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CONFIDENTIAL

EXECUTIVE OFFICE OF THE SECRETARY-GENERAL  
 CABINET DU SECRETAIRE GENERAL

REFERENCE: MEU/024-15/R (NV)

17 March 2015

Dear Mr. Gallo,

**The point here is that upon receipt of the report of the Fact Finding Panel, the “responsible official” (i.e. Lapointe) has a legal duty to review the report and determine if it is “well founded”....**

Pursuant to Staff Rule 11.2, the Secretary-General has reviewed your request, dated 16 January 2015, for a management evaluation of the decision of the Under-Secretary-General for Internal Oversight Services (USG/OIOS), Ms. Carman L. Lapointe, dated 9 April 2014, to refer the report of a fact-finding panel appointed under ST/SGB/2008/5 (SGB) for consideration of disciplinary action against you.

**The only question for the MEU was to determine whether or not the report was “well founded” - i.e. whether the investigation proved the elements of ‘harassment’ as defined in ST/SGB/2008/5 para 1.2**

The review process included a determination of the facts of the case and the application of relevant law to these facts. The facts of the case were set out in your correspondence dated 16 January 2015 and addressed to the Management Evaluation Unit (MEU), documents attached thereto, including the report of the fact-finding investigation panel (report), and the comments received from Ms. Lapointe, dated 12 February 2015.

Based on the management evaluation, as detailed below, the Secretary-General decided to uphold the contested decision.....oh, what a surprise!

### *Summary of Relevant Facts*

You are an Investigator at the P-4 level, Step 9, and you work for OIOS. You joined the United Nations on 17 March 2011.

**Why does the UN insist on repeating facts you already know?**

On 17 January 2014, Mr. Dan Wilson, Officer-in-Charge of the Pro-Active Investigation Unit, OIOS, submitted a Memorandum to Ms. Lapointe through Mr. Michael Stefanovic, Director of the Investigations Division (ID), alleging that on 14 January 2014, you altered comments on a whiteboard in the OIOS ID, and that by so doing, you referred to OIOS Deputy Director, Mr. Michael Dudley, in a negative way in relation to United Nations Dispute Tribunal (UNDT) Judgement 2013-176.

**Let's pad out the response by repeating the question at length as well....**

**Dan Wilson also stated that he was concerned that the USG/OIOS would take action against him if he did not do something to reprimand me.**

Mr. Peter Anthony Gallo  
 Office of Internal Oversight Services  
[gallop@un.org](mailto:gallop@un.org)

**Dudley - the allegedly aggrieved party - also told the Fact Finding Panel that Lapointe had asked Wilson to make the complaint.**

**These documented facts have a bearing on whether the original complaint ever met the “good faith” test - but the MEU clearly doesn't like to let inconvenient facts get in the way of good political lynching.....**

In particular, you altered a quotation on the whiteboard, which originally stated: *“If the facts don’t fit the theory, change the facts – Albert Einstein.”* You changed it to read: *“If the facts don’t fit the theory, change the photos – Michael Dudley.”*

Yes, I know that..... but that has nothing to do with whether or not the report was “well founded” and proved the elements of the misconduct being investigated....

Previously, in a Memorandum to Mr. Wilson dated 19 November 2013, you undertook to refrain from saying anything provocative to anyone again.

Yes, and when I was in the Cub Scouts, I promised to do a good deed every day.....

On 31 January 2014, the USG/OIOS appointed a fact-finding panel (panel) comprised of two individuals who are on the roster of individuals trained for this purpose. The roster is maintained by the Office of Human Resources Management (OHRM). *Let’s not worry about both of them having a clear conflict of interests...*

So what?

The only question is whether the report proved “harassment”?

The panel concluded that your behavior, as alleged in the complaint, constituted misconduct (harassment), as defined by ST/SGB/2008/5. Specifically, it concluded that the evidence supported the allegation that you altered the whiteboard in a way that was offensive and humiliating to Mr. Dudley, and that you did so after committing to cease such behavior. The panel noted your confrontational behavior toward Mr. Dudley on 28 October 2013 in the elevator lobby of the Teachers Building, and the remarks you made about Mr. Dudley in a 6 February 2014 Memorandum to the USG/OIOS, which you copied to all OIOS staff members.

*So can someone please tell me how something on 6 February is a relevant factor in a decision made on 31 January?*

Yes, I know that that is what the report CONCLUDED

....but the question is whether that is what the investigation PROVED

In a Memorandum dated 9 April 2014, the USG/OIOS indicated that she concurred with this conclusion, and she forwarded a copy of the report and supporting evidence to Ms. Catherine Pollard, then Assistant Secretary-General, OHRM (ASG/OHRM), for consideration of disciplinary action against you.

Hooray.... at last we get somewhere close to the question the MEU is to answer!

You submitted a request for management evaluation of this decision on 16 January 2015.....and the MEU was supposed to respond within 30 days, but never mind.

### *Your arguments*

In your request for management evaluation, you alleged that the USG/OIOS sent the report to the ASG/OHRM “without considering whether the report was ‘well founded’”. You claimed that the USG/OIOS should have recused herself from making any decision on Mr. Wilson’s complaint and the report, and you referred to an e-mail from her dated 17 January 2014. You also claimed that she failed to act on a complaint from you against Mr. Dudley and others; that she endorsed a performance improvement plan (PIP) that was, according to you, “designed to prevent any meaningful investigations being undertaken”; and that she supported your former supervisors’ refusal to identify your alleged performance shortcoming.

This is what we call reasonable grounds to believe that Lapointe was prejudiced.....

You alleged that it was not reasonable to conclude that the report was 'well founded'. You stated that the panel failed to show a "causal connection between what was written on the whiteboard and any harassment experienced by the aggrieved party".

So far so good; they can't pretend they didn't understand the question!

**Comments from OIOS**

In response, the USG/OIOS submitted that it was reasonable to deem the report well-founded because the panel concluded that four of the allegations, as contained in Mr. Wilson's complaint of 17 January 2014, were supported by evidence. She stated that your claim that she had failed to act on your ST/SGB/2008/5 complaint against Mr. Dudley is incorrect. She considered the complaint to be related primarily to attempts to manage your performance, since you were rebutting your performance appraisal and a rebuttal panel had been appointed. She did not consider that your complaint warranted a formal investigation concerning harassment and abuse of authority, since the facts surrounding attempts to manage your performance were well-documented, and since the parties agreed to an informal resolution of the complaint. She submitted that the requests set out in your complaint were granted.

Oh really?

If that is so, can someone please explain why the matter was then investigated on the orders of the Secretary-General's office?

Oh really?

Well how come nobody would tell me what I was alleged to have done wrong??

Not true!

Not true!

The USG/OIOS stated that your claim that she endorsed a PIP which was "designed to prevent any meaningful investigations being taken" does not make sense. She reviewed the draft of your PIP for reasonableness and suggested that her Executive Office coordinate with OHRM to provide specific input to ensure that it was reasonable.

So can someone please explain how an investigation can be conducted if an investigator is only permitted to ask pre-approved questions? ..... and is warned against asking questions to satisfy his curiosity?

This is irrelevant anyway; the only question here is whether the report proved the elements of 'harassment' under ST/SGB/2008/5 para 1.2.

**Management Evaluation**

Your claim that the USG/OIOS should have recused herself from making a decision, both when the complaint was received and when the report of the panel was presented to her

The MEU examined the relevant provisions of ST/SGB/2008/5 in connection with your claim. These provisions are as follows:

"5.11 In circumstances where informal resolution is not desired or appropriate, or has been unsuccessful, the aggrieved individual may submit a written complaint to the head of department, office or mission concerned, except in those cases where the official who would normally receive the complaint is the alleged offender; in which case the complaint should be submitted to the Assistant Secretary-General for Human Resources Management or, for mission staff, to the Under-Secretary-General for Field Support. Formal resolution may also be

If any of these clowns understood the first thing about "evidence" - they would understand that the evidence needs to prove that the allegedly aggrieved party was actually "offended" or "humiliated" ..... and that that was attributed to the comment on the whiteboard (that nobody saw) as opposed to being featured in an Associated Press news article...

The USG/OIOS was not actually qualified to be employed as an investigator in OIOS, and was not qualified to make make decisions on sufficiency of evidence or the conduct of investigations - but never mind.....

Please excuse the MEU from repeating the regulations at length.

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They fail to appreciate that reprinting the words does not actually prove anything.

*initiated by the submission of a report of prohibited conduct from a third party who has direct knowledge of the situation to one of the officials listed above (the responsible official). The aggrieved individual or third party shall copy the written complaint or report to the Office of Human Resources Management for monitoring purposes.*

[...]

The MEU can (and do) interpret everything to justify the actions of management and therefore discourage staff members from taking legal action.

*5.14 Upon receipt of a formal complaint or report, the responsible official will promptly review the complaint or report to assess whether it appears to have been made in good faith and whether there are sufficient grounds to warrant a formal fact-finding investigation. If that is the case, the responsible office shall promptly appoint a panel of at least two individuals from the department, office or mission concerned who have been trained in investigating allegations of prohibited conduct or, if necessary, from the Office of Human Resources Management roster.*

The partisan opinions of the MEU are essentially worthless.

[...]

The MEU serves no purpose other than to add to the unnecessary bureaucracy; the staff member is required to go through this additional process before challenging a decision in the UNDT - but cannot challenge any finding by the MEU.....

*5.17 The officials appointed to conduct the fact-finding investigation shall prepare a detailed report, giving a full account of the facts that they have ascertained in the process and attaching documentary evidence, such as written statements by witnesses or any other documents or records relevant to the alleged prohibited conduct. This report shall be submitted to the responsible official normally no later than three months from the date of submission of the formal complaint or report.*

*5.18 On the basis of the report, the responsible official shall take one of the following courses of action:*

*(a) If the report indicates that no prohibited conduct took place, the responsible official will close the case and so inform the alleged offender and the aggrieved individual, giving a summary of the findings and conclusions of the investigation;*

*(b) If the report indicates that there was a factual basis for the allegations but that, while not sufficient to justify the institution of disciplinary proceedings, the facts would warrant managerial action, the responsible official shall decide on the type of managerial action to be taken, inform the staff member concerned, and make arrangements for the implementation of any follow-up measures that may be necessary. Managerial action may include mandatory training, reprimand, a change of functions or responsibilities, counselling or other appropriate corrective measures. The responsible official shall inform the aggrieved individual of the outcome of the investigation and of the action taken;*

*(c) If the report indicates that the allegations were well-founded and that the conduct in question amounts to possible misconduct, the responsible official shall refer the matter to the Assistant Secretary-General for Human Resources Management for disciplinary action and may recommend suspension during disciplinary proceedings, depending on the nature and gravity of the conduct in question. The Assistant Secretary-General for Human Resources Management will proceed in accordance with the applicable disciplinary procedures and will also inform the aggrieved individual of the outcome of the investigation and of the action taken.”*

What about the situation (as in this case) where:  
a) the allegedly aggrieved party (1) falsely denied having made a complaint about the alleged ‘harassment’, (2) denied wanting the matter to be investigated, and (3) was critical of the decision by the Third Party for making the complaint,

AND  
b) the Third Party Complainant admitted that he made the complaint because he was concerned that he himself would be criticised if he did not...

**Hold on a minute.....**  
The MEU, fails to see anything prejudicial in Lapointe trying to have me suspended nearly 2 weeks BEFORE she appoints a panel to investigate the complaint.

This is the ONLY known case of Lapointe wanting the subject of any investigation suspended.

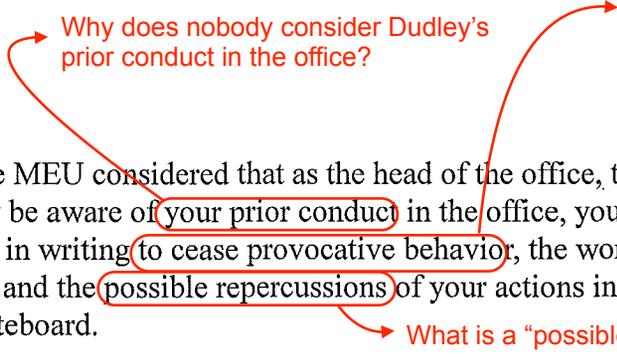
Why should the person who comments on a UNDT judgement be treated more harshly than the person accused of, say, rape?

The MEU noted that pursuant to section 5.11 of ST/SGB/2008/5, an aggrieved individual may submit a written complaint to the head of department, office, or mission concerned (the responsible official). In addition, a third party who has direct knowledge of the situation may also submit a report of prohibited conduct to the responsible official under this provision. The sole exception to this procedure envisioned by the SGB relates to those cases where the official who would normally receive the complaint is the alleged offender.

The MEU considered that this exception does not apply to your case. While you are the alleged offender, you are not the official who would normally receive the complaint. **The UN fails to see any conflict of interest in Lapointe making a decision on a complaint that referred to a judgement in a case in which she herself was criticised.....**

The MEU also considered the procedures followed in this case. On 17 January 2014, the third party, Mr. Dan Wilson, submitted a complaint in an Inter-office Memorandum to the Director of Investigations. Mr. Wilson copied the ASG/OHRM on his Memorandum, as required by the last sentence of section 5.11. On the same day, the USG/OIOS wrote to the ASG/OHRM, specifying why she considered the conduct in question to be “particularly offensive” and inappropriate, and requesting that you be placed on administrative leave with pay while the matter was investigated. The USG/OIOS assessed that the complaint had been made in good faith and appointed a fact-finding panel on 31 January 2014.

The MEU examined your submission that the USG/OIOS should have recused herself from making a decision to appoint a panel when the complaint was received and from making a decision when the panel’s report was received. You referred to the comments in her 17 January 2014 e-mail to the ASG/OHRM – namely, that you have made similar verbal and written negative comments in the past about your former supervisors; that you committed to refrain from such conduct in writing in a Memorandum dated 19 November 2013; that you are aware of the “escalating toxic work environment” in OIOS and efforts by its management to restore a professional atmosphere; and that you knew or should have known that your actions would further inflame the situation and embarrass Mr. Dudley.



The only question here is supposed to be whether or not the investigation proved the elements of the misconduct under ST/SGB/2008/5 para 1.2 and therefore if the report was "well founded".

The MEU considered that as the head of the office, the USG/OIOS would necessarily be aware of your prior conduct in the office, your having previously committed in writing to cease provocative behavior, the work environment in OIOS in general, and the possible repercussions of your actions in changing the quotation on the whiteboard.

The MEU was therefore of the view that your submission that the USG/OIOS would, as a result, have had to recuse herself from acting on Mr. Wilson's complaint and from referring the panel's report for consideration of disciplinary action has no basis. .... lets not worry about her being personally implicated in the retaliation in Nguyen-Kropp & Postica, or the fact she tried to have

The MEU considered that your other submissions in this context – that the USG/OIOS failed to act on your complaint against Mr. Dudley; that she endorsed a performance improvement plan "designed to prevent any meaningful investigations being undertaken"; and that she supported your former supervisors' refusal to identify performance shortcomings – were assertions which were not substantiated in any way. You provided no facts or evidence in support of these assertions. I don't need to provide those facts in support of THIS application, and it was the MEU whose deliberate delays prevented me from bringing evidence of that in a previous application!

The MEU also considered the provisions of section 5.18(c) of the SGB, further discussed below, which state that if the report indicates that the allegations were well-founded and that the conduct in question amounts to possible misconduct, the responsible official shall refer the matter to the ASG/OHRM for disciplinary action. Yes' now perhaps someone should concentrate on whether the report was "well founded".... did it actually PROVE the allegedly aggrieved party was harassed?

The MEU concluded that your claim – that the USG/OIOS should have recused herself when she received the complaint and when the panel's report was presented to her – lacked any basis and was unsubstantiated.

Oh really, that's funny because Michael Dudley - who was (allegedly) the aggrieved party here - described the investigation as "offensive and wrong" - and proof of the misconduct depends on him actually being "offended" or "humiliated"

Your claim that the USG/OIOS did not consider whether the report was "well founded"

At the outset, the MEU observed that your submission - that "[o]n 9 April 2014, without considering whether the report was 'well founded', the USG/OIOS sent the report to the ASG/OHRM" – was a bare assertion, and that you advanced no further arguments on this matter. You referred to "Attachment 1", a Memorandum dated 9 April 2014 from the USG/OIOS to the ASG/OHRM, but advanced no arguments in relation thereto.....other than the failure to actually PROVE misconduct.

Moreover, the MEU considered that the procedure under paragraph 5.18(c) of the SGB does not give the responsible official discretion as to whether or not to refer the matter. Rather, it mandates such a referral. The MEU was of the view that this procedure was followed in this case.

Hold on a minute, I don't care what the MEU considers because the UNDT has held otherwise - in Cabrera (UNDT/2011/081) and Tshika (UNDT/2014/122) that the responsible official's obligation was to consider whether the report was "well founded" and not just to rubber-stamp it

In light of the foregoing considerations, the MEU considered that your claim lacked any basis.

*Your claim that it was not reasonable to conclude that the report was "well founded"*

The MEU considered your submission that the panel failed to show a "causal connection" between the altered text on the whiteboard and any harassment experienced by the "aggrieved party." You claimed, *inter alia*, that the panel failed to determine how many people apart from Mr. Dudley actually saw the altered text; whether Mr. Dudley suffered any harassment at all; and whether Mr. Dudley was offended or humiliated. You referred to the issue of the photographs having been changed by Mr. Dudley as being in the public domain (in the UNDT Judgement and in news reports, including an *Associated Press* news report published on 10 January 2014).

IF Dudley was "offended" or "humiliated" - does nobody think it would be necessary to show that that was caused by:

- a) the findings of fact in Nguyen-Kropp & Postica,
- or
- b) the *Associated Press* newspaper reports,
- or
- c) a comment on a whiteboard in the OIOS office for a few minutes

That's funny, because the word "reasonable" appears in it and ILOAT Judgement 3106 would appear to suggest otherwise....

The MEU observed that you sought to justify your conduct in relation to the altered text on the whiteboard by pointing to the fact that the information in question is in the public domain. That such information may be in the public domain does not provide a license for a United Nations staff member to make negative comments related to it on an office whiteboard. The MEU noted that Mr. Dudley is a serving staff member in your immediate office. The MEU recalled the definition of harassment set out in the SGB, that is, "any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offense or humiliation to another person." The MEU considered that the issue of how many individuals, apart from Mr. Dudley, actually saw the altered text on the whiteboard before it was taken down is irrelevant.

Wait a minute: is this the same logic that allows Malcorra to make prejudicial comments about Mr. Kompass being guilty of misconduct BEFORE he was investigated?

The MEU took the view that your questioning of whether Mr. Dudley actually felt harassed, offended, or humiliated by the altered text was controverted by the information which you provided in footnote 2 (page 4) of your management evaluation request:

"It should be noted, however, that in describing the alteration to the text on the whiteboard as 'shocking behaviour' in his e-mail to Mr. Stefanovic (14 January 2015 [*sic*] at 2:56 p.m.), Mr. Dudley added the final paragraph[:] '*I have the board, the marker used, attribution of the other writing and approximate time.*' [...]"

Also; in Flores (UNDT/2014/025) the Tribunal ruled that investigators had no discretion, and any potential witnesses named by the subject had to be interviewed.

That's interesting..... because that email would suggest that Dudley was COMPLAINING about it, and if so - why was the MEU not concerned about:

- 1) why Lapointe had publicly denied that Dudley was the complainant, and
- 2) why she did not act on that complaint, but preferred to accept a Third Party report of the same thing....

The MEU also observed that in its report (paragraph 56), the panel stated that Mr. Dudley had asked the staff member who had placed the original inspirational quotation of Mr. Albert Einstein on the whiteboard whether she "understood the implications of what it was changed to." The panel went on to

Oh I see..... so the MEU doesn't see anything strange in

- 1) Dudley e-mailing Lapointe to complain about what he described as "shocking"
- 2) Dudley discussing his actions with a witness, explaining why the whiteboard had to be preserved,
- 3) Dudley telling the panel that he did not ask for the matter to be investigated
- 4) Dudley describing the investigation as "offensive and wrong"
- 5) Lapointe publicly denying that Dudley was the complainant, and
- 6) Dudley - the (allegedly) aggrieved party - NOT being asked if he felt embarrassed or humiliated by the whiteboard

Instead, the MEU wish to rely on an e-mail (which Lapointe failed to provide to the Fact Finding Panel) but which indicates that it was Michael Dudley who first complained.... which would then show that Lapointe had been duplicitous in denying that he had done so.....

observe: "After [Mr. Dudley] explained and she had a chance to read the judgment, she understood the sensitivity of the quotation." The MEU considered that the foregoing demonstrates that Mr. Dudley did not share your view that the altered text was "satire" and "done for humorous effect" (report, paragraph 65).

Yes I challenged Dudley for his behaviour in publicly insulting his boss (an Under-Secretary-General) so why does the MEU believe it is "inappropriate" to challenge Dudley on evidence that was led in a public Tribunal hearing,

The MEU also noted the panel's finding that you had made "inappropriate and/or impolite comments to Mr. Dudley in the presence of others on 28 October 2013 in the elevator lobby of the Teachers Building," and that you made further remarks critical of Mr. Dudley in a 6 February 2014 Memorandum to the USG/OIOS.

The MEU took the view that your claim – that it was not reasonable to conclude that the report was well-founded – had no basis and was contradicted by your own submissions. **Where is the EVIDENCE proving the "harassment"?**

...but it is NOT "inappropriate" for Dudley to insult and threaten an Under-Secretary-General?

The Fact Finding Panel was formed to investigate a complaint of 'harassment' contrary to ST/SGB/2008/5, para 1.2

**MEU's recommendation**

Was the purpose of that investigation not to establish, by means of clear and convincing evidence, that the aggrieved party actually suffered 'harassment' as defined in ST/SGB/2008/5, para 1.2?

Based on the above analysis of your request, the MEU was of the view that the decision to refer the report of a fact-finding panel, appointed under the SGB, for consideration of disciplinary action against you, should be upheld.

.....No surprises there!

**Conclusion**

In light of the foregoing considerations of your case, the Secretary-General has decided to endorse the findings and recommendations of the MEU and to uphold the decision to refer the findings of the fact-finding panel for consideration of possible disciplinary action.

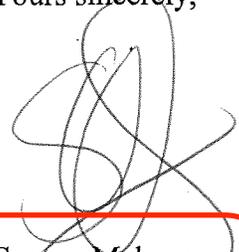
.....but the same Secretary-General will not do anything to hold anyone accountable for the findings of fact in the Nguyen-Kropp & Postica judgement?

Why does the Secretary-General not have a problem with senior officials of OIOS tampering with evidence?

Why does the Secretary-General not have a problem with senior officials of OIOS insulting, threatening or intimidating an Under-Secretary-General?

Any recourse in respect of this decision may be addressed to the UNDT, in accordance with Staff Rule 11.4. The Secretary-General expressly reserves the right to raise the issue of receivability at any subsequent hearing of this matter. In the event that you decide to pursue an appeal, you may wish to obtain further assistance from counsel through the Office of Staff Legal Assistance ([osla@un.org](mailto:osla@un.org)) free of charge, or, if you so wish, at your expense from outside counsel.

Yours sincerely,



Susana Malcorra  
Chef de Cabinet

**Hold on a minute.....**

Oh there's a strange coincidence, because 12 months earlier, the Ethics Office had recused themselves from finding that the harassment and the complaints against me had been "retaliation" and they had referred the matter to Malcorra.....

cc: Mr. Y. Takasu  
Ms. C. Lapointe  
Ms. C. Wainaina  
Mr. C. Saunders  
Mr. M. Madriz

- ▶ Malcorra had protected Lapointe and Dudley by ignoring the facts and doing nothing with my application for protection against retaliation.
- ▶ Malcorra had earlier appointed Dudley's wife to be head of Conduct & Discipline without even having the post advertised.
- ▶ Malcorra was protecting Dudley from any attempt to even suspend him after the Nguyen-Kropp & Postica judgement came out.
- ▶ Malcorra had arranged for the Procurement Division to invent some fictional "special project" to ensure Dudley would
- ▶ Malcorra knew about the about the comment on the whiteboard before the matter was even reported - because Dudley had told her ....
- ▶ Malcorra knew about Anders Kompass being cleared of any wrongdoing when he was investigated over the Western Sahara complaint; before the OIOS report was out.
- ▶ Malcorra arranged for OIOS to investigate Anders Kompass for "leaking confidential information" for taking action when children were being abused in the CAR.....

**But of course, the "proper procedure" has been followed at all times, neither Dudley nor Lapointe have done anything wrong; but Pete Gallo is guilty simply because that was the result that the Organization wanted.....**