



## **CSAC Appeal 003/2019 – Record of Decision**

Appeal 003/2019 was received on 20 March 2019, with the remaining supporting documents received on 21 March 2019, from the Appellant against two decisions of the Respondent:

- (a) the decision not to reappoint the Appellant to her then current position under a new fixed-term employment agreement (“the First Decision”); and
- (b) the decision that the Appellant’s last day at work should be more than three months before the expiry of her then current fixed-term employment agreement, which the Appellant deems to be ‘early dismissal’ (the “Second Decision”).

The Appellant sought as a remedy a declaration that the decisions were biased and unfair and in breach of the Public Service Management Law (2018 Revision) (“PMSL”) and the Personnel Regulations (2019 Revision) (the “Personnel Regulations”).

Following receipt of submissions from the Respondent and further supporting documents from the Appellant, an Appeal Hearing was held on 21 November 2019. It is noted that Acting Chairman Olivaire Watler along with members Stacey Vandeveld, Shomari Scott, and Kimbert Solomon participated in the Appeal Hearing. The Commission subsequently considered the written and oral submissions of both parties along with the relevant sections of the PSML and the Personnel Regulations.

### **First Decision**

CSAC concluded that in exercising her discretion the Respondent was required under Regulation 29 of the Personnel Regulations to consider, inter alia, the Appellant’s performance over the contract period as a whole and other factors the Respondent considered relevant (including the Appellant’s attitude, behaviour, etc.), to discuss any matters arising with the Appellant, and that having considered these factors the Respondent was then entitled either to reappoint the Appellant under a new employment agreement, or to declare her position vacant. Further, CSAC accepted the submission of Counsel for the Respondent that the discussion required was in marked contrast to the procedure required for discipline which has formalities to ensure the employee has ample opportunity to consider and respond to all allegations, and that this difference is intentional because in disciplinary proceedings an employee may lose a right that they currently possess (i.e. their ongoing employment).

Having regard to these requirements and the Respondent’s actions, CSAC did not find that the Respondent acted in an unfair or biased manner, or in a manner inconsistent with the requirements of Part VII of the PSML or the procedures set out in Regulation 29. It is not for CSAC to substitute

its discretion for that of the Respondent and in CSAC's view the Respondent's assessment of the matter fell within the band of responses/decisions a fair and reasonable Appointing Officer might have made. For this reason, this part of the appeal was dismissed.

### **Second Decision**

CSAC agreed with the Respondent's submissions that CSAC did not have jurisdiction over this matter as the Respondent's decision is not amenable to appeal under s.54 of the PSML given that there was no decision to terminate the Appellant's employment agreement early. The evidence presented, and accepted by the Appellant, was that the Appellant was given full salary and benefits until the expiry of her employment agreement even though she was not made to report to work for an extended period of time leading up to the end of the agreement. For this reason, this part of the appeal was also dismissed.

Ultimately, the appeal as a whole was dismissed and no orders made.

The Commission's decision was duly issued on 30 December 2019 to both the Appellant and the Respondent's legal representative.



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Olivaire Watler  
ACTING CHAIRMAN  
CIVIL SERVICE APPEALS COMMISSION