

**THE EASTERN CARIBBEAN SUPREME COURT  
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE  
(Civil)**

**SLUHCV2016/0391**

**BETWEEN:**

**BRIAN SAMUEL**

Claimant

and

**(1) THE PUBLIC SERVICE COMMISSION  
(2) THE PERMANENT SECRETARY  
Ministry of Home Affairs**

Defendants

**Before:**

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

**Appearances:**

Mr. Horace Fraser for the Claimant

Mrs. Grace Ward-Glasgow for the 1<sup>st</sup> Defendant

Mr. Seryozha Cenac for the 2<sup>nd</sup> Defendant

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2018: March 22;  
June 21.

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**JUDGMENT**

[1] **CENAC-PHULGENCE J:** Following the grant of leave, the claimant, Mr. Brian Samuel ("Mr. Samuel") filed a claim for judicial review against the decision of the Public Service ("PSC") not to appoint him to the post of Superintendent of Police. Subject to the striking out of paragraphs (5), (6), (7) and (9) of the reliefs claimed

in the fixed date claim at a previous case management hearing,<sup>1</sup> Mr. Samuel claimed the following relief:

- (a) A declaration that the decision of the PSC to refuse to appoint Mr. Samuel to the post of Superintendent of Police within the Royal Saint Lucia Police Force (“RSLPF”) was unreasonable and irrational.
- (b) A declaration that the role played by the Permanent Secretary of the Ministry of Home Affairs and National Security (“PS-Home Affairs”) on the interview panel vitiates the decision of the PSC on the grounds of breach of fairness and bias.
- (c) A declaration that the decision of the PSC not to appoint the Mr. Samuel to the post of Superintendent of Police is vitiated on the grounds of appearance of bias and being offensive to the rules of natural justice.
- (d) Damages for loss of chance.
- (e) Costs.

### **Preliminary Issue**

- [2] The purpose of a claim for judicial review is to challenge a decision made by a public body and so there must be an identifiable decision of the particular body which is being challenged. In this case, none of the relief claimed relate to any decision taken by the PS-Home Affairs and therefore there is no basis for a claim against the PS-Home Affairs. Counsel for the claimant conceded that this was correct. The claim against the second defendant, the PS-Home Affairs must therefore be dismissed.

### **Background Facts**

- [3] Mr. Samuel joined the RSLPF of 2<sup>nd</sup> August 1983 and worked in several departments including special branch, beat and patrol, criminal investigations department among others. Prior to 31<sup>st</sup> October 2016, Mr. Samuel held the position of Assistant Superintendent of Police in the RSLPF. Mr. Samuel alleged

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<sup>1</sup> The claims at paragraphs (5), (6), (7) and (9) were struck out at a previous case management hearing as no leave had been granted to claim these reliefs which were totally new heads.

that from 6<sup>th</sup> May 2014, there were four separate recommendations made by the Commissioner of Police for his acting appointment as Superintendent of Police but he was never appointed.

- [3] Mr. Samuel alleged that the PS-Home Affairs was responsible for this and had deliberately omitted his name from each memorandum sent by the respective Commissioners of Police and that the PS-Home Affairs interfered with the recommendations. The actions of the PS-Home Affairs suggested that the Executive had a personal vendetta against him and every effort was made to block the recommendations in relation to him.
- [4] As if that were not bad enough, according to Mr. Samuel, the situation was compounded by the PS-Home Affairs sitting on the interview panel for the post of Superintendent of Police and influencing the decision regarding the recommendations to the PSC concerning his suitability to be appointed to the office of Superintendent of Police.
- [5] Mr. Samuel was interviewed for the position of Superintendent of Police on 23<sup>rd</sup> February 2016. Mr. Agosta Degazon (“Mr. Degazon”), the PS-Home Affairs sat on the interview panel. Mr. Samuel considered that he was well qualified for the position, that his qualifications, skill-set and years of experience were far superior to the other candidates but yet still he was not appointed. In Mr. Samuel’s words, he had an excellent interview but was not considered.
- [6] Mr. Samuel alleged that the PSC failed to give reasons for not favourably considering him for the post of Superintendent of Police. Mr. Samuel alleged that the PS-Home Affairs’ mere presence on the interview panel vitiates the decision of the PSC not to appoint him to the position of Superintendent of Police.

### **Issues for the Court's Consideration**

- [7] The Court must consider the following issues:
- (a) Whether the decision of the PSC not to appoint Mr. Samuel to the post of Superintendent of Police was (i) unreasonable and irrational and (ii) vitiated by the appearance of bias and therefore constituted a breach of the rules of natural justice.
  - (b) Whether the PSC had a duty to give reasons for not appointing Mr. Samuel to the post of Superintendent of Police.
  - (c) Whether Mr. Samuel is entitled to damages.

### **The Law**

- [8] In dealing with a claim for judicial review, the Court is concerned with the decision-making process and not the correctness or otherwise of the decision taken. It requires an examination of the process adopted by the public body to ensure that the basic principles of natural justice have not been violated and that the decision is not unlawful, irrational or lacks procedural propriety.
- [9] In **Council of Civil Service Unions v Minister for the Civil Service**,<sup>2</sup> the Court identified three grounds upon which a decision of a public authority may be found to be invalid. These are: illegality, irrationality and procedural impropriety.

#### ***A. Illegality***

- [10] Illegality arises where a decision-maker who must understand correctly the law that regulates his or her decision-making power and must give effect to it fails to do so. Illegality also includes ultra vires acts and errors of law. An action or decision is said to be tainted with illegality if:
- (a) It was purportedly taken under legislation which does not contain the requisite power; or
  - (b) It was purportedly taken under legislation which contains precise limits on the circumstances in which a power or duty can be used, and the action or

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<sup>2</sup> [1985] AC 374.

decision in question either exceeds these limits or fails to perform the power or duty in a proper way.<sup>3</sup>

- [11] In **Blackstone's Civil Practice 2004**, the learned authors state that an alternative way of analyzing illegality is as an error of law. This is where a public body makes a decision based upon an incorrect interpretation of the law.

***B. Procedural Impropriety***

- [12] Procedural impropriety is said to be concerned with the procedure by which a decision is reached, not the ultimate outcome. In order to prove procedural impropriety, the applicant must show that the decision was reached in an unfair manner. If there is no statutory framework which expressly stipulates the relevant procedural requirements, there are two applicable common law rules under this head, namely:

- (a) The rule against bias; and
- (b) The right to a fair hearing whereby those affected by a decision of a public body are entitled to know what the case is against them and to have a proper opportunity to put their case forward.

**Whether the decision of the PSC not to appoint Mr. Samuel as Superintendent of Police was unreasonable and irrational**

- [13] A decision may be tainted by irrationality where the decision-making body allegedly:
- (a) acted for an improper purpose;
  - (b) acted with bad faith;
  - (c) fettered its discretion;
  - (d) improperly delegated its functions;
  - (e) reached a conclusion which no body properly directing itself on the relevant law and acting reasonably could have reached;

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<sup>3</sup> Blackstone's Civil Practice 2004, Charles Plant (ed), (OUP, Oxford 2004), at para. 74.7.

- (f) failed to take into account relevant matters or took into account irrelevant matters;
- (g) abused its powers; or possibly;
- (h) acted in a disproportionate manner.

[14] In looking at the area of a failure to take into account relevant factors or taking into account irrelevant factors, it is the case that the legislation may expressly or impliedly make clear considerations to which regard must be had or must not be had. The Court may infer this by looking at the surrounding circumstances of the case. It does not have to be proven that the influence of irrelevant factors was the chief or main influence upon the decision made or action taken. It is enough to prove that the influence was material or substantial.<sup>4</sup>

[15] Mr. Horace Fraser (“Mr. Fraser”) in his written submissions argued that the decision of the PSC was irrational and unreasonable because it took into consideration irrelevant factors. His main argument centred on the requirement for polygraph testing. He argued that the requirement was not lawful, there was no common law power to use polygraph testing as a condition for promotion and it required legislative blessing and that it offended section 8 of the **Constitution of Saint Lucia** (“the Constitution”).<sup>5</sup> Further, that reliance on polygraph testing was unreasonable and irrational because it had no evidential value. Mr. Fraser submitted that by relying on the Cabinet Conclusion regarding the requirement for polygraph testing the PSC fettered its discretion to appoint public servants. The gravamen of Mr. Fraser’s arguments is that the PSC took into account the polygraph testing which was an irrelevant factor.

[16] In response to this ground, counsel for the PSC, Mrs. Grace Ward-Glasgow in her submissions submitted that the decision of the PSC was not irrational and unreasonable.

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<sup>4</sup> R v Inner London Education Authority, ex parte Westminster City Council [1986] 1 WLR 28.

<sup>5</sup> Cap. 1.01, Revised Laws of Saint Lucia, 2013.

- [17] The evidence showed that Cabinet by Cabinet Conclusion No. 724 of 2013 dated 20<sup>th</sup> December 2013 agreed that all gazetted officers of the Royal Saint Lucia Police Force shall undergo mandatory vetting by polygraph or otherwise to be eligible for appointments, acting appointments and promotions. Cabinet agreed that this requirement be established as a condition of employment for the Royal Saint Lucia Police Force.
- [18] The vacancy notice for the post of Superintendent of Police did not state polygraph testing as a qualification or a requirement in order for a person to be eligible to apply for the post. Mr. Samuel having applied and satisfied the requirements in the posting was short-listed.
- [19] The evidence of Ms. Elma Mathurin, secretary of the PSC was that Mr. Samuel was selected along with other candidates who all met the benchmark qualifications to be interviewed for the position of Superintendent of Police. Ms. Mathurin's evidence was that the qualifications, experience and skill set of Mr. Samuel did not place him above the other candidates as they had all met the benchmark (minimum) qualifications and stood before the Commission on an even playing field. Ms. Mathurin's evidence was that Mr. Samuel performed well at the interview but was considered not to be the best fit for the post after the selection process had concluded. She said that other candidates also performed well at the interview.
- [20] Ms. Mathurin's evidence was that the PSC also considered the requirement that the officer to be appointed must have undergone the mandatory vetting by polygraph or otherwise. Mrs. Ward-Glasgow submitted that the Executive had set this as a requirement in order for officers to be appointed to positions classed as gazetted officers by Cabinet Conclusion No. 724 of 2013 and therefore the PSC had no authority to deviate from a condition of employment established by the Executive. The PSC, she argued was bound to adhere to that condition in the exercise of its constitutional function. It was not the function of the PSC to decide

on the lawfulness or otherwise of the requirement as that would be acting outside of its constitutional mandate.

[21] The PSC's powers are stated in the Constitution at section 94(2). Section 94(2) states:

“The power to appoint persons to hold or act in offices in the Police Force below the rank of Commissioner of Police but above the rank of Inspector (including the power to confirm appointments), and, subject to the provisions of section 96, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Public Service Commission.”

[22] Mrs. Ward-Glasgow argued that those powers do not include setting terms and conditions of appointment for the police. Counsel referred to the case of **Thomas v Attorney General**<sup>6</sup> in support of her submission.

[23] The evidence of Ms. Mathurin was that Mr. Samuel knew about the requirement for the polygraph testing and at the interview had expressed the view that polygraph testing had no part to play in the appointment and promotion of officers. This evidence was corroborated by Mr. Wilbert King, Chairman of the PSC in his affidavit.<sup>7</sup> Mr. Samuel denied this in cross-examination but based on the evidence of Mr. Samuel in his affidavit in support of the claim, I believe that it is more probable than not that he did express such a view. In his affidavit in support at paragraph 28, Mr. Samuel stated that “the issue of polygraph testing does not form part of the requirement for holding the Office of Superintendent of Police in accordance with what is prescribed by parliament.” Clearly, Mr. Samuel did not think that this requirement was one which was sustainable.

[24] The evidence of Ms. Mathurin suggested that the PSC in the absence of any evidence as to whether Mr. Samuel had completed the polygraph test decided to contact the Commissioner of Police as Head of the Police Force for information

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<sup>6</sup> (1981) 32 WIR 375.

<sup>7</sup> See paragraph 8 of the affidavit filed on 27<sup>th</sup> October 2017.



about Mr. Samuel and the other officers who were interviewed. Ms. Mathurin's evidence was that the PSC relied on information provided by the Commissioner of Police that there was no proof of Mr. Samuel being polygraphed and there was no security clearance certificate on file for him.

[25] It is to be noted that Mr. Samuel in his affidavit agreed that the Commissioner of Police was the official store house for records. He stated in his evidence that he had been polygraphed and that the PSC had not asked him. Mr. Samuel produced an email which he said confirmed that he had done the polygraph testing but the maker of that document did not give any evidence before this Court and Mr. Samuel did not even now produce the official certificate of security clearance or any official document from the polygrapher to substantiate his evidence.

[26] The evidence of the Chairman of the PSC, Mr. Wilbert King was that although Mr. Samuel performed well, he was not the best performer at the interview. Mr. King said that at the interview, the candidates were evaluated on certain skill sets such as qualifications, job knowledge, experience, personal characteristics and skills and abilities. Additionally, he said that the candidates were assessed on their leadership potential, innovation and ability to effect change, their interpersonal relationships and job fit. Mr. King said that in assessing job fit, attributes such as ability to command respect, profile in the organization and the perception of honesty and fairness are factors which are taken into account. His evidence was that George Nicholas' performance in the interview was superior to that of Mr. Samuel.

[27] Mr. King went further that seniority is not a criterion used by the PSC in interviews for advertised positions within the Public Service or the Police Force and confirmed that the PSC was not aware that seniority is a criterion for promotion of officers within the Gazetted ranks of the Police Force, since this is not used by the PSC in the selection process in relation to Gazetted officers.

[28] The evidence from Mr. King was that prior to 2016, notwithstanding the existence of the mandatory polygraph testing requirement, police officers were appointed to act and promoted to posts within the Gazetted ranks without satisfying this requirement. This he said was because the PSC did not fully understand how the requirement would operate and required clarification. Mr. King said the PSC realized that this requirement was a term and condition of employment which had been set by the Executive who was the employer of police officers and the PSC had no authority to depart from it.

[29] I fully accept the submissions of Mrs. Ward-Glasgow. The requirement for mandatory vetting by polygraph was a requirement set by the Executive who is responsible for setting the terms and conditions of employment for police and public officers. It was therefore not within the scope and function of the PSC to choose not to apply the requirement or to pronounce on its legality. Support for this comes from the case of **Thomas v the Attorney General**,<sup>8</sup> where the Privy Council said this:

“The functions of the Police Service Commission fall into two classes: (1) to appoint officers to the Police Service, including their transfer and promotion and confirmation in appointments; and (2) to remove and exercise disciplinary control over them. **It has no power to lay down terms of service for police officers; this is for the legislature and, in respect of any matters not dealt with by legislation (whether primary or subordinate) it is for the executive to deal with in its contract of employment with the individual police officer.** Terms of service include such matters as (a) the duration of the contract of employment, e.g. for a fixed period, for a period ending on attaining retiring age, or for a probationary period as is envisaged by the reference to “confirmation of appointments” in section 99(1); (b) remuneration and pensions; and (c) what their Lordships have called the “code of conduct” that the police officer is under a duty to observe.” (my emphasis)

[30] Mr. Fraser sought to place reliance on the case of **Ramoutar v Commissioner of Prisons et al**<sup>9</sup> in support of his argument that the PSC could not have taken into

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<sup>8</sup> Privy Council Appeal No. 47 of 1980, p. 8.

<sup>9</sup> [2012] UKPC 29.

consideration the matter of polygraph testing. But this case must be examined carefully as I do not think it is applicable in the circumstances of this case.

- [31] In **Ramoutar**, the Commissioner of Prisons sought to rely on the Job Specification and Description for the office of Chief Prisons and Welfare Officer to determine that Mr. Ramoutar was not eligible to be considered for an acting appointment as Chief Prison Welfare Officer and did not consider his seniority. However, in Trinidad and Tobago, the Public Service Commission published regulations in which it specifically dealt with appointments of prison officers and the regulations listed the factors to be considered when determining eligibility of prison officers for promotion. The regulations dealt with acting appointments and in particular where such appointments were not a prelude to a permanent appointment and stated that in such circumstances, the officer to be appointed shall be the senior officer in the Ministry or department eligible for such acting appointment. It was therefore not open to the Public Service Commission to have regard to any job specification in the face of clear regulations.
- [32] It is to be noted that Mr. Samuel did not in his claim seek to challenge the constitutionality or lawfulness of the requirement for polygraph testing but has in his submissions, both oral and written advanced this as one of the main arguments in the challenge against the PSC's decision. A claimant must set out his case with clarity so that other party knows what the case is against them.
- [33] Rule 56.7(4)(c) of the **Civil Procedure Rules** states very clearly that the affidavit in support of the claim must state the relevant section of the Constitution which the claimant alleges has been, is being or is likely to be breached. There was no challenge to the constitutionality or lawfulness of the polygraph testing on Mr. Samuel's affidavit or for relief to that effect in his claim and therefore the Court will not make any pronouncements in that regard. Until such time that a court declares the requirement for polygraph testing to be unlawful or unconstitutional, it is to be presumed lawful, (*omnia praesumuntur rite esse acta*).

- [34] It is clear from the evidence of Ms. Mathurin and Mr. King that the requirement for polygraph testing was not the only factor which was considered by the PSC. In fact, from the evidence it would appear that consideration of the requirement in this case came after the interviews had been conducted and not before. I can conclude that the polygraph testing was not a condition necessary to be short-listed for interview but is a condition necessary for appointment.
- [35] Mr. Fraser argued in oral submissions that the PSC could not rest on what the Commissioner of Police said in relation to whether or not Mr. Samuel had been polygraphed and that the PSC should have investigated the matter. He further submitted that the PSC had a duty to investigate and make enquiries and that the scope and scale of such enquiries was a matter for the PSC. In the affidavit in reply of Ms. Mathurin at paragraph 8, she stated that 'in the absence of evidence to the contrary the First Defendant (PSC) relied on information it received from the Head of the Police Force that there was no record of proof of the Claimant (Mr. Samuel) having been polygraphed and that there was no clearance certificate in relation to him.' Mr. Samuel in his affidavit agreed that the Commissioner of Police is 'the official store house for those records'<sup>10</sup> and so I am not quite sure what his complaint is when the PSC relied on this official store house. The PSC chose to consult with the Commissioner of Police which was quite reasonable given the nature of the information which it was seeking to obtain.
- [36] Mr. King in his affidavit in response at paragraph 5 gave evidence that in determining suitability to fill an advertised position in the public or police service, the PSC in addition to conducting an interview or causing an interview to be conducted, carries out background checks. These background checks he said are not investigations but are enquiries from persons whom the PSC believes could give pertinent information on an applicant, including members of the public service and police service (when applicable) including peers and supervisors and referees of an applicant. The PSC's background checks also entail examination of the

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<sup>10</sup> See para. 28 of affidavit of Mr. Samuel filed 5<sup>th</sup> May 2017.

personal files of an applicant. These background checks are conducted by the PSC and not by anyone on behalf of the PSC.

[37] The PSC's authority to rely on the information which it obtained from the Commissioner of Police comes from legislation. Section 5 of the **Public Service Commission Act**<sup>11</sup> states that 'the Commission in considering any matter or question may consult any public officer or other person as the Commission may consider proper and desirable and may require such officer to produce any official documentation relating to such matter or question.'

[38] Regulation 7 of the **Public Service Commission Regulations** is in similar terms stating that the Commission in considering any matter or question referred for its advice may consult with heads of Government departments or other public officers or other persons as the Commission may consider proper and desirable.

[39] I therefore find that the PSC acted within its remit and powers in consulting with the Commissioner of Police on the question of whether there was a record of Mr. Samuel having been polygraphed and relying on the information received from the Commissioner of Police.

[40] Based on the foregoing, I conclude that the decision of the PSC not to select Mr. Samuel for the post of Superintendent of Police was not unreasonable and irrational.

**Whether the decision of the PSC not to appoint Mr. Samuel to the position of Superintendent of Police was tainted with bias because of the presence of the Permanent Secretary, Mr. Agosta Degazon as part of the interview panel**

[41] Mr. Samuel alleged that his case is founded not on actual bias but on apparent bias. The modern law of apparent bias was settled by Lord Hope in **Porter v**

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<sup>11</sup> Chap 1.11 of the Revised Laws of Saint Lucia 2008.

**Magill**<sup>12</sup> where Lord Hope indicated that the ‘question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.’

[42] Lord Hope approved a statement that a court assessing whether there had been bias, should take all relevant circumstances into account: ‘The ultimate question is whether the proceedings in question were and were seen to be fair. If on examination of all the relevant facts, there was no unfairness or any appearance of unfairness, there is no good reason for the imaginary observer to be used to reach a different conclusion.’

[43] Mr. Samuel alleges that the presence of Mr. Degazon, Permanent Secretary of the Ministry of Home Affairs (“PS-Home Affairs”) on the interview panel vitiated the PSC’s decision not to appoint him. He relies on apparent bias and says that given the facts and circumstances of this case, Mr. Degazon was biased against him and therefore his mere presence on the interview panel is a ground to vitiate the decision of the PSC.

[44] In his affidavit in support of his claim, Mr. Samuel alleged that the actions of the PS-Home Affairs seemed to suggest to him that the Executive had a personal vendetta against him and that every effort was made to block his appointments to higher office in the Police Force. This he alleged was done by the PS-Home Affairs altering the recommendations made in the past by the Commissioner of Police and by sitting on the interview panel and influencing the panel’s decision regarding the recommendations to the PSC concerning his suitability to hold the office of Superintendent of Police. I will discuss the different actions which Mr. Samuel alleges support a finding of apparent bias.

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<sup>12</sup> [2001] UKHL 67.

### **A. Action 1 - Not Submitting and Altering Recommendations**

- [45] Mr Samuel's evidence was that between May 2014 and May 2015, a total of about four recommendations were made by the Commissioners of Police, Vernon Francois and Errol Alexander for his acting appointments as Superintendent of Police for specified periods. None of these recommendations resulted in the acting appointment of Mr. Samuel.
- [46] In addition to Mr. Samuel, these recommendations also contained recommendations for other officers including Assistant Commissioner of Police, Frances Henry to act as Deputy Commissioner of Police, Superintendent of Police, Mr. Anastasius Mason to act as Assistant Commissioner of Police, Insp. Andre Collymore to act as Superintendent of Police, Inspector Benson Deterville to act as Assistant Superintendent of Police and Inspector Patrick Scholar to act as Assistant Superintendent of Police. Of these recommendations, the evidence before the Court showed that it was only the ones in relation to Mr. Anastasius Mason and Ms. Frances Henry that were acted upon.
- [47] Mr. Samuel alleged that the PS-Home Affairs deliberately omitted his name from each memorandum sent to him by the Commissioners of Police. He said that this was seen from the various memoranda being channelled to the PSC by the PS-Home Affairs. Mr. Samuel averred that the process of the PS-Home Affairs making recommendations to the Ministry of the Public Service who in turn channels the recommendations to the PSC allowed the PS-Home Affairs to interfere with the recommendations coming from the Commissioner of Police.
- [48] Mr. Samuel averred that the Chairman of the PSC penned a letter dated 11<sup>th</sup> November 2015 setting out a new procedure for the channelling of recommendations from the Commissioner of Police for appointments above the rank of Inspector as a result of interference by the PS-Home Affairs.

- [49] Mr. Degazon in response to the claim and on the matter of why the recommendations made were not submitted, referred to a memorandum from the Ministry of the Public Service dated 28<sup>th</sup> June 2014 to Permanent Secretaries and Heads of Departments captioned “Policies to Control the Growth in the Wage Bill”. That memo Mr. Degazon said required agencies to obtain the approval in writing from the Office of the Budget within the Department of Finance and Economic Affairs prior to submitting requests to the Ministry of the Public Service for promotions within streamed positions and acting appointments. It also required detailed justification to be provided for filling of vacant funded positions.
- [50] Mr. Degazon’s evidence was that when the memo of 6<sup>th</sup> May 2014 was submitted by the Commissioner of Police, he referred the Commissioner to the memo of 28<sup>th</sup> June 2014 from the Ministry of the Public Service and asked that he comply with the said memo. When the Commissioner re-submitted the recommendations on or about 10<sup>th</sup> July 2014, Mr. Degazon’s evidence was that it contained no indication as to whether budgetary approval had been granted in respect of all officers.
- [51] Mr. Degazon said that he forwarded a copy of the justification received from the Commissioner of Police to the Office of the Budget for its information and approval and the Budget Office gave approval for the acting appointments of only two of the four officers named in the memo.<sup>13</sup> He averred that this was not the only memo which he submitted to the Budget Office where approval was not granted for all the persons in respect of whom recommendations were made. In keeping with the approval obtained, Mr. Degazon indicated that recommendations were made for the acting appointments of Ms. Frances Henry and Mr. Anatasius Mason.
- [52] According to Mr. Degazon, when the next recommendation was received in relation to the acting appointments of the same four officers including Mr. Samuel (dated 19<sup>th</sup> September 2014), he saw this was a continuation of the previous

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<sup>13</sup> See memo dated 29<sup>th</sup> July 2014.



acting period and there being no new justification received and having received approval for the two officers, Frances Henry and Anastasius Mason on the previous occasion, submitted the recommendation for acting appointments in respect of only these two officers. In cross-examination, Mr. Degazon indicated that the decision to forward only two of the officers for appointment was based on the memo from the Ministry of the Public Service but also on instructions which he had received from the Minister which he said was also based on budgetary considerations.

[53] In relation to the memo dated 30<sup>th</sup> March 2015 which included an acting appointment for Mr. Brian Samuel, Mr. Degazon said that in keeping with instructions from the Ministry of the Public Service, he requested a list of officers who were eligible to hold the positions in relation to which recommendations were made from the Commissioner of Police. Once he received this list, he submitted the recommendations by memo dated 30<sup>th</sup> April 2015 to the Ministry of the Public Service.

[54] Mr. Degazon in his further affidavit<sup>14</sup> sought to clarify the matter of funding and budgetary approval which had been raised in his affidavit in reply.<sup>15</sup> He responded specifically to Mr. Samuel's statement in his affidavit in response<sup>16</sup> that all the positions were funded and approved and that Mr. Degazon would have known if funding was available to fill any vacancy as he received the budget for all departments under his Ministry. Mr. Degazon's response was as follows:

- (i) "It is a well-known fact and established practice that approvals in the Budget are not sacrosanct. Budget implementation and execution still require approved budgetary provisions to go through a series of robust quarterly allocation meetings and reviews with agencies by the Budget Office.
- (ii) It is only after those quarterly allocation meetings, and most importantly based on government's overall fiscal performance during the year, that approved allocations are released to ministries and departments for spending.

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<sup>14</sup> Filed 31<sup>st</sup> October 2017.

<sup>15</sup> Filed 8<sup>th</sup> June 2017.

<sup>16</sup> Filed 4<sup>th</sup> August 2017 at para. 3-page 15 of Bundle 2.

(iii) Consequently, a vote or expenditure item could have been approved in the Budget but not approved for spending when the quarterly allocations are released by the Budget Office.”

[55] Mr. Degazon denied that his actions were premised on bias against or any vendetta towards Mr. Samuel. Mr. Samuel himself in cross-examination agreed that he had not denied Mr. Degazon’s statement in his affidavit that he did not know him (Mr. Samuel). He also agreed that he had not put any evidence before the Court in his affidavits of the basis for saying that Mr. Degazon or the Executive had a personal vendetta against him.

[56] The claimant presented evidence from Mr. Errol Alexander and Ms. Antonia Alcindor in support of his claim. Mr. Errol Alexander (“Mr. Alexander”), former Commissioner of Police who had submitted at least two memos for the acting appointment of Mr. Samuel gave evidence in relation to this matter. His evidence was that the change in the procedure for the channelling of recommendations to the PSC came about because of complaints about replacement of recommended names before the matter reached the PSC and the extended time the recommendations took to be processed. Mr. Alexander also gave evidence that the Commissioner of Police would consult the police accounts department before a recommendation is made to verify whether funding was available based on the budgetary allocation and therefore the position of the PS-Home Affairs as it related to funding for the acting position was an excuse to try to justify the non-appointment of Mr. Samuel.

[57] Ms. Antonia Alcindor was the Accountant at the Police Department from 2001 to 2012, a period which pre-dated the submission of the memos in issue which commenced in 2014. According to Ms. Alcindor,<sup>17</sup> the budget of a department is prepared within an envelope, that is, the anticipated budgetary allocation for the year. Ms. Alcindor said that she had perused the estimates of expenditure for the years 2008 to 2016, and in each of these years she observed that the post of

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<sup>17</sup> See paragraph 4 of the affidavit filed on 16<sup>th</sup> March 2017.

Superintendent of Police was both funded and approved and on that basis she said that the omission of Mr. Samuel's name from the recommendations for acting appointments was for reasons other than budgetary allocations.

### **Discussion and Analysis**

[58] It is important to clarify the process by which recommendations were submitted for consideration at the relevant time. Mr. Samuel in his affidavit in response<sup>18</sup> at paragraph 3 suggested that the Ministry of Home Affairs is just a conduit and therefore the PS-Home Affairs has no authority to overrule the Commissioner of Police on matters of recommendations. Mr. King in his affidavit in reply<sup>19</sup> stated that the PS-Home Affairs is not merely a conduit but has constitutional supervision of the Police Force and determination of who is the best fit for appointment or promotion within the Gazetted ranks of the Police Force is not a matter for the Commissioner of Police, but is a matter solely for the PSC in accordance with the Constitution.

[59] From the evidence I have gleaned the following: a memo is submitted from the Commissioner of Police recommending appointments of persons to the PS-Home Affairs. Before submitting the recommendation to the Ministry of the Public Service, the PS-Home Affairs would have to ascertain whether the position has been approved and funded, as well as whether the individual recommended meets the required qualifications. If that is the case, the recommendation is then submitted to the Ministry of the Public Service who after carrying out its own checks submits the recommendation to the PSC.<sup>20</sup>

[60] The contents of the memo dated 11<sup>th</sup> November 2015 which Mr. Samuel says introduced a new procedure for channelling recommendations to the PSC from the Commissioner does not support the evidence of Mr. Alexander, former Commissioner of Police. If it is that the concern was that the Ministry of Home

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<sup>18</sup> See affidavit filed 4<sup>th</sup> August 2017.

<sup>19</sup> See affidavit filed 27<sup>th</sup> October 2017.

<sup>20</sup> See paragraph 11.8 of the affidavit of Elma Mathurin filed 9<sup>th</sup> June 2017.

Affairs was interfering with recommendations, then the question is why still involve the Ministry of Home Affairs in the process? Mr. King, Chairman of the PSC in his evidence said that he was aware of a meeting between the former Prime Minister, Dr. Kenny Anthony and the hierarchy of the Police Force, but he was not aware of what occurred at that meeting. Mr. King said that when he met with the Prime Minister Anthony in October 2015, it was to discuss the long delays with recommendations from the Commissioner of Police and consequentially, the late appointments of officers to Gazetted ranks. He said the change in the procedure was not as a result of anything relating to Mr. Samuel.

[61] The memo of 11<sup>th</sup> November 2015 stated that recommendations for appointment, promotion or discipline of police officers above the rank of Inspector and below Commissioner of Police were to be submitted to the PSC directly, copied to the PS-Home Affairs and the Permanent Secretary, Public Service. The PS-Home Affairs was given ten days from receipt of the recommendations to submit any concerns, observations and recommendations to the PSC through the Ministry of the Public Service. The Ministry of the Public Service was then given five days of receipt of PS-Home Affairs comments, etc. to make its own comments and recommendations to the PSC.

[62] I am of the view that the change in the procedure clearly shows an attempt to ensure that the memos for recommendations were processed with dispatch and were not subject to delays. There is no evidence to support Mr. Alexander's assertion that interference by the PS-Home Affairs was a motivating factor for the change in procedure. The process for submission of recommendations prior to 11<sup>th</sup> November 2015 clearly involved both the Ministry of the Public Service and the Ministry of Home Affairs and this did not change with the new procedure outlined in the 11<sup>th</sup> November 2015 memo.

[63] From the evidence it is not correct that the PS-Home Affairs did not submit any memos to the Ministry of the Public Service concerning Mr. Samuel. The evidence

shows that in April 2015, a recommendation was made to the Ministry of the Public Service. It does not appear from the evidence that these appointments were made. If the appointments were not made, it clearly could not be because of interference by the PS-Home Affairs when the evidence clearly shows that the memo was sent to the Ministry of the Public Service. In relation to this particular memo, it is clear that it was not forwarded by the Ministry of the Public Service to the PSC for whatever reason.

[64] In relation to the previous memos, the evidence of Mr. Degazon regarding the reason for non-submission of these memos is supported by the memo from the Ministry of the Public Service dated 18<sup>th</sup> June 2014 "Policies to Control the Growth in the Wage Bill". That memo clearly showed that approval for acting appointments to be made had to be given by the Office of the Budget.

[65] Mr. Degazon's explanation of the budget process was not displaced by Ms. Alcindor. Firstly, Ms. Alcindor is not an accounting officer as per the **Finance Act** and further her evidence in cross-examination was that she was not the accountant at the Police Department between 2003 and 2016. To my mind, Ms. Alcindor's conclusion as to the reasons for the non-submission of the recommendations of Mr. Samuel are not conclusions which she is competent to provide given: (a) that she would not have been part of the Police Department during the relevant period, (b) by her own admission she never worked at the Office of the Budget, (c) she would not have been privy to the Government's fiscal position and (d) she admitted in cross-examination that the Executive had the right to say that even if something is approved and funded that given the current fiscal situation, that such expenditure would not be authorized or approved. Ms. Alcindor was not even aware of the memo concerning the policies to control growth in the wage bill.

[66] It was clear that the claimant does not understand the budget process. From the evidence my understanding is that items are approved in the budget. They may or

may not be funded in any financial year. The Government may however decide that even where an item is approved and funded that its expenditure will not be allowed. A budget is simply a statement of income and expenditure for a particular period and it could be that though provision is made for an item, when the time comes to spend, the fiscal situation may not be able to accommodate that expenditure or because of fiscal concerns, strict approval processes are put in place. The PS-Home Affairs having received the memo of 18<sup>th</sup> June 2014 would have had to have acted in accordance with same. Approval had to be obtained from the Office of Budget even if the particular position were stated as approved and funded in the estimates.

[67] The memo from the Office of the Budget dated 29<sup>th</sup> July 2014 in its last paragraph after detailing the officers for whom approval had been given for their acting appointments stated that 'this no objection is being recommended so as to maintain continuation of the operational efficiency of the work programme of the different divisions of the Royal Saint Lucia Police Force, particularly given the current social climate and the need to provide national security to the people of St. Lucia.'

[68] The question is 'whether the fair-minded and informed observer, having considered all of the facts above, would conclude that there was a real possibility that the PS-Home Affairs was biased.'

#### **B. Action 2 - Not Replying to Correspondence**

[69] Mr. Samuel also relies on the fact that the PS-Home Affairs never responded to correspondence written to him by his lawyer dated 4<sup>th</sup> March 2015 by which he sought to ascertain the reasons why the recommendations in relation to his acting appointments had either been ignored or not approved.

[70] In his affidavit in response, Mr. Degazon gave evidence that he was aware of the letter written by Mr. Samuel's lawyer complaining of a perceived failure to

implement the Commissioner's recommendations in relation to Mr. Samuel. Mr. Degazon said that this letter was received at a particularly difficult time in the Ministry of Home Affairs which saw all resources stretched. In addition, he thought it prudent to discuss the matter internally before responding. However, the other matters proved more pressing and his intention to respond to the letter did not materialize. When asked in cross-examination about the matters which stretched his resources and prevented him from responding, Mr. Degazon again indicated that the Ministry of Home Affairs is a busy Ministry and he could not recall exactly but he mentioned industrial action, the fire service and said it was a challenging Ministry to run. He disagreed with counsel, Mr. Fraser that he had no intention of replying.

### **Discussion and Analysis**

[71] I had no reason not to believe Mr. Degazon that he intended to respond to the letter from Mr. Samuel's lawyer. I accept Mr. Fraser's submission that the non-response to the letter does open the doors for speculation and possibly suspicion on the part of the person whose recommendation has not yielded any results. I am also of the firm view that as the PS-Home Affairs has provided evidence he had reason for not submitting the recommendation for Mr. Samuel and some of the other officers, that if that information had been communicated to the Commissioner of Police, that it would have at least provided a reason and perhaps avenue for dialogue and allow the Commissioner an opportunity to provide added justification if he felt that he really needed the appointments made in the interest of efficiency. In **Moses James v The Attorney General**,<sup>21</sup> I lamented the fact that public officers seem to have adopted a practice of not responding to correspondence and that is something which definitely requires attention.

[72] Having said this, the salient question is whether the fair-minded and informed observer, having considered all of the facts above, would conclude that there was a real possibility that the PS-Home Affairs was biased'.

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<sup>21</sup> SLUHCV2015/0221.

### **C. Action 3 - Sitting on the Interview Panel**

- [73] Next, Mr. Samuel alleged that by sitting on the interview panel, the office of the PS-Home Affairs was able to influence the decision of the panel. He averred that he had an excellent interview but despite this he was not considered for the post of Superintendent.
- [74] Mr. Degazon in his affidavit in reply said that he did not know or have any dealings with Mr. Samuel prior to the date of the interview. Mr. Degazon admitted that he was part of the panel which interviewed Mr. Samuel but denied that his presence on the interview panel may have unduly influenced or biased the panel or that he in any way or manner influenced the panel in respect of any decision concerning Mr. Samuel's interview.
- [75] Mr. Degazon's evidence was that the interview process was only one component of the process and was not singly determinative of the eventual selection of the best suited candidate. He said he was only involved in the interview process and had nothing to do with and no bearing on any other test or aspects designed to select the best suited candidate for promotion.
- [76] The PSC, through the evidence of both Mr. King, the Chairman and Ms. Mathurin, the Secretary in their affidavits indicated that the PSC was not aware of any personal vendetta that the Executive or the PS-Home Affairs had against Mr. Samuel. Their evidence was that whilst the Mr. Agosta Degazon, PS-Home Affairs was a member of the interview panel which interviewed Mr. Samuel on 23<sup>rd</sup> February 2016, he was only one member of a four-member panel.
- [77] The PSC stated that the interview panel did not make any decision on the selection of the candidate for the post of Superintendent of Police, neither did it recommend to the PSC who should be appointed to that post. The sole purpose of the interview panel was to interview the short-listed candidates. The results of



the interview were submitted to the PSC for its consideration and the interview was only one part of the selection process in determining the most suitable candidate for the post. The decision on which candidate to select lay solely with the PSC and it was the PSC who selected the candidate for the post of Superintendent of Police.

- [78] The PSC's position is that it was not aware that Mr. Degazon by sitting on the interview panel negatively influenced Mr. Samuel's chances of holding higher office in the Royal Saint Lucia Police Force. Further, Mr. Samuel has not shown how by sitting on the interview panel, Mr. Degazon negatively influenced his chances to hold the post of Superintendent of Police. The PSC also maintained that Mr. Samuel failed to show that the PS-Home Affairs said anything to the PSC to cause the PSC to make a decision adverse to him. The PSC said that when it makes a decision on candidate selection for a post, it does not single out any particular interviewer's score but considers the cumulative scores of all the interviewers. The contribution of the PS-Home Affairs did not in any way negatively influence the decision of the PSC and the PS-Home Affairs did not have any input at the investigation stage nor that there was an investigation. The PSC said that Mr. Samuel performed well at the interview and was considered for the post, but was not selected as he was found not to be the best fit for the post at the conclusion of the selection process.

#### **D. Discriminatory Practices**

- [79] Mr. Samuel also laid bias at the feet of the PSC alleging that they meted out discriminatory treatment to him. Mr. Samuel made sweeping statements in his affidavit about named officers whom he says were appointed in substantive and acting positions without meeting the polygraph requirement but provides no evidence to substantiate this allegation except from Mr. Gregory Michael Alexander ("Mr. Alexander"). Mr. Samuel relied on the affidavit of Mr. Alexander<sup>22</sup> who stated that after he was interviewed for the post of Assistant Superintendent

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<sup>22</sup> See affidavit filed on 30<sup>th</sup> October 2017.

of Police in March 2016, he was told that he had to get polygraphed in order for him to be promoted. He said that he was sent to Barbados for the sole purpose of being polygraphed. Mr. Alexander said he was subsequently promoted to the rank of Assistant Superintendent of Police.

[80] Mr. Samuel in order to allege discrimination must establish that he was treated differently from some other similarly circumstanced person or persons who are actual or hypothetical comparators.<sup>23</sup> Mrs. Ward-Glasgow submitted that the evidence shows that Mr. Samuel was not similarly circumstanced as any of the persons who were appointed as Superintendent of Police since those persons in addition to performing well at the interview satisfied the mandatory requirement of being successfully polygraphed. Based on the evidence the PSC had, there was no evidence that Mr. Samuel had successfully completed the polygraph testing.

[81] In relation to the evidence of Mr. Alexander, Mr. Samuel could not use that comparator because the circumstances were different - the post was that of Assistant Superintendent of Police and not Superintendent of Police. The PSC is empowered by section 85(13) of the Constitution to regulate its procedures in the exercise of its functions and could choose to regulate its procedure and could decide how it would implement the mandatory requirement of the polygraph testing.

### **Conclusion**

[82] Considering all of the facts and evidence, the question is whether the fair-minded and informed observer, having considered all of the facts above, would conclude that there was a real possibility that the tribunal was biased. Who is this fair-minded and informed observer?

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<sup>23</sup> Bhagwandeem v Attorney General of Trinidad and Tobago [2004] UKPC 21 at para. 18.

- [83] In the case of **Panday v Virgil**,<sup>24</sup> the High Court of Trinidad said that it would characterize the informed and fair-minded observer, generally as one exemplifying balance, intelligence and restraint. The court went on to say that the informed and fair-minded observer is the sort of person who will always reserve judgment on every point until he or she has seen and fully understood both sides of the argument. He or she is not unduly sensitive or suspicious.
- [84] The enquiry to determine whether apparent bias had infected the process was a two-stage one: (a) to determine the facts and circumstances which give rise to the allegations that the Permanent Secretary might not be impartial; and (b) to determine whether the well-informed and fair-minded observer would conclude that the Permanent Secretary was biased.
- [85] Having assessed all the facts and evidence in this case in detail, I cannot see how the fair-minded and informed observer who is balanced, intelligent and has considered both sides will conclude that the PS-Home Affairs, Mr. Degazon was biased toward Mr. Samuel. The fair-minded and informed observer would be well acquainted with the nuances of the public service and the frequent lack of acknowledgement of correspondence. Whilst this practice is certainly not to be encouraged, the fair-minded and informed observer will certainly not think that this shows bias on the part of an officer. He may think that it smacks of poor administration and a lack of courtesy. He may also think that he can understand Mr. Samuel's apprehension since the recommendations for his acting appointment from 2014 to 2016 seemed to have not resulted in any positive outcome for him, whilst his recommenders were left in the dark. But the fair-minded and informed observer would also have regard to the fact that in April 2016, Mr. Degazon did forward a memo to the Ministry of the Public Service for the acting appointment of Mr. Samuel as Superintendent of Police. This would tend to show that there could not have been any bias on Mr. Degazon's part.

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<sup>24</sup> TT2009 HC 260 at [62].

- [86] The fair-minded and informed observer would, having considered the evidence as regards the budgetary considerations, understand that the PS-Home Affairs was constrained to act in accordance with the memo received regarding the policy with regards to growth in the wage bill. Clearly, the decision as to what positions were approved for appointment at that point in time was not that of the PS-Home Affairs but that of the Office of the Budget.
- [87] The fair-minded and informed observer would also recognize that there is no evidence that Mr. Samuel complained about the presence of Mr. Degazon when he appeared before the interview panel, despite his evidence that there was a personal vendetta towards him.
- [88] The fair-minded and informed observer would also note that Mr. Degazon said he did not know Mr. Samuel nor did he have any dealings with him prior to the date of the interview. Mr. Samuel has not shown nor has the evidence revealed that the PSC was biased towards him.
- [89] Having concluded that the fair-minded and informed observer would not conclude that the PS-Home Affairs, Mr. Degazon was biased, it would naturally follow that his presence on the interview panel for the post of Superintendent of Police on 23<sup>rd</sup> February 2016 would not vitiate the decision of the PSC. In any event, the evidence reveals that the interview is only one component of the selection process and the interview panel simply puts its scores and findings before the PSC who is ultimately responsible for making the final decision on selection. The interview panel is not responsible for final selection and does not make a recommendation to the PSC. There is therefore no basis for the grant of declarations (2) and (3) of the relief claimed in the claim form.
- [90] Mr. Samuel has provided no evidence to support his allegation of discrimination and the circumstances do not support such a finding. He cannot therefore claim that the PSC was biased or that the decision of the PSC not to appoint him to the

position of Superintendent of Police was irrational and in breach of principles of fairness.

### **Duty to Give Reasons**

[91] Mr. Samuel complained that the PSC failed to give reasons for his application for the post of Superintendent of Police not being favourably considered in light of the fact that they appointed officers who were junior to him in relation to years of service, experience at the management level and academic qualifications and that this is a breach of the rules of natural justice. This Mr. Samuel said suggested that a compelling reason existed for the PSC's decision which ought to be explained.

[92] Ms. Mathurin in her affidavit in reply<sup>25</sup> admitted that Mr. Samuel was given no reasons for his non-selection for the post of Superintendent of Police. Ms. Mathurin stated that it has never been the practice or policy of the PSC to provide reasons or explanations for the non-selection or non-appointment of candidates. The PSC's evidence was that the officers who were selected for the post and appointed thereto in addition to performing well at the interview and being found to be the best fits for the post of Superintendent of Police, also satisfied the fundamental condition for appointment.

### **Discussion and Analysis**

[93] In an article originally published by Law Society Gazette-Legal Briefings, the writer said this which I adopt as it is apt: "Shakespeare's decadent, drunken and corpulently challenged knight, Falstaff, when pressed to give reasons to verify an obvious lie, robustly declined. He declared that if '... reasons were as plentiful as blackberries, I would give no man a reason upon compulsion'. But although Falstaff as a private individual was presumably within his rights to deny reasons, public authorities cannot be so cavalier."<sup>26</sup>

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<sup>25</sup> See paragraph 27 of affidavit in response filed 9<sup>th</sup> June 2017.

<sup>26</sup> Taken from an excerpt at <https://www.consultationinstitute.org/consultation-news/local-government-duty-give-reasons/>.

[94] The position at common law is that there is no general duty to give reasons.<sup>27</sup> While still seeking to maintain the original common law position, the courts have adopted various approaches or grounds to justify the giving of reasons. It has been stated that although there is no duty at common law to give reasons, the duty is implied since it is necessary to ensure fairness, personal liberty and to prevent an aberrant, unreasonable or irrational decision.

[95] The question is whether this is a case where a duty to give reasons should be implied. Mr. Fraser relied on the case of **Hugh Wildman v The Attorney General**<sup>28</sup> in support of the position that the PSC ought to have given reasons for its decision. In **Hugh Wildman**, Gordon JA [Ag.] quoting Lord Donaldson of Lynton MR in **R v Civil Service Board, ex p Cunningham**<sup>29</sup> said:

“The principles of public law will require that those affected by decisions are given reasons for those decisions in some cases, but not in others. A classic example of the latter category is a decision not to appoint or not to promote an employee or office holder or to fail an examinee. But once the public law court has concluded that there is an arguable case that the decision is unlawful, the position is transformed. The applicant may still not be entitled to reasons, but the court is.”<sup>30</sup>

[96] There was nothing so extraordinary in this case which required the PSC to depart from its practice of not giving reasons for non-selection of candidates after the conduct of interviews. The PSC has put forward its reasons for the non-selection of Mr. Samuel. Mr. Fraser argued that the reasons put forward by the PSC were not sufficient but he could not indicate to the Court what the PSC should have provided. He mentioned that the score sheets should have been produced, but score sheets without the questions asked by the panel and responses given by each candidate and a re-enactment of the interview day would be of no use to me. He also suggested that the minutes of the interview could have been produced.

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<sup>27</sup> See *MslInnes v Onslow-Fane* (1978) 3 All ER 211.

<sup>28</sup> Grenada Civil Appeal No. 9 of 2006, delivered 1<sup>st</sup> March 2007, unreported.

<sup>29</sup> [1994] 4 All ER 310.

<sup>30</sup> *Hugh Wildman* at para. 23.

As I indicated during the hearing, it would be a source of great concern if interviews were recorded and the transcripts could be reproduced at later dates.

[97] The reason offered by Mr. Samuel for requiring reasons is what is critical. Mr. Samuel's reason is however flawed. He perceived that because the persons chosen were junior to him and by his assessment were not as well-qualified and experienced it meant that he deserved a reason for his non-selection. However, Mr. Samuel must realize that when persons are short-listed for interview, it is because they all meet the minimum requirements/qualifications set for the particular post. Candidates do not start the process at different starting points.

[98] The PSC gave its reasons for not selecting Mr. Samuel. He did not perform the best, although he performed well. He was found not to be the best fit for the job. The PSC detailed the criteria which it looked at. In addition to the interview, the selection process included background checks and the PSC did not receive evidence that Mr. Samuel had successfully completed the polygraph testing. I am at a loss as to what evidence the PSC could have provided the Court with apart from detailing how it carries out its interview and selection process so that the Court can assess whether there is anything which smacks of unfairness.

[99] In the case of **Williams v Public Service Commission**,<sup>31</sup> the court held that the PSC had a duty to provide reasons in circumstances where the applicant was recommended for the post of Inspector of Police and was not appointed, neither was the alternate person appointed and someone else was appointed. The court in that case said that the Commission should explain as the decision (a) appeared to be arbitrary, aberrant and irrational, (b) the decision was of special interest to the applicant since he had acted in the position for almost two years without any adverse report or criticism, (c) the recommendation had been made for the applicant to be appointed and it was unclear why it had been rejected. The case of **Williams** did not concern an interview process, but where recommendations for

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<sup>31</sup> DM 2001 HC 1.

the appointment of a particular officer had been made and these recommendations were not considered and someone who had not been recommended at all was appointed. That to my mind makes it distinguishable from the instant case.

[100] In **R v Bristol City Council, Ex. P Bailey**<sup>32</sup> it was held that fairness did not require a local authority to provide reasons for its decision to refuse an application for a housing renovation grant. This was not a case where the duty to give reasons arose because the subject-matter was an interest so highly regarded by the law or because the decision appeared aberrant.

[101] Likewise in this case, I cannot find any exceptional circumstances which require a departure from the general common law position. As correctly submitted by Mrs. Grace Ward-Glasgow, there is no rule of law which requires the PSC to give reasons why it found other candidates more suitable than Mr. Samuel, or to give reasons why it found Mr. Samuel not to be the best fit for the post. It is anticipated that when Mr. Samuel subjected himself to the interview process, he knew that it was a natural outcome that there would be selection of one of the interviewees and that it may not necessarily be him. The fact that someone junior is selected does not imply a duty to give reasons. The reasons given for there being a duty on the PSC to give reasons represent Mr. Samuel's subjective assessment and perception of his superiority over the other candidates and are of no moment given that all candidates start the race at the same starting point.

### **Conclusion**

[102] For the foregoing reasons and discussion, I find that Mr. Samuel has failed to prove his claim and therefore I decline to grant any of the relief which he has claimed.

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<sup>32</sup> (1994) 27 H.L.R. 307.



**Order**

[103] The Order is as follows:

- (1) The claim against the 1<sup>st</sup> and 2<sup>nd</sup> defendants is dismissed.
- (2) In accordance with CPR 56.13, I make no order as to costs. I do not consider that there is any reason to depart from the general rule.

[104] I thank counsel for their helpful submissions in this matter.

**Kimberly Cenac-Phulgence  
High Court Judge**

**By the Court**

**Registrar**