

**Dossier of Documents Surrounding the
Appointment of a Chief Administrator of the
Tobago House of Assembly**

**REPORT TO THE PRIME MINISTER ON THE MATTERS
SURROUNDING THE APPOINTMENT OF A
CHIEF ADMINISTRATOR, TOBAGO HOUSE OF ASSEMBLY**

BACKGROUND:

Section 71 of the Tobago House of Assembly Act states as follows: -

- (1) There shall be assigned to the Assembly, a Chief Administrator who shall be a public officer for the purposes of section 121 of the Constitution.*
- (2) Upon the coming into force of this Act, all the rights, privileges and conditions of service incidental to the office of Clerk of the former Assembly shall be transferred to the office of Chief Administrator without any break in service.*
- (3) The Chief Administrator shall be an Accounting Officer who shall be responsible for such Division as may be assigned to him by the Chief Secretary.*
- (4) Prior to consultation with the Public Service Commission on the appointment of the Chief Administrator, the Prime Minister shall consult with the Chief Secretary.*

2. The above section of the Tobago House of Assembly Act should be read in conjunction with the Constitution of the Republic of Trinidad and Tobago which states as follows: -

121. (1) Subject to the provisions of this Constitution, power to appoint persons to hold or act in offices to which this section applies, including power to make appointments on promotion and transfer and to confirm appointments, and to remove and exercise disciplinary control over persons holding or acting in such offices and to enforce standards of conduct on such officers shall vest in the Public Service Commission.

(3) Before the Public Service Commission makes any appointment to an office to which this subsection applies, it shall consult the Prime Minister.

(4) A person shall not be appointed to an office to which subsection (3) applies if the Prime Minister signifies to the Public Service Commission his objection to the appointment of that person to that office.

(5) Subject to subsections (6) and (7), subsection (3) applies to the offices of Permanent Secretary, Chief Technical Officer, Director of Personnel Administration, to a head of a department of government, to the chief professional adviser in a Ministry of government and to the office of Deputy to any of these offices.

(6) Power to make appointments on transfer to the following offices shall vest in the Prime Minister:

(a) any office of Permanent Secretary from one such office to another such office carrying the same salary;

(b) any office the holder of which is required to reside outside Trinidad and Tobago for the proper discharge of his functions, and such offices in the Ministry of External Affairs as may from time to time be designated by the Prime Minister after consultation with the Public Service Commission.

(7) This section applies to all public offices including in particular offices in the Civil Service, the Fire Service and the Prison Service, but this section does not apply to offices to which appointments are made by the Judicial and Legal Service Commission, the Police Service Commission or the Teaching Service Commission or offices to which appointments are to be made by the President.

(8) Before the Public Service Commission makes any appointment to or transfers a member of the staff of the Auditor General or Ombudsman, it shall first consult with the Auditor General or Ombudsman, as the case may be.

(9) In subsection (7), "Civil Service", "Fire Service" and "Prison Service" means respectively the Civil Service established under the Civil Service Act, the Fire Service established under the Fire Service Act and the Prison Service established under the Prison Service Act.

3. The position of Chief Administrator referred to in the Tobago House of Assembly Act is a public office under the Civil Service Act. The appointment of persons to hold or act in the office of the Chief Administrator therefore falls under the purview of the Public Service Commission, subject to the provisions of the sections of the Constitution referred to above, the Civil Service Act and the Tobago House of Assembly Act.

4. Given the above the process for the appointment of persons to hold or act in the office of the Chief Administrator is as follows: -

- (i) A recommendation is made to the Director of Personnel Administration.
- (ii) The recommendation would be submitted for the consideration of the Public Service Commission.
- (iii) The Public Service Commission would submit a proposal to the Prime Minister for consideration in accordance with section 121(3) of the Constitution.
- (iv) The Prime Minister would consult with the Chief Secretary in accordance with section 71(4) of the Tobago House of Assembly Act.
- (v) The Prime Minister would then advise the Public Service Commission if the Prime Minister has an objection in accordance with section 121(4) of the Constitution.
- (vi) If there is no objection, the Public Service Commission would make the necessary appointment.

5. The principles for selection of promotion are contained in the Public Service Regulations, which are deemed to be made under section 129 of the Constitution, are as follows: -

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 paragraph (a).

Retirement of Bernadette Solomon-Koroma

6. Bernadette Solomon-Koroma was due to retire as Chief Administrator on 28th July, 2022. When she proceeded on pre-retirement leave as Chief Administrator with effect from 27th February, 2022 the following Administrators would have been eligible for consideration for acting appointment: -

	Date of Appointment
Ethlyn John	6 th March, 2010
Claire Davidson-Williams	9 th July, 2013
Ritchie Toppin	29 th October, 2015
Wendy Guy Hernandez	5 th December, 2015
Cheryl-Ann Solomon	30 th April, 2016
Denese Toby-Quashie	23 rd May, 2018

7. Accordingly, it was determined the next Administrator who would have been eligible to act as Chief Administrator was Ethlyn John. It should be noted that Ethlyn John at the time was acting as Permanent Secretary, Office of the Prime Minister – CAST.

8. By memorandum dated 22nd February, 2022 a recommendation would have been sent by Permanent Secretary to the Prime Minister to the Director of Personnel Administration (DPA) recommending Ethlyn John to act as Chief Administrator. By letter dated 2nd March, 2022 the Public Service Commission would have written the Prime Minister proposing the appointment of Ethlyn John to the position of Chief Administrator. **Appendix I** refers.

9. On receipt of the proposal from the Public Service Commission, and in accordance with section 71(4) of the Tobago House of Assembly Act, the Prime Minister would have written the Chief Secretary by letter dated 3rd March, 2022. **Appendix II** refers. It is only after the

receipt of a response from the Chief Secretary by letter dated March 10th, 2022 (**Appendix III** refers) that the Prime Minister would have been in a position to respond/consult with the Public Service Commission.

10. For emphasis, it should be noted that the Prime Minister forms no part of the deliberations of the Public Service Commission in determining persons to act in positions in the Public Service. It is only after the Public Service Commission has deliberated and communicated its proposal to the Prime Minister that he has a role to play. Therefore, it is only after the PSC has written the Prime Minister that he would have something to communicate with the Chief Secretary in accordance with the THA Act. After these consultations take place the Prime Minister would then be able to advise the PSC accordingly.

11. The next Administrator after Ethlyn John, based on seniority, was Claire Davidson-Williams who was already acting Permanent Secretary in the Ministry of Housing and Urban Development and was due to retire March 6th, 2023. In view of the above, Ritchie Toppin was recommended to act as Permanent Secretary, Office of the Prime Minister – CAST.

12. On February 28th, 2022 when it was drawn to the attention of the Permanent Secretary to the Prime Minister that Ethlyn John had assumed office as Chief Administrator and that the Chief Secretary had indicated that he not received any correspondence to that effect, Ms John was advised by myself that she should not report for duty until she has been formally advised by the Public Service Commission.

Retirement of Ethlyn John

13. On the retirement of Ethlyn John as Chief Administrator on May 17th, 2023 the following Administrators would have been eligible for consideration for acting appointment: -

	Date of Appointment
Ritchie Toppin	29 th October, 2015
Wendy Guy Hernandez	5 th December, 2015
Cheryl-Ann Solomon	30 th April, 2016
Denese Toby-Quashie	23 rd May, 2018
Karl Murray	4 th April, 2023
Diane Henry-Baker	5 th April, 2023

14. On April 17th, 2023 the Chief Administrator would have written to the Permanent Secretary to the Prime Minister advising that Ethlyn John was due to proceed on compulsory retirement from the Public Service with effect from May 17th, 2023. Accordingly, on April 18th, 2023 the Permanent Secretary to the Prime Minister would have written the Director of Personnel Administration again recommending the most senior Administrator, i.e. Ritchie Toppin.

15. By letter dated May 16th, 2023, which was received on May 17th, 2023, the Permanent Secretary would have received from the Public Service Commission a letter to the Prime Minister recommending Ritchie Toppin to act as Chief Administrator. **Appendix IV** refers. On

May 17th, 2023, the same day that I would have received the above letter from the PSC, I would have received a letter addressed to the Director of Personnel Administration, in which I was carbon-copied, dated May 17th, 2023 in which the Chief Administrator would have raised allegations of misconduct against Ritchie Toppin.

16. On receipt of the above letter of allegation from the Chief Administrator against the same officer that the PSC was now proposing to the Prime Minister, I decided not to forward the Public Service Commission proposal dated May 16th, 2023 for the Prime Minister's consideration.

17. It should be noted that the Chief Secretary had by letter dated May 15th 2023, which was received in the Office of the Prime Minister on May 16th, 2023, written to the Prime Minister indicating that the Chief Secretary would like to have Denese Toby-Quashie considered for the appointment as the Chief Administrator. **Appendix V** refers.

18. On June 6th, 2023, the Permanent Secretary to the Prime Minister would have received a letter from the Director of Personnel Administration, dated May 26th, 2023, advising that the Public Service Commission had noted the allegations of misconduct made against Mr Toppin and that the PSC has directed that he cease to report to duty. The letter further advised that an investigating officer was appointed to investigate the allegations.

Forensic Audit

19. On November 16th, 2022 the Chief Administrator would have written to the Permanent Secretary advising that the Tobago House of Assembly commissioned an independent forensic audit of five Development Programmes and requested that Mr Toppin, Permanent Secretary (Ag.) OPM-CAST, to attend a meeting with the forensic auditors on December 2nd, 2022. Prior to this letter I would have seen a letter sent to Mr Toppin would have been written to by the Chief Administrator dated November 11th, 2022 in which he was requested to attend a meeting on November 21st, 2022.

20. At no time, prior to the letter of allegations of misconduct dated May 17th, 2023 was I advised that any officer within the THA was subject to an investigation or that there were allegations of misconduct against any officer.

Appointment of Chief Administrator

21. For the record, it should be noted that the Director of Personnel Administration by letter dated June 15th, 2023 had advised the attorney for the THA that the Public Service Commission had previously appointed an officer to act as Chief Administrator from May 17th, 2023, subject to consultation as provided for in the Constitution. In this letter the DPA had also advised that the Commission had received a report of allegations of misconduct against the officer designated for appointment on May 17th, 2023 and that all reasonable steps were being taken to make an acting appointment to the office. **Appendix VI** refers.

22. On June 6th, 2023 having received the correspondence from the DPA advising that Mr Toppin was to cease to report for duty as Permanent Secretary (ag.) CAST, I would have written the DPA by letter dated 6th June 2023 recommending that Denese Toby-Quashie be appointed to act as Chief Administrator.

23. This recommendation was made after taking the following into consideration the position with regard to the three persons after Mr Toppin on the list of Administrators in paragraph 13 above. Two of the persons listed below were appointed as Deputy Permanent Secretaries as follows: -

	Date of Appointment
Denese Toby-Quashie	2nd February, 2023
Ms Wendy Guy Hernandez	3 rd February, 2023

while Cheryl-Ann Solomon is currently acting as a Deputy Permanent Secretary.

24. On June 22nd, 2023 the Office of the Prime Minister received a letter dated June 21st, 2023 from the Public Service Commission recommending Denese Toby-Quashie to act as Chief Administrator. **Appendix VII** refers. The Prime Minister taking into consideration the Chief Secretary's letter dated May 15th, 2023 whereby the Chief Secretary indicated that he would like to have Denese Toby-Quashie considered for appointment as the Chief Administrator, responded to the PSC by letter dated June 23rd 2023 indicating his non-objection. **Appendix VIII** refers.

Conclusion

25. Prime Minister for emphasis I would like to point out that the position of Chief Administrator referred to in the Tobago House of Assembly Act is a public office under the Civil Service Act. The appointment of persons to hold or act in the office of the Chief Administrator therefore falls under the purview of the Public Service Commission, subject to the provisions of the sections of the Constitution referred to above, the Civil Service Act and the Tobago House of Assembly Act.

26. While the Prime Minister, in consultation with the Chief Secretary in accordance with the THA Act, can indicate his objection to a proposed appointed submitted by the Public Service Commission one must take into consideration that this power of 'veto' is subject to the constitutional rights of the persons who are being proposed for appointment.

27. I have attached for reference a Privy Council judgement delivered by Lord Brown on July 18th, 2011, paragraph 45 of the judgement at **Appendix IX** refers.

28. Accordingly, I do not subscribe to the view held by some that section 71(4) of the THA Act allows the Chief Secretary to choose a Chief Administrator.

29. Submitted for your consideration.



144

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APPENDIX I

PUBLIC SERVICE COMMISSION

*Cipriani Plaza
59-61 Cipriani Boulevard
Port-of-Spain
Mailing Address: 52-58 Woodford Street, Newtown
Port-of-Spain
Tel. (868) 623-2991-6/Fax: 623-5972*



P: 10/90/11 Vol. IV Temp VI
In replying, the above number and date of this letter should be quoted.

2nd March, 2022

Dr. The Honourable Keith Rowley
Prime Minister of the Republic of
Trinidad and Tobago
Office of the Prime Minister
13-15 St. Clair Avenue
Port of Spain.

Dear Prime Minister,

Public Service Commission proposes to appoint the officers named in the attached statement to act as Chief Administrator (Group 1C), Tobago House of Assembly and Permanent Secretary (Group 1C), Office of the Prime Minister, Central Administrative Services Tobago for the periods indicated and in the vacancies outlined.

The recommendation of the Permanent Secretary to the Prime Minister dated 22nd February, 2022 was received in the Service Commissions Department on 24th February, 2022.

The minimum experience and training requirements of the offices are:-

Chief Administrator (Group 1C)

Not less than seven (7) years' experience at a senior managerial level including experience in public administration and training as evidenced by possession of a recognized university degree or by having obtained the prescribed qualification for entry into the Administrative Class, or by possession of other recognized qualifications; or any equivalent combination of experience and training.

Permanent Secretary (Group 1C)

Not less than ten (10) years' experience at a senior managerial level and training as evidenced by possession of a degree from an accredited tertiary institution supplemented by relevant post-graduate training, or by possession of other recognized professional qualifications such as the Association of Chartered Certified Accountants (ACCA), the Chartered Institute of Management Accountants (CIMA) or the Association of the Royal Institute of Chartered Surveyors (ARICS).


Particulars on the officers are attached for your information.

Ms. John has not previously acted in the office of Chief Administrator (Group 1C), Tobago House of Assembly; however, she has acted previously in the office of Permanent Secretary (Group 1C), Office of the Prime Minister, Central Administrative Services Tobago.

Mr. Toppin has not previously acted in the office Permanent Secretary (Group 1C), Office of the Prime Minister, Central Administrative Services Tobago. In this regard, Mr. Toppin's Curriculum Vitae is enclosed for your perusal.

In accordance with the provisions of sub-section (3) of Section 121 of the Constitution of the Republic of Trinidad and Tobago, I wish to consult with you on the above-mentioned appointments.

Yours sincerely,



.....
Winston R. Rudder

Chairman

Public Service Commission

**Acting appointment as Chief Administrator (Group 1C) Tobago House of Assembly and
Permanent Secretary (Group 1C), Office of the Prime Minister,
Central Administrative Services Tobago**

No	Name/Office/ Group/Range	Office /Group	Period of Acting Appointment	Vacancy
1.	<p>Ms. Ethlyn John Administrator (Group 4B) Tobago House of Assembly</p> <p>Acting as Permanent Secretary (Group 1C), Office of the Prime Minister Central Administrative Services Tobago</p>	<p>Chief Administrator Tobago House of Assembly (Group 1C)</p>	<p>28.02.22 to 27.07.22</p>	<p>Ms. Bernadette Solomon-Koroma on vacation leave from 28th February, 2022 to 27th July, 2022 prior to her compulsory retirement from the Public Service on 28th July, 2022.</p>
2.	<p>Mr. Ritchie Toppin Administrator (Group 4B) Tobago House of Assembly</p>	<p>Permanent Secretary (Group 1C) Office of the Prime Minister Central Administrative Services Tobago</p>	<p>28.02.22 to 27.07.22</p>	<p>Retirement of Ms. Melba Dedier from the Public Service with effect from 24th April, 2016 and in lieu of Ms. Ethlyn John, Administrator, Tobago House of Assembly who was acting as Permanent Secretary Office of the Prime Minister, Central Administrative Services Tobago and who has been recommended to act as Chief Administrator, Tobago House of Assembly at (1) above</p>

**Particulars on Ms. Ethlyn John
Administrator (Group 4B)
Tobago House of Assembly**

DATE OF BIRTH:	18 th May, 1963
AGE:	58 years
EDUCATION/ QUALIFICATIONS:	1989 - Bachelor of Science degree (Tourism Management) The University of the West Indies
WORK EXPERIENCE:	14.10.19 to present Appointed to act as Permanent Secretary
	06.03.10 - Administrator
	01.02.04 - Manager, Tourism Development
	15.12.92 - Tourism Development Officer

**Particulars on Mr. Ritchie Toppin
Administrator (Group 4B)
Tobago House of Assembly**

DATE OF BIRTH: 4th September, 1977

AGE: 44 years

**EDUCATION/
QUALIFICATIONS:**

2008	-	Master of Science Production Engineering and Management The University of the West Indies
2001	-	Bachelor of Science degree Mechanical Engineering with Biosystems Engineering (Minor) The University of the West Indies
2019	-	FIDIC conditions of Contract Joint Consultative Council
2018	-	Cabinet Note Writing Public Service Training Academy
2016	-	Administrative Leadership Programme Tobago Hospitality and Tourism Institute
2012/2013	-	Practical use of FIDIC Conditions of Contract Joint Consultative Council Trinidad
2011	-	Public Administration Leadership Series
2002	-	Ministry of Public Administration Occupational Safety and Health Training Jaric Environmental Services Tobago

2002/2004 - Crushing Plant Operation and
Maintenance Techniques
Metso Minerals Incorporated, USA

WORK EXPERIENCE:

29.10.15 - Administrator

21.08.13 to 30.09.13

02.06.11 to 14.07.11 Acted as Administrator

18.02.13 to 20.08.13

19.11.12 to 11.12.12

03.12.09 to 04.04.11

15.09.08 to 23.03.09 Acted as Chief Mechanical Engineer

01.10.06 - Mechanical Engineer II

12.12.01 - Mechanical Engineer

**PERFORMANCE
APPRAISAL
REPORT**

01.01.20 to 31.12.20

Very Good

Ritchie Toppin

OBJECTIVE
TO EXCEL WHEREVER I ENDEAVOUR

EXPERIENCE

JUNE 2017-PRESENT
THA-DIVISION OF INFRASTRUCTURE QUARRIES AND THE ENVIRONMENT

ADMINISTRATOR

JULY 2015-JUNE 2017
THA-DIVISION OF COMMUNITY DEVELOPMENT AND CULTURE

ADMINISTRATOR

JUNE 2014-JULY 2015
THA-DIVISION OF INFRASTRUCTURE AND PUBLIC UTILITIES

ADMINISTRATOR (AG)

AUGUST 2013 – JUNE 2014
THA-DIVISION OF AGRICULTURE, MARKETING, MARINE AFFAIRS AND THE ENVIRONMENT

ADMINISTRATOR (AG)

DECEMBER 2012 – AUGUST 2013
THA-DIVISION OF INFRASTRUCTURE AND PUBLIC UTILITIES

CHIEF MECHANICAL ENGINEER (AG)

JANUARY 2012 – NOVEMBER 2012
THA-DIVISION OF TOURISM AND TRANSPORTATION

ADMINISTRATOR (AG)

#66 Ottley Street
Scarborough
Tobago

789-9662; 315-8811; 639-3280
ritchie.m.l.toppin@gmail.com

SEPTEMBER 2011 – JANUARY 2012
THA-DIVISION OF INFRASTRUCTURE AND PUBLIC UTILITIES
CHIEF MECHANICAL ENGINEER (AG)

JUNE 2011 – AUGUST 2011
THA-DIVISION OF COMMUNITY DEVELOPMENT AND CULTURE
ADMINISTRATOR (AG)

SEPTEMBER 2010 – JUNE 2011
THA-DIVISION OF INFRASTRUCTURE AND PUBLIC UTILITIES
CHIEF MECHANICAL ENGINEER (AG)

2006 – SEPTEMBER 2010
THA-DIVISION OF INFRASTRUCTURE AND PUBLIC UTILITIES
MECHANICAL ENGINEER II

2001 - 2006
THA-DIVISION OF INFRASTRUCTURE AND PUBLIC UTILITIES
MECHANICAL ENGINEER I

EDUCATION AND TRAINING
2004 - 2008
UWI ST AUGUSTINE
MSc PRODUCTION ENGINEERING AND MANAGEMENT
> SUCCESSFULLY COMPLETED COURSEWORK

1998-2001
UWI ST AUGUSTINE
BSc MECHANICAL ENGINEERING WITH MINOR IN BIOSYSTEMS
ENGINEERING

ADDITIONAL TRAINING

2018

**PUBLIC SERVICE TRAINING ACADEMY
CABINET NOTE WRITING**

2019

JOINT CONSULTATIVE COUNCIL

FIDIC CONDITIONS OF CONTRACT

2016

TOBAGO HOSPITALITY AND TOURISM INSTITUTE

ADMINISTRATIVE LEADERSHIP PROGRAMME

2012, 2013

JOINT CONSULTATIVE COUNCIL TRINIDAD

PRACTICAL USE OF FIDIC CONDITIONS OF CONTRACT

2012, 2014

CARIBBEAN ASSOCIATION OF PROCUREMENT PROFESSIONALS, TRINIDAD

**PARTICIPATED IN 3RD AND 4TH CARIBBEAN PUBLIC
PROCUREMENT CONFERENCE**

2011

MINISTRY OF PUBLIC ADMINISTRATION, TRINIDAD

PUBLIC ADMINISTRATION LEADERSHIP SERIES

2002

JARIC ENVORONMENTAL SERVICES, TOBAGO

OCCUPATIONAL SAFETY AND HEALTH TRAINING

2002, 2004

METSO MINERALS INC, USA

**CRUSHING PLANT OPERATION AND MAINTENANCE
TECHNIQUES**

OTHER RELEVANT EXPERIENCE

October 2019 -

DIRECTOR

BOARD OF STUDLEY PARK ENTERPRISES LIMITED

JANUARY 2017 –SEPTEMBER 2017

MEMBER

**TOBAGO HOUSE OF ASSEMBLY WORKING GROUP FOR
NATIONAL CRIME PREVENTION PROGRAMME**

JUNE 2014 – JULY 2015

JUNE 2017 - PRESENT

CHAIRMAN

**TOBAGO HOUSE OF ASSEMBLY TRANSPORTATION AND TRAFFIC
MANAGEMENT COMMITTEE**

JUNE 2014 - PRESENT

MEMBER

**MINISTRY OF ENERGY AND ENERGY AFFAIRS MINERALS
ADVISORY COMMITTEE**

2019
HEAD OF DELEGATION

**TOBAGO HOUSE OF ASSEMBLY DIVISION OF INFRASTRUCTURE,
QUARRIES AND THE ENVIRONMENT ATTENDANCE AT HIGH
LEVEL SUMMIT ON SARGASSUM IN CANCUN MEXICO**

2014
MEMBER OF DELEGATION

**TOBAGO HOUSE OF ASSEMBLY DIVISION OF AGRICULTURE
MARKETING MARINE AFFAIRS AND THE ENVIRONMENT
RECONAISSANSE MISSION TO ATLANTA AND GRENADA**

2014
MEMBER OF DELEGATION

**TOBAGO HOUSE OF ASSEMBLY PARTICIPATION AT URISA
CARIBBEAN GIS CONFERENCE**

2012
MEMBER OF DELEGATION

**TOBAGO HOUSE OF ASSEMBLY DIVISION OF TOURISM AND
TRANSPORTATION MISSION TO WORLD TRAVEL MARKET
LONDON**

2012
HEAD OF DELEGATION

**TOBAGO HOUSE OF ASSEMBLY DIVISION OF TOURISM AND
TRANSPORTATION MISSION TO CARIBBEAN TOURISM
ORGANISATION TOURISM CONFERENCE NEW YORK**

REFERENCES

References are available upon request.

OPM: 16/2/86 Vol. XXXVIII

March 03 2022

The Honourable Farley Chavez Augustine
Chief Secretary
Office of the Chief Secretary
TOBAGO HOUSE OF ASSEMBLY
Naresh Persad Building
Bacolet Street
Scarborough
TOBAGO

Dear Chief Secretary

By letter dated March 02 2022 the Public Service Commission has informed the Prime Minister of its proposal to appoint Ms Ethlyn John, to act as Chief Administrator (Group 1C), Tobago House of Assembly.

The proposal is for the period February 28 2022 to July 7 2022 consequent on the vacancy arising out of Ms. Bernadette Solomon-Koroma proceeding on vacation leave from February 28 2022 to July 27 2022 prior to her compulsory retirement from the Public Service on July 28 2022.

The Commission advises that the minimum experience and training requirements of the office of Chief Administrator is as follows:-

Chief Administrator (Group 1C)

Not less than seven (7) years' experience at a senior managerial level including experience in public administration and training as evidenced by possession of a recognized university degree or by having obtained the prescribed qualifications for entry into the Administrative Class, or by possession of other recognized qualifications; or any equivalent combination of experience and training.

Particulars on the officer is attached for your information.

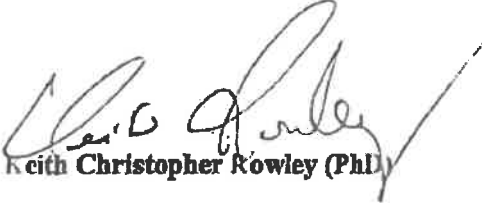
Ms. John has not previously acted in the office of the Chief Administrator (Group 1C), Tobago House of Assembly; however, she has acted previously in the office of Permanent Secretary (Group 1C), Office of the Prime Minister, Central Administrative Services Tobago.

/2. ...

2.

In accordance with the provision of sub-section (4) of section 71 of the Tobago House of Assembly Act, Chapter 25:03, I wish to consult with you on the above-mentioned appointment.

Yours sincerely


Keith Christopher Rowley (PhD)

**Particulars on Ms. Ethlyn John
Administrator (Group 4B)
Tobago House of Assembly**

DATE OF BIRTH: 18th May, 1963

AGE: 58 years

**EDUCATION/
QUALIFICATIONS:** 1989 - Bachelor of Science degree
(Tourism Management)
The University of the West Indies

WORK EXPERIENCE:

14.10.19 to present	-	Appointed to act as Permanent Secretary
06.03.10	-	Administrator
01.02.04	-	Manager, Tourism Development
15.12.92	-	Tourism Development Officer



APPENDIX III

PS
What went on here? I was left + believe that
what was the order?
OK

Office of the Chief Secretary

THE HONOURABLE FARLEY CHAVEZ AUGUSTINE
CHIEF SECRETARY AND SECRETARY FOR FINANCE, TRADE AND THE ECONOMY



March 10th, 2022

The Honourable Dr. Keith Christopher Rowley
Prime Minister
Office of the Prime Minister
The Republic of Trinidad and Tobago
Whitehall
29 Maraval Road
St. Clair
Port of Spain
Trinidad

Dear Prime Minister:

According to the Tobago House of Assembly (THA) Act 40 of 1996, Section 71 (4) "Prior to consultation with the Public Service Commission on the appointment of the Chief Administrator, the Prime Minister shall consult with the Chief Secretary."

Notwithstanding the clear directives in the law, the former Chief Administrator (Ms. Bernadette Solomon-Koroma) informed me that one Ms. Ethlyn John had been appointed to act as Chief Administrator prior to any consultation with your good self. She further informed me that this led to Mr. Ritchie Toppin moving from within the THA to the position of Acting Permanent Secretary within the Office of the Prime Minister – Central Administrative Services Tobago (CAST); and that a new Administrator, Mr. Lincoln Nelson was selected to serve within the THA. Further, I was informed that a formal hand over of portfolios happened. All of the above happened by the 28 February 2022, well in advance of any "prior consultation" as required by law.

Legally and properly, this consultation should have occurred in advance of any appointment on the 28 of February 2022 and the lateral movement within the public service that ensued. It is therefore difficult to view the consultation post the appointment of someone to act as Chief Administrator as anything other than an insult to the office of the Chief Secretary and counterproductive to both of our efforts towards greater autonomy for Tobago. This may very well not be what your office intended, but this is the result of not following the law as prescribed.

Nevertheless, I am inclined to a gracious intervention by accepting Ms. John to serve ONLY on the basis that she worked previously within the THA system as an administrator and thus understand that she is qualified for the role being bestowed upon her.

Telephone: 639-3421

Email: chiefsecretary@tha.gov.tt

Narsh Persad Building
Bacolet Street
Scarborough, Tobago.





Office of the Chief Secretary

THE HONOURABLE FARLEY CHAVEZ AUGUSTINE
CHIEF SECRETARY AND SECRETARY FOR FINANCE, TRADE AND THE ECONOMY

However, allow me to place on record, that in the future, I will decline, publicly object, and seek legal redress should this pattern for appointment of a Chief Administrator repeat itself.

Ms. Ethlyn John has been accepted to act as Chief Administrator and I will only now formally introduce her to the Tobago public and the public servants within the THA as their lead. Be advised accordingly.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Farley Chavez Augustine'.

Farley Chavez Augustine

☎ Telephone: 659-5423

✉ Email: chiefsecretary@tha.gov.tt

📍 Nareesh Persad Building
Bacolet Street
Scarborough, Tobago.





APPENDIX IV



PUBLIC SERVICE COMMISSION

*Cipriani Plaza
59-61 Cipriani Boulevard
Port-of-Spain*

*Mailing Address: 52-58 Woodford Street, Newtown
Port-of-Spain*

Tel. (868) 623-2991-6/Fax: 623-5972

P: 10/90/11 Vol. IV Temp. VII

*In replying, the above
number and date of
this letter should be
quoted.*


16 May, 2023



Dr. The Honourable Keith Rowley
Prime Minister of the Republic of
Trinidad and Tobago
Office of the Prime Minister
13-15 St. Clair Avenue
Port of Spain.

Dear Prime Minister,

Public Service Commission proposes to appoint Mr. Ritchie Toppin, Administrator (Group 4B) to act as Chief Administrator (Group 1C), Tobago House of Assembly from 17th May, 2023 to 30th September, 2023 consequent on the retirement of Ms. Bernadette Solomon-Koroma from the Public Service with effect from 28th July, 2022 and in lieu of Ms. Ethlyn John, Administrator who was acting as Chief Administrator, Tobago House of Assembly and who will retire compulsorily from the Public Service with effect from 17th May, 2023.

The recommendation of the Permanent Secretary to the Prime Minister dated 18th April, 2023 was received in the Service Commissions Department on 20th April, 2023.

The minimum experience and training requirements of the office are:-

Chief Administrator (Group 1C)

Not less than seven (7) years experience at a senior managerial level including experience in public administration and training as evidenced by possession of a recognized university degree or by having obtained the prescribed qualification for entry into the Administrative Class, or by possession of other recognized qualifications; or any equivalent combination of experience and training.

Particulars on Mr. Toppin are attached for your information.

Mr. Toppin has previously acted in the office of Chief Administrator.

In accordance with the provisions of sub-section (3) of Section 121 of the Constitution of the Republic of Trinidad and Tobago, I wish to consult with you on the above-mentioned appointment.

Yours sincerely,


.....
Winston R. Rudder
Chairman
Public Service Commission

**Particulars on Mr. Ritchie Toppin
Administrator (Group 4B)
Tobago House of Assembly**

DATE OF BIRTH: 4th September, 1977

AGE: 45 years

**EDUCATION/
QUALIFICATIONS:**

- | | | |
|-----------|---|--|
| 2019 | - | FIDIC conditions of Contract
Joint Consultative Council |
| 2018 | - | Cabinet Note Writing
Public Service Training Academy |
| 2016 | - | Administrative Leadership
Programme
Tobago Hospitality and Tourism
Institute |
| 2012/2013 | - | Practical use of FIDIC Conditions of
Contract
Joint Consultative Council Trinidad |
| 2011 | - | Public Administration Leadership
Series
Ministry of Public Administration |
| 2002/2004 | - | Crushing Plant Operation and
Maintenance Techniques
Metso Minerals Incorporated, USA |
| 2002 | - | Occupational Safety and Health
Training
Jaric Environmental Services Tobago |
| 1989 | - | Master of Science
Production Engineering and
Management
The University of the West Indies |

WORK EXPERIENCE:

28.07.22 to 31.12.22 - Appointed to act as Permanent
28.02.22 to 27.07.22 Secretary (CAST)

29.10.15 - Administrator

21.08.13 to 30.09.13
02.06.11 to 14.07.11 - Acted as Administrator

18.02.13 to 20.08.13
19.11.12 to 11.12.12
03.12.09 to 04.04.11
15.09.08 to 23.03.09 - Acted as Chief Mechanical Engineer

01.10.06 - Mechanical Engineer II

12.12.01 - Mechanical Engineer

**PERFORMANCE
APPRAISAL
REPORT**

01.01.22 to 27.22.22 **Very Good**



Office of the Chief Secretary

**THE HONOURABLE FARLEY CHAVEZ AUGUSTINE
CHIEF SECRETARY AND SECRETARY FOR FINANCE, TRADE AND THE ECONOMY**



May 15th, 2023

**The Honourable Dr. Keith Christopher Rowley
Prime Minister
Office of the Prime Minister
The Republic of Trinidad and Tobago
Whitehall
29 Maraval Road
St. Clair
Port of Spain
Trinidad**

Dear Prime Minister:

Congratulations on your recent achievement of honorary Doctor of Letters from Howard University.

According to the Tobago House of Assembly (THA) Act 40 of 1996, Section 71 (4) "Prior to consultation with the Public Service Commission on the appointment of the Chief Administrator, the Prime Minister shall consult with the Chief Secretary."

At this juncture, two (2) days away from the retirement of the current Chief Administrator, no such consultation has happened between your good self and me. This letter therefore serves as both a reminder of the legal requirement and an avenue through which I will share my recommendation for the appointment of a new Chief Administrator.

Legally and properly, this consultation should happen in advance of any appointment on the 18th of May 2022 (or thereafter). Last year, the procedure was improperly handled and a letter to that effect was sent to your office reminding of the requirements in law, and the need to not have history repeat itself.

In this regard, I wish to have Mrs. Denese Toby-Quashie considered for appointment as Chief Administrator within the Tobago House of Assembly. She was recently appointed as Deputy Permanent Secretary in the Ministry of Foreign and Caricom Affairs, after serving as Administrator within the Tobago House of Assembly.

Telephone: 639-5421

Email: chiefsecretary@tha.gov.tt

Naresh Peward Building
Bacolet Street
Scarborough, Tobago.





Office of the Chief Secretary

THE HONOURABLE FARLEY CHAVEZ AUGUSTINE
CHIEF SECRETARY AND SECRETARY FOR FINANCE, TRADE AND THE ECONOMY

Attached is her resume.

I shall be available for consultation/conversation on the matter at a time mutually convenient.

Yours sincerely,

A handwritten signature in black ink, appearing to read "F. Chavez", is written over a horizontal line.


**CHIEF
SECRETARY**

Farley Chavez Augustine

**OFFICE OF THE CHIEF SECRETARY
TOBAGO HOUSE OF ASSEMBLY**

 Telephone: 639-3421

 Email: chiefsecretary@tha.gov.tt

 Naresh Persad Building
Bacolet Street
Scarborough, Tobago.



DENESE TOBY-QUASHIE

20A Hope Trace, Blenheim, Tobago. 308-5918. denese_toby@yahoo.com

RESUME

PROFESSIONAL SUMMARY

Principle -centred leader with a systematic approach to problem solving which considers the views and involvement of internal as well as external stakeholders; an avid team player and a teacher at heart. Uses an approach to management that is performance driven in line with strategic objectives and priorities. Leads with passion, compassion and innovativeness.

Trained as a Management Accountant and in compliance, value for money and financial auditing tools and processes having spent over 10 years as the Head of the Auditor General's Department, Tobago Branch Office. Graduated with a Masters of Business Administration with distinctions. Also, trained in governance and public innovation systems and processes.

SKILLS

- Ability to provide leadership and visioning
- Ability to promote effective teamwork
- Ability to manage a cadre of professional, technical and administrative personnel
- Ability to communicate effectively orally and in writing
- Ability to analyse issues, make mature judgements and solve problem
- Ability to manage internal and external stakeholders

EXPERIENCE

FEBRUARY 2023 TO PRESENT, DEPUTY PERMANENT SECRETARY, MINISTRY OF FOREIGN AND CARICOM AFFAIRS

Responsible for providing managerial support to a Permanent Secretary in planning, organizing, directing and coordinating the primary and administrative support function of the Ministry of Foreign and CARICOM Affairs within the context of the Ministry's strategic plan'.

Assist in the monitoring and reviewing the Ministry's operations, activities and projects; coordinating specific functional areas as assigned to ensure the achievement of the organization's objectives. Work is performed with innovativeness and independent judgment and is reviewed for efficacy and the accomplishment of objectives.'

AUGUST, 2017 TO FEBRUARY, 2023 – ADMINISTRATOR, TOBAGO HOUSE OF ASSEMBLY

Responsible for providing managerial support to the Secretary, Tobago House of Assembly including the Secretaries of Finance and the Economy, Settlements, Urban Development and Public Utilities, Education, Innovation and Energy and Health, Wellness and Social Protection in planning, organising and directing the primary and administrative support functions. Assist in the development of policy related to the Division's programmes and projects; and contributing to the Tobago House of Assembly's Development Plan. Assists in the development and review of the Strategic Plan; monitoring and reviewing the Division's operations, projects and programmes to ensure that the strategic objectives are achieved. Liaises with and collaborates with Heads of Department to ensure all programmes and projects are conducted in accordance with agreed policies and strategies. Manage the performance of the Department through a systematic process. Provides guidance to Heads of Departments on matters pertaining to the business of the Division. Develops and reviews the annual budget proposals ensuring consistency with strategic plan and yearly work plans. Selects consultants for contracted services in line with the principles of good governance. Represents the Division on Boards, committees and other such bodies in order to articulate the Division's policy. Provides advice on decision making to the Secretary. Serves as Accounting Officer for the Division.

2003 TO AUGUST, 2017 – AUDITOR GENERAL'S DEPARTMENT

Planned, monitored and supervised the audit of the Tobago House of Assembly, the Ministry of Tobago Development and the Tobago Regional Health Authority. Reviewed work done by the audit teams, wrote Examiner's Report and issued Management Letters. Attended meetings including courtesy calls on accounting officers/ Administrators; Permanent Secretary/Chief Administrator; Chief Executive Officer. Prepared the budget/estimate of recurrent expenditure for the year. Completed performance appraisal reports including the setting of agreed standards and the periodic evaluation of performance. Prepared quarterly status reports and provide ad hoc update to Assistant Auditor General. Performed other administrative duties including the recommending of leave and writing of memorandum.

EDUCATION

CAF Diploma in Governance and Public Innovation

January, 2023

Post Masters of Business Administration
Arthur Lok Jack Global School of Business, Champs Fleurs, Trinidad **October, 2016**

International Masters of Business Administration with Distinction
Specialisation in Human Resource Management
Arthur Lok Jack Global School of Business, Champs Fleurs, Trinidad **January, 2016**
Team awarded Best Business Plan, 2016

Chartered Institute of Management Accountants **January, 2003**

Association of Accounting Technicians **January, 1994**

Ordinary and advanced level Certificates **June, 1986-1989**
From attending Bishop's High School, Tobago



SERVICE COMMISSIONS DEPARTMENT

Cipriani Plaza
59-61, Cipriani Boulevard, Port of Spain
Mailing Address: 52-58 Woodford Street, Newtown, P.O.S.
Tel: (868) 623-2991-6/Fax 623-5972

P: 9/91/1 Vol. IV
CH

June 15, 2023

Ms. Ingrid Melville,
Attorney at Law
Unit 26,
TLH Building,
Milford Road
Scarborough
Tobago

Dear Ms. Melville,

Re: Delay in appointing a Public Officer to the position of Chief Administrator, Tobago House of Assembly

I refer to your letter dated 9th June, 2023. This is an interim reply thereto pending the Commission receiving legal advice thereon.

First, please be informed that the Public Service Commission is expected to consider a named officer for appointment to act as Chief Administrator, Tobago House of Assembly, at its meeting next Tuesday June 20, 2023. Thereafter, constitutional steps will take place to further the appointment.

Second, your letter asks that it be treated as satisfying the requirements for notice under the Pre-Action Protocols but calls on me to use my "good office to ensure that a Chief Administrator is appointed within seven (7) days of receipt" of your letter. It is not clear from your letter whether it relates to a claim for administrative orders. If it does, the Practice Directions provide that the normal time for response is thirty (30) days.

Third, the letter does not specify what relief it is proposed to claim.

Fourth, it is not clear from the allegations in your letter that they relate to any unlawfulness as distinct from mere allegations of maladministration. If it is that your complaint concerns unlawfulness, I shall be grateful if you can clarify the same with reasonable detail.

Fifth, the Commission had previously appointed an officer to act as Chief Administrator from May 17, 2023 subject to consultation as provided for in the Constitution. Thereafter the Commission was notified by the then Chief Administrator, Tobago House of Assembly by letter dated May 17, 2023 of a report of allegations of misconduct against the officer designated for appointment. Upon considering the notification, the Commission, on May 24, 2023, decided that the designated officer cease to report for duty.

Sixth, the Commission is taking all reasonable steps to make an acting appointment to the office of Chief Administration as soon as possible, hence its intention to deal with the matter at its meeting on Tuesday June 20, 2023.

Yours faithfully,

A handwritten signature in blue ink, consisting of a stylized, cursive script that is difficult to decipher but appears to be a personal name.

.....
Director of Personnel Administration



PUBLIC SERVICE COMMISSION

*Cipriani Plaza
59-61 Cipriani Boulevard
Port-of-Spain
Mailing Address: 52-58 Woodford Street, Newtown
Port-of-Spain
Tel. (868) 623-2991-6/Fax: 623-5972*

P: 10/90/11 Vol. IV

*In replying, the above
number and date of
this letter should be
quoted.*

st
21 June, 2023

Dr. The Honourable Keith Rowley
Prime Minister of the Republic of
Trinidad and Tobago
Office of the Prime Minister
13-15 St. Clair Avenue
Port of Spain.

Dear Prime Minister,

Public Service Commission proposes to appoint Ms. Denese Quashie, Deputy Permanent Secretary (Group 3A), Ministry of Foreign and CARICOM Affairs to act as Chief Administrator (Group 1C), Tobago House of Assembly from the date of her assumption of duty to 30th November, 2023 consequent on the retirement of Ms. Bernadette Solomon-Koroma from the Public Service with effect from 28th July, 2022 and in lieu of Ms. Ethlyn John, Administrator who was acting as Chief Administrator, Tobago House of Assembly and who retired compulsorily from the Public Service with effect from 17th May, 2023.

The recommendation of the Permanent Secretary to the Prime Minister dated 6th June, 2023 was received in the Service Commissions Department on 7th June, 2023.

The minimum experience and training requirements of the office are: -

Chief Administrator (Group 1C)


Not less than seven (7) years experience at a senior managerial level including experience in public administration and training as evidenced by possession of a recognized university degree or by having obtained the prescribed qualification for entry into the Administrative Class, or by possession of other recognized qualifications; or any equivalent combination of experience and training.

Particulars on Ms. Quashie are attached for your information.

Ms. Quashie has not previously acted as Chief Administrator. In this regard, a copy of the officer's résumé is enclosed for your information.

In accordance with the provisions of sub-section (3) of Section 121 of the Constitution of the Republic of Trinidad and Tobago, I wish to consult with you on the above-mentioned acting appointment.

Yours sincerely,


.....
Winston R. Redder
Chairman
Public Service Commission

**Particulars on Ms. Denese Quashie
Deputy Permanent Secretary (Group 3A)
Foreign and CARICOM Affairs**

DATE OF BIRTH:	31.10.69
AGE:	53 years
EDUCATION/ QUALIFICATIONS:	2016 Specialisation - International Masters of Business Administration with Distinction in Human Resource Management Arthur Lok Jack Global School of Business, Champs Fleurs, Trinidad
	2016 Post Masters of Business Administration Arthur Lok Jack Global School of Business, Champs Fleurs, Trinidad
	2003 Diploma in Business Administration The Association of Business Executives
	1994 Association of Accounting Technicians
WORK EXPERIENCE	23.05.18 Administrator, Tobago House of Assembly
	09.08.16 Director, Finance and Accounts
	04.10.05 Assistant Audit Director, Auditor General's Department
	01.05.03 Audit Senior, Auditor General's Department
	13.03.02 Audit Examiner I, Auditor General's Department
	15.12.98 Audit Examiner Assistant II, Auditor General's Department
	21.07.97 Audit Examiner Assistant I, Auditor General's Department

DENESE TOBY-QUASHIE

20A Hope Trace, Blenheim, Tobago. 308-5918. denese_toby@yahoo.com

RESUME

PROFESSIONAL SUMMARY

Principle -centred leader with a systematic approach to problem solving which considers the views and involvement of internal and external stakeholders; a team player. Uses an approach to management that is performance driven in line with strategic objectives and priorities. Trained as a Management Accountant and in compliance, value for money and financial auditing tools having spent over 10 years as the Head of the Auditor General's Department, Tobago Branch Office. Has a passion for promoting health through education.

SKILLS

- Ability to provide leadership and visioning
- Ability to promote effective teamwork
- Ability to manage a cadre of professional, technical and administrative personnel
- Ability to communicate effectively orally and in writing
- Ability to analyse issues, make mature judgements and solve problem
- Ability to manage internal and external stakeholders

EXPERIENCE

AUGUST, 2017 TO PRESENT - ADMINISTRATOR, TOBAGO HOUSE OF ASSEMBLY

Responsible for providing managerial support to the Secretary, Tobago House of Assembly including the Secretaries of Finance and the Economy, Settlements, Urban Development and Public Utilities, Education, Innovation and Energy and Health, Wellness and Social Protection in planning, organising and directing the primary and administrative support functions. Assist in the development of policy related to the Division's programmes and projects; and contributing to the Tobago House of Assembly's Development Plan. Assists in the development and review of the Strategic Plan; monitoring and reviewing the Division's operations, projects and programmes to ensure that the strategic objectives are achieved. Liaises with and collaborates with Heads of Department to ensure all programmes and projects are conducted in accordance with agreed policies and strategies. Manage the performance of

the Department through a systematic process. Provides guidance to Heads of Departments on matters pertaining to the business of the Division. Develops and reviews the annual budget proposals ensuring consistency with strategic plan and yearly work plans. Selects consultants for contracted services in line with the principles of good governance. Represents the Division on Boards, committees and other such bodies in order to articulate the Division's policy. Provides advice on decision making to the Secretary. Serves as Accounting Officer for the Division.

2003 TO AUGUST, 2017 – AUDITOR GENERAL'S DEPARTMENT

Planned, monitored and supervised the audit of the Tobago House of Assembly, the Ministry of Tobago Development and the Tobago Regional Health Authority. Reviewed work done by the audit teams, wrote Examiner's Report and issued Management Letters. Attended meetings including courtesy calls on accounting officers/ Administrators; Permanent Secretary/Chief Administrator; Chief Executive Officer. Prepared the budget/estimate of recurrent expenditure for the year. Completed performance appraisal reports including the setting of agreed standards and the periodic evaluation of performance. Prepared quarterly status reports and provide ad hoc update to Assistant Auditor General. Performed other administrative duties including the recommending of leave and writing of memorandum.

EDUCATION

CAF Diploma in Governance and Public Innovation	At Present
Post Masters of Business Administration Arthur Lok Jack Global School of Business, Champs Fleurs, Trinidad	October, 2016
International Masters of Business Administration with Distinction Specialisation in Human Resource Management Arthur Lok Jack Global School of Business, Champs Fleurs, Trinidad Team awarded Best Business Plan, 2016	January, 2016
Chartered Institute of Management Accountants	January, 2003
Association Of Accounting Technicians	1994



**PRIME MINISTER
OF THE REPUBLIC OF TRINIDAD AND TOBAGO**

OPM: 16/2/86 Vol. XLI

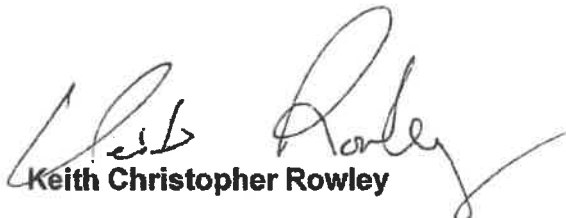
June 23rd, 2023

**Mr. Winston Rudder
Chairman
Public Service Commission
Service Commissions Department
Cipriani Plaza
59-61 Cipriani Boulevard
Port of Spain**

Dear Mr. Rudder

With reference to your letter P: 10/90/11 Vol. IV dated June 21, 2023 I should like to inform you that I have no objection to the appointment of Ms. Denese Quashie, Deputy Permanent Secretary (Group 3A), Ministry of Foreign and CARICOM Affairs to act as Chief Administrator (Group 1C), Tobago House of Assembly from the date of her assumption of duty to November 30, 2023.

Yours faithfully


Keith Christopher Rowley



JUDGMENT

**Permanent Secretary, Ministry of Foreign Affairs
& Prime Minister Patrick Manning (Appellants) v
Feroza Ramjohn (Respondent)**

**Prime Minister Patrick Manning and The Public
Service Commission (Appellants) v Ganga Persad
Kissoon (Respondent)**

**From The Court of Appeal of the Republic of Trinidad
and Tobago**

before

**Lord Phillips
Lord Brown
Lord Mance
Lord Kerr
Lord Dyson**

**JUDGMENT DELIVERED BY
Lord Brown
ON**

18 July 2011

Heard on 10, 11 and 12 May 2011

Permanent Secretary and Prime Minister Patrick Manning

v

Feroza Ramjohn

Appellant

James Dingemans QC
Mrs Linda Khan

Respondent

Sir Fenton Ramsahoye SC
Jodie Blackstock
Cindy Bhagwandeem

(Instructed by Charles
Russell LLP)

(Instructed by Bankside
Law Ltd)

Prime Minister Patrick Manning and Others

v

Ganga Persad Kissoon

Appellant

Peter Knox QC

Respondent

Sir Fenton Ramsahoye SC
Jodie Blackstock
Cindy Bhagwandeem

(Instructed by Charles
Russell LLP)

(Instructed by Bankside
Law Ltd)

LORD BROWN:

1. Section 121 of the Constitution of Trinidad and Tobago confers on the Prime Minister certain powers with regard to appointments to particular public offices. Having heard appeals by the Prime Minister in separate but successive cases against two judgments of the Court of Appeal (each given on 8 July 2009) with regard to the exercise of these powers, the Board has decided to deal with them both in a single judgment.

2. Before indicating anything more of the circumstances of the respective appeals, it is convenient at once to set out the material parts of section 121, provisions to be read in the context of Trinidad and Tobago having a Public Service Commission (PSC) with wide general powers of appointment, discipline and the like in connection with public offices. Section 121(3)-(6) provides:

“(3) Before the Public Service Commission makes any appointment to an office to which this section applies, it shall consult the Prime Minister.

(4) A person shall not be appointed to an office to which subsection (3) applies if the Prime Minister signifies to the Public Service Commission his objection to the appointment of that person to that office.

(5) Subject to subsections (6) and (7), subsection (3) applies to the offices of Permanent Secretary, Chief Technical Officer, Director of Personnel Administration, to a head of a department of government, to the chief professional adviser in a Ministry of Government and to the office of Deputy to any of these offices.

(6) Power to make appointments on transfer to the following offices shall vest in the Prime Minister:

(a) any office of Permanent Secretary from one such office to another such office carrying the same salary;

(b) any office the holder of which is required to reside outside Trinidad and Tobago for the proper discharge of his functions, and such offices in the Ministry Of External

Affairs as may from time to time be designated by the Prime Minister after consultation with the Public Service Commission.”

3. The appeal to which Feroza Ramjohn is respondent (the first appeal), concerns the Prime Minister’s exercise of his section 121(6)(b) power; the appeal to which Ganga Persad Kissoon is respondent (the second appeal) concerns the Prime Minister’s exercise of his section 121(4) power (which for convenience we shall call the power of veto). Put shortly, the Court of Appeal in the first appeal (Warner and Mendonca JJA, Kangaloo JA dissenting) held that the Prime Minister had acted unfairly in appointing Ms Ramjohn to an office which required her to reside outside Trinidad and Tobago (a posting to the High Commission in London) and then, before she had assumed the duties of the office, revoking the appointment. The Court of Appeal in the second appeal (Archie CJ, Warner and Mendonca JJA) held that the Prime Minister had acted contrary to the rules of natural justice in vetoing Mr Kissoon’s appointment, proposed by the PSC, as Commissioner of State Lands in the Ministry of Agriculture, Land and Marine Resources (“a head of a department of government” within the meaning of section 121(5)). In each case the Court of Appeal gave no relief other than a declaration of unfairness/ breach of natural justice and an order for costs. Principally it is the Prime Minister (represented in the first appeal by Mr Dingemans QC, in the second appeal by Mr Knox QC) who now appeals to the Board against the declarations in each case although in the first appeal the Permanent Secretary of the Ministry of Foreign Affairs also appeals to seek a costs order against Ms Ramjohn and in the second appeal Mr Kissoon also appeals to seek further relief against the Prime Minister and the PSC.

4. With those introductory paragraphs the Board now turn to the facts of each case in a little detail.

The first appeal

5. Ms Ramjohn entered the public service in 1971, joining the Ministry of Foreign Affairs (MFA) in May 1984. From 1987 to 1989 she was the Officer in Charge of the Registry in the Consulate General of Trinidad and Tobago in New York and from 1989 to 1995 she was an Accounts Officer in Trinidad and Tobago’s Permanent Mission to the United Nations in New York. After returning from New York she was then stationed continuously at the MFA in Trinidad, being promoted in January 2002 to the office of Foreign Executive Officer II.

6. On 24 May 2004 the Prime Minister signed an Instrument of Transfer in respect of Ms Ramjohn in the following terms:

“In exercise of the power vested in me under Section 121(6) of the Constitution of the Republic of Trinidad and Tobago, I do hereby appoint you, Ms Feroza Ramjohn, Foreign Service Executive Officer II, to the High Commission of the Republic of Trinidad and Tobago, London, United Kingdom, with effect from the date of assumption by you of the duties of the post.”

7. On 27 May 2004 Ms Ramjohn was told by Mr Patrick Edwards, the Permanent Secretary to the MFA, that she was being transferred to London to replace Mr Bisson Budhai in the High Commission’s Accounts Division. Following a criminal investigation, Mr Budhai was being returned home having been charged with using diplomatic pouches to transport cocaine between Trinidad and Tobago and London.

8. On 28 May 2004 Ms Ramjohn received the Permanent Secretary’s letter dated 26 May confirming her posting and enclosing her Instrument of Transfer. The letter included the following references to the Civil Service (External Affairs) Regulations 1977 (the 1977 Regulations):

“As provided for in Regulation 5(3) [of the 1977 Regulations], the exigencies of the service require that you assume duty at the High Commission as soon as possible.

...

In keeping with Regulation 7(1) [of the 1977 Regulations], before your departure arrangements will be made for your medical examination and psychiatric assessment.”

9. Regulation 5 of the 1977 Regulations provides so far as relevant:

“(2) Subject to subregulation (3), an officer shall be given at least two months’ notice of a posting or a transfer.

(3) Where the exigencies of the service require, an officer may be given a shorter period of notice.

(4) A Foreign Service Officer who after being notified in accordance with subregulation (2) or (3) refuses without reasonable excuse to accept a posting shall be liable to – (a) disciplinary action; (b) transfer; or (c) both disciplinary action and transfer.”

10. Pursuant to Regulation 7(1), appointments were made for Ms Ramjohn's medical examination and psychiatric assessment on 11 June 2004. She also served notice on her brother (her landlord) ending her tenancy as from 30 June, sold her motor car, television, video, refrigerator, washing-machine, furnishings and several other appliances and effects, and gave away some of her clothing to the poor in her area. So much for her appointment. Now for its revocation.

11. On 4 June 2004 the Prime Minister signed the following document addressed to the Minister of Foreign Affairs:

"I have reconsidered the appointment of Feroza Ramjohn in light of the contents of the Security Department Intelligence Report. So as to avoid any possibility of further damage to the reputation of the Republic, I hereby revoke the appointment.

Please advise me as a matter of urgency on a safe and appropriate replacement against whom there can be no question raised in this moment of crisis."

12. On the same day the Minister of Foreign Affairs instructed Ms Yvonne Gittens-Joseph, the Acting Permanent Secretary (in Mr Edwards' temporary absence abroad), to advise Ms Ramjohn that her transfer had been rescinded. The Minister told Ms Gittens-Joseph that the Prime Minister had said that this was for reasons of national security based on the contents of the Intelligence Report.

13. On 7 June 2004 Ms Gittens-Joseph called Ms Ramjohn into her office and gave her a letter (which she had drafted and signed dated 7 June) in the following terms:

"I wish to refer to [the letter dated 26 May] and to advise you that your transfer to the High Commission for the Republic of Trinidad and Tobago in London has been rescinded. You should, therefore, discontinue preparations for an early departure. With best wishes."

14. The Intelligence Report referred to in the Prime Minister's revocation notice was a report dated 23 June 2001, prepared by BWIA's Security Department (BWIA being at the time the national airline for Trinidad and Tobago amongst others) marked "secret", concerning the disappearance of a diplomatic pouch containing 200 blank Trinidad and Tobago passports which had been sent from Trinidad and Tobago to New York on 5 June 2001. The report stated:

“On Saturday 23 June 2001, information received from an official at the Permanent Mission to the Republic of Trinidad and Tobago in New York tends to show that Ms Feroza Ramjohn of the Registry Foreign Affairs Office in Trinidad had been involved in a major conspiracy to steal a Diplomatic Pouch containing 200 blank Trinidad and Tobago passports that was sent from the Foreign Affairs Office Trinidad to the Permanent Mission to the Republic of Trinidad and Tobago in New York on BW 5278, June 05, 2001.”

There was no reference to that report in Ms Ramjohn’s service record. She had, indeed, subsequently been promoted within the service. Disclosed in the course of proceedings, moreover, were a number of governmental reports (prepared within the MFI and the Ministry of the Attorney General) concerning the loss of diplomatic pouches (both that which went missing in June 2001 and others lost in 1999), none of which mentioned or raised the least suspicion against Ms Ramjohn.

15. On 11 June 2004 Ms Ramjohn commenced judicial review proceedings challenging the decision revoking her transfer to London. The proceedings named the Permanent Secretary as respondent, the Prime Minister as an interested party. Following a five-day hearing intermittently between October 2005 and January 2006, Tiwary-Reddy J on 3 July 2007 allowed Ms Ramjohn to amend her proceedings to challenge the Prime Minister’s decision directly, declared that she had been treated unfairly and contrary to the principles of natural justice, quashed the Prime Minister’s revocation decision of 4 June 2004 and ordered the assessment of damages.

16. On 8 July 2009 the Court of Appeal allowed the Prime Minister’s appeal against the quashing of his decision and the award of damages. By a majority, however, Kangaloo JA dissenting, they dismissed the Prime Minister’s appeal against the grant of declaratory relief, albeit varying the declaration to read:

“In the circumstances of this case the respondent was treated unfairly by the failure of the [Prime Minister] to inform her of the case against her and to give her an opportunity to make representations.

The second appeal

17. Mr Kissoon entered the public service in 1970 and since 1998 has been the Assistant Commissioner of Valuations in the Ministry of Finance. In January 2001 a vacancy was advertised for the position of Commissioner of State Lands (head of a department of government in the Ministry of Agriculture). Following the PSC Selection Board’s interviews of the candidates for the position in July 2001, Mr Kissoon was placed first in the order of merit (with 241 marks), Mrs Stephanie Elder-

Alexander being placed second (with 229 marks). The Chairman of the PSC accordingly wrote to the Prime Minister (then Mr Basdeo Panday) on 5 November 2001 proposing Mr Kisooson's promotion to the office, stating that following interview he had been found suitable for the position, attaching particulars of his career, and asking whether the Prime Minister had any objections.

18. In the event it turned out that at that time the Director of Surveys had been empowered to carry out the duties and functions of the Commissioner of State Lands and, as the Minister of Agriculture informed the Prime Minister by letter dated 15 April 2002: "The separation of the duties of Commissioner of State Lands from those of Director of Surveys will therefore require the approval of Parliament".

19. The necessary subordinate legislation having been passed on 3 June 2004, the Chairman of the PSC on 19 October 2004 again wrote to the Prime Minister (by then Mr Patrick Manning) again proposing to promote Mr Kisooson, attaching his particulars and asking whether the Prime Minister had any objection. The Prime Minister forwarded the letter to the Minister of Agriculture for his comments and received back from the Minister of Agriculture a letter dated 22 October 2004 in the following terms:

"Promotion of Mr Ganga Persad Kisooson as Commissioner of State Lands

Reference is made to your correspondence . . .

After lengthy and careful consideration of the suitability of the candidate proposed, I am not in agreement with this appointment. The reasons for my objection are as follows:

A considerable amount of time has elapsed since the interviews were conducted for this position on July 24, 2001.

During this period, a number of initiatives have been undertaken by the Ministry of Agriculture, Land and Marine Resources in an attempt to enhance the land management systems in Trinidad and Tobago.

The Government has already successfully obtained passage of a legislative package which includes an Act

governing Land Title and Registration; Land Adjudication; and Land Tribunal.

Cabinet has already approved the establishment of a Land Management Authority which is intended to effectively manage the nation's land portfolio. Draft legislation is now being prepared by the Chief Parliamentary Counsel.

Additionally, there is the Government's thrust to distribute and effectively manage the large landholdings of the former Caroni (1975) Ltd.

Moreover, it is evident that the responsibilities assigned to the office of the Commissioner of State Lands have significantly increased in scope from those which existed in July 2001. The effective management of land in Trinidad and Tobago will be re-organised into a modern and efficient system geared towards achieving Government's goal of developed country status by 2020.

I am of the view that the person appointed to this position must be visionary, committed and dynamic to lead this transformation effort.

As a result of the foregoing, I am therefore recommending that the candidates, who [were] placed first, second and third in the interviews held on 24th July, 2001 be re-interviewed."

20. On 10 November 2004 the Prime Minister wrote to the Chairman of the PSC:

"With reference to your letter . . . dated 19 October 2004, I should like to inform you that I do not support the proposed promotion of Mr Ganga Persad Kisson, Assistant Commissioner of Valuations, Valuation Division, Ministry of Finance, as Commissioner of State Lands, Ministry of Agriculture, Land and Marine Resources."

On 6 December 2004 the Chairman of the PSC wrote again to the Prime Minister, this time proposing Mrs Elder-Alexander for the post, attaching her particulars and asking whether the Prime Minister had any objection. On 8 December 2004 the Prime Minister again forwarded the letter to the Minister of Agriculture for his comments,

this time receiving back the Minister's reply the same day stating simply: "I have no objections". In the result Mrs Elder-Alexander was promoted to the Office with effect from 17 December 2004.

21. On 28 December 2004 Mr Kissoon wrote to the Director of Personnel Administration at the PSC, saying that the Director of Surveys had told him of Mrs Elder-Alexander's promotion, that he had previously been told that he had topped the promotion interviews, that the then Minister of Housing had shown him the PSC's original letter recommending him for the office, stating that in those circumstances he found it difficult to understand how he could have been bypassed for this promotion, and applying for a statement of reasons pursuant to section 16 of the Judicial Review Act 2000.

22. The PSC's Director of Personnel Administration replied to Mr Kissoon's letter on 28 January 2005 stating that the Prime Minister had been consulted under section 121(3)-(5) and had not supported the proposal for Mr Kissoon's promotion.

23. On 18 February 2005 Mr Kissoon was granted leave by Narine J to bring judicial review proceedings challenging the Prime Minister's decision to veto his appointment. Following a hearing before Myers J on 9 and 10 May 2005 – at the start of which the judge had struck out an allegation that the Prime Minister had been improperly influenced by racial considerations – Myers J on 20 February 2006 gave an oral judgment dismissing Mr Kissoon's motion with costs and setting aside Narine J's grant of leave (promising, but regrettably never delivering, a subsequent written judgment).

24. On 8 July 2009 the Court of Appeal allowed Mr Kissoon's appeal, making a declaration that:

"The Prime Minister acted contrary to the rules of natural justice by making a decision to object to [Mr Kissoon's] promotion without informing him of the factors that militate against him and affording him the opportunity to make representations in his favour."

25. It is convenient at this stage, before turning to the arguments in the individual appeals, to set out two provisions of the Judicial Review Act 2000 [the 2000 Act] relevant to both appeals:

"16(1) Where a person is adversely affected by a decision to which this Act applies, he may request from the decision-maker a statement of the reasons for the decision."

(The 2000 Act, by virtue of section 5(1), applies to decisions of, amongst others, a “public body, public authority or a person acting in the exercise of a public duty or function in accordance with any law . . .”)

“20. 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.”

26. The first question to arise in both appeals is whether the Prime Minister, in the exercise of his power of veto under section 121(4) or his power to make appointments on transfer under section 121(6) is a person acting in the exercise of a public duty or function in accordance with any law within the meaning of section 20 of the 2000 Act.

27. The policy underlying section 121 as a whole is plain. As Lord Diplock observed in *Thomas v Attorney General of Trinidad and Tobago* [1982] AC 113, 124 with regard to the equivalent provision in the 1962 Constitution, the “whole purpose” of this provision “is to insulate members of the civil service . . . in Trinidad and Tobago from political influence exercised directly upon them by the government of the day.” It is also worth noting in this connection Regulation 18(1) of the Public Service Commission Regulations:

“18(1) In considering the eligibility of officers for promotion, the Commission shall take into account 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.”

The reason for the Prime Minister being given a power of veto in respect of the section 121(4) offices is to be found in the 1974 Report of the Constitution Commission (at para 288) (following which the 1962 Constitution veto was maintained in the 1976 Constitution):

“These officials are so directly concerned with the formulation of the policy and the supervision of its implementation that they must be acceptable to the political chiefs with whom they must have a close working relationship. This does permit some measure of political influence in purely public service appointments but is necessary on purely practical grounds. We would mention that this recommendation of ours is in keeping with the views of the Public Service Associations as expressed to us.”

28. As for why the Prime Minister is accorded the power to make the appointments specified in section 121(6), the explanation must surely be, in respect of the transfer of permanent secretaries, that no promotion or salary increase is involved and there can be no objection to these decisions being taken on purely political grounds. With regard to a transfer requiring the office-holder to live overseas (or, perhaps, to an office in the Ministry of External Affairs), the likely explanation is that the Prime Minister has the responsibility for promoting the Republic's image abroad.

29. None of these considerations, however, affords the least reason for doubting that in the exercise of these respective powers the Prime Minister is exercising a public duty or performing a public function so as to be required by section 20 of the 2000 Act to do so in accordance with the principles of natural justice or in a fair manner.

30. For the purposes of these two appeals, the Board proposes to put aside consideration of the principles of natural justice (if, indeed, in this context they are materially different from the demands of fairness) and in each case to address simply the question whether, in the exercise of the power in question, the Prime Minister acted in a fair manner. In each case, was the process by which the respective decisions came to be taken a fair one?

The first appeal

31. On the face of it, nothing could be clearer than that the sudden revocation of a person's foreign posting on grounds of suspected criminality without the person concerned being told of the allegation and given an opportunity to respond – without, indeed, any reason whatever being given for the decision (see para 13 above) until after the commencement of judicial review proceedings – is unfair. What, then, is said on behalf of the Prime Minister to justify such a process?

32. As the Board understands Mr Dingemans' first and main submission, it is that the decision whether or not to transfer Ms Ramjohn to London was essentially an operational or management decision beyond the reach of the court supervisory jurisdiction and at any rate not such as to require the Prime Minister to act otherwise than he did. The submission relies heavily on the decision of the Court of Appeal (Aldous, Scott Baker LJ and Sir Philip Otton) in *R (Tucker) v Director-General of the National Crime Squad* [2003] ICR 599; [2003] EWCA Civ 57 concerning the summary termination of a detective inspector's five year secondment to the National Crime Squad on the ground that the Deputy Director General (DDG) of the Squad had lost confidence in the officer's management performance. At the same time several other officers were arrested on suspicion of drug-related offences and two more, whose secondments were also terminated, were returned to their home force for

disciplinary investigation. Harrison J at first instance held the decision to be judicially reviewable but that the DDG had acted fairly notwithstanding the absence of reasons for his decision and the lack of opportunity for the officer to make representations. The Court of Appeal upheld the judge's decision on fairness but held in addition that the DDG's decision had no public law element to it and had not been amenable to review in the first place. Giving the Court of Appeal's only reasoned judgment, Scott Baker LJ said at para 32, under the heading *Nature of the decision*:

"In contradistinction to the decision with regard to the other officers, there was no disciplinary element to the decision in the applicant's case. He was returned to his force because the director general had lost confidence in his ability to carry out his responsibilities. It seems to me that this was an entirely operational decision similar to the kinds of decision that are made with officers up and down the country every day of the week. Examples are transferring officers from uniform to CID or from traffic to other duties. These, to my mind, are run of the mill management decisions involving deployment of staff or running the force. They are decisions that relate to the individual officer personally and have no public element. They are, if you like, the nuts and bolts of operating a police force, be it the national crime squad or any other. It is, in my judgment, quite inappropriate for the courts to exercise any supervisory jurisdiction over police operational decisions of this kind. There is, quite simply, no public law element to them."

Later (at para 38) the Lord Justice described the decision as being "of purely domestic nature".

33. Under the heading *Fairness*, there then appear the following passages in the judgment:

"39 It is common ground that the impugned decision was honestly made and that no question of bad faith arises. The judge concluded that, whilst it may be sensible and desirable for reasons to be given when terminating an officer's secondment, the sensitive nature of the work and information in the national crime squad's hands may exceptionally make this inappropriate in the public interest. This was one of those cases. The director general went as far as he reasonably could in informing the applicant why his secondment was being terminated. The decision was subsequently reviewed and maintained by him. There was no requirement in law to do more.

45 . . . The very nature of the work to which he was seconded is such as to be likely to involve sensitive intelligence information. It is relevant to look at what the applicant was told about why he could not be told more. Initially it was that the professional standards unit of the national crime squad had received information that he had failed to maintain the professional standards required of someone in his position and that the deputy director general no longer had confidence in his ability to carry out his responsibilities; . . . Finally in February 2002 the applicant was told by his deputy chief constable, after the decision to terminate his secondment had been confirmed as correctly taken, that his development needs required attention to ‘the skill areas of informant handling and decision-making, bearing in mind the difficulties surrounding the source of the intelligence.

48 In my judgment the deputy director general was entitled to have in mind the risks attached to disclosing to the applicant the full circumstances of why his secondment was being brought summarily to an end. This does not of course mean that fairness goes out of the window altogether and nor, so far as I can see, did it in this case. The bottom line is the deputy director general acted in good faith and gave such information as he felt he could. Furthermore, the decision was reviewed and some further information provided as events unfolded. What the court cannot do in a case such as this is scrutinise the decision and form its own view whether the deputy director general was objectively justified in withholding information.”

34. On the issue of reviewability, the Board has some doubt as to the correctness of the Court of Appeal’s conclusion in *Tucker* that the DDG’s decision was altogether beyond the Court’s supervisory jurisdiction. Whether or not, however, that was the correct view there, it cannot properly affect our approach (already expressed at para 29 above) to the application here of section 20 of the 2000 Act. *Tucker* cannot operate to dilute the effect of the statute.

35. On the question of fairness, very different considerations arise in the present case from those arising in *Tucker*. A central argument below was that “the question of natural justice had to yield to the issues of national security involved” (para 4 of the Prime Minister’s skeleton argument in the Court of Appeal). This was elaborated by reference to a number of well-known authorities concerning national security including *Council of Civil Service Unions v Minister for the Civil Service* [1985] 1 AC 374 (*CCSU*) and the contention (at para 7 of the skeleton argument) that:

“the interest of national security overrode the requirements of natural justice namely the duty to inform the respondent of allegations made

against her in the Intelligence Report, and to permit her an opportunity to make representation in respect of these allegations. Indeed any revelation of these allegations to the respondent may have brought about the very consequences to national security that was to be avoided.”

That, of course, was precisely the situation in *CCSU*, the Prime Minister there having been concerned that consultation with the unions at GCHQ would result in the very industrial action that the de-unionisation of the service was intended to avoid. Manifestly, however, it was not the position with regard to Ms Ramjohn: no possible damage to national security could have been done by telling her of the BWIA report’s allegation against her.

36. There was, of course, a very different sense in which national security was involved. As Mendonca JA pointed out in his judgment, “the theft of blank passports is a matter of national security” (para 31) and “it would follow that . . . those who might be involved in the theft of the passports may be regarded as a danger to national security” (para 34). As, however, he then observed (para 35), that provided no reason whatever why “she was not told of the case against her or given any opportunity to make representations”.

37. Before the Board, therefore, Mr Dingemans urges as an additional reason what he contends was the urgency of the situation. The Board, however, is unimpressed by this. No evidence has been put before us to suggest that there was not time for the permanent secretary at least to notify Ms Ramjohn of the allegation and give her a chance to deal with it. We know nothing whatever of the circumstances in which the BWIA report came into the Prime Minister’s hands nor of how it related to the governmental reports on the loss of diplomatic pouches nor why Ms Ramjohn’s service record contained no hint of suspicion against her. All we are told is that the transfer was revoked “because of information that had recently become available”. How recently we do not know. How urgently Mr Budhai’s replacement needed to be in London we do not know (although, of course, we know that regulation 5(3) of the 1977 Regulations was invoked and Ms Ramjohn was required to assume duty “as soon as possible”). When in fact Mr Budhai’s eventual replacement took office we do not know.

38. Of course the Prime Minister could not properly have ignored the BWIA report and of course it presented him with an immediate problem. Obviously too, after Mr Budhai’s disgrace, he could not risk another appointment which might have threatened the state’s reputation. None of this, however, justified the course actually taken of telling Ms Ramjohn nothing whatever of the reasons for so devastating a reversal of her fortunes. As Warner JA observed (para 23): “A foreign posting is perceived to carry with it a certain degree of glamour and prestige, because of the perquisites attached to it” and, as already described (para 10 above), Ms Ramjohn had (as must

have been anticipated) taken a number of steps preparatory to her departure. It may very well be that, even had Ms Ramjohn been told of the BWIA report and given the opportunity to respond to it, she would not in the event have been able, in the comparatively limited time available for the purpose, to rebut it sufficiently decisively to preserve her London posting. Threadbare though the report undoubtedly was and self-interested though it could be regarded (BWIA as the state's carriers being themselves under suspicion), it might well have taken months rather than days before, as in the event happened, the report came to be recognised as worthless. These considerations notwithstanding, however, Ms Ramjohn would then at least have been treated fairly and that is what the process required.

39. As is trite law, the requirements of fairness in any given case depend crucially upon the particular circumstances – see, for example, *R v Secretary of State for the Home Department Ex p Doody* [1994] 1 AC 531, 560. Almost always, however, if a decision is to be taken against someone on the basis of an allegation such as that made here, fairness will demand that they be given an opportunity to meet it. A characteristically illuminating statement of the law appearing in Bingham LJ's judgment in *R v Chief Constable of the Thames Valley Police Ex p Cotton* [1990] IR LR 344 (para 60) deserves to be more widely known:

“While cases may no doubt arise in which it can properly be held that denying the subject of a decision an adequate opportunity to put his case is not in all circumstances unfair, I would expect these cases to be of great rarity. There are a number of reasons for this:

1. Unless the subject of the decision has had an opportunity to put his case it may not be easy to know what case he could or would have put if he had had the chance.
2. As memorably pointed out by Megarry J in *John v Rees* [1970] Ch 345 at p402, experience shows that that which is confidently expected is by no means always that which happens.
3. It is generally desirable that decision-makers should be reasonably receptive to argument, and it would therefore be unfortunate if the complainant's position became weaker as the decision-maker's mind became more closed.
4. In considering whether the complainant's representations would have made any difference to the outcome the court may unconsciously stray from its proper province of reviewing the propriety of the decision-

making process into the forbidden territory of evaluating the substantial merits of a decision.

5. This is a field in which appearances are generally thought to matter.

6. Where a decision-maker is under a duty to act fairly the subject of the decision may properly be said to have a right to be heard, and rights are not to be lightly denied.”

40. In the result the Board would uphold the judgment of the majority below and confirm the correctness of the declaration they made (see para 16 above). There is nothing whatever in the Permanent Secretary’s appeal against the Court of Appeal’s decision to make no order as to costs as between him and Ms Ramjohn. He was not separately represented and any additional costs incurred as a result of his being party to the proceedings must have been negligible. There is, if possible, even less in the contention that Ms Ramjohn should have been refused leave to amend her proceedings to add the Prime Minister (originally joined as an interested party) as a respondent and should therefore have been refused a declaration.

The second appeal

41. Despite Mr Kissoon’s request under section 16 of the 2000 Act for the Prime Minister’s reasons for vetoing his recommended promotion, the only information before the Board (besides the bare facts set out at para 17-22 above) comes from the Prime Minister’s Permanent Secretary’s affidavit stating that the Prime Minister wrote his veto letter of 10 November 2004 “having taken account of the matters stated in [the Chairman of the PSC’s letter of 19 October 2004 proposing Mr Kissoon’s promotion and attaching his particulars and in the Minister of Agriculture’s letter of 22 October 2004].” There is no suggestion that the Prime Minister knew anything of Mr Kissoon personally or that he had discussed his promotion with the Minister.

42. True it is that the Minister of Agriculture’s Permanent Secretary eventually came to depose in the course of the litigation:

“The restructuring of the Ministry requires a person with a strong Land Management background to head the Division of the Commissioner of State Lands. The functions of land administration have been separated from those of Land Surveys. Mrs Elder-Alexander is the person with that Land Management background and her qualification of Master of Science in Geographic Information Systems helps in that regard.”

There was nothing, however, in the Minister's letter of 22 October 2004 to suggest that he knew Mr Kissoon (who was in a different Ministry) or had any doubts about his "Land Management background", still less that he knew who had come second or third in the July 2001 interviews and whether they had any stronger such background. On the contrary, all that the Minister's letter made plain was that, because of the length of time since those interviews and because of the increased responsibilities of the proposed appointment, the top three candidates should be re-interviewed.

43. On the face of it, therefore, it seems that the Prime Minister without more treated the Minister's letter as a sufficient basis for exercising his veto against Mr Kissoon's proposed promotion. It is hardly surprising that in those circumstances the PSC (faced solely with the veto letter) then simply proposed Mrs Elder-Alexander (whom they regarded as the second best candidate) for the appointment and that the Minister of Agriculture (who must have assumed that the Prime Minister had communicated to the PSC the substance of his letter and that they had acted in accordance with his recommendation) then raised no further objection.

44. Was this, however, fair? The Board recognises that this is a very different question from that asked and answered by the court below – see the declaration set out at para 24 above. The obligation of fairness in the exercise of the veto under section 121(4), said Mendonca JA in the only reasoned judgment of the Court of Appeal:

“requires that before the veto is exercised in relation to an applicant who is proposed by the Commission for appointment he is informed of what there is against him and given an opportunity to make representations on his behalf. This is required in all cases.”

45. In the Board's view that (and the declaration that followed) goes altogether too far. Rather their Lordships are disposed to accept Mr Knox's submission that the power of veto is subject only to comparatively narrow limitations and that the obligation to act fairly must be viewed in that light. Clearly the veto power is subject to constitutional rights – the right to equal treatment, for example – and clearly it must not be used for a collateral purpose. The Board would reject, however, counsel's argument for Mr Kissoon that the only purpose for which the power can properly be used is a purely political purpose – namely that identified in the 1974 Constitutional Commission Report as set out at para 27 above. In their Lordships' view the veto could properly be exercised to prevent the promotion of a candidate whom the Prime Minister regarded as unsuitable for appointment on other than political grounds. If, obviously, the ground of objection was some specific allegation – as in Ms Ramjohn's case – then fairness would require that it be put to the candidate. But if the Prime Minister was objecting on general grounds involving no particular "case" against the candidate, fairness would not demand any advance notice of the veto.

46. It follows from this that the challenge to the fairness of the Prime Minister's decision process here cannot be on the basis of a failure to give Mr Kissoon the opportunity to meet the ground of objection in advance. Rather it is that to this day Mr Kissoon does not know what, if any, ground of objection the Prime Minister had to his appointment or whether, indeed, he simply misunderstood or paid insufficient attention to the Minister of Agriculture's letter. That seems to the Board clearly unfair and it is no answer to this to say, as Mr Knox does, that this is merely an "application case" demanding little in the way of fairness, let alone natural justice.

47. Mr Knox founds his argument in this regard on Megarry VC's well-known judgment in *McInnes v Onslow-Fane* [1978] 1 WLR 1520 and especially the classification there (p1529) of three particular categories of case: "forfeiture cases", "application cases" and "expectation cases", the latter "an intermediate category" in which "the applicant has some legitimate expectation from what has already happened that his application will be granted." In application cases, he said, "nothing is being taken away, and in all normal circumstances there are no charges, and so no requirement of an opportunity of being heard in answer to the charges". In forfeiture cases, by contrast, "there is a threat to take something away for some reason". Expectation cases, he suggested, "may at least in some respects be regarded as more akin to the forfeiture cases than the application cases".

48. In the Board's judgment these classifications are of little assistance in the present context. There is a very great difference between admission to and expulsion from a social club (one of the Vice-Chancellor's illustrations) or indeed (as in that case) the grant of a boxers' manager's licence and, as here, the exercise of a veto against the proposed appointment of a candidate successful in a competitive selection process for promotion to senior public office. Section 20 of the 2000 Act apart, such a person must surely have an expectation of being fairly treated, not least where, as here, he knew that he had topped the promotion interviews and been recommended for the office.

49. In the result the Board would dismiss the Prime Minister's appeal in this case also, save only to the extent of varying the declaration granted by the Court of Appeal (see para 24 above) to read:

"In the circumstances of this case the respondent was treated unfairly by the Prime Minister's failure to exercise his power of veto rationally or at least to provide a rational explanation for exercising it against the respondent's appointment."

50. As for Mr Kissoon's appeals against the Court of Appeal's refusal of further relief respectively against the Prime Minister and the PSC, these too must be

dismissed. These arguments can be disposed of very briefly indeed. The claim for damages against the Prime Minister failed below on the ground that “there is no claim for damages as is required by section 8(4) of the Judicial Review Act” (para 56 of Mendonca JA’s judgment). Section 8(4) of the 2000 Act does indeed provide that: “On an application for judicial review, the Court may award damages to the applicant if (a) the applicant has included in the application a claim for damages arising from any matter to which the application relates; and (b) the Court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making the application, the applicant could have been awarded damages.” Mr Kissoon’s insurmountable difficulty in this regard is that his claim for damages was (and could only have been) based solely on his allegation that he was unequally treated – a claim pursuant to sections 4(d) and 14 of the Constitution. This allegation, however, was struck out by the unappealed order of the trial judge on 9 May 2005 (see para 23 above). No damages claim thereafter survived.

51. Mr Kissoon’s claim against the PSC was pursuant to the Freedom of Information Act and sought disclosure of the minutes of the PSC’s meeting(s) discussing the relevant promotion. Section 27(1) of the Act, however, provides that:

“Subject to this section, a document is an exempt document if it is a document the disclosure of which under this Act –

(a) would disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister of Government, or consultation or deliberation that has taken place between officers, Ministers of Government, or an officer and a Minister of Government, in the course of, or for the purpose of, the deliberative processes involved in the functions of a public authority; and

(b) would be contrary to the public interest.”

True it is that section 35 of the Act provides for the disclosure of exempt documents in certain specified circumstances but none of those circumstances even arguably exist here. It is, indeed, accepted that from Mr Kissoon’s standpoint this appeal is purely academic. So much, therefore, for Mr Kissoon’s cross appeals.

52. With regard to the dismissal of the Prime Minister’s appeals in both cases, the Board would add only this. There is no question here of the Prime Minister having acted otherwise than in good faith in each case. The Board’s decision is simply that in the very particular circumstances of these two cases, on the evidence put before the reviewing courts, the decision-making processes can be seen to have been unfair to the

respective officers concerned. This judgment should certainly not be regarded as a charter for those disappointed in their applications for public service appointments routinely to challenge the process. On the contrary, only exceptionally is it likely that such challenges will succeed.

53. Submissions in relation to costs should be submitted in writing within 28 days.