

THE REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
(SAN FERNANDO)**

CLAIM NO: CV2019-00195

BETWEEN

VIDESH SEEPERSAD

CLAIMANT

AND

THE STATUTORY AUTHORITIES SERVICE COMMISSION

DEFENDANT

Before the Honourable Mr. Justice Kevin Ramcharan

Date of Delivery: 25th October, 2019

Appearances: Mr. Anand Ramlogan SC, Mr. Douglas Bayley and Mr. Vishaal Siewasaran *instructed* by Alvin Shiva Pariagsingh for the Claimant Ms. Nadine Nabie, Ms. Kristy Mohan, and Ms. Jinai Chong-Singh *instructed* by Ms. Sangeeta Latchan for the Defendant.

DECISION

Background

1. On the 18th January, 2019 leave was granted to the Claimant Videsh Seepersad to apply for judicial review against the promotion policy and/or decision of the Defendant, The Statutory Authorities Service Commission (“SASC”). The SASC is a service commission created by section 4 of the Statutory Authorities Act Chapter 24:01 (“the SASC Act”) and has the power to appoint persons to be or act as officers and to transfer, promote, remove and exercise disciplinary control over persons so appointed in the Statutory Authorities across Trinidad and Tobago. Along with Statutory Authorities, included under the SASC’s purview are four of the fourteen Regional Corporations in Trinidad and Tobago namely, The San Fernando City Corporation, The Port of Spain City Corporation, The Arima Borough Corporation and The Point Fortin Borough Corporation (“the Municipal Corporations”).
2. The instant proceedings concerns the Claimant’s challenge to the current policy employed by the Defendant which treats all public officers from the various statutory authorities as a single pool of eligible candidates for the purposes of appointments and promotions to vacant offices, without first evaluating whether such vacancies can be internally filled by candidates from within the particular statutory authority in which the vacancy arose.
3. By Fixed Date Claim Form filed on the 30th January, 2019 the Claimant sought the following reliefs:
 - a. An order of certiorari to remove into this Honourable Court and quash the practice and/or policy and/or decision of the SASC to create a Master Seniority List by virtue of which it purports now to be entitled to treat all public officers and/or municipal officers in

particular, from the various municipal corporations (Statutory Authorities) under its jurisdiction as a single pool of potential candidates from which it can make appointments or promotions to vacant offices in any of the said corporations (and in particular, the Port of Spain City Corporation), without first evaluating whether the vacancy can be filled by a candidate from the particular statutory authority in which the vacancy arose; and generally to quash the practice, policy and/or decision to so treat those officers, on the ground that it is unlawful and ultra vires.

- b. A declaration that the practice and/or policy and/or decision of the SASC to treat all public officers from the various statutory authorities and/or in particular, municipal police constables from all municipal corporations under its jurisdiction as a single integrates statutory service and/or municipal police service from which it can make appointments and/or promotions to vacant offices in any statutory authority and/or Municipal Corporation under its jurisdiction and in particular, the Port of Spain City Corporation without, first evaluating whether the vacancy can be filled by a candidate from the particular municipal corporation in which it arises, is unlawful and ultra vires.
- c. A declaration that the practice and/or policy and/or decision of the SASC in treating municipal police constables from other municipal corporations as being automatically eligible to be considered for appointment and/or promotion to vacant offices in the Municipal Police Service of the Port of Spain City Corporation, without, in accordance with its previous established practice and policy (and, the Claimant submits, as is required by the Regulations), first evaluating whether the vacancy can be filled by a candidate from

the particular municipal corporation in which it arises, is unlawful and ultra vires.

- d. A declaration that the Claimant has, by virtue of the adoption of the afore-summarised policy, practice or decision been treated unfairly and/or contrary to the principles of natural justice and section 20 of the Judicial Review Act, Chapter 7:08.
 - e. A declaration or finding that the said practice and/or policy and/or decision of the SASC (as summarized above) was adopted in such a way as to, or as a matter of substance constitutes a breach of the Claimant's legitimate expectation; and/or that, for this same reason, the said practice and/or policy and/or decision for the SASC falls to be quashed.
 - f. Costs.
 - g. Such further order, directions, relief or writs as the Honourable Court considers just and as the circumstances of this case warrants pursuant to Section 8(1) of the Judicial Review Act or otherwise.
4. On the 16th January, 2019 the Claimant filed affidavits of Videsh Seepersad, Jodha Badal and Vikash Babulal in support of his claim. The Defendant filed the affidavit of Karen Williams on the 26th April, 2019 in response.
5. On the 17th June, 2019 the Claimant filed its written submissions. The Defendant later filed its written submission on the 12th July, 2019 and the Claimant replied thereto on the 24th July, 2019.
6. Both parties were afforded the opportunity of amplifying on their written submissions by way of oral submissions on the 30th July, 2019. At the hearing of the oral submissions, the parties were directed to file supplemental submissions on the relevance and impact of the Privy

Council case of *Smart -v- Director of Personnel Administration and another* [2019] UKPC 35 with respect to the issues relating to the case at Bar.

The Claimant's Evidence

Affidavit of Videsh Seepersad

7. The Claimant has been appointed by the SASC to serve as Municipal Police Constable attached to the Port of Spain City Corporation for the past 18 years. However, he has been acting in the rank of Municipal Police Corporal (Range 31C) for the latter five years of his service.

8. Over his years of service, the Claimant asserts that the established policy and practice of the SASC was to consider and promote officers within the Municipal Police Service of the Port of Spain Corporation to vacancies that arose within the said corporation. In other words, when a vacancy arose an officer would be promoted within the particular statutory authority to which he was attached and in which the vacancy arose i.e. intra-statutory authority promotions. If a vacancy could not be appropriately filled by an officer from within the Statutory Authority/Municipal Corporation, then the SASC would as a matter of policy, seek to widen the recruitment to other Statutory Authorities/Municipal Corporations. However, the Claimant suggested that such a process was never utilized.

9. On the 2nd August, 2018, the Claimant received a letter inviting him to attend an interview for the position of Municipal Police Corporal (Range 31C). The letter was generic in nature in that it appeared to invite eligible officers from all Municipal Corporations to be interviewed for appointment to vacancies. However, based on the pre-existing policy, practice and procedure, the Claimant was under the belief that although

the invitation was made to all officers, they would have been interviewed for vacant positions within their respective Corporations.

10. On the 14th August, 2018 the Claimant attended his interview at the offices of the SASC on Abercromby Street, Port of Spain. Upon arrival, he noticed the presence of other Municipal Police Constables from other Corporations under the jurisdiction of the SASC. However, he thought they were in attendance for interviews for appointment and/or promotion within their respective Corporation.
11. On the 7th August, 2018, the Claimant observed an article in the Trinidad Guardian Newspaper which reported a promotion ceremony hosted by the SASC at City Hall for Municipal Police Constables. Upon enquiries amongst his colleagues, he was informed that the SASC in the August, 2018 promotion exercise, promoted officers to higher ranks and across all Municipal Corporations.
12. As a result of the approach undertaken by the SASC in the promotion of Municipal Police Constables, the Claimant instructed his Attorneys-at-Law to issue a Pre-Action Protocol Letter dated the 29th August, 2018. Therein the Defendant was accused of subjecting the Claimant and other Municipal Police Constables to an illegal and fundamentally flawed promotion exercise when it treated the Municipal Police Constables from across the various Municipal Corporations, in one pool eligible for consideration to promotion to vacant offices in the Municipal Police service of the Port of Spain City Corporation. Furthermore, the Claimant alleged that the procedure adopted amounted to a breach of his legitimate expectation that the established policy, practice and procedure of treating each statutory authority separately would continue.

13. By the said letter, an application under the Freedom of Information Act Chapter 22:02 was made for access to the following information:

- a. Whether all Municipal Constables from various statutory authorities under the jurisdiction of the SASC were eligible to apply for and/or be considered for the vacancies in the POS City Corporations or did the SASC confine itself to considering eligible officers from within each statutory authority for the vacant position in that particular statutory authority alone.
- b. Any and all notes, reports, correspondence, memoranda and minutes placed before the SASC when it considered the issue of promotion of municipal police officers in the year 2018, the promotion of Jameel Hosein, Everest Joseph, Gerard Griffith, Vishal Singh, Ulric Gilbert, David Singh, Latchman Nandlal and Patrick Louis and the ongoing promotion exercise in the Port of Spain City Corporation, San Fernando City Corporation, Arima Borough Corporation and Point Fortin Borough Corporation.
- c. Any and all advertisement whereby Municipal Police Officers from other Municipal Corporations that fall under the jurisdiction of the SASC and/or any other members of the public were invited to apply for promotion within the Port of Spain City Corporation.
- d. A copy of the minutes or other document containing the decision to treat all municipal officer from municipal corporation under the jurisdiction of the SASC as one pool of potential candidates/applicants for vacancies in the said corporations regardless of where they were serving/attached as well as the document that was considered by the SASC as part of its deliberation to make this decision.
- e. A copy of any document or report that discussed and/or recommended this change in policy whereby all Municipal

Constables from various statutory authorities under the jurisdiction of the SASC regardless of where they were presently attach/appointed/serving.

- f. A copy of the order of merit list which was compiled pursuant to the promotion interviews that led to this recent round of promotion in August 2018.

14. By letter dated the 2nd November, 2018 the Executive Officer of the SASC responded to the Claimant's Freedom of Information request. The letter disclosed that by Minute dated the 29th September, 2016 it adopted a new policy whereby a Master Seniority List of all officers in all statutory authorities would be created for the purpose of assisting with future promotions, appointments and transfers. Based on its Executive Officer's requirement to keep an up to date seniority list pursuant to Regulation 20(1) of the SASC Regulations, "the SASC is entitled to treat all municipal officers from the municipal corporations under the jurisdiction of the SASC as one pool of potential candidates/applicants for vacancies in the said corporations regardless of where they were serving/attached." The Claimant was further informed that the SASC's decision to create a single pool of applicants was 'in part' as a result of the Court of Appeal judgment *SASC -v- Jacqueline Solomon-Sankar* Civ App. 122 of 2008 ("*Solomon-Sankar*") as the said judgment required the SASC to create the "Master Seniority Lists for offices across all authorities", as recorded in the Minute dated the 15th January, 2015.

15. The Claimant stated that he was significantly taken aback as he was neither previously informed of the change in policy nor was, he invited to comment or voice any concerns on the proposed changes.

16. In December 2018, the SASC promoted Municipal Police Officers however, the Claimant was by-passed for promotion despite his seniority, acting appointment and favourable performance appraisals. Other officers with less seniority and who had not been previously attached to serve in the Port of Spain City Corporation were promoted in priority of the Claimant to the rank of Corporal.
17. The Claimant avers that the pre-existing policy was important because it meant that there was a defined pool of competition for promotions limited to the particular Statutory Authority/Municipal Corporation to be considered for promotions. This was advantageous to the Claimant as the pool of candidates in competition with him was much smaller. As a result, the pre-existing policy provided a significant degree of certainty and stability within the system of promotions as he was able to foresee the promotional prospects by reference to the number, age and needs of the particular Statutory Authority/Municipal Corporation.
18. Additionally, the pre-existing policy also afforded officers the benefit of planning their social and family lives around the reasonable prospect of being able to live and work in the same geographical area. The existence and maintenance of the well-known policy in the Municipal Police Service was a major factor in the Claimant's decision to remain in the employ of the service which cause him to forego other employment opportunities in different fields.
19. Furthermore, the Claimant noted that he is aware of the appointment of the Joint Select Committee ("JSC") of Parliament in the Tenth Parliament in the 2010-2011 and 2013-2014 sessions to inquire and report on municipal corporations and service commissions (except the Judicial and Legal Service Commission). At the said meetings of the JSC the

representatives of the SASC confirmed that the established policy, practice and procedure for promotions treated each statutory authority as a separate, discrete and individual entity or employer. The “First Report” (from the Tenth Parliament 2010/2011 session), records within the Minutes of the meeting on the 27th May, 2011 between the JSC and officials from the SASC at page 87 under the rubric 1.4(h) Basis of Promotion as follows:

“Officials pointed out that each body is discrete and autonomous as there is no unified statutory service. This in itself creates limitations for SASC. Thus, promotions are limited to officers within the body they serve. However, positions may be advertised for technical and professional positions in order to create a pool of applicants. In addition, officers may be seconded from larger corporations to other corporations.”

20. Moreover, within the verbatim notes of the said meeting, at page 221 of the First Report, the following comment was made by a member of the SASC, Ms. Prabhatie Maraj:

“If we have a position that maybe the authorities do not have, we would advertise it either within the authorities, within the public service or in the press, and using that method we would have a pool of candidate from which to choose.”

21. In the Twelfth Report (2013/2014 session) at page 77 of the verbatim notes, the following exchange takes place:

“[Ms. Coudray]: Mr. Chairman [...] How do you, when the heads make certain recommendations, how do you look down your list internally or at what stage do you decide we need to open up these vacancies to the general public or the open service, to make sure that you get the best -most suitable- candidate for the particular position?

[Mr. Alvarez]: Where it is appropriated the commission looks at all the persons available to them and in such instances we advertise. You would notice over the last year or so there has been an increased amount of advertisement coming from the SASC for

positions, and we will continue along that path to ensure that when we appoint someone is the best person for the job.

In addition to that, many times we hold interviews and if during the interview process we are not satisfied that we are not getting the calibre of persons required, then we take it to the next step in terms of advertising and re-advertising [...]"

22. Therefore, for these reasons the Claimant asserts that preference was always first given to candidates from within the particular statutory authority in which the vacancy arose. There has never been a system where the entire workforce from all four Municipal Corporations under the SASC's jurisdiction have been treated as a single pool from which to fill vacancies in the first instance and/or the SASC moving straight to advertising the positions to widen the pool of candidates. As a result, the change in the procedure relating to promotions whereby all Municipal Police Constables under the jurisdiction of the SASC are 'lumped together' in one pool to be considered for promotions to vacant offices despite the officers' attachment and where the vacancy arose is illegal, unfair, irrational and fundamentally flawed.

Affidavit of Vikash Babulal

23. Vikash Babulal was appointed in the rank of Constable at the Municipal Police Service of the Port of Spain City Corporation by letter dated the 25th April, 2006 and was confirmed by letter dated 18th March, 2008. Vikash Babulal resides in Barataria which makes the commute to work convenient and affordable. Due to his proximity to work, he can drop off and pick up his children with ease who attend school in Barataria.

24. By letter he was invited to attend an interview on the 22nd August, 2018 for promotion to the rank of Corporal at the offices of the Defendant. Upon reading the said letter, Vikash Babulal assumed that it was general and

generic in nature which was being sent to all eligible officers from the various Corporations so that they could be interviewed for appointment to vacancies within their respective Corporations. It never occurred to him that all Municipal Police Officers were being lumped together by the Defendant in one pool who were vying for promotion to any vacant office regardless of which Corporation they were attached to. Vikash Babulal averred that he has always known the promotion system to be one in which interview and promotions of officers occurred in vacant positions within the Municipal Corporation in which they were already working.

25. On the 22nd August, 2018 while attending the interview Vikash Babulal was never informed that Municipal Police Officers from the different Statutory Authorities would all be lumped together in a single pot of candidate from which vacancies in any of the Municipal Police Service under the SASC's jurisdiction would be filled. The clear and established policy and practice was that officers would be considered for promotions within the particular corporation within which they both worked and in which the vacancies arose.

26. However, by letter dated the 6th December, 2018 Vikash Babulal was informed by the Defendant that he had been promoted to Police Corporal Range 31C in the Municipal Police Service of the San Fernando City Corporation. With the promotion, Vikash Babulal's salary increased from \$7,695.00 to \$8,194.00. However, his personal life has been drastically disturbed. His commute time to work has extended by as much as two hours and the cost of fuel due to the commute far outweighs the meagre increase in salary. With this promotion he has also lost the ability to drop off and pick up his children.

27. Vikash Babulal asserted that had hopes of being promoted in line with the pre-existing policy as he was able to plan his family and social life around the prospect of being able to work and live in the same geographical area. He had a reasonable expectation of promotion within the same Municipal Corporation in which he started his employment as opposed to having to factor into his life the prospect of moving his family to a different area. The pre-existing policy also provided a significant degree of certainty and stability in the system of promotions. The career path and advancement was based on the particular Statutory Authority and on factors such as the sanctioned strength of the Municipal Police Force for the Corporation, the number or vacancies, the seniority of officers and the needs of the particular Statutory Authority/Municipal Corporation.

28. Vikash Babulal affirmed that he was not previously informed of the proposed change in policy nor was he invited to comment on the proposed changes or given an opportunity to voice any concerns or request to be treated differently. He is also aware of fellow officers under the purview of the SASC's jurisdiction who are plagued with the same issues surrounding promotion to the Municipal Police Service in another Corporation. In addition Vikash Babulal states that he has been promoted ahead of officers who were acting in the rank of Corporal and were senior to him which include Curtis George with 26 years' service; Videsh Seepersad with 18 years' service; Sheldon Wayne Joseph with 18 years' service; Maitreya Hewitt with 18 years' service; and Jodha Badal with 18 years' service.

Affidavit of Jodha Badal

29. Jodha Badal was appointed Municipal Police Constable at the Port of Spain City Corporation on the 19th September, 2000 and was later confirmed by the Defendant in that office on the 15th July, 2003.
30. By letter dated the 4th December, 2012 and the 16th December, 2014 Jodha Badal was appointed to act as a Police Corporal with the Port of Spain City Corporation. During his acting tenure he was always assessed as “Very Good” on his annual performance appraisal with capabilities of performing duties/responsibilities of a higher office. As a result, Jodha Badal asserted that he has expectations to be promoted to the rank of Corporal within the Service of the Port of Spain City Corporation. It has always been the established policy, practice and procedure of the SASC to promote officers to vacant positions from amongst and within the Municipal Corporation in which they were already working unless suitable candidates could not be found within. In such a case, the SASC recruited someone externally from other Statutory Authorities/Municipal Corporations. However, in his experience and to his knowledge external recruitment never occurred.
31. By letter dated the 22nd August, 2018, Jodha Badal was invited to attend an interview for the position of “Police Corporal (Range 31C) All Corporations.” Based on the established policy, practice and procedure he assumed that this was simply a generic and general letter being sent to eligible officers from various Corporations so that they could be interviewed for appointment to vacancies within their respective Corporations. Accordingly, Jodha Badal affirmed that he did not interpret the letter to mean that all Municipal Police Officers were being lumped together by the Defendant in one “pool” of Municipal Police Officer who were vying for promotion to any vacant officer regardless of which Corporation they were attached to.

32. By letter dated the 4th December, 2018 Jodah Badal was notified by the Defendant that he was placed at position number 47 on an Approved List of Candidates for the office of Police Corporal (Range 31C) All Corporations. Additionally, he noted that officers junior to him were promoted including PC Kallideen No 3222; PC Soobir No 3224; PC Jaikaran No 3229; WPC Skeete No 3232; and WPC Wiltshire No 3234.
33. Jodha Badal stated that it was demotivating to know that his juniors in some instances persons he trained, are now his superiors especially after working diligently to earn same. The pre-existing policy afforded him the ability to plan his social and family life around the prospect of being able to live and work in the same geographical area. As such he had a reasonable expectation of promotion within the same Municipal Corporation in which he started his employment as opposed to having to factor in the prospect of having to move his family to a different area in order to secure promotion.
34. The pre-existing policy was important because it meant that there was defined pool of competition from promotions wherein only those within the particular Statutory Authority/Municipal Corporation would, at least in the first instance, be considered for promotion. There was a clear advantage of this as he did not have to compete with a much larger pool of candidates from other Statutory Authorities/Municipal Corporations. Jodha Badal declares that the probability of officers being transferred into the Service of the Port of Spain City Corporation will only seek to dilute his promotional prospects. Furthermore, there was a significant degree of certainty and stability in the system of promotions as Jodha Badal and others were able to foresee the future promotional prospects by reference to the number, age and needs of the particular Statutory

Authority/Municipal Corporation in which each officer worked. The existence of the policy over the years of employment was a major fact in choosing to remain in the police.

35. The existence of the policy was well known in the Municipal Police Service and was often referred to. It had become engrained and an integral part of the employment terms. Jodha Badal states that he was not previously informed of the proposed change in policy neither was he invited to comment on the proposed changes or given an opportunity to voice any concerns or request to be treated differently. He is also aware of fellow officers under the purview of the SASC's jurisdiction who are plagued with the same issues surrounding promotion to the Municipal Police Service in another Corporation.

The Defendant's Evidence

36. The affidavit evidence of the Defendant is proffered by Karen Williams, Administrative Officer IV (Ag.) attached to the SASC Department acting in that position since December 2018.

37. The Defendant avers that the Claimant entered the Municipal Police Service on a temporary basis with effect from the 13th February, 2000. The Claimant was then permanently appointed to the post of Municipal Police Constable with effect from the 20th May, 2003. At present, he holds the substantive rank of Municipal Police Constable and had acted in the rank of Municipal Police Corporal for the periods (i) 14th July, 2014 to 3rd December, 2014; (ii) 12th January, 2015 to 12th May, 2015; and (iii) 9th January, 2018 to 9th March, 2018. By Memorandum dated the 27th October, 2015 and letter dated the 31st October, 2018, the Claimant was informed that his acting appointments as Municipal Police Corporal did not

constitute a prelude to a permanent appointment and a claim to promotion.

38. Before the *Solomon-Sankar* judgment the Defendant stated that whenever a vacancy arose in a particular office within a particular Statutory Authority, the vacancy was filled by promoting persons from within that same Statutory Authority i.e. on an intra-statutory authority basis. Therefore, the procedure that was adopted before *Solomon-Sankar* to fill vacancies which arose within the Municipal Corporations for the rank of Municipal Police Corporal was generally as follows:

- a. When a vacancy arose for Municipal Police Corporal in a particular Municipal Corporation, all Municipal Police Constables in that Municipal Corporation satisfying the requirements for the vacancy were invited to attend interviews for promotion to that rank. Interviews were held and each officer received a score based on his performance at the interview. An Order of Merit List (“OML”) was then established based on the scores of the officers. The officers with the highest scores would be promoted to the rank of Police Corporal, subject to the number of vacancies available within in the said Municipal Corporation.
- b. The next time a vacancy arose within the said Municipal Corporation, the OML would have been consulted and the remaining persons from that list would be promoted, subject to the number of available vacancies.
- c. The OML was consulted for promotions until all the person on the list was promoted in order of merit. When the list was exhausted, the interview process aforementioned was repeated.
- d. In or around 2016, the SASC made a decision that all OMLs would be valid for a period of two years. Upon its expiration, the interview

process was repeated resulting in the compilation of a new OML notwithstanding the fact that all the persons on the previous OML may have not been promoted.

39. On the 5th November, 2014 the Court of Appeal delivered the *Solomon-Sankar* judgment wherein the SASC noted the Court's dicta, in particular that the Executive Officer should establish and maintain an up to date Seniority List (Master List) and the Head of a Statutory Authority was mandated to maintain an up to date Seniority List of all officers in his/her Department for the purpose of making recommendations for promotions and acting appointments.

40. Based on the findings of the *Solomon-Sankar* judgment the SASC sought the advice of its legal department on the effect of the said judgment. On the 15th January, 2015 a meeting was held where the SASC accepted the legal department's recommendation not to challenge the *Solomon-Sankar* judgment. In an attempt to give effect to the Court of Appeal's decision, particularly in respect of the dicta that the SASC be treated as "an integrated service", the SASC decided that all fourteen (14) Statutory Authorities would be informed of the impact of the said judgment and the requirement for the development of Master Seniority Lists for each office across all Authorities. As a result, by Memorandum dated the 15th July, 2015, all Heads of the Statutory Authorities were informed of the *Solomon-Sankar* judgment and were requested to submit to the Executive Officer of the SASC Department, an up to date seniority list of all officers (permanent and temporary) in their respective Departments for the purpose of creating a Master Seniority List in respect of each office across all Authorities.

41. A further Memorandum was sent to the all Heads of the Statutory Authorities informing them that the said Master Seniority List created by the SASC Department would be consulted when inviting officers to interview for promotions. The Defendant avers that it was therefore the responsibility of all Heads of the Statutory Authorities to communicate this information to all officers in their Authority. Consequently, the seniority list from received from each Head of the Statutory Authorities in respect of each office, was used by the SASC Department to compile a single Master Seniority List for each office.

42. As a result of the steps taken by the SASC to give effect to the *Solomon-Sankar* judgment, there was a change in the process of promotions to offices that exist across the Statutory Authorities. With particular regard to the promotion of Municipal Police Constable (Range 21) to the office of Municipal Police Corporals (Range 31 C) across the four SASC Corporations, the new process is as follows:

- a. The SASC firsts consults the Master Seniority List for the office of Municipal Police Constable (Range 21) which contains the names of all such officers across all four SASC Corporations.
- b. All Municipal Police Constables who meet the requirements for the office of Municipal Police Corporal as set out in the job description are then invited by the SASC to attend and interview for promotion.
- c. An OML is then compiled based on the scores obtained by the candidates at the interview. Officers who are successful at the interview are then promoted to the office of Municipal Police Corporal in accordance with their position on the OML, subject to the number of vacancies available.
- d. If a vacancy arises within the two-year period before the OML expires, then the OML is consulted and the remaining Municipal

Police Constables would be promoted to the office of Municipal Police Corporal in accordance with their position on the OML. Where it is the case that the OML has expired, the process outlined (in sub-paragraphs a. - c.) hereinabove is repeated.

43. The Defendant asserts that the SASC attempts as far as possible to promote candidates within the Statutory Authority/Municipal Corporation from which they originated; however, this is not always possible. Intra-statutory promotions are facilitated whereby the SASC considers the OML and begins with the officer located at position number 1. If there is a vacancy in the Statutory Authority/Municipal Corporation from which the officer at position number 1 originated, the officer would be promoted within that Statutory Authority/Municipal Corporation. This process is continued moving down the list until there are no longer any vacancies in the Statutory Authority/Municipal Corporation from which an officer originates. After which, intra-statutory promotions occur whereby an officer is promoted to a different Statutory Authority/Municipal Corporation from which he originated where there is an existing vacancy.

44. Where a recommendation is made by a Head of a Statutory Authority in accordance with Regulation 13 of the Statutory Authority Service Commissions Regulations (“the Regulations”), the SASC Department will first check the seniority list of the recommended person(s) on the Master Seniority List. If the person recommended is not the most senior person or the next in line for the promotion then the SASC confirms whether the most senior person was informed of the vacancy in the higher officer and whether he/she has refused the same. If the most senior person was not informed of the vacancy then the Statutory Authority informs that person.

If the person refuses the promotion, then their written refusal must be submitted to the SASC before any action is taken on filling that vacancy.

45. Where an OML exist, such as in the office of Municipal Police Corporal (Range 31C), the recommendation process by the Head of the Statutory Authority is not adopted as the SASC fills the position in accordance with the OML.

46. In order to facilitate the transition from intra-statutory promotions to inter-statutory promotions, members of the SASC together with the administrative staff held a meeting at each Statutory Authority. Meetings were held at the San Fernando City Corporation on the 10th December, 2015; at the Port of Spain City Corporation on the 5th December, 2015; at the Point Fortin Borough Corporation on the 22nd October, 2015; and at the Arima Borough Corporation on the 15th October, 2015.

47. In attendance of the said meetings were the Head of the Statutory Authority together with the staff employed thereunder. The members of the SASC informed those in attendance at the meeting that pursuant to the *Solomon-Sankar* judgment the SASC was required to keep a single Master Seniority List for all offices in all the Statutory Authorities which would now be consulted when inviting persons to attend interviews for the purpose of promotions. As a result, promotions would no longer occur strictly within a particular Statutory Authority on an intra-statutory basis and it was now possible for promotions to occur across the Statutory Authorities. Municipal Police Constables in attendance at these meetings expressed concerns as to whether the judgment affected them and was subsequently advised by the members of the SASC that the judgment applied to all officers under the purview of the SASC which included officers of the Municipal Police Constable.

48. In or around August 2018, the SASC decided to hold interviews for the promotion to the rank of Municipal Police Corporal (Range 31C) as there were 41 vacancies for this office across all four Municipal Corporations as a result of Police Corporals retiring or being promoted. The job description for the office of Municipal Police Corporal required considerable experience as a Municipal Police Constable. Therefore, in an attempt to fill these vacancies, the SASC in line with the new procedure for promotions, consulted the existing Master Seniority List and invited one hundred and eleven (111) Municipal Police Constables from all four Municipal Corporations with the minimum experience and qualifications to attend an interview.
49. The interview for promotions to the office of Municipal Police Corporal occurred between the period August to October, 2018. Upon conclusion of the interviews an OML was prepared based on the scores of the Municipal Police Constables who were interviewed. As there were only forty-one (41) available vacancies, the top forty-one (41) Municipal Police Constables who attained the highest scores from their interviews were promoted to the office of Municipal Police Corporal (Range 31C) with effect from December, 2018.
50. The Claimant's position on the OML was number fifty-four (54) which meant that he was not promoted. Of the forty-one (41) promotions to the rank of Municipal Police Corporal (Range 31C), seventeen (17) of the officers were promoted on an intra-statutory basis and twenty-four (24) of these officers were promoted on an inter-statutory basis.
51. The Defendant asserts that the Claimant was not by-passed for promotion in December, 2018 because subsequent to the interviews held during

August to October, 2018 there were no further interviews for promotions to Municipal Police Corporal. Therefore, the OML resulting from those interviews were still valid. Subsequent to the forty-one (41) promotions effected in December, 2018, no other officer from the said OML has been promoted.

Issues

52. The issues for the court's determination are whether:

- a. The Defendant acted unlawfully and was ultra vires to the scope of the Statutory Authorities Act Chapter 24:01 and the Statutory Authorities Service Commission Regulations because it did not first consider whether the vacancy could be filled from the existing officers within the Port of Spain City Corporation where the vacancy first arose before considering candidates from other Municipal Corporations;
- b. The impugned decision of the Defendant was irrational, unreasonable, procedurally irregular and unfair and in breach of the principles of natural justice enshrined in section 20 of the Judicial Review Act; and
- c. The impugned decision of the Defendant constitutes a breach of the Claimant's legitimate expectations.

Findings

- a. The new policy/procedure adopted by the Defendant conformed to the reasoning elucidated in the Solomon-Sankar judgment that the SASC operates as an integrated service which guided Defendant as to the correct interpretation of Regulation 14. Therefore, the Defendant's actions were not unlawful and was ultra vires to the scope of the Statutory Authorities Act Chapter 24:01 and the Statutory Authorities Service Commission Regulations. The SASC

was not mandated to first consider whether the vacancy could be filled from the existing officers within the Port of Spain City Corporation where the vacancy first arose before considering candidates from other Municipal Corporations;

- b. The impugned decision of the Defendant was not irrational, unreasonable, procedurally irregular and unfair and in breach of the principles of natural justice enshrined in section 20 of the Judicial Review Act. However, the procedure adopted to inform the Municipal Police Constables of the SASC's decision to change the promotion policy was not ideal in the circumstances; and
- c. The impugned decision of the Defendant did not constitute a breach of the Claimant's legitimate expectations as the previous promotion policy was ultra vires to the governing legislation.

Law and Analysis

- a. **Whether the Defendant acted unlawfully and was ultra vires to the scope of the Statutory Authorities Act Chapter 24:01 and the Statutory Authorities Service Commission Regulations**

53. The court in the exercise of its supervisory and constitutional jurisdiction ought to consider the need to vindicate the rule of law in its determination of whether the Defendant acted outside the regulatory framework of the law that established and governs the exercise of power. The Honourable Jamadar J.A. in the Court of Appeal case of *John Dumas -v- The Attorney General* CA Civ P. 218/2014 elaborated on this principle and the court's approach at paragraph 133:

"In our opinion, barring any specific legislative prohibition, the court in the exercise of its supervisory jurisdiction and as guardian of the Constitution, is entitled to entertain public interest litigation for constitutional review of alleged non-Bill of Rights unlawful constitutional action; provided the litigation is bona fide, arguable

with sufficient merit to have a real and not fanciful prospect of success, grounded in a legitimate and concrete public interest, capable of being reasonably and effectively disposed of, and provided further that such actions are not frivolous, vexatious or otherwise an abuse of the court's process. The approach to be taken to this issue of standing is a flexible and generous approach, bearing in mind all of the circumstances of the case, including in particular the need to exclude busybody litigants and those who have no genuine interest in the issues raised and have not demonstrated credible engagement in relation to them. The public importance of the issues raised and of vindicating the rule of law are significant considerations."

54. Similar sentiments were echoed by Lady Hale in *R (Cart) -v- Upper Tribunal (Public Law Project intervening)* [2012] 1 AC 663:

"...the scope of judicial review is an artefact of the common law whose object is to maintain the rule of law—that is to ensure that, within the bounds of practical possibility, decisions are taken in accordance with the law, and in particular the law which Parliament has enacted, and not otherwise. Both tribunals and the courts are there to do Parliament's bidding. But we all make mistakes. No-one is infallible..."

55. The Defendant is service commission designed to oversee the management of assigned affairs. In this jurisdiction, service commissions are either created by statute or under the Constitution. In *Thomas -v- The Attorney General of Trinidad and Tobago* [1981] 32 WIR 375 Lord Diplock¹ expounded on the reason behind the autonomism of commissions created by the Constitution comprising "the Public Service":

"The whole purpose of Chapter VIII of the Constitution which bears the rubric "The Public Service" is to insulate members of the Civil Service, the Teaching Service and the Police Service in Trinidad and Tobago from political influence exercised directly upon them by the Government of the day. The means adopted for doing this was to vest in autonomous commissions, to the exclusion of any other person or authority, power to make appointments to the relevant service, promotions and transfers within the service and power to

¹ At page 381

remove and exercise disciplinary control over members of the service.”

56. Further Lord Diplock² concluded that the Constitution itself preserved the independence of the service commissions created thereunder from the direct influence of both the Executive and the Legislature:

“In respect of each of these autonomous commissions the Constitution contains provisions to secure its independence from both the executive and the legislature. No member of the legislature may serve on the commission; all members must be appointed for a fixed term of years which must not be less than three or more than five, during which a member may only be removed for inability to discharge his function or for misbehaviour. The quarantine period imposed by making it a requirement of eligibility that a member shall not have served in any public office within the last three years and also making him ineligible for appointment to any public office for three years after ceasing to serve as a member of the commission is clearly intended to avoid any risk of his being influenced in favour of the executive by considerations of advancement in his own career.”

57. The SASC however was not created by the Constitution. It is a creature of statute having been established by the Statutory Authorities Act Chapter 24:01 which was enacted in 1966 and came into force on the 1st January, 1967. The SASC Act was in existence before the Republican Constitution³, although it came into effect after the Independence Constitution. Hosein J (acting) in *Braithwaite -v- Port Authority of Trinidad and Tobago (unreported), dated 7 August, 1998*⁴ gave a historical account of the difference between the public servants and officers employed by Statutory Authorities before the Constitution and the service commissions created thereunder:

“By the year 1966 the newly independent State of Trinidad had rapidly expanded its sphere of operations into a number of other

² At page 382

³ The date of commencement being the 1st August 1976

⁴ H.C.A. No. 2305 of 1994 at pages 6-7

areas, such as, housing, industrial development, port facilities, library services and the distribution of agricultural produce. One medium through which this was achieved by the creation of State agencies known as statutory corporations or authorities. The statutory corporations were invested with power and authority to undertake activity in accordance with their Acts of incorporation. The mandate of the statutory authorities included certain functions not traditionally performed by the State, but which were consonant with the then prevailing ideology that the state sector should encompass a much wider area of activity than it had hitherto undertaken.

In order to fulfil their objectives, these statutory authorities soon employed large numbers of persons. Although these persons did not fall within the contemplation of public officers as deemed in the 1962 Constitution they had an indirect nexus with the State by the mere fact of employment by a legal entity performing functions which in some cases were the traditional preserve of the State and which in large measure were funded by the State.

In this setting the Statutory Authorities Act was enacted and came into force on 1st January, 1967. The effect of the Statutory Authorities Act was to harmonize the appointment, promotion, transfer, removal from office and disciplinary control of officers of State agencies known as statutory boards or authorities and to vest jurisdiction in these matters in the Statutory Authorities Service Commission (the Commission). This Commission was created by the Statutory Authorities Act. The provisions of this Act were made applicable to a statutory authority notwithstanding any "general or special power or authority vested in such Statutory Authority by any written law or by virtue of its incorporation". Parliament however made provision in the Statutory Authorities Act for persons who held office in one statutory authority to be transferred by the Commission to another statutory authority."

58. Though not having constitutional status nor the benefit of expressed judicial dicta to substantiate notions of inherent autonomy, the SASC has been deemed akin to that of the constitutionally created commissions insofar as it relates to the discharge of its duties by Lord Walker in *The Attorney General of Trinidad and Tobago -v- Carmel Smith* [2009] UKPC 50 where Lordship stated at paragraph 12:

“...In short SASC’s functions in relation to statutory authorities are similar to those exercisable by the four Service Commissions in relation to the respective branches of the public sector for which the Constitution gives them responsibility.”

59. Therefore, by the same token, the SASC like the constitutionally created service commissions, ought to be treated and assessed in a similar manner as it relates to the discharge of its functions and duties.

60. The SASC having been established under section 4 of the SASC Act was invested with the duty to exercise control over the appointment of its officers pursuant to section 5 of the said Act:

“5. (1) The Commission shall have power to appoint persons to be or act as officers and to transfer, promote, remove and exercise disciplinary control over persons so appointed.”

61. Section 6 of the SASC Act allows for the standardization of those procedures across all Statutory Authorities through the creation of Regulations:

“6. The Commission may with the consent of the Prime Minister by Regulations or otherwise regulate its own procedure, including the procedure for appointment, promotion, transfer and removal from office of officers of statutory authorities and for the exercise of disciplinary control over such officers.”

62. The term “appointment” is defined by Regulation 2 as:

“the placing of a person in the service of a Statutory Authority and includes service in the public service”

63. The term “promotion” is also defined by Regulation 2 as:

“the appointment of an officer to an office in a grade carrying a higher remuneration whether such office is in the same statutory authority or not”

64. The procedure for appointments, promotions and transfers within the SASC is set out in Part II to the Regulations. With regard to the filling of vacancies, Regulation 13 prescribes:

“13. (1) As soon as it is known that a vacancy will occur the Head of the Statutory Authority shall communicate to the Executive Officer in writing and shall make his recommendations regarding the filling of the vacancy.

(2) The Executive Officer shall, from time to time by Circular Memorandum or by publication in the Gazette, give notice of vacancies which exist in the particular service and any officer may make application for appointment to any such vacancy. Such application shall be forwarded through the appropriate Head of the Statutory Authority to the Executive Officer but the failure to apply shall not prejudice the consideration of the claims of all eligible officers.”

65. The Regulations provide two methods of appointment, the first is by competition within a particular service pursuant to Regulation 14 and the second is by advertisement of the vacancies in accordance with Regulation 15:

“14. Whenever in the opinion of the Commission it is possible to do so and it is in the best interest of the particular service within the service, appointments shall be made from within the particular service by competition.

15. Where the Commission considers either that there is no suitable candidate already in the particular 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 particular service that the services of a person not already in that service be secured, the Commission may authorize the advertisement of such vacancy.”

66. Regulation 18 sets out the considerations to be made in the specific context of promotions:

“18. (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 subregulation (1) for an appointment on promotion shall attach greater weight to—

(a) seniority, where promotion is to an office that involves work of a routine nature; or

(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 subregulation (a).

(3) In the performance of its functions under subregulations (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 courses of training that he may have undergone (whether at the expense of Government or otherwise);

(e) the evaluation of his overall performance as reflected in annual staff reports by the Head of the Statutory Authority 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 office for which he is a candidate;

(i) any specific recommendation of the Head of the Statutory Authority for filling the particular office;

(j) any previous employment of his in any public service, Statutory Authority 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 subregulations (1), (2) and (3), the Commission shall consider any specifications that may be required from time to time for appointment to the particular office.”

67. In addition, Regulation 20(3) provides for the keeping of seniority lists:

“The seniority of an officer shall be determined by the date of his appointment to the particular grade within the range in which he is serving. The seniority of officers promoted to the same grade from the same date shall be determined by their seniority in their former grade.”

68. The Claimant submitted that because service commission wield an enormous amount of power, it must act in accordance with its statutory mandate and regulatory framework. It cannot devise its own practical system of administration no matter how convenient and desirable it may be, if it is in conflict with the law. The Claimant relied on the case of *Cooper & Balbosa -v- Police Service Commission and the Director of Personnel Administration* [2006] UKPC 37 where, the opinion had been held that the Public Service Examination Board as appointed by Cabinet had sole responsibility for the setting of exams under public service regulations, the civil service regulations and the police service regulations. However, this opinion was in conflict with the Regulations which vested the authority for promotions solely in the relevant Commissions as independent bodies. In finding that the Commission had acted unlawfully, Lord Hope stated:

“**[28]** The Constitution requires that the powers which it has given to the public service commissions, and to the Police Service Commission in particular, to appoint persons to hold or act in public offices and to make appointments on promotion must be exercised free from inference or influence of any kind by the executive. There is room in this system for the taking of some initiatives by the Cabinet. A distinction can be drawn and the provision of a facility that the commissions are free to use (or not to use) as they think fit. The appointment of a Public Service Examination Board by the Cabinet for the commissions to use if they choose to do so is not in itself objectionable. The advantages of using such a centralised body are obvious, and in practice the commissions may well be content to continue to make use of them. The objection which has given rise to these proceedings lies in the misapprehension as to where the responsibility for choosing that system lies. In their lordships’ opinion the proposition in the media release of 8 July 2002 that the sole responsibility for the conduct of examinations falls under the Public Service Examination Board’s purview was

based on a profound misunderstanding of where the line must be drawn between the functions of the commissions and those of the executive.

[29] There is no doubt that the Police Service Commission Regulations envisage the existence of an examination board. Regulation 15(5) requires that the interview of a police officer who is successful in the promotion examination for promotion to any office in the service must be conducted jointly by, among others, the chairman of the examination board. So the appointment of an examination board is an essential part of the whole process. The Constitution, for its part, does not permit the executive to impose an examination board on the commission of the executive's own choosing. It is for the commission to exercise its own initiative in this matter, free from influence or interference by the executive. It may, if it likes, make use of a Public Service Examination Board appointed by the Cabinet. There may be advantages in its doing so. This no doubt is a service that must be paid for somehow. Where resources are scarce the commission cannot be criticised if it chooses to make use of an existing facility. On the other hand, it cannot be criticised if it chooses not to do so. The Constitution requires that it must have the freedom to exercise its own judgment. It must be free to decline to use the services of the Public Service Examination Board if it suspects that the executive is seeking to use the board as a means of influencing or interfering, whether directly or indirectly, with appointments to or promotions within the Police Service. Those are matters that lie exclusively within the responsibility of the Police Service Commission...

[31] How the commission discharges that responsibility is a matter for the commission itself to determine, in the exercise of its powers under the Police Service Commission Regulations. Regulation 19(1) provides that all examinations in the Police Service shall be set and marked by such examination board as may be appointed for this purpose. The regulation does not state in terms by whom that appointment is to be made. But, in the context of the Regulations as a whole, and in the light of Part 9 of the Constitution in particular, it must be understood as reserving the power to make the appointment to the commission and not to the executive. The Director of Personnel Administration, whose duties extend across the entirety of the public service in Trinidad and Tobago, is responsible for the conduct of the examinations under reg 19(2). But his responsibility extends only to how the examinations that are to be set and marked by the board that the commission has

appointed are to be administered in practice. It does not detract in any way from the responsibility that rests on the commission, with which the power of ultimate control lies, to make that appointment.”

69. In reliance on the case of *Cooper & Balbosa* [supra], the Claimant asserted that its case is not that the SASC is being indirectly influenced by the Executive arm of the State as was the circumstance of that case. Rather, the Claimant’s case is that the SASC has contravened its guiding regulations by amending its promotion policy. In so doing, the SASC has abandoned the correct promotion policy and procedure it once adopted as prescribed by the Regulations. The case of *Cooper & Balbosa* [supra] is instructive as it illustrates that the jurisdiction of the Commission is regulated and must comply strictly with the governing law. Just as the service commissions created under the Constitution must abide by their prevailing regulations in treating with matters such as promotions, so too must the SASC.

70. The crux of these proceedings is essentially based on the interpretation of Regulations 14 which establishes the procedure that ought to be adopted by the SASC in discharging their function to promote officers within the Statutory Authorities Service. Both parties have construed the Regulations in a completely different manner. Therefore, the court is tasked with an interpretation exercise to determine the correct procedure to be adopted when filling vacancies and effecting promotions within the Statutory Authorities Service.

71. The Claimant submitted that Regulation 13(1) provides for recommendations to the SASC by the Head of a Statutory Authority in which the vacancy arises. It is therefore evident that those recommendations arise internally, only from the particular Statutory Authority in which the vacancy arises. In this regard, Regulation 13 paves

the way for and is consistent with the succeeding Regulations 14 and 15 that, promotional preference is to be given to candidates from within the particular Statutory Authority in which the vacancy arises. The recommendation assists the SASC in the first instance which is an internal recruitment drive.

72. Consequently, to interpret Regulation 14 accurately, the Claimant indicated that Regulations 13 and 14 must be read in conjunction with each other. Regulation 14 provides that the SASC must first seek to fill a vacancy arising in a particular Statutory Authority from candidates within that particular Statutory Authority where it is possible and in the best interests to do so. Therefore, the interpretation of the phrase “particular service within the service”, according to the Claimant, means the police service within the particular Statutory Authority. In this context “particular service” means the employment category which is the police service in this case; and the second reference to “service” means the particular Statutory Authority from which the vacancy arose. The second reference to the “particular service” in the remainder of the Regulation 14, “appointments shall be made from within the particular service by competition”, again alludes to the employment category within the particular Statutory Authority in which the vacancy arose.

73. Accordingly, the Claimant submitted that the purpose of the provision is to give preference to intra-Statutory Authority promotions. Such interpretation was the foundation of the pre-existing policy adopted and maintained for so many years upon which the Claimant’s legitimate expectation is based. Moreover, it is also consistent with the Regulations and is therefore correct.

74. Nevertheless, the Claimant averred that while Regulation 14 allows for intra-statutory promotions, the SASC can still recruit from outside the particular Statutory Authority where it is either not possible or in the best interests of the particular Statutory Authority to recruit within. Such is in accordance with Regulation 13(2) and Regulation 2 in the definitions of “promotion” and “appointment” which permits the SASC to advertise the vacancy and seek someone from a different Statutory Authority.

75. The Defendant on the other hand contends that the correct interpretation of the phrase “particular service within the service” in Regulation 14 ought to be interpreted as the police service within the Statutory Authorities Service. The term “particular service” means the field of work/employment category which in this case is the police service. In support of the Defendant’s interpretation, it relied on the first instance judgment of *Jacqueline Solomon-Sankar -v- Statutory Authorities Service Commission*⁵ where Aboud J sought to clarify the use of the word “service” in the context of Regulation 31 which reads in part, “(1) The date of appointment to an office in a particular service within the service of an Authority...” where it was stated:

“In my opinion, the word “service” is an abstract, not a concrete noun. Unlike a concrete noun, which refers to a thing that can be touched, an abstract noun refers to a quality, concept, or idea. The word “service” in the phrase “appointed to an office in a particular service”, refers to the quality of the duties of the office, whether it is secretarial, technical, or administrative, and the grade or range of it. The word “service” in the second phrase of the sentence, “[within] the service of an Authority” is likewise an abstract noun (despite the preposition “within”) because it describes the governing attribute of the authority as being one that provides a public service. The abstract noun “service” in both cases describes the qualities or concept of the office, and the nature or character of the authority’s functions.

⁵ H.C.A No S-1020 of 2005

76. As it relates to the word “service” in the said phrase, the Defendant asserted that it ought to be construed as a collective noun to mean the Statutory Authorities Service. The Defendant supported its position by the use of other Regulations within the SASC Regulations analyzing the emerging use of specific language patterns therefrom. It was submitted that upon observation, where a Regulation is specific to a single Statutory Authority, it specifically reads “a Statutory Authority” or “the Statutory Authority”:

- a. Regulation 11- speaks to applications for first appointment in a Statutory Authority which reads, “Every application for first appointment to the Service of a Statutory Authority shall be...”
- b. Regulation 12- deals with the selection for appointment to a Statutory Authority which reads, “(i) Candidates for permanent appointment to offices in the clerical or secretarial classes and to such other classes in the service of a Statutory Authority...”
- c. Regulation 13- applies to vacancies occurring in a Statutory Authority which reads, “As soon as it is known that a vacancy will occur, the Head of the Statutory Authority...” (the word “the” is used to mean the Statutory Authority in which the vacancy will occur).

77. The Defendant averred that the drafters of the Regulations opted to use certain language patterns when referring to a particular Statutory Authority. That is the consistent use of “a Statutory Authority” or “the Statutory Authority” as the case required. Had the drafters intended that the word “service” to mean a particular Statutory Authority in Regulation 14, it would have instead follow the language pattern used in the other Regulations as cited above and read “in the best interest of the particular service within a Statutory Authority”. This was not done. Therefore, it is

incorrect to say that the word “service” is used throughout the Regulations to refer to a particular Statutory Authority as submitted by the Claimant.

78. Additionally, the Defendant relied Regulation 14 of the Public Service Commission Regulations in support of its interpretation which states:

“14. Whenever in the opinion of the Commission it is possible to do so and it is in the best interest of the particular service within the public service, appointments shall be made from within the particular service by competition, subject to any Regulations limiting the number of appointments that may be made to any specified office in the particular service.”

79. The Defendant stated that Regulation 14 of the Public Service Commission Regulations is the corresponding provision to the SASC Regulation 14 which benefits from a clearer defined wording. The drafters of the Public Service Commission Regulations were more precise in their wording, opting for “particular service within the public service”, thereby defining the word “service” to mean the public service collectively. By applying this definition to the SASC Regulations, it is clear that the word “service” as used in “particular service within the service”, refers to the Statutory Authority Service as a collective noun.

80. As a result of the foregoing, it is the Defendant’s case that Regulation 14 was drafted in a manner to enable the SASC to widen the reach of its appointing power. Regulation 14 allows for appointments on an inter-statutory basis where it is in the best interest of the particular service to do so. Furthermore, in the event that there are no suitable candidates in a particular service across all Statutory Authorities, the Defendant avers that the SASC’s appointment power is further extended by Regulation 15. The wording in Regulation 15 permits the SASC to appoint outside of the particular service i.e. the employment category within the Statutory

Authorities Service through advertisement in order to fill the vacancies. Therefore, based on the SASC's interpretation of Regulations 14 and 15 it was submitted that the Defendant's decision to interview for the office of Municipal Police Corporal across all Statutory Authorities where it considered it in the best interest of the police service to do so, was not ultra vires to the Regulations.

81. Furthermore, the Defendant contended that the Regulations envisage appointments across the Statutory Authorities as demonstrated by the procedure for appointment by promotion within the Statutory Authority Service. The definition of "promotion" and the process of effecting same in the Regulations expressly contemplates promotions between Statutory Authorities i.e. on an inter-statutory basis.

82. To further elucidate, pursuant to Regulation 18, one of the principles of selection for promotion is seniority. Regulation 20(3) provided that "the seniority of an officer shall be determined by the date of his appointment to the particular grade within the range in which he is serving". The Regulation itself is silent on how seniority is to be assessed across different Statutory Authorities. This issue came before the court in *Solomon-Sankar* [supra] at both first instance and on appeal. At first instance, Aboud J reason the issue with reference to Regulation 20(3):

"29. Further justification for this construction is found in regulation 20 (3), which provides that seniority is determined by the date of appointment "to a particular grade within the range" in which the officer is serving. It does not provide for the determination of seniority from the date of appointment to a particular post within a particular statutory authority. This is a very important signpost."

83. This approach was later endorsed by the Court of Appeal where it was restated that seniority is not determined with reference to service in a particular Statutory Authority as per Moosai JA:

“6.7.34 The first sentence of regulation 20(3) - “The seniority of an officer shall be determined by the date of his appointment to the particular grade within the range in which he is serving”, is general in nature and, in agreement with counsel for the respondent, is not qualified by reference to service in a particular statutory authority.”

84. Thus, the Defendant asserts that by virtue of the Regulations, seniority is continuous on an inter-Statutory Authority basis in order to facilitate promotions on an inter-Statutory Authority basis. There is no restriction to a particular Statutory Authority to maintain seniority as the Regulations clearly envisage appointments and promotions across the service requiring seniority to move with the officer from one Statutory Authority to the other. Therefore, the Defendant maintains that it did not act beyond the scope of the governing law in interviewing for the post of Municipal Police Constable across all Statutory Authorities. In fact, it complied with the Regulations which prescribe the manner in which promotions are to be carried out as highlighted by the Privy Council case of *Lovell Romain -v- The Police Service Commission*⁶.

85. Whilst the Defendant sought to establish that the decision to promote officers from across all Statutory Authorities was not illegal⁷ as such was contemplated and permitted by the Regulations as explained above, the new interpretation of the Regulations by the SASC was not the reason for the change in its pre-existing procedure and policy. The Defendant’s

⁶ [2014] UKPC 32 at paragraph 29, “the regulations are intended to provide a self-contained, comprehensive code governing promotions within the service...”

⁷According to De Smith’s *Judicial Review* 6th Edition (2007) at paragraphs 5-002 and 5-003 a decision is illegal if it: (a) contravenes or exceeds the terms of the power which authorizes the making of the decision; (b) pursues an objective other than that for which the power to make the decision was conferred; (c) is not authorized by any power; (d) contravenes or fails to implement a public duty. The task for the court in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the decision-maker. The courts when exercising this power of construction are enforcing the rule of law, by requiring administrative bodies to act within the ‘four corners’ of their powers and duties.

evidence is that the reason for the change in its pre-existing procedure and policy for promotions from being solely intra-Statutory Authority to an inter-Statutory Authority basis, was as a result of the Court of Appeal judgment in *Solomon-Sankar* [supra]. The Claimant contends that the Defendant's change in policy is flawed as it is based on a misunderstanding of the effect of the said judgment.

86. In the case of *SASC -v- Jacqueline Solomon-Sankar* Civ App. 122 of 2008 the respondent was first employed as a temporary Clerk I at the Port of Spain City Corporation. In May, 1992, while still employed as a temporary Clerk I, the respondent wrote to the SASC requesting a transfer to the San Fernando City Corporation; both Corporations operate under the jurisdiction of the SASC. However, she was informed that there were no vacancies at the time. In 1996 the respondent was appointed permanent Clerk I at the Port of Spain City Corporation. In September 1997, a vacancy arose for a temporary Clerk I at the San Fernando City Corporation and the respondent accepted the transfer.

87. In 2002 the respondent discovered that temporary Clerk I's at the San Fernando City Corporation appointed between 1997 and 2002 were deemed senior to her despite her appointment to permanent Clerk I at the Port of Spain City Corporation in 1996. As a result, she wrote to the SASC requesting that her seniority be regularized. In June, 2005, the respondent filed an application for judicial review challenging the legality of the SASC's practice or policy to disregard her prior years of service at the Port of Spain City Corporation and to calculate her year's seniority from the effective date of her transfer to the San Fernando City Corporation.

88. In affirming the trial judge's decision that the SASC's transfer policy which disregarded the years that a transferred officer had previously served in

another Statutory Authority, and calculated seniority from the date of transfer to the recipient authority was unauthorized and illegal, Moosai JA in the Court of Appeal held:

“6.7.41 In conclusion, when the Act and its Regulations are taken as a whole, it is evident that it was the intention of Parliament that the SASC would function over the several statutory authorities, in appointing, transferring, promoting, removing and exercising disciplinary control over officers, so as to create an integrated service. In the context of the Act and Regulations, officers appointed to a statutory authority belong to a service in which transfer is an incident of service. Officers, unless otherwise prohibited by the legislation, may be compulsorily transferred pursuant to the provisions of the Act. To safeguard the interests of officers transferred pursuant to the Act, Parliament has expressly provided for the protection of their superannuation rights. It does not logically follow that Parliament would have intended any result such as the cancellation of seniority upon transfer, that would adversely affect the officer’s chances of promotion and, in effect, amount to ‘penalising’ of the officer upon transfer.”

89. The Claimant submitted that the *Solomon-Sankar* judgment did not speak to the operation of Regulation 14 or the appropriateness of the pre-existing policy and practice of the SASC. The judgment effectively dealt with circumstances where an officer is transferred from one Statutory Authority to another, that their years of seniority would be preserved. The reference to an “integrated service” by Moosai JA simply meant that in the context of an officer being transferred, seniority is preserved and service under Statutory Authorities generally would be maintained in the context of an integrated service. Therefore, the Claimant contends that the Defendant’s understanding of His Lordship’s reference to the creation of an “integrated service” to mean that it has jurisdiction over all Statutory Authorities in respect of making appointments to the relevant service, promotions and transfers within the service and the power to exercise

disciplinary control over members of the service is an ill-conceived reception of its jurisdiction.

90. Moreover, the Claimant avowed that the underlying essence of the Court of Appeal's decision of *Solomon-Sankar* was addressed previously in the case of CV2016-04405 *Joan Chee -v- The Statutory Authorities Service Commission*. That case concerned a challenge on rationality grounds to the promotion of a person over the head of Ms. Chee. Therein the SASC's argument based on *Solomon-Sankar* was that "...persons from all streams and locations falling under the SASC and not just those in any one stream at the Corporation had to be considered based on seniority for the acting appointment"⁸. Donaldson Honeywell J explained and distinguished the *Solomon-Sankar* from the case at Bar as follows:

"34. Sankar was a case in which the Judicial Review challenge arose from circumstances that were not on all fours with those giving rise to the present Claim. On the facts of Sankar the Claimant had requested and was eventually granted a transfer. Sankar is not an authority for the proposition advanced by the SASC in the instant case that it has a duty to consider all eligible officers from all statutory authorities whenever it has to make an acting appointment. The issue determined in Sankar was not that when making appointments, the SASC must consider all officers in all authorities. It was that when an officer is transferred, for whatever reason, the officer does not lose his or her seniority as a consequence.

35. In the Court of Appeal Judgment delivered by Moosai JA in *Sankar*, their Lordships held the following:

"It is therefore axiomatic that officers appointed to a statutory authority under the provisions of the Act belong to a service which is transferable. Accordingly, transfer is an incident of service and an officer, unless otherwise prohibited by the legislation, may be compulsorily transferred pursuant to the provisions of the Act. Clearly, the rationale for conferral of such powers on the SASC was

⁸ At paragraph 5 of the judgment

that, given the diverse number of statutory authorities under its jurisdiction, it could have proved inimical to the proper functioning of the entire service if SASC were unable to provide the manpower where, for example, administrative necessity or the exigencies of the service demanded same.”

36. It is therefore clear that the rationale of the decision in Sankar is that, upon transfer of an officer, their seniority would be preserved. It does not however provide authority and precedent for the proposition that when the Defendant is selecting an officer for acting appointment or promotion, that it must consider officers in all statutory authorities. The Defendant’s contention that it is mandated by the Sankar decision to consider persons from all statutory authorities for acting positions is misconstrued. It is not therefore correct that Lystra Parke and one Yvette Rousseau from the San Fernando City Corporation are senior to and had to be allowed to bypass the Claimant as the most senior officers eligible for appointment as PIRO III.”

91. The Claimant averred that the foregoing passage captured the essence of its submission. That in a promotion exercise, the SASC cannot lump all officers from the various Municipal Corporations under its jurisdiction in a single pool of candidates from which it can make appointments or promotions to vacant offices in any of the Corporations without first evaluating whether the vacancy can be filled by a candidate from the particular Statutory Authority in which the vacancy arose.

92. The Defendant maintained that the change in its promotion policy and procedure was carried out lawfully in accordance with the governing Regulations. The *Solomon-Sankar* judgment was merely used as an interpretation aid to acquire overall learning and general principles of the intention of Parliament as espoused by Moosai JA. Whilst acknowledging that the judgment dealt with the specific issue of transfers and did not speak to the operation of Regulation 14, what was highlighted and pronounced on definitively by the Court of Appeal was, the overarching

intention of the legislature under the SASC Act and Regulations when taken as a whole⁹ was to create an integrated service. As a result, this pronouncement of Parliament's intention to create an integrated service had to be considered by the Defendant to ensure that its policies and procedures were carried out in accordance with the law. Therefore, the Defendant cannot be faulted for change in the policy to reflect the true construction of Regulation 14 in light of Parliament's intention nor can it be found improper. Furthermore, the Defendant submitted that to say the creation of an integrated service is limited to the preservation of seniority in the context of transfer is misguided especially in light of the vast range of powers bestowed upon the SASC under section 5(1) of the Act.

93. The Defendant was also in agreement that *Solomon-Sankar* was not an authority for the change in policy to inter-statutory promotion as set out in *Joan Chee* [supra]. The Defendant affirmed that its power and discretion to carry out promotions on an inter-statutory basis is founded solely in Regulation 14 itself once that change was carried out fairly and reasonably.

94. By order of the court dated 30th July, 2019, the parties herein were directed to file supplemental submissions on the relevance and impact of the Privy Council decision in *Smart -v- Director of Personnel Administration and another* [2019] UKPC 35. The case concerned a claim for judicial review by legal officers of the Chief State Solicitor's Department who challenged the decision of the Judicial and Legal Service Commission ("JLSC") under the Public Service Commission Regulations ("PSC Regulations"), specifically PSC Regulation 15, to advertise vacancies externally (outside of the Service) and to carry out interviews for Senior State Solicitor, without first

⁹ Consistent with the general principle governing statutory interpretation, in this case the Act and Regulations, must be read as a whole- Bennion on Statutory Interpretation 5th Edition (2008) at page 1155.

considering the suitability of the appellants who were all officers within the Service in the Chief State Solicitor's Department.

95. PSC Regulation 14 provides for appointments by competition within the service and PSC Regulation 15 authorizes the advertisement of the vacancy by the JLSC to persons outside the particular service as follows:

"14. Whenever in the opinion of the Commission it is possible to do so and it is in the best interest of the particular service within the public service, appointments shall be made from within the particular service by competition, subject to any Regulations limiting the number of appointments that may be made to any specified office in the particular service.

15. Where the Commission considers either that there is no suitable candidate already in the particular service available for the filling of any vacancy or that having regard to the qualifications, experience and merit, it would be advantageous and in the best interest of the particular service that the services of a person not already in that service be secured, the Commission may authorize the advertisement of such vacancy."

96. PSC Regulation 18 then deals with the criteria for selection for promotion.

The interrelationship and interpretation between PSC Regulations 14 and 18 as it relates to internal competition promotion was explained:

"6. In *Sankar v Public Service Commission* [2011] UKPC 27 the Privy Council had to consider the relationship between regulations 14 and 18. Lord Mance (giving the judgment of the Board) observed that the relationship between the various regulations was "not straightforward" (para 17). He rejected a submission for the Commission that the reference to "eligibility" in regulation 18 indicated that the criteria there set out applied only to the initial decision to accept a candidate for consideration for promotion, rather than the actual decision to promote. As he said:

"18. It is true that this word can have the threshold meaning assigned to it by Mr Knox's submission (as the word 'eligible' in regulation 13(4), (5) and (7) appears to). But in the context of regulation 18 the Board has no doubt that the word 'eligibility' is the equivalent of 'suitability', and relates to the final decision whether or not to promote.

Otherwise, the Regulations would contain no criteria at all regarding the basis for final decisions whether or not to promote. The Board therefore agrees with the Court of Appeal that regulations 14 and 18 must be read together. Where a promotion is to be made from within the public service, it should be by competition, but the decision which of the competitors to promote should be made taking into account the criteria set out in regulation 18.””

97. The Board in dismissing the appeal held:

“21. This issue raises a short point of construction of the relevant regulations. Without disrespect to Mr Knox’s careful submissions, the Board has no doubt the courts below were correct to hold that regulation 15 is self-standing, and that its application is not dependent on the Commission forming a prior view as to the lack of suitable internal candidates, under regulation 14 or otherwise. Not only is there no such pre-condition in the wording of regulation 14 or 15, but regulation 15 clearly gives the Commission a choice between two alternatives, neither dependent on the other.

22. The first applies where the Commission considers that there is no suitable candidate within the service. The second by implication may apply even where there are suitable internal candidates. It requires no more than that the Commission should consider it “advantageous and in the best interest of the service” to secure the services of a person not already in the service. That view must be formed “having regard to qualifications, experience and merit”. Contrary to Mr Knox’s submissions, those words cannot be read as requiring separate consideration of the qualities of the officers within the service. The criteria are expressed in general terms, apt to apply to the consideration of the range of the qualities required for the post, whether from internal or potential external candidates. They may be contrasted with the similar criteria in regulation 18, which are addressed specifically to the qualities of the internal candidates (“... educational qualifications, merit and ability ... of such officers” (emphasis added)).”

98. The Claimant acknowledged that notwithstanding the fact that the Regulations governing the SASC and the JLSC were somewhat similar, the

Smart [supra] judgment is not relevant to the case at Bar. The instant proceedings do not concern the consideration of internal candidates before engaging Regulation 15, complaints about the applicability of Regulation 18 nor the advertisement of vacancies to the public at large. Likewise, the SASC's jurisdiction to invoke Regulation 15 and promote from outside of the particular Statutory Authority was never disputed. Furthermore, it was contended that the JLSC is different from the SASC in a material way in that each Statutory Authority maintains some level of independence as a result of the creation of the SASC and the variety of functions in which each authority performs. Therefore, it cannot be considered to be a single service such as the JLSC.

99. The Claimant averred in its supplemental submission that what it takes issue with is the SASC's erroneous view that it must compile a master seniority list of all officers under the purview of the SASC, based on its misunderstanding of *Solomon-Sankar* as an integrated service. The Defendant's misapprehension renders Regulations 13 and 14 which allow for internal appointment otiose and superfluous because it is now an integrated service with a single work force as the SASC operated on the basis of a master seniority list and must give consideration to all eligible officers from the general pool across all Statutory Authorities.

100. In the holistic determination as to the applicability of *Smart* [supra], the Claimant proceeded to highlight distinctions between the SASC Regulations and PSC Regulations, despite the fact that the courts have treated the SASC similar to the other constitutionally created commissions. By doing so, the Claimant compared Regulation 14 of both Regulations. It was stated that the PSC Regulations clearly says "the public service" whereas in the SASC Regulations, the drafters were careful to say "the service". It did not say the Statutory Authority Service Commission or

Statutory Authority therefore “the service” must be taken to mean the particular Statutory Authority.

101. Another example was drawn by reference to Regulation 11 of both Regulations. Regulation 11 of the PSC Regulation states:

“11. Every application for first appointment to the public service shall be addressed to the Director on the prescribed form.”

102. Whereas Regulation 11 of the SASC Regulations states:

“11. Every application for first appointment to the Service of a Statutory Authority shall be addressed to the Executive Officer on the prescribed form.”

103. The Claimant affirmed that the drafters appreciated the distinction and is consistent with its interpretation because Regulation 11 of the SASC clearly says, “the Service of a Statutory Authority” instead of its equivalent in the PSC Regulation which states, “the public service”. Such an obvious distinction was made because the drafters appreciated that appointments were intended to be made to a particular Statutory Authority or else it could have simple said, “to the Statutory Authority Service”.

104. The Claimant averred that another telling distinction is the way in which both Regulations define certain terms. Whilst the PSC Regulations make reference to “the public service”, the SASC Regulations make reference to “the Statutory Authority” and “a Statutory Authority”. As such, the drafters made it obvious that whereas the public service is treated as one single service the SASC Regulations treat with the particular Statutory Authority and not the Statutory Authority Service as a whole.

105. Conversely, the Defendant submitted that the *Smart* [supra] decision is relevant insofar as it provides guidance as to the correct interpretation of Regulation 14. The assessment and reasoning undertaken by the courts in

the said decision as it relates to PSC Regulation 15 can be applied to the instant case as it relates to SASC Regulation 14.

106. However, the Defendant stated that there was a fundamental distinction between *Smart* [supra] and the instant case that ought to be regarded. PSC Regulation 15 treats with appointments made outside the public service whereas SASC Regulation 14 deals with appointments that are internal to the Statutory Authorities Service but outside of a particular Statutory Authority (according to its interpretation of the provision in dispute).

107. Accordingly, Defendant emphasized that the Claimant's challenge in the instant proceedings is not that the SASC appointed persons from outside of the service as in *Smart* [supra], but that it appointed persons from outside one particular Statutory Authority without first considering the suitability of person within that particular Statutory Authority.

108. The decisions of the High Court, the Court of Appeal and the Privy Council in *Smart* [supra] were explicitly clear that there is no requirement for the JLSC to first consider or evaluate whether there were suitable candidates in the service before it made appointments under PSC Regulation 15. The courts found that the JLSC was entitled to advertise vacant posts once they considered it advantageous and in the best interest of the particular service, that the services of a person not already in the service could be secured. There was no need to determine whether there existed suitable persons already in the service pursuant to PSC Regulation 14 as PSC Regulation 15 was self-standing.

109. The Privy Council in *Smart* [supra] also held that there was no pre-condition in the wording of either PSC Regulation 14 or 15 and that the JLSC had a choice to either carry out promotions by competition between

internal candidates or by advertising the vacant position to external candidates. The Board noted that the choice was not dependent on an evaluation of the suitability of internal candidates. All that was required was a consideration by the JLSC that it is advantageous and in the best interest to recruit a person not in the service, having considered the range of qualities required for the post whether from internal or external candidates.

110. Accordingly, the Defendant submitted that the *Smart* [supra] decision illustrated that the SASC need not satisfy itself of any pre-condition that there were no suitable candidates within the service before it appointed outside of the service. Though, not the issue in the instant claim as the SASC did not appoint from outside the Statutory Authority Service, the Defendant averred that what it in fact did was appoint from outside of the particular Statutory Authority (i.e. the Port of Spain City Corporation). Such an appointment is provided for by Regulation 14 under which the Defendant is entitled to advertise the vacant post of Municipal Police Corporal to external candidates (i.e. external to the particular Statutory Authority) and is neither under a duty to first evaluate whether the vacancy could have been filled by candidates from within the particular Statutory Authority. In so doing, the Defendant affirmed that it acted in accordance with the Regulations which allowed for the expansion of the scope of potential candidates for consideration to ensure that persons with the necessary skills to carry out the job were appointed.

111. After a careful review of the law and the submissions of the Claimant and Defendant, the court finds that the decision of the SASC to compile a Master Seniority List for the purposed of promoting Municipal Police Constables across all Statutory Authorities/Municipal Corporations despite

the origination of the vacancy, was not unlawful or ultra vires to the SASC Act and Regulations.

112. The SASC's jurisdiction to promote officers spans over all Statutory Authorities under its purview pursuant to section 5 of the SASC Act. The Regulations were created to set out the manner in which such promotions ought to be conducted. The evidence established that the SASC previously interpreted Regulation 14 in a manner that restricted promotion of officers to the particular Statutory Authority in which the vacancy arose. Therefore, officers could have only been promoted within their employment category in the Statutory Authority to which they were attached and in which the vacancy arose. However, after the Court of Appeal decision of *Solomon-Sankar* [supra] the entire procedure changed.

113. Moosai JA in the said judgment propounded that taking the SASC Act and the Regulations as a whole, it was the Court of Appeal's opinion that the SASC in the discharge of its functions of appointing, transferring, promoting, removing and exercising disciplinary control over officers were instructed to operate in a manner which creates an integrated service. From his dicta it is pellucid that the learned Justice of Appeal did not limit the creation of an integrated service to cases of preserving seniority as it relates to transfers, as contended by the Claimant.

114. Moreover, the SASC in *Solomon-Sankar* [supra] previously held the view that each Statutory Authority was autonomous having an independent existence of its own. This was the reason seniority of was deemed not transferable and the calculation of seniority restarted upon the officer's transfer to another Statutory Authority. However, the Court of Appeal re-directed the SASC's outlook on the Statutory Authorities under its purview. The Court of Appeal while acknowledging that each Statutory

Authority maintains some level of independence by virtue of their distinctive Acts of Incorporation, their functional and legal independence is subordinate to the exclusive jurisdiction conferred on the SASC over the appointment, promotion, transfer and discipline of their officers operating as an integrated service¹⁰.

115. Therefore, the court disagrees with the Claimant's submission that the Defendant misunderstood the reference to the creation of an integrated service to mean that it has jurisdiction over all Statutory Authorities in respect of making appointments to the relevant service, promotions and transfers within the service and the power to exercise disciplinary control over members of the service. Contrarily, this is exactly the SASC's function as per the Court of Appeal. It is clear from the *Solomon-Sankar* decision that the intention behind the SASC Act and Regulations amounted to the creation of an integrated service. The term integrated service denotes the unity or combination of all the Statutory Authorities to for the effective discharge of the SASC's duties. Accordingly, the staff employed within the Statutory Authority Service is under the full and absolute control of the SASC as it relates to their appointment, promotion, transfer and discipline, despite the nature of the function the particular Statutory Authority was created to perform.

116. Now that it is established that the SASC operates as an integrated service for the purpose of appointment, promotion, transfer and discipline of the officers under its jurisdiction, it is necessary to ascertain the correct interpretation of Regulation 14 when effecting promotions.

¹⁰ At paragraph 6.7.36

117. Both parties were in agreement that “particular service” in Regulation 14 referred to the employment category, in this case, the police service. The court is also in agreement with this interpretation which was expounded upon by Aboud J in *Jacqueline Solomon-Sankar -v- Statutory Authorities Service Commission* [supra]. From a reading of the section it is evident that the word “service” in that context refers to the classification of the office and the function in which it was designed to perform.

118. The Claimant submitted that the phrase “particular service within the service” means the police service within the particular Statutory Authority, whereas the Defendant contended that it meant the police service within the Statutory Authorities Service collectively.

119. The Claimant attempted to illustrate that recruitment of officers at the first instance is an internal drive which was supported by the preceding Regulation 13. While it is accepted that Regulation 13 is illustrative of an internal recruitment drive through recommendations by the Head of a Statutory Authority, it also speaks to advertisement of the vacancy by the SASC allowing any officer to make an application to such vacancy, which is external. Therefore, it is incorrect to say that Regulation 13 sets the tone for internal recruitment and Regulation 14 must be interpreted consistently. Regulation 13 provides for the filling of vacancies both internally and externally.

120. In line with the principles of statutory interpretation in reading the legislation as a whole, upon examining the Regulations the court agrees with the submissions of the Defendant as it relates to the language pattern in the Regulations. The drafters of the Regulations understood the structure of the Statutory Authority Service which comprised various Statutory Authorities. Therefore, certain terminologies were used

consistently throughout the Regulation which can act as a reference point to interpretation when attempting to ascertain the meanings to assign to words that appear ambiguous.

121. Upon perusal of the Regulations, where reference was made to a single Statutory Authority, it specifically read “a Statutory Authority” or “the Statutory Authority”. The words “the service” was barely used throughout the Regulations as a stand-alone term without being followed by “of a Statutory Authority” or as an abstract noun describing the nature of the authority’s functions. If the word “service” was to be interpreted as attributed by the Claimant to mean the particular Statutory Authority, then there would be no need to follow “service” with “of a Statutory Authority” because that meaning would have already been understood and would amount to a redundancy. However, the drafters used the terms “a Statutory Authority” or “the Statutory Authority” when referring to a single Statutory Authority. Therefore, it makes no sense that the word “service” would be used to refer to a particular Statutory Authority. Of the two constructions proffered by the parties, the Defendant’s appears to be more plausible.

122. The court noted that “the service” was used was a stand-alone term in Regulation 16 where it was stated:

“16. (1) The Commission may from time to time appoint one or more Selection Boards to assist in the selection of candidates for appointment to the service and the composition of any such Board and the form in which its reports are to be submitted shall be in the discretion of the Commission.”

123. With the understanding of *Solomon-Sankar* [supra] which establishes that the SASC operates as in integrated service in the discharge of its functions of appointing officers spanning all Statutory Authorities under its purview,

“the service” as it appears Regulation 16 does not at all seem to refer to a particular Statutory Authority as the Claimant asserts. Selection Boards appointed by the Commission give the impression that it is general in nature to be used across all Statutory Authorities in the selection of candidates for appointment. Since control of all appointments are under the governance of the SASC, “the service” in this Regulation appears to be referring to the Statutory Authority Service collectively as stated by the Defendant.

124. Likewise, the definition of the term “promotions” expressly facilitates the movement of officers between Statutory Authorities which supports the proposition of the SASC being an integrated service. In a similar vein, seniority of officers, one of the considerations for promotion under Regulation 18, is also not confined to a particular post within a particular statutory. Seniority is determined generally with reference to the particular grade within the range the officer is serving.

125. Therefore, by assessing these various aspects of the Regulations, it is clear that the SASC is not limited to promoting officers within the particular Statutory Authority in which the vacancy arose. The preservation of seniority across the Statutory Service when effecting a transfer or promotion (which in itself occurs across the Statutory Service) is illustrative of the Parliamentary intention of how the SASC was meant to operate, the paramount rule in the interpretation of legislation¹¹.

126. The case of *Joan Chee* [supra] held that *Solomon-Sankar* is not authority for the proposition that the SASC is under a duty to and must consider all

¹¹ *A-G for Canada v Hallett & Carey Ltd* [1952] AC 427 at 449 per Lord Radcliffe, “the paramount rule remains that every statute is to be expounded according to its manifest and expressed intention.”

eligible officers from all Statutory Authorities when making an appointment. The court respectfully disagrees with the dicta of Donaldson Honeywell J. while *Solomon-Sankar* specifically held that when an officer is transferred, their seniority is preserved, the reason for so doing was that the SASC functions as an integrated service when performing their functions.

127. In so far as it relates to the *Smart* [supra] judgment, the court agrees with the Claimant that the case is not applicable to the one at Bar. That case dealt with the independence of PSC Regulations 14 and 15 appointments and the interrelationship between PSC Regulations 14 and 18. In his written submissions, the Claimant strongly pursued the argument that the Regulations required the SASC to look internally for appropriate candidates first, before looking to the outside. For this reason, to look to outside the Port of Spain Municipal Police Service before considering those internally was *ultra vires*.

128. *Smart* (supra), put paid to that argument however. The Privy Council holding that the JLSC there did not have to consider the suitability of internal candidates before looking outwards.

129. The Claimant therefore remodeled his argument to along the *Cooper and Balbosa* argument, that is to say that the SASC wrongly felt itself constrained to treat the SASC as an integrated service with respect to promotion.

130. However, as noted above, the Court is of the view that the decision of the Court of Appeal in *Solomon-Sankar*, does indeed hold that the SASC is an integrated service, and that this is not just limited to the question of seniority. As a result, the court finds that the procedure adopted by the

SASC was lawful and in conformity with the governing law and was not in breach as was in the case of *Cooper & Balbosa* [supra].

b. Whether the impugned decision of the Defendant was unreasonable, irrational, procedurally irregular and unfair and in breach of the principles of natural justice enshrined in section 20 of the Judicial Review Act

131. In the case of CV2016-03330 *The National Insurance Board of Trinidad and Tobago -v- The National Insurance Appeals Tribunal of Trinidad and Tobago* the Honourable Madam Justice Wilson provided guidance as to the role of the court when reviewing a decision:

“17. It is essential to state at the outset that the role of the Court in judicial review proceedings is to ensure that public authorities exercise their functions within the boundaries of their powers, fairly and reasonably. The supervisory jurisdiction is summarised in *Reid v Secretary of State for Scotland* [1999] 2 AC 512, 541F-542A as follows:

“Judicial review involves a challenge to the legal validity of the decision. It does not allow the court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. It may be that the tribunal whose decision is being challenged has done something which it had no lawful authority to do. It may have abused or misused the authority which it had. It may have departed from the procedures which either by statute or at common law as a matter of fairness it ought to have observed. As regards the decision itself it may be found to be perverse, or irrational, or grossly disproportionate to what was required. Or the decision may be found to be erroneous in respect of a legal deficiency, as for example, through the absence of evidence, or of sufficient evidence, to support it, or through account being taken of irrelevant matter, or through a failure for any reason to take account of a relevant matter, or through some misconstruction of the terms of the statutory provision which the decision-maker is required to apply. But while the evidence may have to be explored in order to see if the decision is vitiated by such legal deficiencies it is perfectly clear that in a

case of review, as distinct from an ordinary appeal, the court may not set about forming its own preferred view of the evidence.””

132. Moreover, Fordham’s Judicial Review Handbook ¹² opined that a review ought to be conducted from the decision-maker’s point of view:

“One protection from over-intrusion by the Court is that judicial review is generally conducted by approaching the question from the decision-maker’s point of view. That includes considering the position as at the time when the decision-maker acted, the circumstances in which that action was taken, and the material that was available at that time.”

133. Section 20 of the Judicial Review Act Chapter 7:08 states:

“An inferior Court, tribunal, public body, public authority or a person acting in the exercise of a public duty or function in accordance with any law shall exercise that duty or perform that function in accordance with the principles of natural justice or in a fair manner.

134. Lord Mustill at page 560 in *R -v- Secretary of State for the Home Department, ex p. Doody* [1994] 1 AC 531 summarised the law on natural justice and fairness as follows:

“My Lords, I think it unnecessary to refer by name or to quote from, any of the often-cited authorities in which the courts have explained what is essentially an intuitive judgment. They are far too well known. From them, I derive that (1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will vary

¹² 6th Edition at paragraph 13.7

often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer.”

135. The approach as to the principles of fairness and the rules of natural justice was expounded upon by Glidewell J in *R -v- Secretary of State for the Home Department, ex p. Doody* [1994] 1 AC 531:

“More recently, in *Llyod -v- McMahon* [1987] 1 All ER 1118 at 11161, [1987] AC 625 at 702-703 Lord Bridge of Harwich said:

“My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when anybody, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other frameworks in which it operates. In particular, it is well established that when a statute has conferred on anybody the power to make decision affecting individuals, the courts will not only require the procedure prescribed by statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness.””

136. In the case of *Wiseman -v- Borneman* [1971] AC 297 Lord Mustill showed the lengths the courts are willing to go in achieving natural justice:

“Natural justice requires that the procedure before any tribunal which is acting judicially shall be fair in all the circumstances, and I would be sorry to see this fundamental general principle degenerate into a series of hard-and-fast rules. For a long time the courts have, without objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary for this purpose. But before this unusual kind of power is exercised it must be clear that the statutory procedure is insufficient

to achieve justice and that to require additional steps would not frustrate the apparent purpose of the legislation.”

137. The test for unfairness was discussed in the case of Civ App No 106 of 2003 *Gillette Marina Ltd -v- Port Authority of Trinidad and Tobago* where it was held that in order to vitiate a decision of a public authority on the ground of unfairness, mere unfairness will not suffice; it is “conspicuous unfairness” that is required. In that case Kangaloo JA opined:

“Unfairness amounting to an abuse of power as envisaged in *Preston* and the other Revenue cases is unlawful not because it involved conduct such as would offend some equivalent private law principle, not principally indeed because it breaches a legitimate expectation that some different substantive decision will be taken, but rather because either it is illogical or immoral or both for a public authority to act with conspicuous unfairness and in that sense abuse its power. As Lord Donaldson MR said in *R. v ITC Ex p TSW*: ‘The test in public law is fairness, not an adaptation of the law of contract or estoppel.’ Simon Brown L.J. continues at pg. 19- “Any unfairness challenge must inevitably turn on its own individual facts. True, as Lord Templeman made clear in *Preston*, it can only ever succeed in ‘exceptional circumstances’. True, too, the court must always guard against straying into the field of public administration and substituting its own view for that of the administrator.””

138. Furthermore, in assessing whether a decision was fair, Jones J¹³ (as she then was) in CV2011-04918 *Nizam Mohammed -v- The Attorney General of Trinidad and Tobago* held that the question is not whether the decision was the right one, but rather whether the decision was procedurally fair in the circumstances in which it was arrived at. The right to be treated fairly and the right to natural justice is related to and intertwined with the constitutional rights to protection of the law and due process. As a result,

¹³ At paragraph 9

the Constitution provides protection in cases where a breach of procedural fairness is established¹⁴.

139. The test of unreasonableness/irrationality, Lord Greene MR's classic statement of the principle of what is most commonly called "Wednesbury unreasonableness" was set out in the case of *Provincial Picture Houses - v- Wednesbury Corporation* [1948] 1 KB 223 as follows:

"It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably." Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority."

140. Justice Sykes¹⁵ in the case of *Northern Jamaica Conservation Association and Other -v- Natural Resources Conservation Authority and National Environment Planning Agency* HCV 3022 of 2005 highlighted that the strictness of the Wednesbury test has been relaxed in recent years moving closer to the notion of proportionality. Nevertheless, the continuing existence of the test has been acknowledged by the House of Lords at times such as in the case of *R -v- Secretary of State for the Home Department, Ex p Brind* [1991] 1 AC 696 where their Lordships rejected the

¹⁴ At paragraph 5 which was approved in the Privy Council case of *Sam Maharaj -v- Prime Minister* [2016] UKPC 37

¹⁵ Quoting Lord Dyson in the case of *Regina (Association of British Civilian Internees: Far East Region) -v- Secretary of State for Defence* [2003] Q.B. 1397

proportionality test and opted for the traditional *Wednesbury* test. Justice Skyes further stated that although it is possible to escape the traditional *Wednesbury* test, a finding of unfairness is still required. Unfairness is an abuse of power and irrationality is an extreme abuse of power. It is for the court to determine whether the decision-maker has acted fairly. That is a judicial function. *Narrow Wednesbury* while not dead has been mortally wounded.

141. The Claimant submitted that based on the Defendant's misunderstanding and misapplication of the *Solomon-Sankar* judgment, being the basis for the change in its promotion policy, it was acting in an irrational and unreasonable manner. By lumping the officers in one pool for the purpose of promotions, the Defendant avers that the SASC has assumed the role of employer, treating the officers from the various Statutory Authorities as if they were from different departments operating under the roof of a single company. The SASC cannot lump the officers together in this manner as the officers have been employed to serve in different authorities that remain separate and independent in the eyes of the law and there is no privity of contract between the SASC and the public officer in relation to the contract.

142. The Claimant submitted that not only was the lumping together of officers in this manner irrational and unreasonable, it was also unfair. The SASC has acted unfairly by arrogating unto itself the role and rights of the individual Statutory Authorities by acting as the employer. The Claimant would have known that his contract of employment was with a particular Statutory Authority and his career advancement would be within the said Authority pursuant to the Regulations.

143. Moreover, the Claimant stated that based on the facts of this case he was treated unfairly and the court should so declare¹⁶. It was further submitted that the Defendant was unfair because it failed to communicate the proposed changes in policy to him. If this was done, the Claimant asserts that he would have had the opportunity to make representations or to be heard on the issue. It was also unfair for the SASC to devise a system for promotion that was ultra vires to the governing Regulations.

144. When an officer decided to serve within a particular Statutory Authority, his decision would have been informed by important considerations such as the location, size and promotional opportunities for career advancement in that Authority. Therefore, it was patently unfair to suddenly lump the Claimant with other officers in a vast pool of candidates from the various Statutory Authorities as this would dilute his chances of promotion, force him to serve in a Statutory Authority he did not contract to serve in, deprive him of further promotional opportunities in the Statutory Authority he chose to serve in and force him to work in a location that result in much hardship and inconvenience.

145. The Defendant argued that the crux of the Claimant's challenge to procedural fairness was that the decision resulted in an outcome that was not advantageous to him as the change in policy for promotions resulted in an enlarged pool of competition and he had lost the advantage he once had¹⁷. However, the Defendant submitted that the success of a challenged decision on the basis of fairness, required more than just showing that the procedure adopted by the decision-maker would be better or fairer, but

¹⁶ *Rees -v- Crane* [1994] 1 All ER 833 wherein the Privy Council decided the respondent was treated unfairly based on the circumstance of that case.

¹⁷ As per paragraph 20 of the Affidavit of Videsh Seepersad filed on the 16th January 2019

persuasion that the procedure was actually unfair¹⁸. As such, the Defendant contends that the Claimant's evidence has fallen woefully short of proving that the SASC's decision to promote on an inter-Statutory Authority basis was illogical, immoral or exceptionally abusive as to warrant a finding of unfairness.

146. It is the Defendant's case that there was evidence to support the steps taken by the SASC to notify officers across the entire service of the change in policy and the reason for same. By Memorandum dated the 15th July 2015, the SASC wrote to all Heads of Authorities advising of its change in policy. The responsibility then shifted to all Heads of Authorities to notify their respective officers of the change in policy which was the most practical and efficient mean of communicating such information. The Defendant averred that it is unreasonable and impractical to expect that the SASC could communicate this information to each officer individually across all the Statutory Authorities. Even so, the SASC members together with its administrative staff held meetings with each Statutory Authority in 2015 in efforts of communicating the change in policy, inclusive of the Municipal Police Officers.

147. Furthermore, the Defendant asserted that there is no duty on a public body to consult persons who may be affected by a proposed change before that change is made. That obligation may arise out of a statutory scheme or by consequence of having created a legitimate expectation¹⁹. As a result, the steps taken by the SASC to inform all officers of the change in policy satisfies the threshold of fairness.

¹⁸ *R -v- Secretary of State for the Home Department, ex p. Doody* [1994] 1 AC 531 as per Lord Mustill

¹⁹ *Rainbow Insurance Company Limited -v- The Financial Service Commission and Others* [2015] UKPC 15

148. To determine whether the SASC's decision to compile a Master Seniority List, combining all candidates from across the Statutory Authorities Service for promotions to vacancies across the said Service despite where the vacancy arose or which Municipal Corporation the officer was attached is unreasonable, procedurally irregular in breach of the principles of natural justice all boils down to a finding of fairness. The principle of fairness is embedded in the various legal concepts. Therefore, the court must determine whether the decision to change in the promotion policy from intra-Statutory Authority to inter-Statutory Authority and the conduct of this new procedure was fair in all circumstances.

149. As previously discussed, the Defendant did not misunderstand ~~nor~~ misapply the *Solomon-Sankar* judgment. It was merely used as an interpretation tool to reveal the true underlying meaning of Regulation 14 which was previously misinterpreted and applied when effecting promotions. Therefore, the decision to change the procedure by which it promoted officers under its jurisdiction to comply with the governing Regulations cannot be found to be unfair. Such a change can never amount to an abuse of power since the SASC used its power to make the promotion procedure compliant with Parliament's intention of the relevant legislation.

150. Nevertheless, although the decision to change the promotion policy was not found to be unfair it is necessary to examine whether the newly implemented policy of inter-Statutory Authority promotions was conducted in a procedurally fair manner.

151. Regulation 20(1) instructs the Executive Officer of the SASC to keep an up to date seniority list of all officers holding offices in the several grades in the Service of a Statutory Authority. Regulation 20(2) instructs the Head

of a Statutory Authority to keep an up to date seniority list of all officers holding offices in the several grades in his Department. However, while Regulation 20(2) states the purpose for keeping such a list i.e. for making recommendations for promotion and acting appointments, Regulation 20(1) is silent on same. Therefore, it appears that the SASC is not restricted as to the use of seniority list in which it compiles.

152. The evidence indicates that a Master Seniority List in respect of each office across all Statutory Authorities was compiled by the SASC Department, after receiving from the Head of each Statutory Authority, an up to date Seniority List of all officers in their Department pursuant to the Memorandum dated the 15th July, 2015. The purpose of creating this Master Seniority List was for the purpose of consultation when inviting officers to interview for promotions, in an attempt to give effect to the Court of Appeal's decision of *Solomon-Sankar*, that the SASC be treated as "an integrated service".

153. The court finds that the creation of a Master Seniority List for the purpose of consultation when inviting officers to interview for promotions was not unfair amounting to an abuse of power. Regulation 20 did not limit the use of the SASC's seniority list of all officers holding offices in the several grades in the Service of a Statutory Authority. In keeping with the notion of treating the SASC as an integrated service and for ease of considering the particular service within the service pursuant to Regulation 14, the creation of a Master Seniority List was thought to be appropriate in these circumstances.

154. The creation or use of the Master Seniority List was not in any way prohibited by the governing legislation nor was it unreasonable rendering the decision to create such a list so absurd that a sensible person would

deem it outside the powers of the SASC. The creation of a Master Seniority List was a proportional means of achieving the aims of the SASC of being an integrated service; as well as to be in compliance with Regulation 14 as the said List would contain all Municipal Police Constables (the particular service/employment category) across all Statutory Authorities/Municipal Corporations (within the service/the Statutory Authority Service).

155. By compiling a Master Seniority List pooling together officers from the various Statutory Authorities was neither ultra vires to their power, nor did the SASC act as an employer as submitted by the Claimant. The purpose of lumping together the officers from the various Statutory Authorities was for the purpose selecting the eligible candidates for promotion. This is under the sole jurisdiction of the SASC despite the fact that the officers report to duty at individual Statutory Authorities. This reasoning was expounded in the *Solomon-Sankar* judgment where the Court of Appeal affirmed that while that each Statutory Authority maintains some level of independence by virtue of their distinctive Acts of Incorporation, their functional and legal independence is subordinate to the exclusive jurisdiction conferred on the SASC over the appointment, promotion, transfer and discipline of their officers operating as an integrated service²⁰.

156. After the Master Seniority List is consulted all the Municipal Police Constables who meet the requirements for the office of Municipal Police Corporal as set out in the job description are then invited by the SASC to attend and interview for promotion. An OML is then compiled based on the scores obtained by the candidates at the interview. The evidence of the Defendant was that the SASC attempts as far as possible to promote candidates within the Statutory Authority/Municipal Corporation from

²⁰ At paragraph 6.7.36

which they originated although this is not always possible. Starting at position 1 on the OML the SASC looks at the Statutory Authority/Municipal Corporation from which the officer at position number 1 originated. If there is a vacancy within that officer's Statutory Authority/Municipal Corporation the officer will be promoted therein. This process is continued moving down the list until there are no longer any vacancies in the Statutory Authority/Municipal Corporation from which an officer originates. Thereafter, intra-statutory promotions occur whereby an officer is promoted to a different Statutory Authority/Municipal Corporation from which he originated where there is an existing vacancy.

157. The court is of the view that the new procedure adopted by the Defendant is not only in line with the correct interpretation of Regulation 14 but it is fair and reasonable in the circumstances. The manner in which the promotions are conducted has been aligned to the ethos of the governing legislation. The definition of promotions envisage the appointment of an officer to an office carrying a higher remuneration whether such office is in the same Statutory Authority or not. Therefore, Regulation 14 allows the officers from the various Statutory Authorities within the particular service/employment category to compete with each other for appointment to the relevant vacancies. The former procedure was not consistent with Regulation 14 nor the definition of the term "promotion". The new procedure allows for both intra-Statutory Authority and inter-Statutory Authority promotions whereby, intra-Statutory Authority preference still exists but limited to those officers with a high OML score.

158. The procedure although more competitive cannot be considered to be unfair as such was permitted under the governing legislation. It is also not the case that intra-Statutory Authority preference is not considered and

officers are randomly placed in Statutory Authorities. Careful consideration is given to the particular Statutory Authority to which the officers are attached and to which they originated. However, it is only those officers who earned such preferential treatment by obtaining a high score on their OML, are promoted to the Statutory Authority in which they originated. The decision is not only procedurally fair but it is the right one in the circumstances. Such a procedure facilitates the SASC in ensuring that they have chosen the most qualified and best suited officers regardless of the Statutory Authority in which they were originally appointed. Furthermore, it is only fair that those officers who have scored the highest be rewarded with by being placed in the Statutory Authority of their choice. For these reasons, the procedure by which the SASC adopted to effect inter-Statutory Authority promotions was not unreasonable, irregular, unfair nor in breach of the principles of natural justice.

159. However, what appears to be less than ideal is the manner in which the change in the promotion policy was communicated by the SASC to the officers under its jurisdiction. The Defendant's evidence is that by Memorandum dated the 15th July, 2015, the SASC wrote to all Heads of Authorities advising of its change in policy which responsibility then shifted to all Heads of Authorities to notify their respective officers of same. The Defendant averred that this was the most practical and efficient means of communicating such information as it is unreasonable and impractical to expect that the SASC could communicate this information to each officer individually across all the Statutory Authorities. The court disagrees with the Defendant in this regard. The ultimate responsibility for promotions lies with the SASC. Therefore, it should do more to ensure that all officers are duly notified of a monumental change in policy such as this. Reliance

on the Heads of Authorities was in the court's view not good enough, and while not rendering the procedure unfair, it was certainly not ideal.

160. The Claimant gave evidence as to how engrained and established the previous promotion policy was amongst him his peers; how the officers planned their social and family life around the prospect of being able to live and work in the same geographical area; how the pre-existing system of promotions allowed for a significant degree of certainty and stability in promotions by the ability to foresee the promotional prospects; the advantage the pre-existing policy afforded as the pool of candidates in competition was much smaller; and the existence of the policy over the years of employment was a major fact in choosing to remain in the police. Therefore, given the level of reliance placed on the pre-existing policy and further that we live in an age of advanced technology making communication convenient, easy, effective and accessible, the court sees no reason why emails could not have been circulated to this effect from the SASC to the individual officers under their purview.

161. There is no evidence to suggest that the change in the promotion policy ever trickled down to the officers. In fact, the evidence before this court from three Municipal Police Officers is that they were not previously informed of the proposed change in policy, not invited to comment on the proposed changes nor given an opportunity to voice any concerns or request to be treated differently. The Defendant stated that members of the SASC together with its administrative staff held meetings with each Statutory Authority in 2015 in efforts of communicating the change in policy, inclusive of the Municipal Police Officers. However, there is no evidence of any other member of the SASC, administrative staff nor Municipal Police Officer to substantiate this claim.

162. For these reasons, the court accepts the evidence of the Claimant in this regard and finds that the manner in which the change in the promotion policy was communicated by the SASC to the officers under its purview was poor. Despite there being no duty on a public body to consult persons who may be affected by a proposed change before that change is made, there was a duty on the SASC to ensure that the officers were well informed of the changes after a decision was made. It was unfortunate for the officers to have discovered the change in the manner in which they did. Had they been aware of the change in the promotion policy this may have influenced their decision to interview for the position of Municipal Police Corporal in the first place. They were deprived of the opportunity of being fully informed of the circumstances to which they were venturing, which had the impact of drastically impacting the family, social and financial aspects of some of the officers who were promoted.

c. Whether the impugned decision of the Defendant constitutes a breach of the Claimant's legitimate expectations

163. Justice Honeywell in CV2017-00324 *Shermattie Pardassie & Others -v- The Public Service Commission* noted that the UK Supreme Court²¹ considered that to create a legitimate expectation there must be a promise or practice directed at a particular group or individual assuring the relevant policy's continuance. The evidence of the practice needs to be so unambiguous, so wide-spread, so well-established and so-well recognized to demonstrate the commitment of treatment in accordance with it.

²¹ In *R (Davies) -v- HMRC* [2011] UKSC 47 at paragraphs 49 and 58

164. The concept of legitimate expectation was defined in the case of *Council of Civil Service Unions -v- Minister for the Civil Service* [1985] A.C. 374 by Lord Diplock where he stated that the decision:

“...must affect [the] other persons... by depriving him of some benefit or advantage which either (1) he had in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (2) he has received assurance from the decision maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.”

165. Lord Woolf MR in *R -v- North And East Devon Health Authority, Ex Parte Coughlan* [2001] QB 213 indicated that where the court finds that there was a lawful promise or practice has led to a legitimate expectation of a substantive and not just a procedural benefit, the court will decide whether to frustrate the expectation is so unfair that a new and different course would amount to an abuse of power. However, it is in the interest of good administration that it should act fairly and implement its promise to follow a certain procedure providing that in doing so it does not interfere with its statutory duty²².

166. The Board of the Privy Council case of *Rainbow Insurance Company Limited -v- The Financial Services Commission and others* [2015] UKPC 15 emphasized that the courts will enforce an expectation only if it is legitimate. An expectation can only be legitimate if it is in accordance with the governing legislation²³. There is an established line of authority that nobody can have a legitimate expectation that he will be entitled to an ultra vires relaxation of a statutory requirement. The law should be slow

²² *Attorney-General of Hong Kong -v- Ng Yuen Shiu* [1983] 2 All ER 346

²³ CV2017-00468 *Pan Trinbago Incorporated -v- The National Carnival Commission of Trinidad and Tobago*

to weaken the principle of legality and an unlawful representation should not prevail where third party interest were or might be compromised.

167. The case of *Paponette and Others -v- The Attorney General of Trinidad and Tobago* [2010] UKPC 32 explains the shifting burden of proof in situations where a legitimate expectation was alleged:

“37. The initial burden lies on an applicant to prove the legitimacy of his expectation. This means that in a claim based on a promise, the applicant must prove the promise and that it was clear and unambiguous and devoid of relevant qualification. If he wishes to reinforce his case by saying that he relied on the promise to his detriment, then obviously he must prove that too. Once these elements have been proved by the applicant, however, the onus shifts to the authority to justify the frustration of the legitimate expectation. It is for the authority to identify any overriding interest on which it relies to justify the frustration of the expectation. It will then be a matter for the court to weigh the requirements of fairness against that interest.

38. If the authority does not place material before the court to justify its frustration of the expectation, it runs the risk that the court will conclude that there is no sufficient public interest and that in consequence its conduct is so unfair as to amount to an abuse of power. The Board agrees with the observation of Laws LJ in *Nadarajah v Secretary of State for the Home Department* [2005] EWCA Civ 1363 at para 68: “The principle that good administration requires public authorities to be held to their promises would be undermined if the law did not insist that any failure or refusal to comply is objectively justified as a proportionate measure in the circumstances.” It is for the authority to prove that its failure or refusal to honour its promises was justified in the public interest. There is no burden on the applicant to prove that the failure or refusal was not justified.”

168. The Claimant submitted that by its conduct the state made clear an unequivocal position known to the Claimant, one upon which he could and did in fact rely on and it is now exceedingly unfair for the state to change its approach in the manner in which it did. In addition, the SASC

Regulations generated a binding legitimate expectation that the policy espoused therein would be applied and therefore the undisclosed adoption of a new policy was ultra vires and illegal. This legitimate expectation was also created when the Defendant asserted that the former policy was always the approach²⁴ until it became aware of the *Solomon-Sankar* judgment.

169. The legitimate expectation was of a procedural nature, not a promise that the Claimant would be promoted. It was a promise that the Claimant and colleagues of various Corporations would be treated procedurally, in a particular way, consistent with the SASC Regulations. In effect that he along with his colleagues in the same Statutory Authority/ Municipal Corporation would have the first shot at vacancies arising therein. Since the SASC impliedly represented to the Claimant over his many years of service that he would be treated in accordance with the preferential scheme of intra-Statutory Authority recruitment (that he would be interviewed and considered along with his colleagues in the same Statutory Authority for promotions ahead of any advertisement of the vacancies to other Statutory Authority) a legitimate expectation was created amounting to the guarantee of future conduct unless amended by legislation. Therefore, the longstanding and entrenched nature of the pre-existing practice amounted to the required unequivocal assurance²⁵ that that procedure would have been continued but for the *Solomon-Sankar* judgment.

²⁴ Privy Council Appeal No 1 of 2001 *Dougnath Rajkumar -v- The Public Service Commission* [2001] UKPC 53 where Lord Mackay of Clashfern said at paragraph 14, "The respondents also accept that by promulgating regulations which required staff reports for promotion decisions, the Commission generated a legitimate expectation that staff reports would be taken into account in an assessment of regulation 172 factors."

²⁵ *R (Bhatt Murphy) -v- Independent Assessor* [2008] All ER (D) 127 per Laws LJ at paragraph 29 that the Claimant must show "...an unequivocal assurance, whether by means of an expressed promise or an established practice"

170. The Defendant while acknowledging the Claimant's plight that the practice of carrying out promotions on an intra-Statutory Authority basis existed for years, the policy to do so was premised on what the SASC thought to be the correct interpretation of the relevant legal provisions. Therefore the basis for the Claimant's legitimate expectation cannot be founded on an interpretation of the Regulations that was found to be contrary to the intention of Parliament. In short, the Claimant cannot have a legitimate expectation to an act that was premised on an administrative mistake or one that was illegitimate or unlawful. As such the Defendant is entitled to reverse the decision taken in error although the Claimant may have relied upon and enjoyed the benefits therein²⁶.

171. Further, the Defendant averred that the frustration of any alleged expectation is justified by the overriding objective of ensuring the efficient functioning of the various corporations which fall under the SASC and ensuring compliance with the applicable law. By ensuring that vacant posts are filled by competition based on a Master Seniority List, the Defendant has pursued the legitimate aim of having the most qualified, best-suited officers appointed regardless of the Statutory Authority in which they were originally appointed. This fosters a more efficient, integrated service as was found to be necessary by the governing SASC Act and Regulations.

172. The Claimant has adduced evidence to satisfy that there was an unequivocal assurance by the SASC that he along with his colleagues in the same Statutory Authority/ Municipal Corporation would have had the first

²⁶ Privy Council Appeal No 48 of 2005 *Sahadeo Maharaj -v- Teaching Service Commission and Corinth Teachers' Training College* per Lord Hope of Craighead, "The unfairness of which the appellant complains may well attract sympathy. It is regrettable that he was so sadly misled for so long by the Commission's inaccurate record-keeping. But the law cannot provide him with the remedy which he seeks, to which he is plainly not entitled on the facts. The appeal must be dismissed."

shot at vacancies arising therein based on the longstanding and entrenched nature of the pre-existing promotion policy. However, in line with the Privy Council Appeal No 48 of 2005 *Sahadeo Maharaj -v- Teaching Service Commission and Corinth Teachers' Training College* as per Lord Hope of Craighead, the unfairness of which this Claimant complains may well attract sympathy. The authorities are explicit that in order to have a legitimate expectation it has to be in accordance with the governing legislation. As already discussed, the previous promotion policy did not align with Regulation 14 nor the Parliamentary intention of the governing legislation. Therefore, in preserving the principle of legality, a legitimate expectation cannot be determined in this case as the previous promotion policy was ultra vires to the SASC Act and Regulations.

173. In the circumstances, for the reasons set out above, the Claimant's claim must be dismissed.

**Kevin Ramcharan
Judge**

Judicial Research Counsel: Romela Ramberran