

DOMINICA

IN THE COURT OF APPEAL

CIVIL APPEAL No. 3 of 1995

BETWEEN:

CHARLES SAVARIN

Appellant

and

JOHN WILLIAMS

Respondent

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice
 The Hon. Mr. C.M.D. Byron - Justice of Appeal
 The Hon. Mr. Satrohan Singh - Justice of Appeal

Appearances: Mr. R. David & Mr. D. Baptiste for the Appellant
 Mr. A. Astaphan & Mr. L. Lawrence for the Respondent

1995: September 19, 20;
 October 30.

JUDGMENT

SIR VINCENT FLOISSAC, C.J.

On 12th June 1995, a general election was held in the Commonwealth of Dominica. At that election, four candidates (the appellant, Mr. Norris Prevost, Dr. Jonathan Prevost and Masterlyn Labad) contested the seat reserved in the House of Assembly for the constituency of Roseau Central. The appellant, Mr. Prevost, Dr. Prevost and Labad received 1013, 759, 356 and 7 votes respectively and the appellant was thus returned as the successful candidate elected to represent that constituency.

On 3rd July 1995, the respondent (a voter at the election) filed an election petition in which he prayed for the avoidance of the appellant's election on the ground that at all material times, the appellant was the General Manager of the National Development Corporation (N.D.C.)

established under the National Development Corporation Act No.17 of 1988 (Chap 84:02). The respondent contended that the General Manager of the N.D.C. holds or acts in an office or appointment in a branch of the Public Service of Dominica and for this reason is disqualified to be elected as a member of the House of Assembly. In support of his contention, the respondent relied on section 5 of the House of Assembly (Disqualification) Act No.6 of 1967 (Chap 2:02) which I will hereafter refer to as the Disqualification Act. Section 5 provides as follows:

"5.(1) No person shall be qualified to be elected as a member of the House of Assembly or to be appointed or elected as a Senator if -

- (a) he holds or is acting in any office or appointment in the Legal or Judicial Services, the Civil Services, the Teaching Service, the Fire Service or in any branch of the Public Service of Dominica;
- (b) he belongs to any of the armed forces of the State, or to any class of person that is comprised in any such force; or
- (c) he belongs to any police force or to any class of person that is comprised in any such force.

(2) For the purposes of this section "office" or "appointment" does not include office as a member of any board, panel, committee or other similar body whether incorporated or not, established by or under any law for the time being in Dominica, or office as a Minister or Acting Minister of Government, Speaker or Deputy Speaker, member of Parliament or Member of the Cabinet."

The petition was heard by Adams J. By judgment delivered on 24th July 1995, the learned judge held that by virtue of section 5 of the Disqualification Act, the appellant "was not qualified to be a candidate at the General Elections and was not duly returned or elected to the Legislature." However, the learned judge refused to declare the runner-up (Mr. Prevost) to have been duly elected to represent the constituency of Roseau Central.

The appellant is dissatisfied with the judgment and has appealed against it. The respondent is also dissatisfied with the judgment and filed a notice of intention to contend that the judgment should be varied by a

declaration that the runner-up (Mr. Prevost) was duly elected to represent the constituency of Roseau Central.

The fundamental issue in this appeal is the meaning of the ambiguous phrase "any office or appointment in any branch of the Public Service of Dominica" appearing in section 5(1)(a) of the Disqualification Act. This ambiguous phrase and the words included therein have not been defined in the Disqualification Act. The meanings of this ambiguous phrase and the words included therein must therefore be determined by reference to established principles of construction of statutes.

In order to resolve the fundamental issue in this appeal, I start with the basic principle that the interpretation of every word or phrase of a statutory provision is derived from the legislative intention in regard to the meaning which that word or phrase should bear. That legislative intention is an inference drawn from the primary meaning of the word or phrase with such modifications to that meaning as may be necessary to make it concordant with the statutory context. In this regard, the statutory context comprises every other word or phrase used in the statute, all implications therefrom and all relevant surrounding circumstances which may properly be regarded as indications of the legislative intention.

In the present case, there are at least seven factors which may be regarded as possible components of the statutory context of the Disqualification Act and as indications of the legislative intention in regard to the meanings of the ambiguous phrase and the words included therein. These seven factors are (1) the legislative object or purpose of the Disqualification Act (2) the Constitutional background against which the Disqualification Act was enacted (3) the ground of disqualification

intended to be prescribed by section 5(1)(a) of the Disqualification Act (4) the language of section 5(1)(a) and in particular the use of the phrase "the Public Service" (5) the particularisation in section 5(1)(a) of services which are ejusdem generis (6) the express exclusion by section 5(2) of offices other than the office of General Manager of a statutory corporation and (7) the enactment of the Public Service Act No. 27 of 1991. I propose to consider these seven factors in that order.

(1) The legislative object

There can be no doubt that the legislative object or purpose of a statute is a most important component of the statutory context by reference to which legislative intention may be inferred or the words and phrases of the statute may be interpreted.

In *Pepper v Hart* (1993) 1 A.E.R. 42 at 50, Lord Bridge said:

"The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears on the background against which the legislation was enacted."

Accordingly, the Constitutional background against which the Disqualification Act was enacted illuminates the legislative object or purpose of that Act and is one of the constituents of the statutory context by reference to which the legislative intention in regard to the meanings of the ambiguous phrase and the words included therein may be inferred. That Constitutional background must therefore be examined.

(2) The Constitutional Background

The Disqualification Act was authorised by the 1967 Constitution

of Dominica which came into operation on 1st March 1967 when the Disqualification Act itself came into operation. The 1967 Constitution has since been revoked and is now replaced by the 1978 Constitution which came into operation on 3rd November 1978.

The 1978 Constitution was created by the Commonwealth of Dominica Constitution Order 1978 (Imperial Order 1978 No.1027). Paragraph 2 of Schedule 2 to the Imperial order ratified the then existing laws of Dominica and required that they be construed "with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution and the Supreme Court Order".

Section 32 of the 1978 Constitution (which substantially reproduced section 25 of the 1967 Constitution) includes the following provisions:

"(1) A person shall not be qualified to be elected or appointed as a Representative or Senator (hereinafter in this section referred to as a member) if he -

(a).....(b).....(c).....(d).....(e).....

(f) subject to such exceptions and limitations as may be prescribed by Parliament, has an interest in any government contract and has not, within seven days of his nomination as a candidate for election or, as the case may be, at least seven days before the date of his prospective appointment, disclosed the nature of the contract and of his interest therein by means of a notice published in the Official Gazette and in a daily or weekly newspaper circulating in Dominica; or

(g).....

(2) (3)..... (4).....

(5) If it is so provided by Parliament and subject to such exceptions and limitations (if any) as Parliament may prescribe, a person shall not be qualified to be elected or appointed as a member if -

(a) he holds or is acting in any office or appointment (whether specified individually or by reference to a class of office or appointment);

(b) he belongs to any of the armed forces of Dominica or to any class of person that is comprised in any such force; or

(c) he belongs to any police force or to any class of person that is comprised in any such force.

- (6) In subsection (1) of this section -
 "government contract" means any contract made with the Government or with an officer of the Government contracting as such;".

The Disqualification Act purports to be Parliament's reply to the invitation extended by section 25 of the 1967 Constitution. The Disqualification Act must therefore be construed against the background and in the context of the 1967 Constitution (which authorised that Act) and the 1978 Constitution (which replaced the 1967 Constitution). It is against that background and in that context that we are required to determine the legislative object or purpose of the Disqualification Act or the grounds of disqualification which Parliament intended to prescribe by that Act.

(3) The grounds of disqualification

Section 25 of the 1967 Constitution (which has been substantially reproduced in section 32 of the 1978 Constitution) authorised Parliament to prescribe two matters namely (1) the exceptions and limitations to the disqualification by reason of an interest in a government contract and (2) the specific offices or appointments the holding of which would constitute a ground of disqualification.

Section 25 of the 1967 Constitution, section 32 of the 1978 Constitution and sections 2 and 5 of the Disqualification Act all segregate government contracts from offices or appointments. The clear implication of the segregation is that the Constitutional concept of a government contract was not intended to include a contract of service by which an office or appointment is created.

Section 2 of the Disqualification Act prescribes the exceptions and limitations to the disqualification by reason of an interest in a government

contract and section 5 of the Disqualification Act prescribes the specific offices or appointments the holding of which results in disqualification. The marginal note or sidenote to section 5 of the Disqualification Act reads "Persons holding Public Offices to be disqualified". The terms of section 5 itself clearly indicate that the section relates to disqualification by reason of the holding of an office or appointment.

Counsel for the respondent sought to introduce into section 5 of the Disqualification Act grounds of disqualification which were not contemplated either by the 1967 Constitution or by the 1978 Constitution or by the Disqualification Act itself. Counsel evidently persuaded the learned judge and sought to persuade this Court that a person is disqualified to be elected as an elected member of the House of Assembly if he is an employee or servant of the Government or of a Department of the Government. Counsel contended that the NDC is an agent or Department of the Government and that since the General Manager of the NDC is a servant or agent of the NDC, he is also a servant or agent of the Government. Counsel argued that the basis of the disqualification was the possibility of a conflict of interests.

I wonder how many citizens would be eligible for election to the House of Assembly if disqualification from election were based on employment by or an agency of the Government or on the possibility of a conflict of interests. Fortunately, neither the 1967 Constitution nor the 1978 Constitution nor the Disqualification Act prescribes any such indeterminate ground of disqualification. The ground specified in section 25(5)(a) of the 1967 Constitution and section 32(5)(a) of the 1978 Constitution is the holding of such offices or appointments as Parliament may prescribe. In prescribing those offices or appointments, Parliament

will no doubt consider the nature of the holder's employment or agency (if any) with the Government and the degree of conflict of interests. But these considerations are not ipso facto constitutional or statutory grounds for disqualification.

In its wisdom, Parliament elected to confine disqualification by reason of the holding of an office or appointment to offices or appointments in "the Public service". Accordingly, the crucial question in this appeal is the meaning of the phrase "the Public Service".

(4) The Public Service

Unlike the phrase "public service" (which is a reference to a function), the phrase "the public service" (with the definite article) is clearly a reference to an institution established legally or conventionally. In section 5(1)(a) of the Disqualification Act, the phrase "the Public Service" is capitalized. Having regard to the Constitutional background against which the Disqualification Act was enacted, the capitalisation is neither accidental nor meaningless. It signifies a legislative intention to use the phrase in the technical sense in which it was used in the 1967 Constitution which authorised the Disqualification Act.

According to section 110(1) of the 1967 Constitution and section 121(1) of the existing 1978 Constitution of Dominica, the phrase "the public service" means "subject to the provisions of this section, the service (of the Crown) in a civil capacity in respect of the government of Dominica." These Constitutional sections also define the phrases "public office" and "public officer". According to those Constitutional definitions, "public office" means "any office of emolument in the public service" and "public officer" means "a person holding or acting in any public office".

By Constitutional definitions, the phrases "public Office" "public officers" and "the public service" are correlative terms. The scope of the Constitutional meanings of those phrases is necessarily circumscribed by the Constitutional context of those phrases. An important ingredient of that context is Chapter VI (sections 76 to 87 inclusive) of the 1967 Constitution which deals specifically with the Public Service and which has been reproduced in Chapter VI (sections 84 to 96 inclusive) of the 1978 Constitution.

I refrain from reciting the elaborate provisions of Chapter VI of the 1967 and 1978 Constitutions. Suffice it to say that Chapter VI provides for the appointment of persons to hold or act in offices in the Public Service and for the removal of such public officers from their public offices. It provides for such appointment and removal by or in accordance with the advice of the appropriate Constitutional Commission (namely the Public Service Commission or the Judicial and Legal Services Commission as the case may be). It confers on such public officers a right of appeal to the Public Service Board of Appeal.

The Constitutional definition of the phrase "the public service" was clearly intended to be read and interpreted in the light and context of Chapter VI. So read and interpreted, the phrase must be confined to the institutional service governed and protected by Chapter VI.

In my judgment, the Constitutional background against which the Disqualification Act was enacted indicates (1) that the legislative intention was that the phrase "the Public Service" appearing in section 5(1)(a) of the Disqualification Act should bear its Constitutional meaning (2) that the Constitutional meaning is circumscribed by Part VI of the 1967 and 1978 Constitutions and (3) that by virtue of the Constitutional meaning so

circumscribed, a person cannot be said to be holding or acting in an office or appointment in a branch of the Public Service of Dominica unless he was appointed to hold the office and is removable therefrom by or in accordance with the advice of the appropriate Constitutional Commission (namely the Public Service Commission or the Judicial and Legal Services Commission as the case may be).

(5) *Ejusdem generis*

According to the *ejusdem generis* rule, where a statutory provision or written instrument particularises two or more species of persons or things and all of the particularised species share essential characteristics from which a common genus can be identified, if the particular words which particularise the species are followed by general words, this is usually an indication of a legislative or contractual intention to confine the general words to persons or things of the same species as those particularised.

In *Quazi v Quazi* (1980) A.C. 744 at 807 & 808, Lord Diplock said:

"As the latin words of the label attached to it suggest, the rule applies to cut down the generality of the expression "other" only where it is preceded by a list of two or more expressions having more specific meanings and sharing some common characteristics from which it is possible to recognise them as being species belonging to a single genus and to identify what the essential characteristics of that genus are. The presumption then is that the draftsman's mind was directed only to that genus and that he did not, by his addition of the word "other" to the list, intend to stray beyond its boundaries, but merely to bring within the ambit of the enacting words those species which complete the genus but have been omitted from the preceding list either inadvertently or in the interests of brevity."

In *Quazi v Quazi*, the general word under consideration was the word "other". But the use of that adjective is not a prerequisite to the application of the *ejusdem generis* rule.

In *Brownsea Haven etc v Poole Corpn* (1958) 1 A.E.R. 205 at 221,

Romer L.J. said:

"The doctrine of ejusdem generis is only a part of a wider principle of construction, namely, that, where reasonably possible, some significance and meaning should be attributed to each and every word and phrase in a written document. That being the object of the doctrine, it is difficult to see what difference it can make whether the word "other" is or is not used, provided - and this is essential - that the examples which have been given are referable to a clearly ascertainable genus. It is, accordingly, vital to ascertain whether the three examples which precede the words "and in any case" in s.21 all possess a common characteristic or quality. In my opinion, and having regard to the context in which they appear, they plainly do."

In my judgment, the ejusdem generis rule applies to section 5(1)(a) of the Disqualification Act. Section 5(1)(a) particularises four species of institutional services (namely the Legal or Judicial Services, the Civil Services, the Teaching Service and the Fire Service). All of the particularised species share an essential characteristic from which a common genus can be identified. The essential characteristic is the fact that persons holding or acting in offices or appointments in those four institutional services are appointed and are dismissible by or in accordance with the advice of a Constitutional Commission (namely the Public Service Commission or the Judicial and Legal Services Commission). The particular words which particularise the species are followed by the general words "any branch of the Public Service of Dominica". The consecutive particularisation and generalisation indicate a legislative intention to confine the general words to institutional services of the same species and with the same essential characteristic as those particularised. That indication is consistent with the statutory context of the Disqualification Act and in particular with the legislative object or purpose of that Act ascertained by reference to the Constitutional background against which that Act was enacted.

(6) Expressio Unius

Counsel for the respondent relied on the maxim "expressio unius est exclusio alterius" (the express mention of one or more of several related persons, things or matters indicates exclusion of the others). Counsel sought to apply the maxim to section 5(2) of the Disqualification Act which expressly excludes certain specified offices from the purview of section 5(1)(a). Counsel contended that the express exclusion of these offices indicates inclusion of the office of General Manager of N.D.C. among the offices caught by section 5(1)(a).

In **Halsbury's Laws of England** (Fourth Edition) Vol. 44 paragraph 876, it is stated:

"The maxims which provide that the express mention of only one of several related persons, things or matters indicates the exclusion of the others, and that where there is express provision for certain things then anything not mentioned is excluded apply to the interpretation of other documents, but must be applied to statutes with caution since the omission to mention things which appear to be excluded may arise from inadvertence or accident or because it never struck the draftsman that they needed specific mention."

Significantly, the officers mentioned in section 5(2) are not appointed and are not dismissible by or in accordance with the advice of the Public Service Commission or the Judicial and Legal Services Commission. Their offices or appointments are therefore not offices or appointments in the Public Service within the strict Constitutional and statutory meaning of the phrase "the Public Service". Consequently, there was no need expressly to exclude these offices from the purview of section 5(1)(a). The exclusion was purely *ex abundanti cautela*.

Such exclusion is not unusual. In **Halsbury's Laws of England** (Fourth Edition) Vol. 44 paragraph 882, it is stated:

"In some statutes, and particularly in private statutes and taxing statutes, provisos and exceptions are to be found which are not strictly necessary since they except from the enactments to

which they are attached matters which would not in any event be covered by those enactments. In such cases the provisos and exceptions are inserted to make assurance doubly sure so as to allay the fears of those who might think their interests would be affected, and no implication can be derived from the proviso or exception as to the scope of the enactment."

Further, in the year 1967 when the Disqualification Act was enacted, the N.D.C. and the office of General Manager of N.D.C. were not in existence. The N.D.C. was established in 1988. In those circumstances, any implication which is derived from the maxim "expressio unius est exclusio alterius" and which would result in the inclusion of the office of General Manager of N.D.C. among the offices contemplated by section 5(1)(a) is necessarily fragile.

In *A.G. for Northern Ireland's Reference* (1977) A.C. 105, the House of Lords considered the effect on section 49 of the Criminal Appeal (Northern Ireland) Act 1968 of a new section 48A which was inserted in that Act in 1972 and to which the maxim "expressio unius" and the implication therefrom were sought to be applied so as to affect section 49. There, Lord Diplock said (at p 132):

"This involves no conflict with the express provisions of section 49. All it does involve is the rejection of an implication derived from the maxim *expressio unius exclusio alterius* that the making of rules regulating the exercise of a jurisdiction not expressly mentioned in section 49 is prohibited. Such an implication is weakened by the fact that section 49 was drafted and enacted at a time when section 48A did not exist."

Accordingly, in the particular circumstances of the Disqualification Act, no implication bearing on the meaning and scope of the phrase "the Public Service" can be extracted from the fact that the office of the General Manager of the N.D.C. or of any other statutory corporation is not specifically mentioned in section 5(2). Any implication derivable from the maxim "expressio unius" is necessarily tenuous and is in any event overridden by the first five of the factors which have been considered in

this judgment and which constitute cogent ingredients of the statutory context of the Disqualification Act. These five factors clearly signify a legislative intention to ascribe a constitutional meaning to the ambiguous phrase "any office or appointment.... in any branch of the Public Service of Dominica". By virtue of that Constitutional meaning, a person holds or acts in an office or appointment in a branch of the Public Service of Dominica if and only if he was appointed to or is dismissible from that office by or in accordance with the advice of the Public Service Commission or the Judicial and Legal Services Commission. The General Manager of the N.D.C. is not such a person. He is appointed to and is dismissible from his office by the N.D.C.

(7) The Public Service Act 1991

I acknowledge the principle that the meanings of the words and phrases of the earlier of two statutes in *pari materia* (i.e. relating to the same person or thing) cannot as a general rule be ascertained by reference to the later statute unless the later statute amends or purports to declare the meaning of the earlier statute. That principle is now well established.

In **Kirkness v John Hudson & Co. Ltd** (1955) A.C. 696, after reviewing the decision of the House of Lords in **Ormond Investment Co. v Betts** (1928) A.C. 143, Lord Reid said (at p.735):

"My Lords, this decision of this House appears to me to afford conclusive and binding authority for the proposition that, in construing a provision of an earlier Act, the provisions of a later Act cannot be taken into account except in a limited class of case, and that that rule applies although the later Act contains a provision that it is to be read as one with the earlier Act. Of course, that does not apply where the later Act amends the earlier Act or purports to declare its meaning: in such cases the later Act operates directly by its own force. But where the provisions of the later Act could only operate indirectly as an aid to the construction of words in the

earlier Act those provisions can only be used for that purpose if certain conditions apply to the earlier Act when it is considered by itself."

The question therefore arises as to whether the Public Service Act of Dominica (No. 27 of 1991) is caught by the general rule or by the exception thereto. The answer to that question is to be found in the Public Service Act itself.

The long title to the Public Service Act is capitalised and reads: "An Act to provide for the establishment of the Public Service of Dominica and the establishment of procedures for negotiation and consultation between the Government and members of the Public Service for the settlement of disputes and connected matters". Section 4(1) of the Act provides that: "There is hereby established a Public Service for Dominica consisting of persons who are public officers". The interpretation section (section 2) of the Act provides that (1) "Public Service" means "the Service in a civil capacity of the Government of Dominica established under section 4" (2) "public officer" means "a person holding or acting in a civil capacity of the Government of Dominica established under section 4" and (3) "office" means "any office of emolument in the Public Service specified in the First Schedule".

The First Schedule to the Public Service Act specifies no less than 411 offices which constitute the Public Service of Dominica. All of the persons who hold the offices specified in the First Schedule are appointed to and are dismissible from their offices by or in accordance with the advice of the Public Service Commission or the Judicial and Legal Services Commission. Neither the office of General Manager of the N.D.C. nor any office of any statutory corporation is mentioned or alluded to in the First Schedule or in any other part of the Public Service Act.

The signals are that the Public Service Act purports to declare the meaning of the phrase "the Public Service" appearing in earlier Acts (including the Disqualification Act). The meaning so declared is not inconsistent with the Constitutional meaning of the phrase. The Public Service Act simply elucidates the constitutional meaning. In those circumstances, the Public Service Act is an exception to the general rule against the use of later statutes to interpret earlier statutes. We should therefore interpret the Disqualification Act in the light of the Public Service Act. When the Disqualification Act is so interpreted, there can be no doubt that for the purposes of that Act, the General Manager of the N.D.C. is not a person who holds or acts in an office or appointment in the Public Service. All the other vital elements of the statutory context of the Disqualification Act invite the same conclusion.

Conclusion

In my judgment, the appellant did not hold or act in an office or appointment in a branch of the Public Service of Dominica by reason of the fact that he held the office of General Manager of the National Development Corporation. Consequently, he was not disqualified under section 5 of the House of Assembly (Disqualification) Act to be a candidate and to be elected as a member of the House of Assembly at the General Election held in Dominica on 12th June 1995. The learned judge erred in holding otherwise.

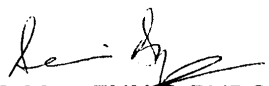
Accordingly, I would allow this appeal and set aside the learned judge's decision delivered on 24th July 1995. I would affirm that the appellant was duly returned and elected to the House of Assembly at the said general election. I would order the respondent to pay the appellant's

costs here and in the Court below - such costs to be taxed if not agreed.

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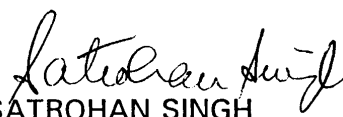
SIR VINCENT FLOISSAC
Chief Justice

I concur.

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C.M. DENNIS BYRON
Justice of Appeal

I concur.

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SATROHAN SINGH
Justice of Appeal