."[63] This last element was seen as crucial as it went to the root of the mischief that the laws were designed to treat with; if the vulnerable did not part with any money, the social ill does not ever arise. Halsbury Laws of England relying on the cases, has provided useful illustration of the lottery:[64]

> *"In its simplest form the adventurers contribute to a fund which they agree among themselves shall be unequally divided upon the happening of an agreed event. The organizer of such a scheme may or may not himself be an adventurer, and, in considering whether a lottery is set up or maintained, it is unnecessary to consider whether the organizer is to make a profit out the subscriptions. As between the adventurers, when the lottery takes this simple form, seems to contain an element of gambling, for all stand to lose the amount of their subscription in favour of the winner. This gambling element does not appear to ever to be wholly absent, but it need not be common to all the adventurers; it is enough that some of them stand to lose. Therefore if some of the adventurers have, however indirectly, contributed to the fund out of which the prizes are to be paid, they risk the amount of their contributions, and in such a case it is immaterial that others who have contributed nothing may win the prize."*

[192] The United States of America has had a more checkered development of the law in terms of all the State level constitutional prohibitions and legislation definitions to treat with the issue. In fact, the traditional view to lotteries was that it was such a social evil exacerbated by nationwide fraud that from the 1890s to 1964 all States had their own constitutional prohibitions to lotteries.[65] This led to a plethora of cases in which the courts were called upon to decide whether various schemes constituted lotteries. The role of the courts in the US, quite like the English courts, has also been to ensure that various schemes disguised as competitions or games of skill did not pass the scrutiny of the law and obeyed each State's constitutional prohibition.[66] It may have been the reason why, the common law in

---

[63] Per Lord Widgery C.J. in Readers Digest Association v Williams [1976] 1 W.L.R. 1109 Divisional Court

[64] Volume 4, 4th Edn. Halsbury Laws of England para. 4. Footnotes omitted.

[65] Ronald J. Rychlack, Lotteries, Revenues and Social Costs: A Historical Examination of State-Sponsored Gambling, 34 B.C. L. REV. 11, 13, 37-38 (1992).

[66] See an Article by Roland Santoni, 'An Introduction to Nebraska Gaming Law", Volume 29, Creighton Law Review, in which he cites the following cases State ex rel. Stephan v. Parrish, 887 P.2d 127 (Kan. 1994); State ex rel. Mountaineer Park, Inc. v. Polan, 438 S.E.2d 308 (W. Va. 1993); Knight v. State ex rel. Moore, 574 So. 2d 662 (Miss. 1990); Secretary of State v. St. Augustine Church 1st Augustine Sch., 766 S.W.2d 499 (Tenn. 1989); Seattle Times Co. v. Tielsch, 495 P.2d 1366 (Wash. 1972); State ex rel. Schillberg v. Barnett, 488 P.2d 255 (Wash. 1971); Kayden Indus., Inc. v. Murphy, 150 N.W.2d 447 (Wis. 1967); Idea Research & Dev. Corp. v. Hultman, 131 N.W.2d 496 (Iowa 1964).

the US followed suit with a slightly more liberal approach to the definition as to what constituted a lottery. As Steele, Circuit Judge stated in Poppen v Walker[67] stated:

> *"The term lottery has no technical meaning; rather courts adopt the generally accepted definition in popular use.[68]The usual generic definition of the term in the organic law is any plan or scheme which has three elements: 1) a prize, 2) the element of chance, and 3) consideration paid for the opportunity of winning the prize."*

[193] Comparing these definitions with the St. Lucia definition, it is immediately noted that whilst all three of the definitions speak to a distribution of a prize, and that it must be by a chance, as it is expressed, the St. Lucia's definition facially differs from the common law definitions of both the UK and the US in that there is no expressed requirement that there be any contribution or consideration from the participant to the scheme. No doubt such an Act has as one of its aims, the protection of the public from unregulated lotteries, and accordingly this aspect of common law definition is a necessary implication of section 2 of the Lotteries Act; from a very practical standpoint, some form of consideration flowing from the participant, is an integral part of a lottery. The fact there is this omission from the statutory definition might also, however, leave it open for a game to be statutorily considered a lottery even where there has been no traditional consideration provided by the participant. It may be that like certain States in the US, the St. Lucia's legislation even allows a lottery to exist where the participant turns up at a location and receives a chance to win a prize – his act of attendance being considered sufficient consideration in law.[69] (I am of the view that the fact that the Criminal Code in St. Lucia (which predated the Gaming Act and Lotteries Act) makes provision for certain criminal offences in relation to betting houses, cannot be read to limit the statutory scope of the two Acts, as it is but an ordinary piece of legislation and unlike Constitutional overriding provisions found in some of the US States. The two Acts in St. Lucia are not made subject to the Criminal Code and must therefore be interpreted by reference to their own provisions.)

---

[67] (1994) 520 N.W. 2d 238

[68] Cases cited here in the report: Quatsoe v Eggleston 42 Or. 315 71 P. 66 (1903); State v Coats 158 Or. 122. 74 P. 2d. 1102 (1938)

[69] Nebraska Constitution. Article III, section 24 provides: GAMES OF CHANCE, LOTTERIES AND GIFT ENTERPRISES; RESTRICTIONS; PARIMUTUEL WAGERING ON HORSE RACES; BINGO GAMES. (1) Except as provided in this section, the Legislature shall not authorize any game of chance or any lottery or gift enterprise when the consideration for a chance to participate involves the payment of money for the purchase of property, services, or a chance or admission ticket or requires an expenditure of substantial effort or time." [emphasis supplied]

[194] I am therefore of the view that whilst St. Lucia has essentially incorporated all the elements of the English Common Law and of the US common law definition of a lottery, it clearly allows for a more liberal interpretation than the English common law. Notwithstanding, for an appreciation of those basic elements of a lottery, I am of the view that the cases coming out of the United Kingdom would provide strong persuasive assistance in interpreting and construing the instant statutory definition. The US common law cases are also of persuasive force to the task at hand.

[195] With this in mind, I now turn to consider in the context of this case, the three elements of the lottery as statutorily prescribed in St. Lucia, namely whether: (1) there is scheme, game, method or device, (2) there is a distribution of prizes of money or money's worth; and (3) the distribution was by lot or chance.

Distribution of Prizes of Money or Money's Worth

[196] The common law cases from both the UK and the US have shown it was once believed that there should be a prize fund to which each player would contribute to get his chance to win the prize. This was how the older cases viewed 'a distribution of the prize or prizes by chance'. The 'prize' in this sense was to be paid out of this common pool to which all the players contributed. This has been one of the arguments of the claimant in this case, that none of the players is contributing to a common fund out of which the prizes might be paid. I do not agree with the claimant's argument on this point. That this was the only method of distributing prizes, was laid firmly to rest in Atkinson v. Murrell[70] where the House of Lords was faced with a single question, namely, 'whether it is an essential feature of an unlawful lottery that there should be such a fund or prizes in the hands of the promoters for them to distribute when the prize winners were ascertained.'

[197] In Atkinson the 'appellant used three premises for the purpose of collecting correspondence relating to a chain-letter scheme called 'World Wide Roulette.' A

[70] [1973] A.C. 289

participant in the scheme purchased from a seller for £1 an envelope containing a list of names and addresses. The participant sent £1 to the person whose name appeared at the top of the list, deleted the top name and inserted his own name at the bottom of the list which he then sent to the managers of the scheme together with £1. The management then supplied the participant with three envelopes for the participant to sell at £1 each. The participant waited for his name to reach the top position at which stage the participant hoped to receive £729 but only if the chain was not broken. The appellant was charged with using premises for the promotion of a lottery, contrary to section 42 (1) (f) of the Betting, Gaming and Lotteries Act 1963. He contended that the scheme was not a lottery within the meaning of section 41 of the Act, for there was no prize fund which was a necessary ingredient of a lottery and the scheme did not constitute a distribution of money by lot or chance because the money sent by new participants to participants whose name was at the head of the list was not a matter of chance but one of deliberate choice. The justices held that the scheme constituted an unlawful lottery and convicted the appellant. On appeal the Divisional Court affirmed the conviction. The appellant was granted leave to appeal on the question whether in order to constitute a lottery which was unlawful under section 41 of the Act of 1963 there must be either (a) a prize fund for profits in the hands of the promoter to which the participants had contributed and out of which profits were provided; or (b) a prize or prizes in the hands of the promoter provided by a third party who was not a participant. It was held, dismissing the appeal:

> *(1) that a scheme which was a lottery if the prizes were in the hands of the promoter for him to give to the winners did not cease to be a lottery if the scheme provided that each participant should send a contribution direct to the winner, a contribution to his prize.*
> *(2) That, although in a lottery a participant had to pay for his chance to participate, it was not an essential ingredient of a lottery that there should be a prize fund provided the scheme devised had the overall object of the distribution of money by chance*.[71]

[71] The court also noted Whitbread & Co. Ltd. v. Bell [1970] 2 Q.B. 547 where Lord Parker C.J., with whose judgment the other members of the court agreed, said, at p. 555:*"Nowhere in the history of lotteries or in this Act is there a statutory definition of a lottery. At least it consists of the distribution of prizes by chance, that is to say, cases where there is no element of skill whatever on the part of the participant ... It is clear, however, and indeed admitted, that that is not a complete definition ... There is, so far as I know, no case of a successful prosecution for running a lottery which has not involved some payment or contribution by the participants, and indeed the trend of authority has all been the other way. <u>There must be some payment or contribution, if not towards the prizes themselves, at any rate towards funds, i.e. profits, out of which prizes are provided."</u> [emphasis supplied]*

[198] In Imperial Tobacco Ltd v Attorney General [1981] A.C. 718, the English House of Lords again reaffirmed the point and held *inter lia* that to establish the existence of an unlawful lottery, it was not necessary to prove that the money paid by participants was used to provide the prizes or towards funds out of which the prizes were provided. What was essential was that there was a distribution of prizes by lot or chance and that the chances should be secured by some payment or contribution by those who took part. Viscount Dilhorne agreed with Griffiths J in the Divisional Court, when he said:[72]

> *"Whereas it is true that most lotteries involve a scheme which creates an identifiable prize fund, I can find no reason to conclude that this is an essential feature of a lottery, provided the scheme achieves the overall object of the distribution of money by chance."*

The learned Law Lord went to make the point that:

> *"There are no doubt many cases in which the money paid by participants contributes to the prizes and in such cases if the distribution of the prizes is by chance, it is easy to conclude that it is a lottery. Proof that the money so contributed goes into a fund out of which the prizes are paid may not be so easy and if such proof is necessary, then it would be easy to avoid the conclusion that there was a lottery by arranging that the prizes came from an independent source.*
>
> *My Lords, despite the final words in the passage I have cited from Lord Parker's judgment [1970] 2 Q.B. 547 , 555, and what was said in Douglas v. Valente, 1968 S.L.T.(Sh.Ct.) 85 , 87, I am satisfied that it is not necessary to prove that the money paid by participants was used to provide the prizes or towards funds out of which the prizes are provided to establish the existence of an unlawful lottery. What is essential is that there is a distribution of prizes by lot or chance and that the chances should be secured by some payment or contribution by those who take part."*

[199] The question really is not whether the participant has paid money or has put a stake forward, it is enough that he has given some valuable consideration. This is the point being made by Lord Fraser of Tullybelton in Imperial when he said:

> *In my opinion, a scheme will be a lottery if the prizes are distributed by chance and if persons are induced to make a money payment, or to give other valuable consideration in order to obtain a chance of winning a prize. It is immaterial that no part of the price can be allocated to the chance. That is the conclusion to which the long line of cases referred to by Viscount Dilhorne leads. In particular Taylor v. Smetten, 11 Q.B.D. 207 seems to me to be indistinguishable in principle from the present case. In that case the promoter had sold packets of tea for 2s. 6d. each. In*

[72] [1972] 2 Q.B. 274 , 282-283

each packet was a coupon entitling the purchaser to a prize, but the purchasers did not know until after buying the packets what prizes they were entitled to, and the prizes varied in value. The promoter was convicted of keeping a lottery, notwithstanding that the tea was good and worth all the money. Hawkins J. said, at p. 212, that a participant

> *"... bought the tea coupled with the chance of getting something of value by way of a prize, but without the least idea what that prize might be. ... To us it seems utterly immaterial whether a specific article was or was not conjoined with the chance, and as the subject-matter of the sale."*

In that case as in the instant appeal, the chance was the subject matter of a contract of sale. But the result would have been the same if the contract had been of some other kind - for example a contract to give the chance in return for the participant entering into a separate collateral contract. I do not think it is necessary to go into the question of contract at all; the material question is whether some consideration has to be given, in order to acquire a chance. The participant must, of course, give the consideration knowing that it will give him a chance to win a prize: if he Pays his money without knowing that, the scheme will not be a lottery: see Minty v. Sylvester (1915) 31 T.L.R. 589, 590 per Lord Reading C.J.

Of the cases brought to our notice, where prizes were distributed by chance, without the exercise of skill or dexterity, the only ones that escaped classification as lotteries were those in which the chance was truly free in the sense of being available to a participant whether he bought anything else or not."[73]

[200] From these cases, the point is well made.[74] There was no absolute requirement in any lottery under the common law or the legislation in the United Kingdom that the players all contribute to a common fund from which the prizes are to be distributed, as the destination of each player's payments is irrelevant.[75] I am of the view that the legislation in St. Lucia equally does not impose any requirement that a lottery must distribute prizes from a common pool of funds from all the players. Nothing in the language of the legislation allows for such a limitation to be read into the provisions. There is no constitutional prohibition against lottery and gambling as exists in some jurisdictions that may lead to any

---

[73] The cases referred to were: Reader's Digest case [1976] 1 W.L.R. 1109 ; Whitbread v. Bell [1970] 2 Q.B. 547 and Douglas v. Valente, 1968 S.L.T.(Sh.Ct.) 85 .

[74] See also Morris v. Blackman (1864) 2 H. & C. 912 which was approved by the House of Lords in Imperial Tobacco. In Morris, the promoter of an entertainment announced that at the end of it, he would distribute among the audience "a shower of gold and silver treasures on a scale utterly without parallel." It was a matter of chance whether the buyer of a ticket got anything and if he did what he got. Here the payment for a ticket entitled the purchaser to see the entertainment and to secure a chance in a lottery.

[75] This point was made by Lord Fraser of Tullybelton in Imperial at p. 747. He referred to Bartlett v. Parker [1912] 2 K.B. 497, where the prize was a bicycle presented by an outside firm as an advertisement, and the participants' payment made no contribution to the cost of the bicycle or to the profits of the firm that had presented it, the scheme was held to be a lottery.

narrow constructions of the legislation.[76] Once the overall scheme was that for the distribution of money or money's worth by chance, the prizes could be simply paid out of the profits collected by the organizers of the lottery, or even from a pre-allocated budget. It could be a car or a boat. Logically, therefore, if the 'prize fund' could be pre-allocated, it would be sufficient that the games were being played as part of a scheme that collected funds from all the players, which funds eventually translated into profits, which was then used to pay out to each winner.

[201] This is not a case in which there was any one on one betting against the house. Whilst each player was playing a game on a single machine, each game being played on machine is part of a scheme, run by CAGE on that machine into which the losing stakes of all the players on that machine are paid into. The scheme on that single machine is also part of a larger scheme comprising of several hundred machines in which the funds collected from the games on all the machines are channeled. It would be artificial to regard the scheme within which the lottery is played as being the single game being played by any one player. The statutory definition in section 2 allows for this distinction when it separately speaks of a 'scheme' as distinct from a 'game'. It is really one player playing on a single machine but playing within a scheme from which prizes were paid out of the profits collected from all the players playing on that machine. As the evidence shows, the prizes were arranged by way of a 'pay-table' that always ensured that the prizes were paid out from a percentage of the funds received from all the players on a single machine. Having set the pay-tables in accordance with fixed percentages each player is thereafter playing within a scheme to which all other players have contributed funds out of which prizes would be paid out to winners. As a direct result of the configuration of the pay table fixed minimum percentage payouts, CAGE is in no sense putting up any property that is to be shared out as prizes. CAGE simply shares out prizes from the revenue collected from all the games. Its own revenue coming from the players who lost their stakes, that is, the profits. It is for this reason that I do not believe that the cases R v McNiven [1944] 1 WWR 127; Marino v King [1931] S.C.R. 482[77] advance the claimant's argument on the meaning of the word' distribute'.

[76] See Western Telcon, Inc. v California State Lottery 917 P. 2d 651 (Cal. 1996)

[77] Marino itself supports the view that the payments of a separate prize in each game in this case would also amount to distribution where the funds/profits held by CAGE were used to pay out other prizes as the need arose. In Marino, the

[202] There has been some attempt by the claimant to distinguish between lotteries and gaming, but the English common law has shown that all lotteries are considered to be gaming.[78] One case has even made the point that a game of roulette would fall to be considered a lottery.[79] It has also been held that '[t]o constitute gaming the game played must be one which involves the element of wagering; each player must have a chance of losing as well

---

defendant was charged with two separate counts of unlawfully distributing morphine and cocaine. The question on appeal was whether the word 'distribute' covered the facts of the case. It was held 'affirming the appellant's conviction, that upon the evidence, the appellants had the drugs in question for distribution and that they did in fact 'distribute' them. The appellants cannot contend that, because two separate sales were proved in evidence, two offences were actually charged, as there could be no distribution unless more than one sale was proved."

[78] The California case of Western Telcon, Inc. v California State Lottery 917 P. 2d 651 (Cal. 1996) which ruled that the video game 'Keno' could not be regarded as a lottery is to distinguished since it came to that conclusion based on expressed constitutional provisions and statutory distinctions between 'lottery' and 'gaming'. The court stated: "As we have seen, California law, historically and currently, distinguishes between the operation of lotteries (chapter 9) and other forms of illegal gaming (chapter 10). (See also People v. Postma (1945) 69 Cal.App.2d Supp. 814, 819 [160 P.2d 221] [" 'Gaming, betting and lotteries are separate and distinct things in law and fact, and have been recognized consistently as calling for different treatment and varying penalties.' "].) This conceptual division is neither novel nor unique to our state. [3] "The three key forms of gambling are gaming, lotteries and betting. Gaming may be defined as 'the playing of any game for stakes hazarded by the players.' A lottery may [13 Cal.4th 485] be defined as 'a distribution of prizes by lot or chance.' Betting may be defined as 'promise[s] to give money or money's worth upon the determination of an uncertain or unascertained event in a particular way and (unlike a lottery) may involve skill or judgment.' [Citation.] In the United States, the definition of a lottery usually, but not always, includes the additional element of 'consideration.' [Citation.]" (Blakey, Gaming, Lotteries, and Wagering: The Pre-Revolutionary Roots of the Law of Gambling (1985) 16 Rutgers L.J. 211, 214-215, fn. 8.)" [emphasis supplied] A further reason why this case cannot offer any support to the claimant is the view the court expressed on what may be regarded as a 'prize'. The court opined: "A lottery must involve distribution of one or more prizes, rather than mere bilateral wagering."A prize must be distinguished from a bet between two persons upon an uncertain future event." (71 Ops.Cal.Atty.Gen. 139, 146 (1988).) When two parties wager against one another on the outcome of a game, they engage only in gaming. (See In re Williams, supra, 127 Cal.App. at p. 427 [" 'It is betting on the game that constitutes gaming, and those game or gamble who thus bet.' "].) The bettors do not thereby conduct a lottery, for neither of them has offered up any property as a prize to be distributed to others."

[79] Smith v Wyles [1959] 1 QB 164. In this case Lord Goddard CJ stated: I think that participating in a lottery is gaming and I agree with the magistrate that it is analogous to a game of roulette. In the one case the player buys a numbered ticket which if drawn gains a prize, in the other he chooses a number on a board and if the ball stops at that number he wins. If the latter is gaming, and no one could argue the contrary, I cannot see why the former is not." In the same case Ashworth J stated: "It is true that in places the relevant statutes appear to draw a distinction between lotteries and gaming: for example, in section 24 (1) (a) of the Act of 1934 reference is made to "purposes not connected with gaming, wagering or lotteries." Moreover, in the Act of 1956, lotteries and gaming parties are treated separately. But in my view these provisions do not justify the inference that lotteries and gaming are, so to speak, mutually exclusive terms. The truth is that some lotteries involve gaming and some do not, just as some gaming involves a lottery and some does not. The facts of each case relating to a lottery require separate consideration in order to determine whether that lottery constitutes gaming or not." Note also Hardwick v Lane [1904] 1 K.B. 204 in which the respondent, the keeper of a beerhouse, arranged for a sweepstakes on a horse-race to be held on his premises. Sixty-one persons entered, each of whom paid 6d. to the respondent; and prizes amounting in the aggregate to 30s. Were paid by the respondent to the persons who respectively drew the first three horses in the race, less the price of a certain quantity of beer which by the conditions of the sweepstakes had to be bought from the respondent by the prize-winners. It was held, that the sweepstakes was a lottery within s. 2 of the Gaming Act, 1802.

as of winning.'[80] I am of the view that the effect of these cases is that at common law, and therefore within the statutory framework of the Lotteries Act, there can hardly be any distinction between lotteries and games that involve wagering, that is where a party has a chance not only to win, but also to lose his stake. To my mind therefore, the fact that the player on each VLT stand to have his stake forfeited if he loses is not determinative as to whether the VLT is being operated as a part of lottery scheme. I do not see any practical or real difference between a stake being forfeited in a wagering contract and a player losing his stake in a lottery scheme. As is noted by Halsbury Laws in the passage quoted above: "*As between the adventurers, when the lottery takes this simple form, it seems to contain an element of gambling, for all stand to lose the amount of their subscription in favour of the winner."*[81]

[203] In any event, even if I am wrong about my conclusion above, I am of the view that the statutory definition of lottery in St. Lucia is sufficiently wide to ensure that once those expressed statutory elements of a lottery are present in the game, it would matter not whether there was an element of wagering in that game. Nowhere in the legislation, is there is any expressed limitation that such games of chance, which might involve wagering are not to be considered 'lotteries'. It is true that the Act itself speaks of 'lotteries', 'pools'

[80] Lockwood v Cooper [1903] 2 K.B. 428 King's Bench Division; I note that the decision in Camelot relied on by the claimant was subject to the following comment by Glick and Usher in their article 'Life is not a Lottery: The Importance of Sound Legal Advice to the UK's Betting Industry" at page 254 when they said: "There are several 'legal' arguments raised by both sides in this case which the magistrate did not address in his judgment (it was simply unnecessary for him to do so). For example, the question arose as to whether a bet and a lottery are mutually exclusive in law. By virtue of the magistrate concluding that *49's*, on its facts, did not constitute a lottery, he did not need to address the legality of an activity, which constituted both a bet and a lottery, or whether all or any of the six findings of fact are equally present in a lottery." [emphasis supplied] Gaming Law Review Volume 2, Number 3 1998

[81] Volume 4, 4th Edn. Halsbury Laws of England para. 4. The cases have made the point that there is no 'gaming' where there is no stake hazarded. See McCollom v Wrightson 1968 WL 22933 where the House of Lords held that 'Gaming only takes place when there is a chance of losing as well as winning. The Westlaw Abstract notes that 'the use of the word "winnings" in the Betting, Gaming and Lotteries Act 1963 s.55(1) has not altered the common law in this respect. W, the holder of a justices' on-licence for certain premises, inserted advertisements in local newspapers that there would be free games of bingo there on Sundays. On three Sundays members of the public did play bingo on those premises. No charge was made for cards; no stakes were hazarded by participants; distribution of cards was not related to the purchase of drink; and prizes were provided by the management. W was charged with having suffered bingo to be played on the premises in such circumstances that an offence under Part II of the 1963 Act was committed, contrary to the Licensing Act 1964 s.177 (1), and also that he took part in gaming in a place to which the public had access, contrary to the Betting, Gaming and Lotteries Act 1963 s.34 (1). The justices having dismissed the information and their decision having been upheld by the Divisional Court, on the prosecutor's appeal to the House of Lords, held that the appeal be dismissed. (Decision of Divisional Court [1967] C.L.Y. 1750 affirmed; R. v Ashton 118 E.R. 444 applied and Lockwood v Cooper [1903] 2 K.B. 428 applied; Willis v Young [1907] 1 K.B. 448 distinguished and Minty v Sylvester (1915) 84 L.J. K.B. 1982 distinguished).

and 'games of chances', but whilst 'lotteries' are defined, the terms 'pools' and 'games of chance' are not defined by the Act. Even the Gaming Act does not define a 'game of chance'[82]. In my view, this is a case that requires the interpretation of the definition of a 'lottery' under section 2 of the Lotteries Act. The task of statutory interpretation must start with the statutory provision in context of the whole Act, which is to be interpreted. If, in its literal and plain sense, it is clear and unambiguous then this meaning must be given to the provision.[83] The fact that the Act separately speaks to 'games of chance' cannot be considered as any context which gives rise to any ambiguity in the language used in the definition section. In providing separately for 'pools' and 'games of chance', the Act is clearly providing for 'pool betting' that fall properly to be considered 'betting', and more importantly providing for those 'games of chance' that may either contain some material element of skill which takes it out of the statutory definition of a 'lottery' or are those games of chance which are not run by the lotteries Authority as 'lotteries'. For practical purposes if a game of chance which possessed all the elements of a lottery and was a game which was not operated by or through the Lotteries Authority, then it would simply fall to be a 'game of chance', and would not have been excluded from the ambit of the Gaming Act, as that Act only excluded 'lotteries' from its operation.[84] It is recalled that the Lotteries Act provides a practical basis for the separate treatment of some 'games of chance' when it provides by section 4(2)(d) that the Authority has the duty to 'promote and oversee public education related to lotteries, pools, betting and games of chance in collaboration with relevant government bodies'. This is a duty imposed on the Authority to even promote and oversee public education those games of chance which do not constitute lotteries but which fall under the Gaming Act. There is thus a real and obvious purpose for the Act to

[82] Popular examples of 'games of chance' include: bingo (which sometimes is considered a lottery), sports betting and dice games, and those games of chance which have a material element of skill implicated in the outcome of the game.
[83] See generally "Statutory Interpretation', Francis Bennion 4th edn. Butterworth at page 393.
[84] As one Assistant Professor of Business Law of Drake University writes: The legal definition of gambling is now interchangeable with the legal definition of lotteries, which requires consideration for the distribution of a prize awarded by chance. (See Fed. Commc'ns Comm'r, 347 U.S. at 290.) While there was once a practical difference between the use of the terms "gambling" and "lotteries," any line of demarcation between the two terms has disappeared.(footnotes omitted) "Although there are statutes specifically defining the word 'lottery,' in the general sense it refers to a gambling game or device wherein one gives up something of value for the chance of obtaining a prize in money or property of value."(See Johnson v. Phinney, 218 F.2d 303, 306 (5th Cir. 1955).)If all three elements—consideration, prize, and chance—are present, the activity constitutes gambling. (See People v. Li Ai Hua, 885 N.Y.S.2d 380, 383) (Crim. Ct. 2009)) 'Carnival Games: Walking the Line Between Illegal Gambling and Amusement" by J. Royce Fichtner Drake Law Review Volume 60

treat games of chance that are lotteries and other games and chance separately. This may be undesirable to the claimant, but it is not the kind of undesirability or absurdity in law which requires a different approach to be taken.[85]

[18] I am also fortified in this view when I consider the obvious intention of the Gaming Act, which was to allow for the Lottery Authority to continue to have the sole right to operate lotteries in St. Lucia once the games they choose to operate as lotteries fall within the statutory definition of the Lotteries Act. I have had regard to the English and American cases that showed clearly those courts' inclination to deem as lotteries every game which possessed these elements, even in circumstances when by those decisions the courts were effectively deeming those activities to be illegal, and thereby causing organizers of such games to fall foul of the law. Here I am being asked to look at a game that possesses all the statutory elements, and to infer a statutory limitation that if wagering (one on one betting against the house) is involved such a game is not a lottery. Those common law courts were being asked to treat with a mischief and were in the process of finding offences against the law, and yet if these elements were present they were prepared to call them lotteries. I can hardly see how I can avoid the plain meaning of the statutory definition given by the section 2 of the Lottery Act even if I were to adopt the very strict and narrow definition required to construe penal statutes.

By Lot or Chance

[204] The concept of the determination of something 'by lot or chance' is perhaps as old as man himself and even appears as a recurring theme in the bible when fate is said to play the final role in the outcome of things.[86] As a general rule from the English cases, as an element in the modern day lottery, a game is clearly considered a lottery when (the other elements being present), the outcome is the result of random event, that is by pure

[85] Note the claimant's argument on this in reliance on the case of R (Edison First Power Ltd.) v Secretary of State for the Home Department [2007] 1 AC 70; Dalton v Pataki 11 A.D. 3d 62 (2004). Note in this latter case, there was a general constitutional prohibition against gambling. Lotteries were allowed by a constitutional exception permitting them.

[86] See John Ashton, The History of English Lotteries, The Leadenhall Press, C. Scribner's Son; see also Proverbs 18.18, "The lot causes contentions to cease, and decides between the mighty."

chance. The concept of winning entirely by 'chance' is often to be contrasted to games where the outcome is determined by some element of dexterity, skill, knowledge or judgment.[87]

[205] In treating with numerous attempts by the organizers of games to escape the lottery laws by the conduct of games, which were essentially lotteries, claiming that these games involved some element of dexterity, skill, knowledge or judgment, the English courts were often at pains to point out that a game would be no less a lottery if the element of skill was merely a blind ruse to disguise the nature of a game which outcome depended entirely by chance.[88]

[206] The English courts have taken the position that the involvement of skill in a game was not fatal to it not being considered a lottery. Here the point was made that the determining factor was whether this skill or merit affected the result in some way. In Moore v Elphick[89] the court stated that 'the exercise of any skill, greater than a mere scintilla, which looking at the scheme as a whole, has contributed to the successful result, will be sufficient to take the case out of the Act.' The merit or skill must be real skill which has some effect. It must be something more than a scintilla of skill, so that it can fairly be said that the distribution of the prize, the allocation of the prize, in the particular case, was due to two causes, not one cause with possibly a scintilla of some other cause added to it, but two separate causes, one being skill and the other being chance.

---

[87] Even in the 19th century the English courts were drawing a clear line. In Stoddard v Sagar (1895) 2 Q.B. 474 a newspaper issued coupons for a competition in which the participants could (for 2 shillings) get a prize for forecasting the result of horse races. The court accepted that: *"In a lottery there is no opportunity for the employment of any skill or judgment: the event depends on pure chance. In selecting winning horses, the event depends in great measure on the exercise of skill, knowledge and judgment and therefore this competition cannot be a lottery"*

[88] As Lush J stated in Scott v Director of Public Prosecutions, *"a scheme may either be on the face of it a lottery – that is a scheme for distributing money according to mere chance – or, if it is not, it may be shown by extraneous evidence that the parties concerned contemplated that it would be conducted in that way…if the appeal to skill and merit was a mere blind or cloak to cover up the true nature of the scheme, if all the sentences, for example, which would be composed under this scheme would have practically an equal chance of obtaining the prizes, one being as 'appropriate' as the other, it would be just as much a distribution by mere chance as if the scheme were so described.*

[89] [1945] 2 All ER 155 – I found the analysis of the cases by Mr. Patterson Q.C. to be helpful.

[207] The English courts have also accepted if a scheme has several parts, one of which may involve some element of skill, the game would nonetheless be considered a lottery if the game to a substantial extent offered other rewards dependent entirely by chance.[90]

[208] The American common law cases on the other hand took a more liberal view of the element of chance as a feature of a lottery game. Those courts felt that it really did not matter if there was some element of skill also involved in the game, once the element of chance was the dominant factor that was the determinative feature. This point is well made in National Football League v Governor of the State of Delaware where the Appeal Court of Delaware had to determine the question as to what constituted a lottery. The court stated:

> *"…In the United States, however, by what appears to be a weight of authority at the present day, it is not necessary that this element of chance be pure chance, but it may be accompanied by an element of calculation or even of certainty; it is sufficient if chance is the dominant or controlling factor. However, the rule that chance must be the dominant factor is to be taken in the qualitative or causative sense."*

[209] The court went on to note:

> *"The Delaware courts have not ruled on whether the "pure chance" or "dominant factor" rule applies in this State. Compare State v. Sedgwick, 2 Boyce's 453, 25 Del. 453, 81 A. 472, 473 (1911). The courts of two adjoining states considered this problem in the context of privately operated football pools and they concluded that the pools did fall within the meaning of lottery despite the presence of an element of skill. State v. Steever, 103 N.J.Super. 149, 246 A.2d 743 (1968). Commonwealth v. Laniewski, 173 Pa.Super. 245, 98 A.2d 215 (1953). In addition, over the last ten years the trend toward acceptance of the dominant factor rule described in Wharton has continued and expanded. See, e. g., Morrow v. State, 511 P.2d 127, 129 (Alaska 1973); Finster v. Keller, 18 Cal.App.3d 836, 96 Cal.Rptr. 241 (1971). Absent clear language in the Constitution supporting a contrary rule, I believe the Delaware Supreme Court would be inclined to adopt the majority, dominant factor rule."*

[90] Senator Hanseatische Verwaltungsgesellschaft mbH, Re [1997] B.C.C. 112 Court of Appeal (Civil Division) citing with approval Boucher v Rowsell [1947] 1 All ER 870

[210] Drawing on these two approaches, I am content to say that I prefer the English approach. The American cases have established the dominant factor test, but those cases were being considered against very stringent constitutional prohibitions against lotteries, and very concerned to strike down anything that resembled a lottery. The English cases require that as a rule the distribution of the prizes must be by pure chance. This recognizes that a game would be considered no less a lottery where it consists of a scheme with several parts one of which though relying on some degree of skill, it will pay out prizes which substantially dependent on chance.[91] The scheme in question must be looked at as a whole. If the skill element is but one aspect of it, but substantial rewards are paid out by chance, then the game will be a lottery, all the other factors being present.

[211] It is against these principles that I have looked at the VLTs and the scheme within which they operate as a whole. There is no doubt that in all the games, a player can only become a winner on the basis of pure chance. The fact that there is a 2% element of skill involved in the video poker games affecting the quantum of winnings does not make this game any less a game of chance; for these specific video games, here the scheme has several parts, the main part of the game or the 'substantial rewards of the game' is dependent entirely by chance, and the fact that a subsequent part of the game which may involve some element of skill which could affect the quantum of winnings does not make these games any less games of chance.[92]

Scheme, Method, Game or Device – The Slot Machine Argument

[212] As all the arguments have so far shown, there can be no doubt that the VLTs are operated as a scheme. There can also be no doubt that the VLTs themselves play 'games' and that the hardware is nothing but a 'device'.

[91] Note even the UK passed legislation in 1963 which defined a 'game of chance' as including 'a game of chance and skill combined and a pretended game of chance or of chance and skill combined, but does not include any athletic game or sport'.

[92] See Senator Hanseatische Verwaltungsgesellschaft mbH, Re [1997] B.C.C. 112 Court of Appeal (Civil Division) citing with approval Boucher v Rowsell [1947] 1 All ER 870

[213] The claimant's argument that the VLTs are nothing but slot machines is really of no moment. It is true that the Gaming Act does expressly state that no one should manufacture, distribute or operate gaming devices without first obtaining a Gaming Operator's Licence under the Act. Breach of these provisions is considered an offence under the Gaming Act. The same Act defines 'gaming devices' as being any 'gaming machine' or 'device' that can be converted into a slot machine. Whilst there is no doubt that the VLTs are capable of being converted into slot machines, the Gaming Act itself excludes any game that is a 'lottery'. It would be absurd to read this exclusion as being only limited to a lottery other than a lottery played on a device which is capable of being converted to a slot machine.

Issue No. 5 – A Merit Based Issue - Whether the Management Agreement Entered into between CAGE and the Lotteries Authority was contrary to or in violation of the provisions the Lotteries Act for allowing CAGE to operate the VLTs as lotteries instead of the Lotteries Authority which is the only entity permitted by law to 'operate lotteries in St. Lucia.

[214] Mr. Foster Q.C. argues that there was 'no evidence in this case to show that the Lotteries Authority was actually operating and in control of this alleged 'lottery' pursuant to the terms of the 'professional Services agreement'.' To the contrary, learned Queen's Counsel asserts, 'the evidence given by its witness confirms that it is the Interested Party that is conducting this 'lottery'.'

[215] Mr. Foster Q.C. submits that 'despite the clear limitations of section 4(2)(a) of the Lotteries Act, the contract with CAGE gives CAGE virtual complete control over the operations of the alleged lottery conducted by the VLTs. Section 4(2)(a) is very clear in its scope. The [Lotteries Authority] is the only body allowed to conduct lottery operations. However in this contract with CAGE, the [Lotteries Authority] has only approval rights over the locations of the VLTs (despite this approval right, many locations were approved in small rum shops and pubs in the poorest communities). CAGE has the sole right to determine all matters relating to the machines and including choosing the lottery games. The [Lotteries Authority] merely collects a percentage fee from CAGE of 20% from which we know from the letter

from the Prime Minister to be in lieu of all taxes, service charges, and environmental levy on all of CAGE's imports. Although the [Lotteries Authority] believe that the VLTs must be connected to a central monitoring system, the Chairman of the [Lotteries Authority] was not aware if it was connected and had no idea where this monitoring system is located. Instead the [Lotteries Authority] relies on paper reports provided to it by CAGE. Accordingly it is CAGE, and not the [Lotteries Authority], that operates this so-called lottery – in direct violation of the Lotteries Act.[93]

[216] Mr. Patterson Q.C. in his closing arguments did not treat with this issue at any great length. The essence of his submissions was that importation, distribution and operation of the VLTs by CAGE on behalf of the Lotteries Authority was not contrary to the provisions of the Lotteries Act.

Analysis and Findings - The Management Agreement

[217] There is nothing in the Act or in Section 5(3) which requires that the Lotteries Authority must approach management contracts in an inflexible manner, or that there must be some feature of management over particular lottery operations which must be retained by the Lotteries Authority. It is sufficient under the Act, that the Lotteries Authority does not, by virtue of a management contract, divest complete responsibility for the operation of lottery in St Lucia, to a third party. Save for this, these management contracts which gives the third party the right to 'conduct lottery operations' in St. Lucia could properly give to the third parties all aspects of management in the conduct of such lottery operations. In other words, the third party could be given full power to conduct and manage all aspects of any lottery provided the Lotteries Authority retains some right of oversight over such operations. This power for instance, allows the Lotteries Authority to select particular areas of lottery business which it wish to attract into St. Lucia such as the modern methods of lotteries, or to encourage a particular group and create strategic partnerships to raise funds for the support of certain specific groups and projects within the community. It is also

[93] I have also considered the arguments of Mr. Anthony W. Astaphan S.C. on this point in his submissions dated the 26th February, 2013.

to be noted that such third party entities are only allowed by such management contracts to conduct lotteries in St. Lucia, and not outside of St. Lucia.

[218] The Management Agreement in this case stipulated in its recital clause that the '[Lotteries Authority] desires that CAGE develops, supplies and operates VLTs, on an exclusive basis, for the [Lotteries Authority] consistent with the terms and conditions of the 'St. Lucia Business Plan (Revised)…as provided by CAGE to the [Lotteries Authority]…' the Management Agreement further provided *inter alia* that CAGE will 'implement and maintain all reasonable quality control and security procedures requested by the [Lotteries Authority] or its authorized representatives'.' The Management Agreement also imposed on CAGE the obligations 'establish a central office' in St. Lucia that would serve as a central system link and have the capacity to management the information from all of the VLTs. CAGE is also required by the Management Agreement to seek the approval of the Lotteries Authority, not to be unreasonably withheld, for the location of 'sites for the computer center, back-up facilities, warehouse facilities and main office for the VLT system' as well. CAGE is also obligated to provide auditable evidence of its net payments, and it is required to pay a service fee of EC$250,627.00 or 20% of Net Income whichever is greater to the Lotteries Authority. The Lotteries Authority also has the right on reasonable notice to conduct site visits on the premises of CAGE and examine the online system and inspect and take copies of the records pertaining to the operation of the VLTs. This Management Agreement is of the kind contemplated by section 5(3) of the Lotteries Act which gives the third party the right to conduct lottery operations, but still allows the Lotteries Authority to retain overall control over lotteries in St. Lucia. I have found that the VLTs system conducts a lawful lottery. On this basis and on the basis of section 5(3) I find as a matter of law and fact that the Lotteries Authority was perfectly entitled to enter into a management agreement of this nature with CAGE. I can hardly understand the claimant's arguments that there is no evidence that this central monitoring system is not in place. If there has been a breach of this agreement that would be a matter between the parties to the contract. It could not be used to support an argument that the Lotteries Authority was not entitled to enter such an agreement. The fact that CAGE may be committing breaches of the Management Agreement (of which there is no evidence in this case) could in no way

be used to support any case that the Lotteries Authority divested its statutory responsibility under the Act.

Conclusions and Orders

[219] On the basis of my reasoning above, I now make the following orders:

[220] First, the claimant should not have joined the fourth respondent to this claim for judicial review without the permission of the court; it was unnecessary in any event to join him to these proceedings. The fourth respondent is accordingly removed.

[221] Second, the claimant claim against the first respondent, was quite apart from the other substantive issues of merit, was premature in that the claimant failed to allow the first respondent to perform its statutory functions under the Gaming Act. In the circumstances and for this reason, the claim is dismissed against the first respondent.

[222] Third, the claim is also dismissed against all the other remaining parties on the basis that there was no unlawful decision made by either the Cabinet of Minister, the Minister of Youth and Sports, or the National Lotteries Authority as regards the management agreement entered into by the Lotteries Authority and CAGE. The video lottery operations conducted by CAGE under the Management Agreement on behalf of the Lotteries Authority constitute a scheme by which money is distributed as prizes by lot or chance and are accordingly being run as a lottery under the Lotteries Act.

[223] Having regard to oral submissions made by the Interested Party and the claimant on the date of the delivery of this judgment, the court now orders the parties to file written submissions on the issue of costs on the 27th October 2014. A decision is reserved on this issue.

[224] Finally, I wish to thank all Counsel for their obvious industry at the trial and in the preparation of their closing arguments that did provide the court with assistance. The court is also grateful to the parties for their patience in this matter.

.....
Darshan Ramdhani
High Court Judge (Ag.)