



UNITED NATIONS DISPUTE TRIBUNAL

PETER ANTHONY GALLO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

APPLICATION

Registry: **New York**

UNDT case number:

Date of application:

Counsel for Applicant: **Mr. Richard Kenneth Cameron,
Messrs. Fraser Brooks & Co,
Edinburgh, Scotland.**

Counsel for Respondent:

Notice: This application should not exceed 10 pages (excluding supporting documents).

I. Applicant's general information

1. Title: Mr.
2. Surname: **Gallo**
3. First name: **Peter**
4. Middle Name: **Anthony**
5. Current UN staff member:
 - a. **Fixed term. 2 Years, ending 16 March 2015**
 - b. **P4/8**
 - c. **Investigator.**
 - d. **Office of Internal Oversight Services / Investigations Division**
 - e. **New York**
6. Index No.: **66715**
7. Date of Birth: **28 May 1962**
8. Nationality: **British**

II. Applicant's employment information at the time of the contested decision

Same as above

III. Applicant's contact information

1. Your contact information:
 - a. Email address for correspondence: **gallop@un.org**
 - b. Optional email address: **gweilicus@gmail.com**
 - c. Cellular phone: **917-575-8835**
 - d. Work phone: **7-4265**
 - e. Mailing address for service of documents: **Rm. IN-725, Innovation Bldg,
300 East 42nd St., New York,**

IV. Applicant's representation

1. The Applicant is assisted by a solicitor in private legal practice.
2. Legal representative's contact information:
 - a. Last name: **Cameron**

- b. First name: **Richard Kenneth**
c. Place of work and functional title:
Messrs Fraser Brooks & Co.
45 Frederick Street
Edinburgh, EH2 1ES
United Kingdom

Please note that as a Solicitor, Mr. Cameron will not appear in person. When a personal appearance is required for a hearing, an Advocate will be retained, as per the rules of the Law Society of Scotland and the Scottish Faculty of Advocates.

Solicitor

- d. Phone: **+44-131-225-6226**
e. Facsimile: **+44-131-220-0651**
f. e-mail: **fraserbrooks@btconnect.com**

2. Mr. Cameron was admitted to practice in **Scotland** in **1984**.

V. Details of the contested decision

- 5.1 This is an application to contest the decision to appoint a Fact-Finding Panel to investigate a complaint of prohibited conduct under ST/SGB/2008/5 lodged against the Applicant on *either* 14 or 17 January 2014.
- 5.2 The decision was made by Ms. Carman L. Lapointe, Under-Secretary-General, Office of Internal Oversight Services.
- 5.3 Ms. Lapointe's decision was communicated to the Applicant in a memo dated 31 January 2014, [Annex 2] sent by e-mail on same date.

VI. Management evaluation

1. Have you requested a management evaluation of the contested decision? Yes No
2. If yes, when (date)? **5 February 2014** [Annex 5]
3. Have you received a response? Yes No [Annex 6]

VII. Summary of the facts of the case or facts relied upon

- 7.1 On 20 December 2013, the UNDT published the judgment in Nguyen-Kropp & Postica, UNDT/2103/176.
- 7.2 On 9 January 2014, in the only comment that has been made to OIOS staff on the matter, Ms. Lapointe stated that she was unwilling to discuss the case as it may be subject to appeal.
- 7.3 On 10 January 2014, an article about the judgment was published by Associated Press and reproduced by unknown number of newspapers and news websites around the world under the headline of “*UN whistle-blower case shows accountability limits .*”
- 7.4 On Tuesday 14 January 2014, there was a whiteboard in the OIOS Investigations Division office upon which was written an unusual inspirational quote. It read: “***If the facts don’t fit the theory, change the facts.***” This was (wrongly) attributed to Albert Einstein. For satirical purposes, the Appellant changed the ending, so it read: “***If the facts don’t fit the theory, change the photographs.***” The Appellant also erased the words ‘Albert Einstein’ and substituted instead the words ‘Michael Dudley’.
- 7.5 This was a reference to Michael Dudley’s own admissions, which were held as a finding of fact by Meeran J. in Nguyen-Kropp & Postica, UNDT/2103/176 at paras 34-36, and was reported in the media. This information is in the public domain.
- 7.6 Very shortly after it was written, the satirical text was seen by Michael Dudley (the aggrieved party) who reported it to Ms. Lapointe. In that he reported conduct to the “responsible official” and that conduct was subsequently deemed to be misconduct, Michael Dudley is thus a “*complainant*”.
- 7.7 Ms. Lapointe immediately instructed the Director OIOS Investigations Division, Mr. Michael Stefanovic, to interview the Applicant about the matter. This interview took place on that same afternoon, Tuesday 14 January, when the Applicant admitted to having written the satirical text. At no time has the Applicant ever denied having written it.
- 7.8 After having been interviewed, and finding the whole thing quite comical, the Applicant informed his First Reporting Officer, Mr. Dan Wilson, of what had happened.
- 7.9 Mr. Wilson considered the Applicant’s actions as having broken an agreement reached on 18 November 2013. Mr. Wilson had had to deal with a series of petty and groundless

complaints made against the Applicant since he had commenced reporting to him. [Annex 9; pages 7 to 10, being the Schedule attached to Ethics Office form dated 4 Feb 2014.]

- 7.01 On Friday 17 January 2014, (three days after the incident) Mr. Wilson wrote to Ms. Lapointe, when he is understood to have expressed the view that the Applicant had breached his undertaking not to be confrontational.
- 7.11 On 31 January 2014, Ms. Lapointe appointed a panel under ST/SGB/2008/5, citing Mr. Wilson's letter of 17 January - *and not Mr. Dudley's email of 14 January* – as the complaint upon which the investigation was predicated. [Annex 2]

Background / Motive

- 7.12 An established history of retaliatory conduct by Mr. Michael Dudley and others, and the complicity of Ms Lapointe in continuing that retaliatory conduct, was established by Meeran J. in Nguyen-Kropp & Postica UNDT/2013/176.
- 7.13 Ms. Lapointe has failed to take any action following the publication of UNDT/2013/176. Instead, the appointment of this Panel to investigate as misconduct is indicative of the continued protection enjoyed by Michael Dudley and other parties involved in the retaliatory action identified in that judgement
- 7.14 Ms. Lapointe failed to take the appropriate action after the Appellant made a complaint of harassment and abuse of authority on 11 March 2013 in which Michael Dudley was one of the four named subjects. The only action taken in response to that claim was on 14 March 2013, when Ms. Lapointe called the Appellant to enquire if his report of misconduct had been incited by Mr. Florin Postica (the second named Appellant in UNDT/2013/176). This was wholly incorrect, but had been reported as an unsubstantiated rumour. [Annex 8. PAG Memo to Ethics Office dated 27 January, at page 5] or [Annex 9. Applicants renewed formal submission to Ethics Office dated 4 February 2014, at page 2]
- 7.15 Ms. Lapointe not only failed to take any action under the Applicant complaint of 11 March 2013, she actively supported the very parties against whom the complaint had been made, requiring it to be elevated to the Office of the Secretary-General on 22 July 2013.
- 7.16 Ms. Lapointe has been aware of the fact that the Appellant has been the subject of a series of petty and groundless complaints, made by the same persons who had been the subjects of his misconduct complaint of 11 March 2013. [para 7.09 above]
- 7.17 After receiving an egregious End of Cycle Appraisal, on 18 July 2013 the Appellant applied to the Ethics Office for Protection against Retaliation under ST/SGB/2005/21.

This was refused on 23 July 2013. The matter was again raised with the Ethics Office on 9 January 2014 and, despite initial verbal assurances of favourable consideration, on 12 March 2014 the Ethics Office recused themselves from acting - on grounds that they had a pre-existing conflict of interests [Annex 10] .

VIII. Grounds for contesting the administrative decision

Action by the Tribunal is required to prevent further waste of the Organisations financial and personnel resources in a matter that is an abuse of the internal justice system and is part of an ongoing series of actions dating from 14 March 2013 that are retaliatory in nature.

The decision to establish a panel under ST/SGB/2008/5 should be overturned for the following reasons:

8.1 Lack of foundation under ST/SGB/2008/5

The conduct described in para 7.4 above does not warrant action under the Bulletin.

- 8.1 (a) The complaint concerned an act that: (1) was trivial in the extreme, (2) was not seen by a significant number of other persons, and (3) does not meet the definitions of 'harassment' under section 1.2 of the Bulletin. As such, it cannot reasonably be considered "*prohibited conduct*" for the purposes of the Bulletin.
- 8.2 (b) The complaint concerned an act that was a reference to something that was (1) a finding of fact by a UNDT Tribunal, (2) admitted by the aggrieved party in 2009, and (3) reported extensively in the media. The aggrieved party has had since 2009 to recant his admission and has failed to do so. A statement of this fact cannot constitute "harassment".
- 8.2 (c) The complaint cannot be considered to constitute "*sufficient grounds to warrant a formal fact-finding investigation*" pursuant to section 5.14 of the Bulletin and notwithstanding any invitation from the Applicant to do so, Ms. Lapointe exceeded her jurisdiction in pursuing the matter as misconduct.
- 8.1 (d) The aggrieved person is a D-1, the applicant is a P-4. In establishing a panel under ST/SGB/2008/5, Ms. Lapointe seeks to establish that it is legally possible for a staff member to "harass" someone who is fully two levels senior in rank, and to do so by quoting information which is both factual and in the public domain.

8.2 Lack of Good Faith

Ms. Lapointe failed to determine whether or not the complaint made on 14 January 2014 was

made in good faith, as required by section 5.14 of the Bulletin

- 8.2 (a) Ms. Lapointe accepted the complaint made by Michael Dudley - the “aggrieved person” - on 14 January 2014, [paras 7.4 to 7.7 above] but attributed the complaint to Mr. Dan Wilson. By instructing Mr. Stefanovic to interview the Applicant on 14 January 2014, Ms. Lapointe was carrying out a 'prompt review' under para 5.14 of the Bulletin. It was not physically possible for Mr. Wilson to have been the primary complainant as he was not aware of the incident until informed of it by the Applicant. The 'prompt review' interview by the Director in this case took place three days before the alleged complainant was actually received by Ms. Lapointe.
- 8.2 (b) Ms. Lapointe's actions show the intent to protect Mr. Dudley from the consequences of instigating a matter that might later be deemed to be retaliatory. Evidence of this is seen in Ms. Lapointe's email of 6 February 2014 when, in response to the Applicant's open letter, she issued a misleading denial that Mr. Dudley was not the complainant. [Annex 4]
- 8.2 (c) Ms. Lapointe is aware of Mr. Dudley's record of unprofessional and unethical conduct and that he admitted before the UNDT that there was a “*voluminous and critical documentation*” as evidence of his unsatisfactory conduct, to such an extent that there was, by his own admission: “*no way of defending himself against it.* [See Dudley UNDT/2010/097, Order No. 308, dated 10 November 2010, at para. 49.]
- 8.2 (d) In failing to determine whether the complaint made on 14 January 2014 was made in good faith, Ms. Lapointe perpetuated the culture of harassment and retaliation that is prevalent within the New York office of OIOS, as found by Meeran J. in UNDT/2013/176.
- 8.2 (e) In her own email of 25 November 2013, Ms. Lapointe acknowledged that at that time, there were some 16 misconduct complaints pending. (This has since risen.) In an office of only some 28 people, such a high number of complaints is indicative of management's failure to act as role models by upholding the highest standards of conduct and to provide a harmonious work environment free of any form of prohibited conduct; contrary to Section 3.2 of the Bulletin.

8.3 Conflict of Interests

Ms. Lapointe has (First) used the internal justice system to suppress comment on a judgement in which she herself was implicated, and (Second) appointed persons to serve on the panel who have conflicts of interest which will, at the very least, create the *perception* of bias.

- 8.3 (a) Ms. Lapointe played a part in the chain of events described in UNDT/2013/176 that was found to be retaliation and was named in the judgment. As the act described in para 7.4 above was a reference to a finding of fact in that judgement, Ms. Lapointe had a conflict

of interests when she exercised her jurisdiction as a “*responsible official*” in a matter that referred to that case and should have recused herself.

- 8.3 (b) Given that Ms. Lapointe failed to act on the Appellant's complaint of 11 March 2013 and that that complaint then had to be elevated to the Secretary General ([para 7.15 above](#)); Ms. Lapointe should have recused herself from making any preliminary review of the complaint made by Mr. Dudley against the Appellant on 14 January 2014 as there existed (at least) a perceived conflict of interests.
- 8.3 (c) OIOS Investigations Division plays an integral role in the UN internal justice system. As such, the integrity of its professional staff should be of paramount importance. If any OIOS/ID professional staff are to be investigated for any misconduct – even if the allegation is completely unfounded and without substance of any sort – any investigation carried out internally within OIOS will be tainted with the perception of there being a conflict of interests. In this case, two OIOS staff members were appointed to act as the Panel; Mr. William Peterson and Mr. Eddie Yee Woo Guo. [[Annex 2](#)] That panel does not offer a reasonable guarantee of the independence of its members.
- 8.3 (d) Mr. Peterson has conflicts of interests which should disqualify him from serving on the Panel. He is a former Deputy Director of OIOS Internal Audit Division, based in New York. As such, he has had a working relationship with the complainant Mr. Dudley for a number of years. He had never met the Applicant prior to being appointed to the Panel.
- 8.3 (e) Mr. Peterson is employed on a short term contract, paid for out of OIOS/ID budget for the employment of an investigator in UNMIL. [[PA 294688 refers](#)]. He has a direct financial interest in having that contract renewed and the decision to do so lies with Ms. Lapointe.
- 8.3 (f) Mr. Peterson's Second Reporting Officer is Ms. Lapointe. He was made aware of the evidence indicating that Ms. Lapointe acted in bad faith in appointing the Panel, failed to deny that Mr. Dudley was the original complainant, and declined to recuse himself.
- 8.3 (g) Mr. Eddie Yee has conflicts of interests which should disqualify him from serving on the Panel. He is Deputy Director of OIOS Internal Audit Division and is based in New York. As such, he has had a working relationship with the complainant Mr. Dudley for a number of years. He had never met the Applicant prior to being appointed to the Panel.
- 8.3 (h) In 2008, when Acting Director OIOS/IED, Mr. Yee was in charge of a Staff Survey carried out of ID Staff. On 25 November 2008, it is understood that Mr. Dudley (then Acting Director OIOS/ID) expressed dissatisfaction with the number of anonymous respondents who had been critical of his poor leadership and his lack of integrity. Having knowledge of this Survey, Mr. Yee has a conflict of interests which should disqualify him

from serving on the Panel.

- 8.3 (i) Mr. Yee's Second Reporting Officer is Ms. Lapointe. He was made aware of the evidence indicating that Ms. Lapointe acted in bad faith in appointing the Panel, failed to deny that Mr. Dudley was the original complainant, and declined to recuse himself.

8.4 Illegality

- 8.4 (a) To expend time and the resources formally investigating any matter as trivial as the facts admitted in para 7.4 above is a patent waste of financial resources of the Organisation; contrary to para 4 of the Standards of Conduct for the International Civil Service.
- 8.4 (b) Ms. Lapointe's decision to appoint a panel was made for the personal benefit for Mr. Michael Dudley and was not a decision made in the best interests of the Organisation. The decision therefore violated UN Staff Regulation 1.2 (c) .
- 8.4 (c) Reference to the findings of fact in a UNDT judgement by a Staff Member whose career has been affected by both that judgement and by a similar course of retaliatory actions by management of OIOS/ID, constitutes 'freedom of opinion and expression', which is protected under Article 19 of the Universal Declaration of Human Rights.
- 8.4 (d) In view of the foregoing, Ms. Lapointe's decision itself constitutes an abuse of authority, which is itself an act of "*prohibited conduct*" as defined by section 1.5 of the Bulletin.

IX. What remedies are you seeking?

- 9.1 An order by the Tribunal overturning the decision by Ms. Lapointe on 31 January 2014 to appoint a panel under ST/SGB/2008/5 to investigate the alleged "*prohibited conduct*" on 14 January 2014.
- 9.2 In the absence of such a finding by the Ethics Office, a finding by the Tribunal that there exists a prima facie case of retaliation against the Applicant, in the form of (1) his End of Cycle Appraisal dated 26 June 2013 and (2) the series of complaints made against him in the period from 14 March 2013 to 31 January 2014, following on from the 'protected act' of the report of misconduct he made on 11 March 2013.
- 9.3 An Order by the Tribunal removing Mr. William Peterson and Mr. Eddie Yee Woo Guo from said Panel on grounds that the appointment of any OIOS Staff Member to any investigative panel established to investigate alleged misconduct by any other OIOS Staff

member must, by definition, carry the inherent risk of a perceived Conflict of Interests.

X. Supporting documents		
Annex	Title (include nature of communication, author & addressee)	Date
1	Authorization for legal representative	18 March 2014
2	Decision by Ms. Lapointe to appoint panel	31 January 2014
3	Applicant's open reply to Ms. Lapointe	06 February 2014
4	Email from Ms. Lapointe to all OIOS staff	06 February 2014
5	Request for Management Evaluation	04 February 2014
6	Management Evaluation (refusal)	10 March 2014
7	Applicants memo to Ethics Office for reconsideration	09 January 2014
8	Memo to Ethics Office	27 January 2014
9	Applicants fresh submission to Ethics Office	04 February 2014
10	Ethics Office memo to Applicant, recusing from acting	12 March 2014

XI. Signature and certification
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I hereby certify that to the best of my knowledge the information provided in this application form is true, accurate and complete and all copies submitted to the Dispute Tribunal are true copies of the original documents.

Applicant:

Name: Peter Anthony Gallo. Date: 18 March 2014

Signature:

Legal representative (if applicable):

Name: Richard Kenneth Cameron Date:

Signature: