



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2018: No. 392

**IN THE MATTER OF THE APPOINTMENT OF THE COMMISSIONER OF
EDUCATION**

**AND IN THE MATTER OF RECOMMENDATIONS MADE BY THE BOARD OF
EDUCATION AND THE PUBLIC SERVICE COMMISSION PERTAINING TO
THE POSITION OF THE COMMISSIONER OF EDUCATION**

BETWEEN:

DR. GINA TUCKER

Applicant

-and-

THE PUBLIC COMMISSION

1st Respondent

THE BOARD OF EDUCATION

2nd Respondent

Before: **Hon. Assistant Justice Riihiluoma**

Appearances: **Mr Mark Diel, Marshall Diel & Myers, for the
Applicant**
**Mr Richard Horseman, Wakefield Quin Limited, for
the 1st Respondent**
**Mr Delroy Duncan and Mr Ryan Hawthorne, Trott &
Duncan Limited, for the 2nd Respondent**

Date of Hearing: **10 December 2020**

Date of Judgment: **29 January 2020**

JUDGMENT

Judicial review – Appointment of Commissioner of Education – Procedural impropriety – Bias

Introduction

1. This matter comes before the court on the Applicant's Originating Notice of Motion seeking a declaration against the Public Service Commission and the Board of Education that the appointment of Mrs Kalmar Richards as Commissioner of Education is void on the basis of illegality and that the appointment be declared null and void.
2. The Applicant, Dr Gina Tucker, is an educator with many years of experience both as a teacher and an administrator in the Department of Education. She unsuccessfully applied for the post of Commissioner of Education in 2013 and 2016. Dr Tucker applied for the post of Commissioner of Education in 2018 and she was, again, unsuccessful. Mrs Richards was appointed as Commissioner of Education.
3. Dr Tucker complains that she was unsuccessful because the Board of Education and the Public Service Commission woefully breached the legislation and regulations governing the appointment of the Commissioner of Education. Further, Dr Tucker contends that the Permanent Secretary for Education was complicit in these breaches in order to obtain the appointment of her chosen candidate. I will deal first with Dr Tucker's claim in respect of breach of legislation and then I will deal with her allegations in respect of bias.

The Department of Education

4. Broadly, the Department of Education operates and administers the public education system in Bermuda.
Section 2(2) of the Education Act 1996 provides:

“The Department shall, subject to the general direction and control of the Minister,-

- (a) be under the supervision of a public officer who shall be known as the Permanent Secretary; and*
- (b) consist of the Commissioner of Education and such other public officers as may from time be authorized by the Governor.”*

5. The Commissioner of Education is the Head of the Department of Education. The Commissioner of Education’s duties are set out in section 5(2B) of the Education Act and include such matters as:

“prepare for the Board [of Education] a draft statement of vision, values and strategy for education to assist the Board in making recommendations to the Minister [of Education]

[responsibility] for the assessment ... of the performance of the educational system and implementation of plans for improving the system; and
[responsibility] for the development of the curriculum for schools.”

6. Section 3 of the Education Act provides that the Minister may appoint 15 members to the Board of Education which shall consist of the following:

- “(a) 5 persons who are representative of schools, other than senior schools, in different areas of Bermuda;*
- (b) 2 persons, one from the Berkeley Institute and one from CedarBridge Academy, appointed after consultation with their boards of governors;*
- (c) 4 persons, one from the Association of School Principals, one from the Bermuda Public Services Union and two from the Bermuda Union of Teachers, appointed after consultation with each of them;*
- (d) 2 persons appointed after consultation with organizations representing the business community as determined by the Minister; and*

(e) 2 persons who are representative of parents or the education community, appointed after consultation with any national organization representing parent-teacher associations;”

7. The functions of the Board of Education are set out in section 4 of the Education Act as follows:

“(a) make recommendations to the Minister regarding the evaluation of the Commissioner of Education and directors of the Department;

(b) make recommendations to the Public Service Commission regarding the appointment of the Commissioner of Education, directors of the Department and principals;

(c) make recommendations to the Minister regarding educational policy;

(d) make recommendations to the Minister regarding a statement of vision, values and strategy for education;

(e) make recommendations to the Minister regarding its budget, the budget for schools and the allocation, within the budget for schools, of funds for individual schools;

(f) evaluate, in conjunction with the Commissioner of Education, the performance of schools and boards of governors;

(g) make recommendations to the Minister regarding the curriculum for schools;

(h) make recommendations to the Minister regarding methods for assessing the performance of the educational system and monitoring the implementation of plans for improving the system;

(i) make recommendations to the Minister for the design and implementation of an effective risk management strategy for schools, including policies and measures to control risks relating to the provision of education, security of persons and property and health and safety.

(j) provide monthly reports to the Minister on its activities.”

8. The Board of Education does not have its own administration/secretariat. It relies on the Department of Education for these resources.

Procedure for the Appointment of the Commissioner of Education

9. The basic procedural requirements laid down in legislation and regulation for the appointment of the Commissioner of Education are:
 1. the Board of Education makes recommendation to the Public Service Commissioner regarding the appointment of the Commissioner of Education (section 4(1)(b) Education Act);
 2. the Public Service Commission is obliged to consider all applicants (section 16 of the Public Service Regulations);
 3. the Public Service Commission shall recommend to the Governor the best candidate for the post (section 19(2) Public Service Act); and
 4. the Governor shall consult with the Premier in making the appointment (section 82(2) Bermuda Constitution Order).¹

The Procedure Adopted for the Appointment of Mrs Richards

10. The civil service Recruitment Code was used for the appointment of Mrs Richards as Commissioner of Education in 2018. The civil service Recruitment Code was used for the appointment of the Commissioner of Education in 2013 and 2016.
11. Ms Germaine Trott, the Senior Human Resources Manager for the Department of Education, describes in her affidavit the administrative steps taken in the 2018 appointment of the Commissioner of Education. Ms Tott was directly involved, working with the Permanent Secretary, in the 2018 selection process. She had performed a similar role in respect of the 2013 and 2016 appointments of the Commissioner of Education.

¹ The parties agreed that it was unnecessary to join the Governor as a defendant to these proceedings

12. In May 2018 the position of Commissioner of Education was advertised locally and in the Official Gazette. A copy of the advertisement has not been exhibited. There is no suggestion that the Board of Education prepared or placed the advertisement.
13. After the closing date for applications Ms Trott met with the Permanent Secretary to establish a shortlist of candidates to be interviewed by an Interview Panel. Three non-Bermudians who had applied were not shortlisted. Two Bermudians who applied were not shortlisted because they did not meet the qualifications. Dr Tucker did meet the qualifications and was shortlisted. Ms Richards did not meet the qualifications but the Applicant Summary Form states that she had “*extensive years of relevant experience*” and she was shortlisted.
14. Ms Trott then met with the Permanent Secretary to determine the composition of the Interview Panel. Ms Trott says in her affidavit that the Recruitment Code provides that a maximum of five persons should sit on an interview panel. The Recruitment Code states that an interview panel should include the Designated Recruitment Manager, the line manager for the post being recruited and an independent assessor from outside of the relevant Government Department.
15. The members of the Interview Panel for the 2018 appointment of the Commissioner of Education were:
 - Mr Loren Wilson, Acting Chairman of the Board of Education
 - Ms Ru-Zelda Severin, member of the Board of Education
 - Mrs Germaine Trott, Designated Recruitment Manager
 - Mrs Valerie Robinson-James, Permanent Secretary and Direct Line Manager
 - Mr Randolph Rochester, Permanent Secretary from another Department and Independent Assessor.
16. On 10 July 2018 the Interview Panel interviewed Dr Tucker and Mrs Richards for the post of Commissioner of Education. The Interview Panel were provided with an evaluation form on which they scored each candidate in respect of certain categories. The completed evaluation form and score card are as follows:

Interview Panel Discussion Notes

KR	DGT
<i>Presentation/Evaluation Sheet</i>	<i>Presentation/Evaluation Sheet</i>
Presentation started/ended with focus on students	Did not follow protocol in providing presentation in advance; presentation started/ended with focus on self
A clear vision transforming public school system post Plan 2022	Very comprehensive, outlined what was currently wrong with the public school education
Embedded Plan 2022 strategies	Displayed a combative approach
Looked beyond Plan 2022	Not a clear vision beyond Plan 2022
	Presented a skeletal plan to accomplish the 2007 Hopkins Report & Plan 2022 – did not speak to the presentation topic
Interview	Interview
Provided specific questions	Gave vague responses with no real substance
Shared a lot of practical work experience	Did not provide specific examples of work experiences
Committed to research-based data driven decisions	Failed to give concrete answers, and gave little evidence and opinions in responses;
Demonstrated she was a manager and developer of people	Pointed external to others as the fault
Not afraid to hold persons accountable	Struggled with same competency question as before
Proven leadership skills	Showed good energy
Kept Plan 2022 at the forefront	Deflected responsibility from self when answering questions
Has relationships with PTAs and the Unions	

			INTERVIEW SCORE CARD – COMMISSIONER OF EDUCATION							
						July 10 2018				
			Interview Panel Members							
				LW	RS	RR	GT	VRJ	Average	
	Dr Gina Tucker		Points							
		Presentation	100	76	82	56	54	60	67.6	
		Interview	105	70	58	48	50	48	54.8	
		Total	205	146	140	104	114	108	122.4	
	Kalmar Richards									
		Presentation	100	96	100	78	88	85	89.4	
		Interview	105	94	99	85	72	87	87.4	
			205	150	199	163	160	172	176.8	

17. Based upon the interviews the Interview Panel recommended to the Board of Education Mrs Richards to be the Commissioner of Education.

The Board of Education Meeting

18. The Board of Education met on 14 August 2018 to consider its recommendation to the Public Service Commission on the candidate to fill the post of Commissioner of Education. The meeting was attended by ten Board members. Four did not attend. Mr Loren Wilson acted as Chairman of the meeting. Mr Wilson had acted as Chairman of the Interview Panel. Ms Sevrin who, also, sat on the Interview Panel attended the Board Meeting. The Permanent Secretary and Ms Trott were in

attendance at the Board Meeting. The unapproved Minutes of the Board of Education Meeting are exhibited to Ms Trott's second affidavit.

19. Ms Trott told the meeting that the Recruitment Code was used in the selection process. She explained that the Code was designed by the Department of Human Resources to achieve consistency, fairness and transparency in Government's recruitment process. The Recruitment Code was used in the 2013 and 2016 appointments of the Commissioner of Education.

20. Ms. Trott told the Board of the step by step procedures used in the Commissioner of Education recruitment process and the findings of the Interview Panel. Certain members of the Board expressed concern that the process was not shared prior to the interviews. The Permanent Secretary explained that the recruitment process was begun in March 2018 with a view to filling the post of Commissioner of Education before the start of the next school year. The Permanent Secretary had hoped to inform the Board of the interview process at their June 2018 meeting but no meeting was held nor was there a Board meeting in July 2018. A special meeting of the Board of Education was convened for 14 August 2018 to consider the appointment of the Commissioner of Education.

21. The members of the Board raised various other questions concerning the interview process at 14 August 2018 meeting. These questions were addressed. The Acting Chairman of the Board says in his affidavit that he asked the Board:

“whether they wanted to stop the process and commence a different method of obtaining information in order to equip themselves to make a recommendation to the Public Service Commission. The Board voted and unanimously agreed that they consented to the process and were now willing to consider the conclusion of the interview panel”.

22. Dr Timothy Jackson, the Chairman of the Board of Education, attended the 14 August 2018 Board meeting. He states in his affidavit:

“I did not consider it necessary to meet the candidates personally in order to make recommendations to the PSC. Frankly, had the Board members wanted to meet the candidates, we were given the opportunity to say so at the Meeting. The Board members are not shy about expressing their views and would not have hesitated to ask if they thought it necessary. However, the fact is that based on the information we had, we were confident that we could recommend the best suited candidate out of the two that interviewed for the position of Commissioner of Education to the PSC”.

23. The Board of Education recommended Mrs Richards to the Public Service Commission for the post of Commissioner of Education. Ms Trott, also, sent to the Public Service Commission an Applicant Summary Form that listed all applicants for the post.

24. The Public Service Commission recommended Mrs Richards to the Governor for the Post of Commissioner of Education. The Governor upon consulting the Premier duly appointed Ms Richards as Commissioner of Education.

The Parties’ Positions and Analysis

Procedural Irregularity

25. Dr Tucker contends that the procedure for the appointment of the Commissioner of Education is as follows:

“(1) Maintain appropriate standards of integrity and conduct (Regulation 1A(d) of the Public Service Commission Regulations 2001).

(2) Be politically neutral.

(3) Meet good employer obligations.

- (4) *Require the Board of Education to make recommendations to the PSC regarding the appointment of the Commissioner of Education and Directors of the Department (S.4 Education Act).*
- (5) *Exclude the Permanent Secretary who has no role to play in this matter at all. The Permanent Secretary is NOT and cannot be a member of the Board of Education (See section 3 of the Education Act).*
- (6) *Ensure the PSC consider all applicants for the position (Regulation 16 of the PSC regulations).*
- (7) *Ensure the PSC recommends the best candidate for the post (Regulation 19(2) of the PSC Regulations). The PSC may recommend a person who does not possess the qualifications if the PSC is “satisfied” that the person is of sufficient merit to enable it to make the recommendation.”*

26. Dr Tucker complains that the Board of Education and the Public Service Commission failed to comply with each of the steps listed above. The essence of Dr Tucker’s case on breach of appointment procedure is that virtually every step taken by the Board of Education in the appointment process was fundamentally flawed and illegal because of the Permanent Secretary’s involvement throughout. Dr Tucker contends that the Board of Education’s illegality vitiates the Public Service Commission’s recommendation to the Governor that he appoint Mrs Richards as Commissioner of Education.

27. Dr Tucker position is that the Board of Education should not have undertaken the steps performed by the Permanent Secretary and the Human Resources Manager, acting upon her direction, in the appointment of the Commissioner of Education. Primarily, Dr Tucker claims that the Board of Education ought to have selected the short list of candidates to be interviewed by the Interview Panel and the Board ought to have selected the interview panel.

28. Mr Diel on behalf of Dr Tucker accepts that the Board of Education may delegate any of its functions to a committee. He contends, however, that the appointment of the interview panel breached section 12 of Schedule 1 of the Education Act which regulates the Board’s delegation powers in these terms:

“(1) The Board may appoint a committee for any of the purposes of the Board, and delegate any of its functions to such a committee with or without restrictions or conditions.

(2) The number of members of a committee appointed under this paragraph and their term of office shall be fixed by the Board.

(3) The Board shall appoint one of its members to be chairman of the committee.

(4) A committee appointed under this paragraph may include persons who are not members of the Board, but the chairman and at least one half of the other members of every committee must be members of the Board.”

29. Dr Tucker contends that section 12 of Schedule 1 of the Education Act was breached in that:

1. the Board of Education did not appoint the interview panel;
2. the Board of Education did not appoint one of its members to be Chairman;
and
3. more than half of the interview panel were not members of the Board of Education.

30. Both Respondents take the same approach to Dr Tucker’s breach of section 12 of Schedule 1 of the Education Act. The Board of Education makes the case that the relevant “function” of the Board under section 4 (1) (b) of the Education Act was to “*make a recommendation to the Public Service Commission regarding the appointment of the Commissioner of Education*”. The Board of Education claim that they did not delegate this function. The Board claim that they performed this function when they met on 14 August 2018, deliberated and recommended Mrs Richards to the Public Service Commission to be the Commissioner of Education.

31. Apart from the specific provisions set out in paragraph 9 above, the Education Act does not lay out a prescribed procedure for the Board of Education’s role in the appointment of the Commissioner of Education. The Respondents rely upon the

English Court of Appeal decision in *R (oao Reckless) v Kent Police Authority* [2010] EWCA Civ 1277 where Carnwath LJ ruled:

“29. *the regulations do not purport to prescribe the means by which the members are to investigate the matter, or to reach their decision. For example, there is no specific requirement for all or any of them to interview any of the candidates, nor as to the manner of voting. In the absence of any prescribed rules, the procedure is a matter for them. All that is necessary in law is that it should be fair, and reasonably adapted for the purpose of providing the members with the material necessary to make an informed decision as between the candidates on the statutory short-list, and enabling them to reach what can properly be termed a collective decision. There is no reason why, as part of that process, they should not ask a smaller group of members to assemble the information, to conduct interviews for the purpose, and to make recommendations. That is not a delegation of their statutory function. It is simply an exercise of their implied power to take steps to obtain the information necessary to perform it.” [Emphasis added]*

32. The Respondents, also, rely upon *Dolding v Public Service Commission* [2004] Bda LR 15. Mr Dolding was a long serving senior employee who applied for the post of Director of Marine and Port Services. In *Dolding* the Public Service Commission was required to make a recommendation to the Governor as to the appointment of the Director of Marine and Port Services. The Permanent Secretary for the Department of Marine and Ports Services played a prominent role in establishing an interview panel which, in their opinion, determined the most suitable candidate. The Permanent Secretary for the Department of Marine and Ports Services provided the Public Service Commission with the interview summaries of each candidate interviewed. The Public Service Commission followed the interview panel’s recommendation in recommending to the Governor that Mr John Coupland be appointed Director of Marine and Port Services.

33. Mr Dolding, as an unsuccessful candidate, sought judicial review of the Public Service’s recommendation/decision on grounds, *inter alia*, that the Public Service

Commission improperly delegated its function to the interview panel assembled by the Permanent Secretary for the Department of Marine and Ports Services.

34. In deciding that there was no improper delegation of the Public Service Commission's function in relying on the interview panel's report Simon's J ruled:

"In Jefffs v New Zealand Dairy Production and Marketing Board [1967] 1 A.C. 551, a case not cited by counsel, but containing guidance which I find to be apposite, the Privy Council held that a board tasked with making zoning orders could appoint a person or persons to receive evidence and submissions from interested persons. The court held that so long as before making their decision the board was fully informed of the evidence and submissions, there is no breach of natural justice.

...Provided that the panel or Head of Department supplies the PSC with a report containing the relevant assessments no criticism can be made of the process. The only caveat to this to be derived from legal principle is that it is vital that the PSC itself should make the decision about whom they will recommend to the Governor for appointment

...I am convinced therefore that the PSC offends no procedural rules in inviting the input of a Head of Department who may choose to involve others in the interview process. It matters not in my opinion whether each member of the panel was selected by the PSC, or with its knowledge and or consent, the crucial issue is that the recommendation made to the Governor should genuinely be that of the PSC"

35. I did not derive much assistance from the authorities presented by Dr Tucker on the improper delegation issue. *McLaughlin v Governor of Cayman Islands* [2007] UKPC 50 and *Perinchief V Governor of Bermuda* involved dismissal of a public officer by reason of abolition of their post. These cases do not assist in determining the propriety of a Government Board relying upon an interview panel in determining

whether to recommend an individual to the Public Service Commission for appointment to a post.

36. Dr Tucker's third case *Jamaicans for Justice v Police Service Commission Service* [2019] UKPC 12 turns on its unique facts and does not assist. The Jamaican Police Service Commission was responsible for the promotion of police officers. At the time there were instances of the police taking the law into their own hands and carrying out extra-judicial killings. There was a non-binding recommendation that the Police Service Commission carry out an investigation into whether applicants had been involved in extra-judicial killings. The Police Service Commission did not carry out such an investigation. Lady Hale ruled on behalf of the Board of the Privy Council that such an investigation ought to have been carried out.
37. Based upon the reasoning in *Reckless* and *Dolding I* I find that the interview panel process used in the Board of Education's consideration and recommendation of Mrs Richards to the post of Commissioner of Education did not constitute an improper delegation of the Board's function or breach section 12 of the Schedule to the Education Act.
38. The key feature here is that the decision to recommend Mrs Richards appointment was made by the Board of Education. At the Board meeting on 14 August 2018 Ms Trott fully informed the Board of the process used in arriving at a short list and in making a recommendation for the post of Commissioner of Education. The Board raised questions about the process which were answered. The Board were given the opportunity to adopt another process and start again if they were dissatisfied with the process. The Board unanimously agreed to the process used. The Board considered the interview panel's report and their recommendation and unanimously resolved to recommend Mrs Richards to the Public Service Commission for the post of Commissioner of Education. I can find no actionable fault in the process used by the Board of Education in its role in recommending Mrs Richards to the Public Service Commission for the post of Commissioner of Education. It follows that I find that there is no fault in the process that would vitiate the Public Service Commissioner's

recommendation of the appointment of Mrs Richards as Commissioner of Education to the Governor.

The Participation of the Permanent Secretary

39. As appears from Dr Tucker's written submissions, she contends that the Permanent Secretary for Education's participation in the process of selecting the Commissioner of Education was fatal to the entire process. First, the process proceeded on the allegedly erroneous presumption that the Permanent Secretary was the Commissioner of Education's "line officer" and therefore had a role to play in the appointment process. Second, the Permanent Secretary sits hieratically below the Minister, a political appointee, as a result everything the Permanent Secretary did was tainted and cannot be considered politically neutral. The requirement of political neutrality in the appointment of public officers comes from Section 1A(d) of the Public Service Regulations 2001.

40. Prior to 2008 the Permanent Secretary for Education was the Head of the Department of Education. The Education Act was amended in 2008 to create the post of Commissioner of Education who is deemed to be the Head of the Department. The structure of the Department of Education is set out in section 2 of the Education Act:

"The Department shall, subject to the general direction and control of the Minister,-

- (a) be under the supervision of a public officer who shall be known as the Permeant Secretary; and*
- (b) consist of the Commissioner of Education and such other public officers as may from time be authorized by the Governor".*

41. Section 10 of the Public Service Commission Regulations requires the Head of Department to advertise any vacancy and make a report to the Public Service

Commission. In this case it is the Board of Education who considers the applicants and reports to the Public Service Commission.

42. In this case, clearly, there was no Head of Department to advertise the post of Commissioner of Education. Given the Board of Education have no administrative staff I find that there is nothing wrong with the Permanent Secretary getting “the ball rolling” by advertising the post and selecting an interview panel. These are not functions that the full Board of Education need undertake. I believe I am supported in this view by the judgments in *Dolding* and *Reckless*.

43. *Dolding* is particularly instructive on the role of the Permanent Secretary. In *Dolding* the post of Director of Marine and Ports Services was becoming vacant. The appointment of the Director of Marine and Ports required that the Public Service Commission recommend a candidate to the Governor for appointment. The Public Service Commission is required to maintain political neutrality. Upon learning of the then Director of Marine and Ports intention to retire, the Permanent Secretary for Marine and Ports prepared an advertisement for the post with the assistance of the outgoing Director. The Director of Marine and Ports assembled an interview panel who interviewed those who answered the advertisement. All were unsuccessful including the plaintiff. The Permanent Secretary then recruited a candidate from overseas. The overseas candidate was interviewed by the same interview panel that interviewed those answering the advertisement. The interview panel recommended the overseas candidate and the Permanent Secretary for Marine and Ports appeared before the Public Service Commission who supported the interview panel’s recommendation. If the heavy involvement of the Permanent Secretary were fatal I am certain Mr Fromkin QC who acted for the plaintiff would have taken the point.

44. If Dr Tucker’s claim regarding political neutrality were carried to the extreme everything that the Permanent Secretary did would be tainted by political influence. This cannot be right given the role she plays in the structure of the Department of Education.

Bias

45. Dr Tucker claims that the Permanent Secretary is biased against her and that this bias caused the Permanent Secretary to engineer Mrs Richards' appointment as Commissioner of Education. Dr Tucker did not raise bias as ground for impeaching Mrs Richards' appointment in her Grounds for Relief nor did she seek to amend her Grounds for Relief. I shall, however, consider Dr Tucker's bias claim.
46. Dr Tucker's bias claim centres on a luncheon meeting held at the Bank of Butterfield on 2 June 2016. In attendance were Mr Curtis Dickinson, former Chairman of the Board of Education, Mr Loren Wilson, former Deputy Chairman of the Board, the Permanent Secretary and Dr Tucker. The object of meeting was to advise Dr Tucker that her 2016 application for the post of Commissioner of Education had been unsuccessful.
47. The Affidavit evidence of Mr Dickinson, Mr Wilson and the Permanent Secretary shows that Dr Tucker verbally attacked the Permanent Secretary and Mr Wilson. The attack on the Permanent Secretary continued out into the street at the conclusion of the lunch. Mr Wilson, Mr Dickinson and the Permanent Secretary considered Dr Tucker's behaviour an unfortunate overreaction to bad news and put it behind them.
48. Dr Tucker's first affidavit states that after this lunch meeting the Permanent Secretary treated her coldly in the work place. The Permanent Secretary denies this in her affidavit and says that after the luncheon "blow up" she resumed a normal working relationship with Dr Tucker. The Permanent Secretary exhibits emails from Dr Tucker with "smiley face" salutations in support of her claim. Dr Tucker's reply affidavit does not challenge this aspect of the Permanent Secretary's affidavit.
49. The accepted test for determining bias is whether a fair minded reasonably informed observer would conclude that there was a real possibility of bias on the part of the decision maker. Leaving aside the fact that the Permanent Secretary was not the decision maker, I do not find that a fair reasonably well informed person would conclude that there was a real possibility that the Permanent Secretary was biased

based upon the affidavit evidence of what transpired at the luncheon in June 2016 and what transpired after.

Conclusion

50. For the reasons set out above, I dismiss Dr Tucker's Application for Judicial Review.

51. I order nisi that the First and Second Respondents' costs be paid at the standard rate such costs to be taxed or agreed. This costs order shall become absolute unless any party applies within 14 days for a different order.

Dated this 29 day of January 2020

JOHN RIIHILUOMA
ASSISTANT JUSTICE