

15 May 2019

Ms. Jan Beagle
Under-Secretary-General
Department of Management Strategy, Policy & Compliance
United Nations
New York, NY 10017

Dear Ms. Beagle,

Misconduct under ST/SGB/2008/5

I represent Mr. Yves Nadeau, now a former staff member and the Applicant in UNDT/NY/2019/018, but this is a general enquiry on behalf of a wider audience and which your legal staff claim is unconnected to the matter presently before the UNDT.

In their pleadings in that case however, the Administrative Law Division/OHRM have stated that if my client considered he was the victim of harassment he should have filed a complaint under ST/SGB/2008/5 with his program manager who is the USG/OIOS.

As investigators, OIOS/ID staff members must be expected to be familiar with the provisions of ST/SGB/2008/5 and have a good understanding of what constitutes misconduct under the UN Staff Regulations and Rules. My client in particular had some 14 years experience in OIOS. Prior to that he had a successful career in the Canadian Government, culminating in his sitting as a judge in an Administrative Tribunal in Canada that serves the same role as the UNDT serves in the UN.

As such, he is very familiar with the concept of - and the legal definition of - 'misconduct', but you may also like to consider that he, like all interested OIOS staff members, is aware of the following:

1. In 2009, OIOS staff member Mr. Florin Postica made a complaint against the then acting Director, Michael Dudley for withholding evidence in an investigation. Mr. Dudley was immediately cleared of any wrongdoing (by his own staff) and Mr. Postica was simultaneously investigated – and found culpable – in an investigation that Judge Meeran described as having a patently retaliatory motive. **No action (either disciplinary or managerial) was ever taken against Mr. Dudley nor the two patently biased OIOS staff members who cleared him.**
2. In November 2010, while appearing before a UNDT judge to argue that he should *not* be investigated for retaliating against an OIOS/ID staff member; Michael Dudley admitted that the volume of evidence against him was such that there was “*no way of defending himself against it.*” **No action was taken.**
3. In March 2013, OIOS staff member, the undersigned made a complaint under ST/SGB/2008/5 against his first and second reporting officers for harassment and abuse of authority. **No action was taken.**

4. Upon learning that no action was taken on that complaint, the undersigned elevated it to the Secretary-General, and – after a delay of eight months - a Fact Finding Panel was established. The USG/Management was made aware of numerous flaws in the investigation, but **no action was taken**.
5. That investigation did establish that the USG/OIOS *should have* acted on the complaint but **no action was taken**. On the contrary; the USG/OIOS was then complicit in the subjects of that complaint pursuing a campaign of harassment against the undersigned.
6. In March or April 2013, OIOS Unit Chief Roberta Baldini (who enjoyed the patronage of Mr Michael Dudley) made a bad faith complaint against Investigations Director Michael Stefanovic. Despite the lack of probable cause to believe that misconduct had taken place, Mr. Stefanovic was subjected to a two-year long investigation before being cleared. When he then sought to make a counter-complaint against (1) Ms. Baldini (2) Ms. Susan Maddox (Administrative Law Section) and (2) Ms. Catherine Pollard (then ASG/OHRM)¹ for making a bad faith complaint; the Administration covered the whole matter up and clearly **took no action against Baldini, Maddox or Pollard**.
7. In October 2013, in the course of the hearing in *Nguyen-Kropp & Postica*, evidence was lead that Mr. Michael Dudley had insulted and threatened his superior, Under-Secretary-General Inga-Britt Alhenius. **No action was taken**.
8. In December 2013, following the publication of the *Nguyen-Kropp & Postica (UNDT/2013/176)* judgement, the undersigned submitted a complaint that an OIOS/ID staff member who was a witness in that hearing had knowingly misled the Tribunal by giving a false answer to a direct question. **No action (either disciplinary or managerial) was taken**. On the contrary, she was given “*enhanced responsibilities*”.
9. In 2013, OIOS staff member Campbell Moore submitted a complaint under ST/SGB/2008/5 against OIOS Unit Chief Roberta Baldini.² A Fact Finding Panel did conduct an investigation but Ms Baldini then went on a very convenient medical leave. She returned to full health in March 2015, just two weeks before she formally separated from the Organization, but in accordance with a statement she had made the previous October, predicting that she would be fit for work upon separating from the UN.
10. In February 2014, following the publication of the *Nguyen-Kropp & Postica (UNDT/2013/176)* judgement and an Associated Press article that was syndicated worldwide, Micheal Dudley made a complaint against the undersigned for a satirical reference to information in the public domain (that nobody other than Dudley actually saw). This was considered 'harassment' and **was** investigated immediately, in advance of over 20 other misconduct complaints against OIOS staff **on which no action had yet been taken**.
11. In March 2014, through external legal counsel the undersigned submitted a complaint against OIOS Unit Chief Roberta Baldini who, after a series of other increasingly ridiculous retaliatory complaints against him, had falsely accused him of assault and possession of a firearm – both of

1 Widely reputed to be a personal friend of Michael Dudley and his wife, Mercedes Gervilla.

2 This was one of **eight** complaints pending against Ms. Baldini at the time.

which are serious criminal offences. **No action was taken.**

12. In November 2014, following the unlawful imposition of a disguised disciplinary measure, the undersigned (then an OIOS staff member) submitted another complaint under ST/SGB/2008/5, directly to the Secretary-General - against a number of senior OIOS officials. **No action was taken.**
13. In February or March 2015, following settlement of the UNDT case of *von der Schulenburg* OIOS staff member Dan Wilson made a complaint against Michael Dudley and others, including Dudley's wife Mercedes Gervilla (Chief of the Conduct & Discipline Unit) for their shortcomings in the investigation of Executive Representative of the Secretary-General and Head of Mission Mr. von der Schulenburg. **No action was taken.**
14. Co-incidentally, Mr. von der Schulenburg had made a complaint against an OIOS investigator who reported to Dudley; but the complaint was mysteriously "lost" - so **no action was taken.**
15. In March 2015, OIOS staff member Fatimazohra Nouinou made a complaint against Deputy Director James Finniss. **No action was taken.**
16. Also in March 2015, the undersigned learned that the (OIOS) Fact Finding Panel investigating him for the satirical comment on the whiteboard had withheld material evidence from the decision-maker, and complained about this. **No action was taken.**
17. On 18 March 2015, OIOS/ID staff member Mr Ulf Kirchner also submitted a complaint under ST/SGB/2008/5 against Deputy Director Mr. James Finniss. This was duly investigated by a Fact Finding Panel who upheld the factual basis for his complaint, but – after fully two years - the USG/OIOS elected to take only managerial action, which was patently of no effect given that Mr Kirchner was then compelled to file an application with the UNDT³ citing *continued* harassment by Finniss.
18. In March 2016, OIOS staff member Fatimazohra Nouinou made a second complaint under ST/SGB/2008/5 against Deputy Director Finniss, whereupon Ms. Nouinou was berated by now Investigations Director Ben Swanson, accusing her of "*trying to harm James Finniss's reputation.*" **No action appears to have been taken against Finniss** but Swanson began taking retaliatory action against Ms. Nouinou, abolished her post and gave bad references to other departments when she applied for other positions.
19. In January 2017, Mr Nadeau made a complaint against Michael Dudley and his First Reporting Officer⁴ for publicly disparaging a UNDT judge (specifically the judge in *Nguyen-Kropp & Postica (UNDT/2013/176)* who was critical of Dudley's behaviour.) The USG/OIOS held that this did not rise to the level of misconduct so **no action was taken.**⁵
20. In August 2018, following the publication of the *Nouinou UNDT/2018/070* judgement and at the request of a number of UN G-staff members, I submitted a complaint to the Secretary-General about Investigation Director Mr. Ben Swanson. **No action was taken.**

3 UNDT/GVA/2017/075

4 The same First Reporting Officer referred to in paras 3 and 4 above, who also complained about the manner in which the undersigned walked in the corridor, pursuant to para 11 above.

5 This must be compared with para 10 and should be contrasted with OIOS's reaction to para 6 above.

When considered in the context of the diagram illustrating the patently disparate treatment of OIOS/ID staff that was attached to my letter dated 12th inst., my client can hardly fail to identify a pattern here, even if OIOS management do not.

Even these examples, however, belie the scale of the number of internal complaints generated within an office of less than 30 people. These are only those *internal* complaints known to Mr Nadeau. There must be many more.

In January 2014 the then USG/OIOS indicated there were over 20 such complaints though she had failed to take action on most of them.

You will be aware of the Deschamps panel's finding that Ms. Lapointe *abused her authority* in relation to the complaint against Mr. Anders Kompass. Given her conduct as USG/OIOS, it is my belief that your department was wilfully blind to that not being the first or only occasion when she did so

There is clearly a “protected class” of OIOS/ID staff members in New York who enjoy the patronage and protection of senior managers and are immune from any accountability despite the evidence of their professional and ethical shortcomings.

That the Ethics Office has been singularly feckless in recognising this is a tribute to their political dexterity, further illustrating why astute staff members have little confidence in the system.

I would expect the Department of Management to have at least read the various Staff Surveys that have come out.

The history of poor management in OIOS/ID is not a secret to your Department.

Your predecessor refused to disclose the amount of money your department had to waste to settle UNDT cases that were based on poor investigative work by the same clique of individuals in OIOS who were clearly protected by OHRM, and it is apparent that the current Investigations Director is simply perpetrating this scenario.

Mr Swanson joined OIOS as a Deputy Director in October 2013 and was appointed Director after the resignation of his predecessor at the end of October 2015. He has had ample time to address matters and his attitude towards my client indicates how he has patently failed to do so.

You will be aware of how his predecessor resigned following the settlement of a UNDT case which implicated the ASG/OHRM and the Legal Officer who is now Chief of the Disciplinary Unit.

The complicity of your staff in promoting the interests of certain individuals clearly continues unabated, and Mr. Swanson has clearly just aligned himself with them.

Moreover, your Department approved the terms of the previous Investigation Director's financial settlement, like you approved that paid to OIOS unit chief Dan Wilson⁶ in settling his UNDT case. Both of these are understood to contain provisions preventing them from testifying against Dudley and others who remain in OIOS in a remorseless attempt to prevent other staff members such as my client from leading evidence of managerial misconduct that is germane to their cases.

It is clear that none of the various initiatives offered by the Department of Management in the past to

6 Note that Wilson was the complainant in para 13 above.

address the management culture in OIOS have had any impact. Neither Mendoza, Swanson or anyone else appointed to senior positions have proved wither willing or capable of addressing it. Indeed, the Secretary-General even called on the Member States “*to mandate an external review of the mandate and capacity of the Office.*” That was contained in his report to the General Assembly on Reform: Measures and Proposals in September 2017 but I am not surprised that nothing has been done about it.

The net result is that the hostile working environment in OIOS/ID has been *encouraged*, regardless of the impact this might have on general staff confidence in the UN justice system.

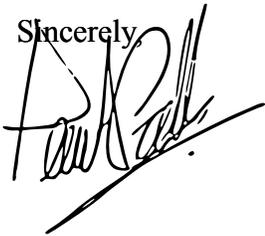
In view of the foregoing and the near certainty of this question arising in the future, would you be so kind as to advise;

1. **Whether the Department of Management Strategy, Policy and Compliance still considers it reasonable to expect OIOS staff members to submit complaints under ST/SGB/2008/5?**

In addition, given the Secretary-General's decision to over-ride ST/SGB/2008/5 in cases of sexual harassment and refer all such cases to OIOS for investigation;

2. **Whether the Department of Management Strategy, Policy and Compliance consider that it is reasonable to expect other UN staff members to have confidence in any investigation under ST/SGB/2008/5 being conducted by OIOS independently and impartially?**

Sincerely,



Peter A Gallo
Attorney

- cc. Ms. Patricia Nemeth. *President, United Nations Staff Union, New York*
Mr. Moses Bamuwanye, *Secretary, Independent Audit Advisory Committee*
Ambassador Marc-André Blanchard, *Ambassador and Permanent Representative of Canada*
Congresswoman Karen Bass. *Chair: US Congress, House Committee on Foreign Affairs, Subcommittee on Africa, Global Health, Global Human Rights, & International Organizations*
Congressman Chris Smith. *Ranking Member: US Congress, House Committee on Foreign Affairs, Subcommittee on Africa, Global Health, Global Human Rights, & International Organizations.*