

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**



G 182 of 2020

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW PURSUANT
TO ORDER 53 OF THE GRAND COURT RULES 1995, REVISED**

IN THE MATTER OF SECTION 54 OF THE PUBLIC SERVICE MANAGEMENT LAW (2018 REVISION)

**AND IN THE MATTER OF THE DECISION OF THE CIVIL SERVICE APPEALS COMMISSION DATED
17 AUGUST 2020**

BETWEEN

ANDREW GALBRAITH

Applicant

AND

CIVIL SERVICE APPEALS COMMISSION

1st Respondent

CHIEF OFFICER, MINISTRY OF DISTRICT ADMINISTRATION, TOURISM AND TRANSPORT

2nd Respondent

IN CHAMBERS

Appearances: Mr. Stephen Symons of Symons & Symons, Attorneys-at-Law for the Applicant

Before: Hon. Mrs. Justice Margaret Ramsay-Hale

Heard: 14 December 2020

Draft ruling circulated: 22 March 2021

Ruling Delivered: 25 March 2021

HEADNOTE

Judicial Review- application for leave - applicant must establish an arguable case that a ground for seeking judicial review exists

JUDGMENT

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Introduction

1. The Applicant, Mr. Andrew Galbraith, seeks leave to move for Judicial Review of the decision of the Civil Service Appeal Commission (“CSAC”) dated the 17 August 2020 dismissing his appeal against the decision of the Chief Officer in the Ministry of District Administration, Tourism and Transport not to offer him the post of Finance Manager within the Cayman Brac District Administration, for which he had competed in or about 6 August 2019.
2. The application was not considered on the papers. An oral hearing was fixed for 14 December 2020. At the conclusion of the hearing, the Court indicated its provisional view that there were no arguable grounds on which to seek judicial review of the decision of the CSAC but said it would give the matter further consideration and provide a written ruling on the application, which I do now.

Background

3. The Applicant is employed within the District Administration for Cayman Brac as the Financial Administrator. He has been employed in that post since 6 December 2013.
4. In mid-2019, the Ministry of District Administration, Tourism and Transport (“the Ministry”) conducted a recruitment exercise for a Finance Manager within the Cayman Brac District Administration. This would be a new senior role to which the Financial Administrator would report.
5. The **Public Service Management Law** (“PSML”) sets out the recruitment procedure to be adopted in the recruitment exercise and provides, *inter alia*,

“(5) Upon the closing of applications, the appointing officer shall prepare a shortlist of suitable candidates for interview consisting of at least two persons who, in the opinion of the appointing officer, have the qualifications, skills, knowledge and experience necessary for the position.

(6) Persons shall be placed on the shortlist only on the basis of their qualifications, skills, knowledge and experience

(7) Except as provided in subsection (8) –

(a) all candidates on the shortlist are to be interviewed by an interview panel established by the appointing officer and using a comparable interviewing approach for each applicant; and



(b) *the interview panel is to establish the preferred candidate, that being the candidate that has the best mix of qualifications, skills, knowledge and experience for the position based on -*

- (i) *the information provided by the applicants;*
- (ii) *the results of the interviews;*
- (iii) *the personal knowledge of the persons on the interview panel as declared to the panel; and*
- (iv) *any other information the interview panel considers relevant.”*

6. The section also provides that where, after applying the criteria for establishing the preferred candidate, two or more persons rank broadly at the same level, Caymanians shall be given preference.
7. The recruitment exercise commenced in mid-2019. The closing deadline for applications was the 14 June 2019. Persons wishing to be considered for the post completed a Cayman Islands Government application setting out, *inter alia*, their relevant work experience. On the closing of the applications, the Applicant was one of seven candidates shortlisted for interview. An Interview Panel was established (“the Panel”) the members of which were the Deputy District Commissioner, to whom the successful candidate would report, the Brac District Administration’s Human Resources Manager and the Deputy Chief Financial Officer in the Ministry. As it is relevant to one of the grounds of review, I will note here that the Deputy District Commissioner and the Human Resources Manager appointed to the panel are near cousins and both are distant cousins to the third member of the panel.
8. The Panel conducted interviews with all the candidates on 25 July 2019. At the end of the interview process, the Panel identified the “*preferred candidate.*” The Ministry made an offer to the preferred candidate on 30 August 2019 which was accepted on 12 September 2019.

The Applicant’s case

9. The following account is drawn from the Applicant’s affidavit sworn in support of his appeal to the CSAC.
10. The Applicant was told on 6 September 2019 he had not been selected for the post. It was unwelcome news given that,

“I was virtually already performing the role. It may have meant upon formally taking up the “title” that some new and additional ministry duties presently maintained by the Chief Financial Officer and Chief Officer would be handed over



to me (what I see as a natural progression or an opportunity for the enhancement of my abilities.)”¹

11. The Applicant believed that he was *“a strong candidate, in fact the strongest candidate against any person for the position of finance manager.”*² He sought to demonstrate this in his affidavit, detailing at some length what he considered his accomplishments in the role of Finance Administrator.³ He states, *inter alia*, that, before he took office in 2013, the District Administration experienced significant budget deficits and the Auditor General disclaimed an opinion on its financial statements in two successive years. When he was appointed to the post, he worked through what he described as the *“accounting black hole”*⁴ left by his predecessor, cleaning up the mess he left behind including, but not limited to, cash flow issues, no proper account or control of inventory, failure to ensure that accounts receivable were in order and insufficient knowledge or control of fixed assets.⁵
12. As a result of the financial controls he subsequently introduced, the auditors expressed unqualified opinions on the District Administration’s financial statements for the years 2016 and 2017.⁶
13. That Applicant states that between 2015 and 2016, he had discussed the re-grading of his post to Finance Manager with the Human Resource professionals within the Ministry and within the District Administration and believed it was being considered.
14. He says he was surprised when the recruitment exercise for the Finance Manager position *“came up out of the blue.”* He spoke to the Deputy District Administrator who said he saw no reason why the Applicant should not apply for it and said further, undoubtedly bolstering the Applicant’s own belief that he was the strongest candidate for the post, said *“he did not see anyone on Islands who could challenge [the Applicant] for the post.”*⁷ The Applicant also believed that as a Caymanian, he should have been preferred, consistent with the commitment of the civil service to provide opportunities for the advancement for Caymanians.
15. Unsurprisingly, then, when he received formal notification on 7 October 2019 that his predecessor was the preferred candidate to whom the post of Finance Manager had been offered, the Applicant was, as he says, *“shocked that [his predecessor] was even considered for*

¹ First Affidavit of Andrew Galbraith dated 10 November 2019 at para 81 at page 109 of the exhibit AG-JR1

² *Ibid* para 81

³ “ paras 24 to 56, 61 to 65

⁴ “ para 24

⁵ “ para 90

⁶ *Ibid* para 60

⁷ “ para 76

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*the position considering his past performance in the role*⁸ and *“devastated”* by the news as, in his opinion, his predecessor had *“no understanding of internal budgetary controls.”*⁹

16. He candidly admitted that, *“I feel humiliated and the way that I have been treated have been demoted (sic).”*¹⁰
17. The Applicant asserts that his predecessor’s poor or non-performance in the role was known, or ought to have been known, to the Chief Officer, as the fact that there had been no internal or budgetary controls when his predecessor was at the helm could be readily discerned from the publicly available financial statements for the Brac District Administration for the years ending 2011/12 and 2012/13. He asserts it was also to be inferred from an email sent by a former Chief Officer to the District Commissioner, after a meeting between them and his predecessor, asking him to more closely manage the budget going forward and directing that only invoices approved By the District Commissioner, or his Deputy, be approved.
18. The Applicant declared he was shocked too by the fact that his predecessor was shortlisted, in light of this memo.
19. Given his belief that the appointment process had gone awry, the Applicant resolved to appeal the decision not to appoint him as Finance manager. As he says in his Affidavit,

*“After dealing with my shock and disbelief, it became clear to me that this appointment was made on a biased and unfair basis and that I had to do something about this otherwise the finances of the District Administration would suffer again under the management of [his predecessor].”*¹¹

20. Just pausing there, it is an inescapable conclusion from the Applicant’s evidence that his complaint that the process was unfair was entirely predicated on the fact that he was not selected for the post. Given his belief that he was the superior candidate, he considered that the appointment of his predecessor could only be explained on the basis that the Chief Officer and/or the Panel were either biased or predisposed towards his predecessor, or biased against him.
21. The Applicant wrote to the Chief Officer protesting the decision not to appoint him to the post and seeking to have his predecessor’s appointment vacated and himself appointed as Finance Manager.

⁸ “ para 85

⁹ “ para 97

¹⁰ “para 98

¹¹ *Ibid* para 86

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22. Falling at that hurdle, the Applicant appealed to the CSAC, stating in his affidavit sworn in the appeal that,

*“It is this unpopularity emanating from me doing a good job which has resulted in [my predecessor] being appointed to the position of Financial Manager (sic). Simply put, I am disappointed but grateful for the procedure outlined in the Law for me to properly address this issue and **hopefully be appointed the Finance Manager.**”¹² [emphasis mine]*

The Grounds of Appeal

23. The Applicant appealed to the CASC on the grounds that:
- (i) That the Chief Officer acted unfairly in failing to appoint him to the position of Finance Manager in the circumstances where he had held the position of Finance Administrator for 6 years. The Applicant asserted that the positions were substantially the same and that he had been given a prior indication that his Financial Administrator post would be upgraded to that of Manager rather than a new position of Finance Manager created to which the Finance Administrator would report;
 - (ii) That the Chief Officer should not have appointed his predecessor as he had actual or constructive knowledge of his predecessor’s prior poor performance;
 - (iii) That he had been constructively demoted by the removal of his management functions and those functions being vested in the newly appointed Finance Manager;
 - (iv) That the Chief Officer had failed to take account of the Applicant’s recent Status Grant when appointing his predecessor and had accordingly failed to have proper regard to section 55 (1) (c) requirement that he recognise the need for the advancement of Caymanians in all parts of the civil service;
 - (v) That the selection process had placed undue weight on the interview element of the recruitment process;
 - (vi) That the Chief Officer and/or his delegates had acted in a biased way by failing to appoint an independent Appointing Officer and Interview Panel (the “Panel”);

¹² *Ibid* para 99
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- (vii) That the Chief Officer and/or his delegates acted in a manner inconsistent with Part VII of the PSML by failing to operate a personnel policy that complied with section 55(1) by, in particular:
- (a) failing to impartially select qualified persons for appointment pursuant to section 55 (1)(b),
 - (b) failing to recognise the need to promote Caymanians, and
 - (c) failing to provide opportunities for the enhancement of the abilities of individual employees pursuant to section 55(1)(d).
- (viii) That the Chief Officer failed to comply with section 41(7)(a) and (b) as the Panel was not comprised of individuals who were independent and unbiased, as required by Regulation 27 and had also had breached section 41(7)(b) by placing undue weight on the interview element of the recruitment process;
- (ix) That the Chief Officer failed to undertake a background check of the successful applicant in compliance with Regulations 28(1) (b).

24. There was some degree of overlap in the latter grounds of appeal.
25. The grounds were distilled by the CSAC as alleging that the decision not to appoint the Applicant was:
- (i) Biased,
 - (ii) Unfair,
 - (iii) Against the principles of natural justice,
 - (iv) Contrary to the provisions of the law,
 - (v) Unjust, and
 - (vi) Unlawful.

The Chief Officer's Response

26. The Chief Officer in response, said that he was unaware that that the Applicant had been given any indication that his post as a Financial Administrator was to be upgraded to the post of Finance Manager. He said that such a decision is made by the Chief Officer and he had not given the Applicant any such indication. This was not disputed by the Applicant.
27. With respect to the alleged poor performance of his predecessor, the Chief Officer observed that this was the Applicant's personal opinion and that the Ministry and District Administration management team had been pleased with his predecessor's performance during his previous tenure, otherwise he would not have been shortlisted.



28. The Chief Officer did not accept that the Applicant was constructively demoted although he acknowledged that some of the Financial Manager's responsibilities would be assumed by the Finance Manager.
29. With respect to the allegation that he had failed to consider his duty to advance Caymanians and provide opportunities for the enhancement of the abilities of individual employees as required by section 55(1)(c) and (d) of the PSML, the Chief Officer stated that at the time the decision was made to appoint the preferred candidate to the post of Finance Manager, the Applicant had not been granted Caymanian Status.
30. The Chief Officer rejected the allegation that the selection process as conducted by the Panel was inconsistent with section 41(7) of the PMSL, given that all applicants went through the same process when applying for the post, they were each scored based on the same criteria and were each given "*the same due consideration*"¹³ which the section required. As an aside, Chief Officer noted that the Applicant was not the "reserve candidate" - the second choice - for appointment, in the event that his predecessor was not appointed. In that event, the position would have been offered to candidate #4.
31. The Chief Officer rejected the allegation that the Panel was not properly constituted, saying that the members were competent and fit to determine whether the candidates were suitable and met the requirements of the Financial Manager post. He said further, that the fact that the Applicant and his predecessor were both known to the Panel was not indicative of bias.
32. As to his failure to conduct a background check on the Applicant's predecessor before appointing him to the post, the Chief Officer noted that the law gives the Chief Officer a discretion to conduct background checks if he thinks it appropriate and that there had been no need to conduct a background check on the appointee as he had been previously employed with the Ministry.

THIS APPLICATION

33. The appeal was heard by zoom. The CSAC took evidence on oath and took time to consider their decision before dismissing the Applicant's appeal on 24 August 2020.
34. The Applicant now seeks an order of *certiorari* quashing the decision of the CSAC on the ground that the decision was *ultra vires* the CSAC and an order remitting the matter to the CSAC for reconsideration.

THE LAW ON THE GRANT OF LEAVE

¹³ Chief Officers response at para 12 at page 135 Exhibit AG-GR1
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35. The procedure he now seeks to invoke is to challenge the decision of the CSAC by Judicial Review. The Cayman Rules provide that the leave of the Court be first obtained on an *ex parte* application to the Court: GCR O 53, r.3.
36. The requirement for leave was explained by Diplock LJ In *O'Reilly v. Mackman*, where the learned Judge said this¹⁴:



“The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision.”

37. The observation is particularly apt in these proceedings where the Applicant’s ultimate goal is to have the present post-holder, who had been in post since October 2019, removed from his employment.
38. It is also important to reiterate that judicial review is concerned with reviewing, not the merits of the decision in respect of which the application for judicial review is made, but the decision-making process.
39. As Donaldson LJ stated In *R v. Crown Court at Carlisle, ex parte Marcus-Moore*,¹⁵ the purpose of the remedy of judicial review, is to ensure that the individual is given fair treatment by the authority to which he has been subjected. It is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question. The duty of the court is to confine itself to the question of legality. Its concern is with whether a decision-making authority exceeded its powers, committed an error of law, committed a breach of the rules of natural justice, and reached a decision which no reasonable body could have reached or abused its powers.
40. The authorities establish that leave should be granted if, on the material available to the judge, there is an arguable case for the granting of the relief claimed: **White Book** note 53/14/55 at p 915.
41. The grounds on which the Applicant seeks to review of the CSAC’s decision are set out below.

GROUND 1: Decision *ultra vires* having been rendered outside the 30 day period set out in the Law

42. The Applicant submits that pursuant to section 53(3) of the PSMAL, the CSAC is required to render its decision on the appeal within 30 days. The decision in his appeal was rendered nearly

¹⁴ [1983] 2 A.C. at 280–281

¹⁵ The Times, 26 October 1981

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5 months after the appeal was heard. The Applicant contends that, in the premises, the CSAC had “acted without jurisdiction” by seeking to render their decision out of time and that their decision was *ultra vires*.

43. It is a rule of construction that whether the word “shall” should be construed as mandatory or directory depends on the statutory intent. The word “shall” in section 53(3) is not mandatory but directory. It is plainly meant by the legislature to encourage the timely dispatch of appeals. The Legislature did not intend that the CSAC should not deliver decisions at all, if they were not delivered within the prescribed time. Such a construction would defeat the legislative purpose of establishing a statutory Tribunal to deal with appeals.
44. Consequently, there is nothing in this ground.

GROUND 2: The CSAC applied wrong test for bias

45. The Applicant alleges that the Chief Officer and/or his delegates - the Panel - acted in “an unfair or biased manner.”
46. The Applicant contends that the CSAC misdirected itself on the law in determining that there was “inadequate evidence of a lack of independence or bias” to interfere with Chief officer’s decision to appoint particular person to the interview panel, that “there has to be clear evidence of bias that is not apparent on the evidence” and that the Applicant “had no direct evidence that the Panel had an alternative motive...”
47. The submission is that the CSAC made an error of law as they held that direct and clear evidence of *actual* bias was required to ground a finding that the Chief Officer and/or his delegates acted in a biased manner whereas the correct legal test for bias is whether a fair minded observer would conclude that there was a real possibility that the decision maker was biased: see **Magill v Porter** [2002] 2 AC 357. As a consequence, the CSAC failed to consider the evidence in light of the test for apparent bias.
48. It seems to me that, no matter what test is applied, there must be some *evidence of circumstances* capable of supporting an allegation of bias. As I understand the CSAC decision, there was simply no evidence capable of supporting a finding of bias, real or apparent.
49. Given that the totality of the Applicant’s evidence of bias consisted of his belief that, as the superior candidate, he would have been appointed *but for* bias in the Panel, incidents recalled from “*past events and hindsight*¹⁶” which included a Panel member hanging up on him and the fact that the Panel members were all related as well as “*a sixth sense or feeling*¹⁷” that the Panel

¹⁶ Heading to para 91 on page 19 of his affidavit

¹⁷ Evidence before the CSAC recorded at page at age 8 of the Decision

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was biased, the CSAC made no reviewable error of law. It merely decided as a fact that there was no evidence to support the allegation of bias made against the Panel.

50. To the contrary, as the CSAC observed, the Applicant's evidence that the Chairman of the Panel had once said he didn't see anyone on Island who could challenge the Applicant for the post, could conceivably point in the opposite direction.
51. This ground is hopeless.

GROUND 3: The CSAC erred in its interpretation of section 41(7)(a) and (b) of the PSML

52. The Applicant argued before the CSAC that the selection of his predecessor as the preferred candidate demonstrated that undue weight had been placed on the results of the interview in breach of the guidance provided by section 41 (7) (a) and (b) of the PSML.

53. The relevant provisions section 41(7) (b) provides as follows:

"The interview panel is to establish the preferred candidate, that being the candidate that has the best mix of qualifications, skills, knowledge and experience for the position based on-

- (i) the information provided by the applicants;*
- (ii) the results of the interview;*
- (iii) the personal knowledge of the persons on the interview panel as declared to the panel; and*
- (iv) any other information the interview panel considers relevant...."*

54. The Applicant asserted that he did not receive any "scoring" based on the matters set out at (i), (iii) or (iv) and that he and the other candidates were scored significantly, if not entirely, on the interview. The *sub silentio* assertion here again is that, had the Panel considered his successful tenure as Finance Administrator rather than just the points scored in interview, ¹⁸ he would have been the preferred candidate.
55. The CSAC dismissed this ground, holding that the Panel was required to make their recommendation based on the application of each applicant and the points awarded to each applicant and had clearly considered the Applicant's experience as Finance Administrator.

¹⁸ Para 37,
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56. Although the CSAC did not address the complaint of undue weight being given to the interviews with particularity, I understand them to be saying that there was no evidence of any procedural error in the way the selection process was conducted by the Panel.
57. In so finding, the CSAC did not make an error of law as the law does not provide for scoring anything other than the answers given in interview and the Panel's impression of the personal attributes of each candidate nor does it prescribe the weight to be given to matters to be considered by the Panel in deciding which candidate has the best mix of qualifications, skills, knowledge and experience for the position.
58. There's nothing arguable in this ground.

GROUND 4: The CSAC made an error of fact with respect to the number of points allocated to the interviews

59. In dealing with the Applicant's complaint about the undue weight give to the interviews in the selection process, the CSAC stated in the course of its decision that,

"The interview enabled an applicant to gain 100 of out 124 points from the interview segment."

60. The Applicant says that, in so holding, the CSAC made an error of fact as each interview sheet was comprised of "interview questions" worth up to 100 points and a section for "Personal Attributes" worth another 24. He asserts that this error of fact "is of a nature and significance to warrant judicial intervention."¹⁹
61. In saying that the candidates could score 100 points in the "interview segment", I understand the CSAC to mean the candidates could score 100 points for answering the questions asked and they were correct to so hold. The **Personal Attributes** section of the form allowed the Panel to score their impression of the candidates' personal attributes gained during the exchange of questions and answers during the "interview segment" (to adopt the CSAC's phrase), scoring the candidates up to 24 points in respect of 6 'questions' the Panel members were to ask themselves, such as whether the candidate had good communication skills, was appropriately attired, was a good fit for the organisation and so on.
62. Even if the CSAC were mistaken as to how many points an applicant could gain in interview, the mistake would not be not material as it would not bear on the fact that the Applicant scored 275.5 points out of a possible 372 points and ranked third out of the 7 applicants for the post at the end of the interview process.

¹⁹ Paragraph 51 of the Application for Leave
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63. This ground too is hopeless.

GROUND 5: The CSAC failed to provide adequate reasons for its finding that the Chief Officer did not act unfairly pursuant to section 53 (3)

64. Ground 5, and the particulars that are relied on to support it, is rather opaque. As I understand this ground, the Applicant asserts that he was “*constructively demoted*” in the circumstances where some of his managerial functions would be assumed by the Finance Manager and he would be left in a post which “*was a shell in comparison to what it was.*” The allegation is that in stripping his post as Finance Administrator to a mere “*shell*” of what it was and not appointing him as Finance manager, the Chief Officer acted in an unfair manner.

65. The CSAC rejected this submission, stating that

“...whilst the creation of the Finance Manager position did mean that that Mr. Galbraith would have a slightly different role, the Chief Officer was entitled and empowered to determine the assignment of duties between his staff. Even if there was an element of demotion (which CSAC does not find) that of itself does not invalidate the process or appointment of someone to the new post.”

66. The Applicant contends that these reasons fail to explain why his treatment at the hands of the Chief Officer was not unfair but it is plain, from the reasons given, that the CSAC found as a fact that Chief Officer, in assigning some the Applicant’s duties to the Finance Manager, had not significantly altered the Applicant’s role. Had not, in other words, constructively demoted him, as the Applicant alleged.

67. In my judgment, the Applicant has no arguable case that the reasons given were inadequate.

GROUND 6: The CSAC made an error of law in deciding that that no question of preferring a Caymanian arose

68. As already noted ²⁰, section 41 (7) of the PSML provides that where, after applying the criteria for establishing the preferred candidate, two or more persons rank broadly at the same level, Caymanians shall be given preference.

69. The Applicant asserts that, as all the candidates were shortlisted then, inferentially, they all ranked broadly the same. In the Application, at para 67 he put the matter this way:

“Provided the law is followed, the candidates, including the Applicant, must have ranked broadly the same or they would not have been considered appropriate for the position and short-listed.”

²⁰ supra para 53

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70. On this ground, the CSAC said this:

“The obligation on the Panel to prefer a Caymanian applicant over a non-Caymanian applicant arises only if two persons are broadly at the same level...In the present case, Mr Galbraith was never ranked broadly at the same level as another non-Caymanian applicant. The Panel scoring clearly shows that Mr Galbraith ranked third of the seven applicants whereas the preferred candidate ranked first... In the Panel Report, Mr. Galbraith’s experience as Financial Administrator was clearly considered. Mr. Galbraith did not perform well in interview. The panel felt Mr. Galbraith’s answers to some technical questions were not as satisfactory as other applicants”

71. The thrust of the CSAC’s decision is that the question of whether candidates “rank broadly”, and whether a Caymanian should be preferred, is a matter to be considered at the end of the selection process - at the end of ‘the Panel scoring’ - and not when the candidates are shortlisted. This is plainly correct as the statutory scheme provides that the consideration of whether two persons rank broadly falls to be considered after applying the criteria in section 41 (7)(b) to the shortlisted candidates to establish the preferred candidate.
72. The Applicant has no arguable case that the CSAC fell into reviewable error in dismissing this ground of appeal.

GROUND 7: The CSAC erred in interpreting the Applicant’s email to the Chief Officer as a “grievance” and not an appeal against an appointment decision

73. The final ground raises a procedural non-issue.
74. Before the appeal was heard, the question was raised by the CSAC as to whether the Applicant had raised a “*formal grievance*” with the Chief Officer pursuant to section 51(2)(d) of the PSML, which is not subject to the appeal process, instead of an appeal to the Chief Officer pursuant to section 53, thus depriving the CSAC of jurisdiction.
75. The issue was resolved when the Chief Officer indicated that he was content for his email response to the Applicant’s complaint to be treated as a decision for the purposes of the appeal. The CSAC proceeded on that basis and heard and determined the appeal.
76. Whatever error the CSAC might have made in considering it had no jurisdiction to hear the appeal, it ultimately heard and determined the appeal. The application to quash the CSAC’s decision as *ultra vires* on the ground that the CSAC allowed the appeal to proceed, which is what this ground boils down to, is simply nonsense.

CONCLUSION

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77. The Applicant's application for permission to move for Judicial Review of the CSAC's decision is hopeless and is dismissed.
78. The Chief Officer was improperly joined in the application for leave, as the only decision challenged is the decision of the CSAC. The application against the Chief Officer is struck out.

DATED 25 MARCH 2021



Hon Mrs. Justice Ramsay-Hale
Judge of the Grand Court

