

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(Civil Division)

SAINT VINCENT AND THE GRENADINES

CLAIM NO. SVGHCV2023/0165

BETWEEN:

CELENA MCDONALD

Claimant

AND

THE PUBLIC SERVICE COMMISSION

Defendant

Before:

The Hon. Mde. Cybelle Cenac-Dantes (Ag.)

Judge of the High Court

Counsel on Record:

Shirlann Barnwell with Jomo Thomas counsel for the claimant, Tonya DaSilva led by
Senior Counsel Douglas Mendes via zoom counsel for the defendant

2025: 18 March
30 April (final submissions)
4 December

DECISION ON THE PAPERS

Introduction and Background

- [1]. **Cenac-Dantes, J.:** This is a claim for judicial review brought by the Claimant, Ms. Celena McDonald, pursuant to Part 56 of the Civil Procedure Rules 2023. The claim is directed against the Public Service Commission (“the PSC”) and concerns the legality of two decisions made by the PSC in relation to appointments within the Parliament Department of the Government of Saint Vincent and the Grenadines.
- [2]. The impugned decisions are:
- (a) the appointment of Mrs. Deborah Alexander-Charles to the post of Clerk of the House of Assembly; and
 - (b) the promotion and appointment of Mrs. Simone Williams-Huggins to the post of Deputy Clerk of the House of Assembly.

- [3]. The Claimant, a long-serving public officer who acted in both positions at various times and who contends that she was eligible for substantive promotion, challenges both appointments on the basis that the PSC failed to adhere to the constitutional and statutory requirements governing appointments in the public service.
- [4]. The claim is grounded upon alleged breaches of Regulation 18 and Regulation 19 of the Public Service Commission Regulations (2009 Revised Edition), which form part of the constitutional framework regulating the exercise of the Commission's appointment and promotion functions.
- [5]. The Claimant contends that the PSC acted:
- (a) in breach of Regulation 18, by failing to advertise the vacancies or otherwise give proper notice of the posts, thereby denying eligible officers, including the Claimant, a fair opportunity to be considered;
 - (b) in breach of Regulation 19, by failing to properly assess the statutory criteria of seniority, experience, educational qualifications, merit, ability, and relative efficiency;
 - (c) unreasonably, by taking into account irrelevant considerations, such as the possession of a law degree and failing to consider relevant ones;
 - (d) in a procedurally improper and unfair manner, with the result that the Claimant was unlawfully excluded from consideration for either post; and
 - (e) in a manner giving rise to apparent bias, particularly in the context of the Commission's refusal to afford transparency in the selection process.
- [6]. On these bases, the Claimant seeks:
- (i) Declarations that the appointments of Mrs. Alexander-Charles and Mrs. Williams-Huggins were unlawful and null and void;
 - (ii) Declarations that the PSC's failure to advertise the posts violated Regulation 18 and the principles of transparency and fairness;
 - (iii) Declarations that the PSC failed to apply the mandatory criteria prescribed by Regulation 19; and
 - (iv) Orders of certiorari to quash both appointments.
- [7]. The Defendant denies that it acted unlawfully, contending inter alia that the appointments were properly made in accordance with the Regulations, that there was no requirement to advertise the posts in the circumstances, and that the Claimant's challenge suffers from procedural bars, including unreasonable delay, non-joinder of necessary parties, and the absence of prejudice.
- [8]. The matter proceeded to trial on the papers, with no cross-examination of witnesses, and was determined on the basis of the agreed statement of facts, witness statements, and written submissions filed by both parties.

Preliminary Issues

Objection to Portions of the Defendant's Witness Statements

- [9]. The Claimant, in her written submissions filed on 28th August 2024, raised objections to portions of the witness statements filed on behalf of the Defendant, particularly those of Arlene Regisford-Sam and Stephen Williams, arguing that certain assertions ought to be struck out on the basis that they amounted to hearsay or otherwise lacked documentary substantiation. The Claimant contended that these statements represented conclusions or matters of opinion and did not comply with the evidentiary standards expected of witness statements in judicial review proceedings.
- [10]. Having considered the substance of the Claimant's submissions, I do not accept that the impugned statements should be struck out. The appropriate stage for raising evidentiary objections, particularly of the nature advanced here, is at case management, not at the stage of final submissions. The record reveals that no application was made to strike out or exclude any part of the Defendant's witness statements during the case management process, nor at any time thereafter.
- [11]. It is of further note that at the Pre-Trial Review held on 14 June 2024, both parties expressly agreed that the matter would proceed on the papers and that there would be no cross-examination of witnesses. While it is open to the Court to consider objections to the admissibility or weight of evidence even at a late stage, it is procedurally improper for a party, having foregone earlier opportunities for objection, and having consented to a decision on the written record to seek to challenge evidence in closing submissions. This is especially so where no cross-examination was undertaken, and where the Court had made provision, through prior directions for any such objections to be ventilated.
- [12]. Moreover, I am satisfied that the impugned portions of the witness statements, particularly those made by Ms. Arlene Regisford-Sam, the Chief Personnel Officer, who also sits *ex officio* as a member of the Public Service Commission, reflect facts within her personal knowledge and are admissible. Her witness statement is not based on second-hand accounts but arises from her institutional role and involvement in the matters under challenge. There is no merit to the contention that her evidence amounts to inadmissible hearsay or speculation.

Scope of the Challenge under Regulation 18

- [13]. The Defendant in its written submissions filed on 10th December 2024 contends that the Claimant's pleaded case was confined to Regulation 18(1) only, and that the attempt in her submissions to rely on Regulation 18(2) amounts to an impermissible broadening of the claim beyond the fixed-date claim form and supporting evidence by way of witness statement.
- [14]. I do not accept the Defendant's contention on this point. It is evident from the Fixed Date Claim Form filed on 11 October 2023, and the supporting witness statement of the Claimant, that the complaint

was broadly framed as one concerning the PSC's failure to advertise the posts of Clerk and Deputy Clerk and to conduct a transparent and fair selection process. The Claimant specifically pleads that the PSC violated "*Regulation 18 of the Public Service Commission Regulations*" without restriction to subsection (1).

- [15]. Further, the Agreed Statement of Facts and Issues filed on 28 March 2024 includes among the agreed issues for determination the question of whether "*the PSC acted in breach of Regulation 18 by failing to advertise the vacancies for Clerk and Deputy Clerk of the House of Assembly*" without limiting the scope to subsection (1). Both parties' submissions also addressed the two-tiered structure of Regulation 18, with reference to Regulation 18(1) (which governs notice to internal candidates) and Regulation 18(2) (which governs when and how the PSC may advertise externally where no suitable internal candidates are available).
- [16]. On the whole of the record, I find that the challenge under Regulation 18 was not confined to subsection (1) but encompassed the entirety of the Regulation. The Defendant had ample opportunity to respond to this aspect of the case and did so in its written submissions. No prejudice arises from treating the challenge as having been made under both subsections of Regulation 18, and it would be inconsistent with the overriding objective to construe the pleadings unduly narrowly in the context of a Part 56 claim where the issues were clearly joined and canvassed in full.

Issues for Determination

- [17]. In light of the pleadings, submissions, and the Agreed Statement of Facts and Issues filed by the parties, the questions for determination, as reframed by the Court, are as follows:
- (i) **Whether the PSC acted in breach of Regulation 18** of the Public Service Regulations by failing to advertise the vacancies for Clerk and Deputy Clerk of the House of Assembly, and whether such failure renders the appointments unlawful.
 - (ii) **Whether the PSC acted in breach of Regulation 19** of the Public Service Regulations by failing to consider the proper criteria of merit, ability, and seniority when appointing Mrs. Alexander-Charles as Clerk and Mrs. Williams-Huggins as Deputy Clerk of the House of Assembly, or alternatively, failed to consider relevant factors in its decision.
 - (iii) **Whether the impugned decisions were unlawful on grounds of unreasonableness, procedural impropriety, or apparent bias**, in that the PSC took into account irrelevant considerations, failed to take into account relevant considerations, or otherwise failed to conduct a fair and transparent process.

While this ground does not appear expressly in the Fixed Date Claim Form or in the Agreed Statement of Issues, it has been raised and developed throughout the Claimant's affidavit evidence, written submissions, and Reply submissions, and were addressed in substance by the Defendant in its own submissions. In particular, the Claimant contends that the PSC gave undue weight to factors such as possession of a law degree, an irrelevant consideration under the

governing Regulations, and failed to properly assess statutory criteria such as seniority, merit, and experience. She further asserts that the process was tainted by procedural unfairness and apparent bias, resulting in her unlawful exclusion from meaningful consideration.

Although not formally agreed as an issue between the parties, these arguments flow from the pleaded allegations of breach of Regulations 18 and 19, and are properly before the Court for consideration. The supervisory nature of judicial review permits the Court to evaluate the legality, rationality, and procedural propriety of administrative decisions, even where those aspects are not framed as standalone grounds but are integrally connected to the core statutory breaches alleged.

(iv) **Whether the discretionary bars to relief apply**, namely:

- Delay - whether there was unreasonable delay in bringing the proceedings;
- Non-Joinder - whether the failure to join the appointees as parties is fatal to the claim; and
- Prejudice - whether granting relief would cause prejudice to third parties or otherwise undermine good administration such that relief ought to be withheld.

Legal Framework Governing Judicial Review

[18]. The present claim is brought pursuant to **Part 56 of the Civil Procedure Rules 2023**, which governs applications for judicial review and other administrative orders. The jurisdiction conferred upon the Court under Part 56 is supervisory in nature, and not appellate. It is well established that judicial review does not involve a reconsideration of the merits of the administrative decision, but rather an assessment of the legality, rationality, and procedural propriety of the decision-making process. As stated in **Council of Civil Service Unions v Minister for the Civil Service**¹, the focus is on the lawfulness of the process, not the correctness of the outcome.

[19]. The grounds upon which the Court may intervene in the exercise of its supervisory jurisdiction are settled and may be summarised as follows:

- (i) **Illegality**, where the decision-maker has acted outside the scope of its statutory powers, misdirected itself in law, or failed to properly apply governing legal principles;
- (ii) **Irrationality or unreasonableness**, where the decision is so unreasonable that no reasonable authority could ever have reached it; and
- (iii) **Procedural impropriety**, where the process by which the decision was made was unfair, contrary to natural justice, or in breach of a prescribed procedure.

[20]. It is also a well-recognised principle that remedies in judicial review are discretionary. The Court may decline to grant relief even where a ground of review is established, particularly in cases where:

- there has been undue or inordinate delay in bringing the claim;
- there has been a **failure to join** persons who would be adversely affected by the relief sought; or
- the grant of relief would cause prejudice to third parties or otherwise disrupt good administration.

¹ [1985] AC 374

- [21]. These considerations are codified in **CPR 56.4** and form part of the evaluative exercise undertaken by the Court in determining whether relief ought to be granted².

The Constitutional and Statutory Framework

- [22]. The Public Service Commission (“PSC”) is a constitutional body established under **Chapter 2, Part II of the Constitution Order of Saint Vincent and the Grenadines 2009 Revised Edition**. The PSC has the exclusive authority to appoint, promote, transfer, and discipline public officers, subject to the Constitution and the Public Service Regulations.
- [23]. The relevant provisions of the **Public Service Regulations (2009 Revised Edition)** for the purpose of this exercise are Regulations 18 and 19 which provide:

18. Advertisement of vacancies

- (1) The Chief Personnel Officer shall, when so directed by the Commission, by circular or by publication in the Gazette, give notices of vacancies, and any officer may make application in the prescribed form for appointment to any such vacancy. Such application shall be forwarded to the Chief Personnel Officer through the Head of Department and Permanent Secretary under whose authority the applicant is serving.
- (2) Where the Commission considers either that there is no suitable candidate already in the public service available for the filling of any vacancy or that, having regard to qualifications, experience and merit, it would be advantageous and in the best interest of the public service that the service of a person not already in the service be secured, the commission shall take such step (including advertisement of the existence of such vacancy) as it may think necessary for the filling of such vacancy.

19. Principles of selection for promotion

- (1) In considering the eligibility of officers for promotion, the Commission shall take into account the seniority, experience, educational qualifications, merit and ability together with relative efficiency of such officers and, in the event of an equality of efficiency of two or more officers, shall give consideration to the relative seniority of the officers available for promotion to the vacancy.
- (2) The Commission, in considering the eligibility of officers under Sub regulation (1), for appointment on promotion shall attach weight to –
 - (a) seniority, where promotion is to an office that involves work of a routine nature;

² R v Soneji [2005] UKHL 49; Newbold v Commissioner of Police [2014] UKPC 12

(b) merit and ability, where promotion is to an office that involves work of progressively greater and higher responsibility and initiative than is required for an office specified in paragraph (a)

(3) In the performance of its functions under sub regulations (1) and (2), the Commission shall take into account as respects each officer –

- (a) his general fitness;
- (b) The position of his name on the seniority list;
- (c) any special qualifications;
- (d) any special course of training that he may have undergone (whether at the expense of the government or otherwise);
- (e) the evaluation of his overall performance as reflected in annual confidential reports by any permanent secretary, head of department or other senior officer under whom the officer worked during his service;
- (f) any letters of commendation or special reports in respect of any special work done by the officer;
- (g) the duties of which he has had knowledge;
- (h) the duties of the officer for which he is a candidate;
- (i) any specific recommendation of the chief personnel officer, permanent secretary of head of department for filling the particular post;
- (j) any previous employment of his in the public service or otherwise;
- (k) any special reports for which the Commission may call;
- (l) his devotion to duty.

(4) In addition to the requirements Prescribed in sub regulations one, two and three the Commission shall consider any specifications that may be required from time to time for appointment to the particular post.

Case Law Guidance

- [24]. The parties placed before the Court a substantial body of authority. It is neither necessary nor desirable to recite each decision in this judgment. Nonetheless, I confirm that all authorities submitted were carefully considered and that the general principles distilled from them are well settled in judicial review and have guided the Court's analysis of the issues.

- [25]. The Eastern Caribbean Court of Appeal in **Tyrone Burke (Chief Personnel Officer) v Otto Sam**³ reaffirmed the principle that decisions concerning public officers must be demonstrably authorised by the PSC, and that the Commission owes a continuing duty of candour to place before the Court all materials necessary to test the lawfulness of its decision. The absence of proper documentary record-keeping was held to justify adverse inferences against the public authority.
- [26]. In **Henriques v Harding**⁴, the Court emphasised that statutory preconditions to valid decision-making by the PSC must be strictly observed, and that even technical breaches can invalidate appointments if they undermine fairness or transparency.
- [27]. Similarly, in **Rodney v Attorney General of Saint Lucia**⁵, the High Court held that the PSC's discretion is not unfettered; it must be exercised in accordance with the Regulations, and failure to apply the criteria of merit, ability and seniority amounted to unlawfulness. The Court underscored that fair competition and equal opportunity are essential hallmarks of a lawful appointment process.
- [28]. The common theme emerging from these authorities is that while the PSC enjoys a margin of discretion, it is constrained by the constitutional and statutory framework. Where it fails to advertise vacancies as required, or where it bypasses merit and seniority without reason, its decision is susceptible to being quashed as unlawful.
- [29]. The authorities also remind us that judicial review remedies are not automatic. The Court must balance the rule of law against the need for stability in public administration, and may withhold relief if, to grant it, would cause disproportionate disruption or prejudice to third parties.

³ SVGHCVAP2014/0002 (judgment delivered 15 September 2015)

⁴ BVIHCV2010/0181

⁵ SLUHCV2012/0124

SSUE 1: whether the PSC acted in breach of Regulation 18

Application of Regulation 18 to the Facts

- [30]. The Claimant contends that Regulation 18(1) imposes a mandatory obligation upon the Commission to advertise all vacancies. On this view, any appointment made without prior advertisement is ultra vires the Regulations and void. Counsel stresses that the requirement of transparency inherent in the Regulation can only be met by universal advertisement, so that all eligible officers have notice and opportunity to apply.
- [31]. The Defendant, by contrast, submits that Regulation 18(1) imposes no general obligation to advertise every vacancy. Rather, the duty to give notice is conditional upon the Commission directing the Chief Personnel Officer. The Commission, it is argued, retains a discretion whether to give such a direction, and Regulation 18(2) similarly leaves it to the Commission to determine whether advertisement is one of the necessary steps when external recruitment is contemplated.
- [32]. Regulation 18 must be interpreted, not in isolation, but as part of the wider framework of the Public Service Regulations. While it is true that Regulation 18(1) uses the word "shall," a purely literal reading of that subsection fails to capture the conditional nature of the provision and the broader structural context within which it operates. In particular, Regulation 15 sheds critical light on how vacancies arise and are to be addressed, and it is only by placing Regulation 18 within that scheme that its proper legal character becomes clear.
- [33]. On a close reading, the duty imposed on the Chief Personnel Officer to issue notice is conditional. It arises only *"when so directed by the Commission"*. Thus, the Commission's direction is the operative trigger. If no direction is given, no duty arises. The provision is therefore directory in character, not mandatory in the absolute sense. The clause simply identifies how notice is to be given if the Commission determines that notice is appropriate.
- [34]. This conclusion is supported by **Regulation 15** of the Public Service Regulations, which governs the reporting of vacancies. It provides:
- "When a vacancy occurs, or it is known that a vacancy will occur, in any public office in any department or ministry, the Permanent Secretary shall report the fact to the Commission and—
- (a) if the Permanent Secretary recommends that the vacancy should be filled by the appointment or promotion of an officer serving in that department or ministry, he will inform the Commission and, if the promotion of that officer would involve the supersession of any more senior officers in the ministry, he will also state the reasons for the supersession of each officer;
- (b) if the Permanent Secretary is unable to recommend the promotion of a serving officer, he will inform the Commission of the names of the most senior officers in the particular grade or cadre from which the promotion would normally be made, stating his reasons why he does not consider the officers named to be suitable for promotion to the vacant post;
- (c) if the Permanent Secretary recommends that applications to fill the vacancy should be invited from serving officers or from both serving officers and the general public, he will attach to his report a draft advertisement setting out details of the vacant post and its duties and the qualifications for appointment; and

(d) if the Permanent Secretary is unable to recommend that the vacancy should be filled immediately, he will so inform the Commission and state his reasons therefore."

- [35]. Regulation 15 thus provides the practical scaffolding for how vacancies are reported and assessed. It contemplates several outcomes, only one of which results in the preparation of an advertisement. In particular, under clause (a), a vacancy may be filled by promotion within a department without any notice or advertisement; under clause (b), internal candidates may be considered unsuitable; and only under clause (c) is advertisement formally recommended. It follows, that not every vacancy results in a direction under Regulation 18(1), nor does every vacancy require advertisement. There are clear and legitimate pathways for appointments without either.
- [36]. This is not anomalous. The public service is not analogous to the private sector. It is a structured institutional body whose staffing practices are shaped by internal norms of seniority, merit, and institutional memory. Like a family, the public service generally seeks to promote from within, drawing upon mechanisms such as seniority lists, performance appraisals, and assessments by Heads of Department. This explains why the Regulations are drafted to give the Commission flexibility: because it is assumed that within the structured public service, suitable candidates may often be identified without formal advertisement or even service-wide notice.
- [37]. Indeed, Regulation 18(2) reinforces this reading by specifying the circumstances in which the Commission must proceed externally. It provides that where no suitable internal candidate exists, or where the interests of the service so require, the Commission may take steps, including advertisement, to fill the vacancy.
- [38]. Unlike subsection (1), subsection (2) is triggered only after the Commission has considered and rejected internal candidates. Once that threshold is crossed, the Commission becomes subject to a mandatory duty: it "*shall take such step*" as it thinks necessary. The phrase "*including advertisement*" must be understood not as merely illustrative, but as mandating advertisement as one of the steps to be taken. In the context of external recruitment, advertisement is the principal mechanism by which transparency and equal access are ensured. It cannot be omitted unless some equivalent measure is adopted and justified.
- [39]. I therefore respectfully depart from the view expressed by Henry J in **Public Service Union v Public Service Commission**⁶, a decision relied upon by the Claimant, to the extent that it treats Regulation 18(1) as imposing a general mandatory obligation to give notice by advertisement in every case. While I understand the learned Judge's purposive reading of the provision, I am of the view that a deeper purposive and structural analysis, one which situates Regulation 18 within the full framework of the Regulations, including Regulation 15 reveals a more nuanced scheme. In that scheme, the Commission's duties arise only once specific procedural and factual thresholds have been crossed.
- [40]. Finally, I note that the House of Assembly, by constitutional design, is an autonomous public service department and does not have a Permanent Secretary. However, this does not detract from the usefulness of Regulation 15 as an interpretive aid. Rather, it confirms the broader point: the Regulations accommodate institutional diversity and permit flexible processes depending on the context. The requirement to issue notice or advertise is not absolute, but conditional, structured, and

⁶ SVGHCV2016/0219; judgment delivered August 17, 2017

purposely directed to achieving fairness and transparency in a way that respects the internal architecture of the public service.

[41]. That said, although the House of Assembly enjoys autonomy, it remained incumbent upon the PSC, in discharge of its duty of candour, to demonstrate what internal process was followed when vacancies within that department came to its attention. The Court would have expected evidence of a procedure analogous to that contemplated by Regulation 15, showing how vacancies were received, considered, and progressed. The PSC could not materially depart from such a standard without undermining the overarching principles of fairness and transparency across the service, nor without risking the exclusion of the best pool of candidates from consideration.

[42]. In this regard, the Privy Council in **Lovell Romain v Police Service Commission** [2014] UKPC 32 emphasised the importance of certainty and transparency in appointment processes. At paragraph 20 of the judgment, the Board observed that:

“To permit the Commission to waive parts of the process when it thinks it appropriate would create an uncertain and unequal playing field.”

[43]. That statement underscores the public interest in ensuring that potential candidates know the rules governing appointments and can rely on their consistent application. Applied here, it reinforces the proposition that the PSC ought *not* to bypass advertisement or notice unless clearly authorised and justified. Absent such justification, the risk is that the process loses its transparency and fails to provide an equal opportunity to all eligible officers.

[44]. I conclude, therefore, that Regulation 18(1) is directory, not mandatory. It creates no free-standing obligation to issue notice in every case. Regulation 18(2), on the other hand, imposes a mandatory duty to act once external recruitment is contemplated, and advertisement is a required part of that step. The overarching statutory purpose, ensuring transparency, equal opportunity, and rational decision-making must always guide the Commission’s discretion, but the specific procedural mechanism it adopts may vary depending on the context and the stage at which the vacancy is assessed.

[45]. Having accepted that Regulation 18(1) is directory rather than mandatory, and that any obligation to issue notice or advertisement arises only upon the Commission’s determination, I find that the PSC was not, strictly speaking, in breach of the Regulation. That conclusion, however, does not end the inquiry. The Court must still examine whether the Commission’s decision not to give such a direction was, in the circumstances, irrational, unfair, or otherwise inconsistent with the requirements of a fair, transparent, and objective process. That is the true threshold for review.

[46]. The Defendant relies principally on the affidavits of Stephen Williams, Secretary to the PSC, and Arlene Regisford-Sam, Chief Personnel Officer. At paragraph 14 of his witness statement, Mr. Williams states that the Commission considered the suitability of officers based on the recommendations of senior officers, and that certain persons were consulted and declined interest. At paragraph 17 he further records that possession of a law degree was regarded as “especially advantageous” for the post of Clerk. No general advertisement or service-wide notice was issued by circular or Gazette.

- [47]. It is important to emphasise that neither Mr. Williams nor Mrs. Regisford-Sam identifies a law degree as part of the qualifications prescribed by the public service job descriptions for Clerk or Deputy Clerk. Those job descriptions, not the Regulations, define the established qualifications for the offices, and they did not require a law degree. Regulation 19(1)–(3) sets out the mandatory officer-centred criteria to be applied in assessing eligible officers: seniority, experience, educational qualifications, merit and ability, relative efficiency, general fitness, performance reports, and the other matters enumerated. Regulation 19(4), by contrast, permits consideration of *post-centred* “specifications ... required from time to time” for the particular office. Any such specification must therefore be an objective, pre-existing requirement inherent to the office, uniformly applicable and properly communicated, rather than an ad hoc preference favouring a particular candidate. No such specification was ever adopted or notified in respect of either position. The Commission’s reliance on a law degree as merely “advantageous” was accordingly extraneous to the statutory criteria and could not displace the mandatory evaluation under Regulation 19 of seniority, experience, merit, and ability. The Claimant, though not a lawyer, was not excluded on the face of the prescribed qualifications, and her candidacy was required to be fairly weighed.
- [48]. Mr. Williams’ own account confirms that all three officers considered for Clerk already held law degrees. The Claimant contends, and I accept, that if legal qualifications were thought to be critical, advertisement could have attracted a far wider pool of applicants, “scores of lawyers,” in the words of counsel for the claimant, thereby maximising the talent available to the service. Limiting consideration to a select group without transparent criteria deprived the process of openness and denied the Claimant a fair opportunity to compete.
- [49]. As for Mrs. Alexander-Charles, the Defendant contends that she preserved her continuity of service when transferred to the Community College in 2020 under the Transfer of Undertakings Act and that her appointment as Clerk in June 2023 was effected by way of re-transfer. However, no documentary evidence of any such re-transfer was produced before the Court. In the absence of such evidence, Regulation 20(3) must apply, which provides that where an officer resigns or otherwise leaves the service, her seniority is reckoned from the date of re-entry. On that footing, Mrs. Alexander-Charles’ seniority could only be calculated from June 2023, rendering her markedly junior to the Claimant.
- [50]. As regards the Deputy Clerk, Mr. Williams states at paragraph 21 that both the Claimant and Mrs. Williams-Huggins were considered. The evidence of Mrs. Regisford-Sam and the Claimant confirms that both women held undergraduate degrees, but that the Claimant additionally held a Master’s degree, had nearly three decades in the public service, and had served for twelve years as Senior Stenographer in the House of Assembly, with responsibility for supervising junior staff, including Mrs. Williams-Huggins. On at least one occasion she was appointed to act as Clerk of the House. Although Mrs. Regisford-Sam describes that acting stint as of limited substance since the House was not in session, the fact remains that the Claimant was considered sufficiently competent by her superiors to be entrusted with the acting appointment.

- [51]. The comparative evidence before the Court therefore underscores material differences in the qualifications and service records of the three women. The Claimant's nearly thirty years in the public service, advanced academic qualifications, long tenure in the House, supervisory responsibilities, and her appointment to act as Clerk all suggest that she was a serious candidate for advancement. Mrs. Williams-Huggins, by contrast, had only fourteen years of service, entered the House as a junior officer, and was junior to the Claimant in both seniority and supervisory responsibility. Mrs. Alexander-Charles' only distinguishing feature was possession of a law degree, which the Commission regarded as advantageous, but which was not required by the job descriptions. On any fair application of Regulation 19, the Claimant's service record, seniority, and qualifications compared favourably with both appointees. The Commission's elevation of a non-statutory "bonus" qualification above the prescribed criteria, coupled with the failure to advertise, meant that the Claimant was denied a fair opportunity to compete on the proper statutory grounds.
- [52]. Mr. Williams refers on several occasions (paras. 14, 18, 20–21) to "round robin" consultations and informal deliberations by Commissioners. Yet no documentary record of these consultations has been produced. Regulation 6 permits decisions to be taken otherwise than at formal meetings, but Regulation 7 requires the Secretary to record and confirm such decisions. No such records were adduced. This omission is material and undermines confidence that the PSC applied its mind in a structured, transparent manner.
- [53]. Taken together, the absence of advertisement, the reliance on informal consultations unsupported by records, the elevation of a job description qualification (a law degree) to decisive weight when it was not prescribed as mandatory, and the failure to weigh the Claimant's comparative strengths against Mrs. Williams-Huggins for Deputy Clerk, demonstrate that the PSC did not adopt a process which could objectively be described as transparent, fair, or rational. Regulation 19 required the Commission to apply its statutory criteria: seniority, experience, merit, ability, and relative efficiency across the full pool of eligible officers. By substituting a non-mandatory qualification and narrowing the field without advertisement, the Commission acted inconsistently with those statutory purposes. The explanations provided amount to post-hoc justification rather than evidence of contemporaneous decision-making.
- [54]. In these circumstances, I find that the PSC's decision not to advertise the posts was unlawful. While Regulation 18(1) does not impose an absolute obligation, the discretion it confers is not unfettered. It must be exercised in a manner that is consistent with fairness, transparency, and equal opportunity. On the evidence, those principles were not satisfied. The failure to advertise deprived the Claimant and other eligible officers of a fair opportunity to compete and created precisely the uncertain and unequal playing field cautioned against by the Privy Council.
- [55]. I therefore conclude that, although the PSC was not under a strict statutory duty to advertise every vacancy, its failure in this case to adopt an alternative process of equal transparency and fairness renders the appointments procedurally improper and contrary to Regulation 18 when read purposively.

ISSUE 2: Whether the Commission properly applied the criteria of qualifications, experience, merit merit, ability and seniority under Regulation 19

- [56]. Regulation 19 requires the Commission, when considering officers for promotion, to take into account seniority, experience, educational qualifications, merit, ability and relative efficiency, together with the additional matters set out in sub-regulations (1)-(3). As outlined at paragraphs 46–55 above, the Claimant’s seniority, long service within the House of Assembly, academic qualifications, supervisory responsibilities, and acting appointment as Clerk all fell squarely within these statutory criteria and therefore required structured evaluation.
- [57]. The Defendant’s position, advanced through the evidence of Mr. Williams and Mrs. Regisford-Sam, is that the Commission did take account of qualifications and experience, and that the selected officers were regarded as “*suitable*,” “*capable*,” and able to perform the duties of the posts. However, neither witness exhibits any contemporaneous or documentary record demonstrating how such conclusions were reached. No minutes, internal assessment matrices, comparative charts, deliberative notes, or other evaluative documents were produced to show that the prescribed statutory criteria were applied.
- [58]. While Regulation 19 does not elevate seniority above merit and ability, it does require that all the statutory criteria be conscientiously assessed. In the absence of any documentary evidence of evaluation, and in circumstances where the witnesses relied instead on generalised labels such as “*suitable*” and “*capable*”, the Court cannot infer that the Commission undertook the structured comparison required by Regulation 19⁷. This conclusion is reinforced by the improper reliance on a non-mandatory qualification discussed at paragraph 47 above, which suggests that relevant considerations were displaced by extraneous ones.
- [59]. The duty of candour obliges a public authority exercising statutory appointment powers to demonstrate the process by which it applied the governing criteria. Where the statutory scheme mandates selection on objective grounds, bare assertions of suitability are insufficient. The unexplained absence of contemporaneous records in this case undermines the Defendant’s contention that the Commission complied with Regulation 19.
- [60]. The Claimant’s evidence as to her own seniority, qualifications, and extensive service record stands essentially unchallenged. In the absence of any documentation showing that these matters were weighed against those of the appointees, the Commission has not demonstrated that it took the mandatory criteria into account in any meaningful way.
- [61]. In judicial review, a public authority must meet the duty of candour. Where a statutory scheme requires selection on objective grounds, it is not enough for the authority to say it was done, it must show how it was done. Vague attestations by Commission officials do not discharge this duty. The

⁷ Wisniewski principle [Wisniewski v Central Manchester Health Authority 1998] cited in Otto Sam: if a piece of evidence one would expect to see is absent without explanation, the court may infer that its content would not have helped the withholder’s case

Court is entitled to expect a reasoned record of deliberation, or at least some documentary evidence reflecting the application of the governing criteria. That is wholly absent here.

- [62]. I therefore find that the appointments in issue were not only procedurally flawed under Regulation 18, but substantively flawed under Regulation 19. The Commission has failed to demonstrate that it took into account the mandatory criteria of qualifications, experience, merit, ability and seniority in any conscientious or documented manner. The appointments are thus liable to be quashed on both procedural and substantive grounds.

Issue 3: Whether the impugned decisions were unlawful on grounds of unreasonableness, procedural impropriety, or apparent bias

- [63]. The determination of this issue follows directly from the findings reached under Issues 1 and 2. Having found that the Commission failed to adopt a transparent or fair process consistent with Regulation 18, and further failed to demonstrate compliance with the statutory criteria under Regulation 19, the Court must now consider the legal consequence of those deficiencies.
- [64]. The Claimant submits that the combined breaches of Regulations 18 and 19 render the decisions unlawful. She argues that the legitimacy of appointments in the public service depends on strict adherence to the statutory framework, and that material non-compliance necessarily invalidates the outcome.
- [65]. The Defendant contends that even if there were procedural shortcomings, they do not rise to the level of illegality. It submits that the Commission retains a broad discretion in matters of appointment, and that the Court should not interfere absent proof of mala fides, manifest irrationality, or substantial prejudice.
- [66]. The relevant legal standard is set out in **Burke v Sam**⁸, where the Court of Appeal affirmed that the PSC is under a duty to demonstrate compliance with the applicable regulatory framework to ensure that statutory procedures designed to guarantee fairness and transparency are observed. The Court emphasised that the Commission must be able to demonstrate, by reference to evidence, that it has complied with the governing rules and has acted fairly. In the absence of such demonstration, the Court is entitled to intervene.
- [67]. Against that standard, the Court considers the three classic grounds of judicial review:
- **Unreasonableness / Irrationality.** The Commission's reliance on a non-mandatory job-description qualification, its failure to adopt any transparent comparative process, and its preference for candidates manifestly junior in service without recorded reasons were not rational exercises of discretion. No reasonable decision-maker properly directing itself could have considered such a process sufficient.
 - **Procedural Impropriety.** The duty of fairness required transparency, documentation, and even-handed comparison. Yet there was no advertisement or service-wide notice,

⁸ [SVGHCVP2014/0002]; judgment delivered September 15, 2015

no minutes or records of deliberation, and only uncorroborated references to “round robin” consultations, contrary to the requirements of Regulations 6 and 7. Such deficiencies deprived officers of the opportunity to compete fairly and breached the procedural protections the Regulations were designed to secure.

- **Apparent Bias.** The cumulative effect of narrowing the field to a select group, elevating an “advantageous” qualification above the prescribed criteria, and failing to open the process to wider competition would reasonably appear to a fair-minded and informed observer to favour certain individuals over others. While there is no evidence of actual bias, the process gave rise to an appearance of partiality and unequal treatment.

[68]. Before turning to the legal consequences of the deficiencies identified, it is necessary to reiterate the statutory purpose that underpins the Commission’s obligations of fairness and transparency. Regulation 18 does not require notice or advertisement in every instance, but the underlying objective remains constant: to ensure that public service appointments are made through processes that are transparent, objective, and free from arbitrariness. Notice and advertisement remain the most direct and defensible means of achieving those purposes, as they provide all eligible officers with an equal opportunity to be considered. Where the Commission elects not to issue internal notice or to advertise externally, it must adopt an alternative process that is equally transparent and objective. Such alternatives may include a service-wide review of personnel records, structured consultation with Permanent Secretaries or Heads of Department, or the convening of an impartial panel to assess the full pool of eligible officers. Whatever method is chosen, the Commission must be able to demonstrate, by cogent evidence, that its process was fair, rational, and consistent with the statutory criteria of merit, ability, and seniority. Absent such evidence, the failure to give notice or advertise undermines the statutory purposes and renders the resulting appointment susceptible to judicial review.

[69]. I therefore hold that the appointment decisions challenged in these proceedings were procedurally improper, unreasonable, and contrary to the Regulations. The Commission failed to take into account relevant considerations mandated by law, which is an illegality in administrative law, and further, the lack of fair process in considering the claimant’s candidature renders the decision procedurally improper. The decisions are accordingly unlawful and, in the exercise of my supervisory jurisdiction, I find them liable to be quashed.

Issue 4: Whether the Court should exercise its discretion to grant relief

[70]. The Claimant seeks orders of certiorari and declaratory relief. The Defendant resists on the basis that there has been delay, that the appointment has been acted upon, and that to disturb it now would prejudice the incumbent officers and disrupt the effective functioning of the department.

[71]. Under CPR 56.4, the Court retains a discretion to refuse relief if the application was not made promptly, or where the grant of relief would cause substantial hardship to any person, substantially prejudice the rights of any person, or be detrimental to good administration. Unlike the previous rules, the 2023 revision does not prescribe a fixed outer limit; the question of delay is assessed in context.

- [72]. In the present case, I am not satisfied that the discretionary bars relied upon by the Defendant have been made out. The Defendant argues that the Claimant delayed from the time of appointment to the filing of the claim, but the delay in question must be considered in its full factual and legal context. The Claimant acted within the limitation period, and no evidence has been adduced to show that the time taken was unreasonable in light of the complexity of the matter and her efforts to ascertain the basis for the appointment. The procedural rule does not require mechanical urgency, but timely action in all the circumstances. That standard has not been breached.
- [73]. As to the non-joinder of the Clerk of the House and the Deputy Clerk, I do not consider that omission to be fatal to the claim. The judicial review challenge lies against the decision-maker, the Commission, not the beneficiaries of the decision. The Court notes that the successful appointees were not joined as parties and that it is generally desirable, where practicable, to afford persons whose interests may be affected an opportunity to be heard. However, neither officer was party to the impugned process, nor would their participation alter the factual or legal assessment of its lawfulness. In matters of this kind, the Commission is capable of presenting the institutional perspective, and the Court is satisfied that the interests of the appointees have been considered in the round. Their joinder would add nothing to the analysis of whether the Commission acted lawfully under the statutory scheme. Any potential prejudice to them arising from the grant of relief must instead be addressed under CPR 56.4, which provides a framework for evaluating hardship, prejudice, or detriment to good administration.
- [74]. Moreover, the Defendant has not demonstrated, with any specificity or evidential clarity, what prejudice would be suffered by the incumbent officers if the relief sought were granted. The suggestion of disruption or hardship is generalised and speculative. There is no evidence of financial loss, institutional dislocation, or personal hardship. Incumbents necessarily hold office subject to the legality of their appointment, and correction of an unlawful administrative process does not, without more, amount to prejudice within the meaning of CPR 56.4. While the Court is always alive to the realities of administrative continuity and the need for orderly transitions, the discretion to withhold relief must be grounded in concrete, substantiated prejudice. That is lacking here.
- [75]. I therefore see no basis to refuse the relief sought. The appointments are quashed, and the Claimant is entitled to a declaration that the Commission acted unlawfully in breach of Regulations 18 and 19.

Relief and Conclusion

- [76]. The breaches identified go to the heart of legality, fairness and good governance. The Commission is under a public duty to comply with the Regulations and law, and its failure to do so resulted in a process that was both procedurally and substantively flawed. These breaches are not trivial. They are

not minor or technical defects; they go to the core of what the Regulations were designed to secure: procedural integrity, fairness and merit-based appointments. They represent a serious departure from the standards of objectivity, transparency, and accountability that underpin the constitutional and regulatory framework governing public service appointments. Where appointments are made outside those standards, the integrity of the service is compromised, and public confidence is eroded. In the absence of concrete prejudice under CPR 56.4, the ordinary consequence is that the Court must grant appropriate relief. To withhold such relief would dilute the Court's supervisory jurisdiction and undermine the rule of law.

- [77]. For the reasons set out above, the Court finds that the Public Service Commission acted unlawfully in failing to adopt a transparent and fair process under Regulation 18 and in failing to demonstrate compliance with the mandatory criteria laid down in Regulation 19 of the Public Service Regulations.
- [78]. Accordingly, the Court grants a declaration that the process by which the appointments of Mrs. Deborah Alexander-Charles as Clerk of the House of Assembly and Mrs. Simone Williams-Huggins as Deputy Clerk of the House of Assembly were undertaken, was unlawful and contrary to Regulations 18 and 19. The Court further grants an order of certiorari quashing both appointments.
- [79]. On the question of costs, the Claimant has succeeded in establishing unlawful conduct on the part of the Commission and has obtained substantive relief in the form of both declaratory orders and certiorari. That success is not merely technical; it represents a vindication of the public interest in lawful, fair, and merit-based public service appointments. In judicial review, the general rule is that a successful claimant should recover her costs unless there is good reason otherwise, and no such reason has been shown here.
- [80]. In the circumstances, costs are awarded to the Claimant, summarily assessed in the amount of \$10,000.00, to be paid by the Defendant.
- [81]. The claimant shall have carriage of the order after judgment.

BY THE COURT

REGISTRAR