

**IN THE HIGH COURT OF BELIZE, A.D. 2023**

**CLAIM No. 262 of 2022**

**BETWEEN**

**BRADS GAMING GROUP LTD. CLAIMANT/RESPONDENT**

**AND**

**THE HON. JOHN BRICENO 1<sup>ST</sup> DEFENDANT/APPLICANT  
(Minister Responsible for Lotteries)**

**THE ATTORNEY GENERAL 2<sup>ND</sup> DEFENDANT/APPLICANT**

**BEFORE THE HONOURABLE MADAM JUSTICE PATRICIA FARNESE**

**Hearing Date:** June 9, 2023

**Appearances:**

Rt. Hon. Dean O Barrow, SC and Mr. Adler GL Waight, Counsel for the Claimant/Respondent.

Mr. Douglas Mendes, SC and Ms. Iliana N Swift, Counsel for Defendants/Applicants.

**DECISION ON APPLICATION TO APPOINT EXPERT**

[1] The Hon. John Briceno and the Attorney General (the Government) ask that I appoint a Chartered Accountant to prepare an expert report to review Brads Gaming Group Ltd.'s (Brads) 2020-2021 audited financial statements. The expert would provide his opinion on the impact of imposing a 12.5% tax on Brads' gross monthly sales. The expert would provide a report that addresses whether the tax would have (1.) resulted in operational losses to the Claimant, (2.) caused the

Claimant to suffer an initial loss which it could eventually recover or (3.) destroyed the Claimant's business.

[2] Brads opposes the application on the grounds that an expert is not necessary to resolve the matter fairly and justly and will be a needless expense of resources. The amended Claim asserts that the 12% tax was irrational because it was harmful to Brads' business. Brad argues that the harm is readily apparent upon review of the audited financial statements and is conceded by the Government's evidence.

[3] The Government makes its application under *Supreme Court (Civil Procedure) Rules 2005* (CPR) Rule 32.11(1):

32.11 (1) Where a party has access to information which is not reasonably available to the other party, the court may order that party –

- (a) to arrange for an expert to prepare a report on any matter;
- (b) if appropriate, to arrange for an examination to be carried out in relation to that matter; and
- (c) to file the report and serve a copy on any other party.

[4] Rule 32.11(1) gives the court discretion to appoint an expert. In exercising this discretion, I am cognizant of how the CPR defines the purpose of the expert:

32.1 (1) This Part deals with the provision of expert evidence to assist the court.

32.2 expert evidence must be restricted to that which is reasonably required to resolve the proceedings justly.

An expert's overriding duty is to assist the court where, as Rule 32.11(1) outlines, "access to information is not reasonably available to the other party." I interpret *readily available* to not only mean physically available, but also accessible in the broad sense. The court may require the assistance of an expert where information is of a highly technical or scientific nature.

[5] In light of the fact that the scope of the application has changed since it was first filed, I find the assistance of an expert is not required. Brads clarified that reference in its pleadings to the Government's action destroying their business was made in support of their request for interim relief. As Brads is no longer operating, Counsel for Brads explained at the oral hearing for this application that they will be solely relying on the ground of irrationality in the judicial review.

[6] The Government also conceded at the oral hearing of this application that their initial request for specific disclosure was too wide. The Government will rely on Brads' 2020-2021 audited financial statements. Those statements were the only material about Brads' financial situation before the decision-maker when the decision that is subject to review was made.

[7] Audited financial statements are not documents I need help to understand their content or significance. I have substantial personal experience with reviewing audited financial statements. Moreover, audited financial statements are drafted for non-expert audiences such as regulators, corporate directors, lenders, and investors to understand the financial position of the company and to ensure the integrity of management.

[8] Furthermore, I endorse the comments of in *R (Law Society) v Lord Chancellor* about the use of experts in judicial review:<sup>1</sup>

It follows from the very nature of a claim for judicial review that expert evidence is seldom reasonably required in order to resolve it. That is because it is not the function of the court in deciding the claim to assess the merits of the decision of which judicial review is sought. The basic constitutional theory on which the jurisdiction rests confines the court to determining whether the decision was a lawful exercise of the relevant public function. To answer the question, it is seldom necessary or appropriate to consider any evidence which

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<sup>1</sup> [2019] 1 WLR 1649 at para 36.

goes beyond the material which was before the decision-maker with evidence of the process by which the decision maker was taken -let alone any expert evidence.

Irrationality is ultimately a legal question. This judicial review requires that I, broadly speaking, assess the reasonableness of the Government's decision, including their conduct when they decided to impose the 12% tax. I am not assessing the merits of the decision.

**Disposition:**

[9] The application is dismissed. The Government shall pay costs of this application to Brads as agreed or assessed.

**Dated 17 August 2023**

**Patricia Farnese  
Justice of the High Court**