



**World Bank Administrative Tribunal**

**2016**

**Decision No. 548**

**DJ,  
Applicant**

**v.**

**International Finance Corporation,  
Respondent**

**(Merits)**

**World Bank Administrative Tribunal  
Office of the Executive Secretary**

**DJ,  
Applicant**

**v.**

**International Finance Corporation,  
Respondent**

1. This judgment is rendered by a panel of the Tribunal, established in accordance with Article V(2) of the Tribunal's Statute, and composed of Judges Stephen M. Schwebel (President), Abdul G. Koroma, and Marielle Cohen-Branche.

2. The Application was received on 2 October 2015. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. The International Finance Corporation (IFC) was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 28 March 2016.

3. The Applicant challenges the following: (i) the non-renewal of his contract; (ii) the unauthorized disclosure of confidential personal information about him; (iii) harassment and discrimination based on his sexual orientation; (iv) retaliation for reporting his manager to the Office of Ethics and Business Conduct (EBC); (v) failure of senior management, Human Resources, and EBC to protect him; and (vi) the unlawful manipulation of his email account after the termination of his contract. The Applicant also argues that the EBC investigations into his complaints were procedurally improper and that the Vice President of Human Resources (HRVP) should have recused himself from being the decision maker in Ms. A's case.

#### **FACTUAL BACKGROUND**

4. The Applicant worked at the IFC as a Short Term Consultant (STC) from 2012 to 30 June 2015. From January 2014, the manager of his unit was Ms. A.

5. The Applicant maintains that his work in the unit was praised by his colleagues and that Ms. A gave him many of her projects to complete. He states that he and Ms. A got along and frequently had contact, including lunches together.

6. In July 2014, the unit advertised two job openings for Level GG officers. The closing date of the postings was 31 July 2014. The Applicant applied for one of the positions on 17 July 2014. He was required, in the job application, to disclose whether he was related to a Bank staff member, and so he disclosed his marriage to another male staff member.

7. The Applicant claims that Ms. A discovered his sexual orientation when she looked at the applications for the positions between 28 July 2014 and 30 July 2014. While talking to another staff member who was not involved in the recruitment process, either on 28, 29, or 30 July 2014, Ms. A disclosed that the Applicant was married to a man. The Applicant learned about this disclosure on 31 July 2014 from another staff member. On the same day, he contacted the Coordinator of the IFC's Lesbian, Gay, Bisexual, and Transgender (LGBT) Employee Resource Group (ERG) and EBC, although he did not file a formal complaint with EBC at that time.

8. The Applicant filed a formal complaint with EBC on 1 October 2014. In his complaint, he asked EBC to investigate Ms. A's comment about the Applicant being married to a man, her disclosure of confidential information about the Applicant's sexual orientation, and the discriminatory nature of the recruitment process.

9. EBC interviewed the Applicant on 16 October 2014. Between 10 November 2014 and 13 March 2015, EBC interviewed six more witnesses. Ms. A was served a Notice of Alleged Misconduct on 6 January 2015.

10. As part of its investigation, EBC reviewed information from the World Bank Group Information and Technology Solutions (ITS) office showing the dates on which Ms. A logged into the portal for job applications during the recruitment process. The EBC investigation found that she logged into the portal on 29 July 2014 and 4 August 2014. During the EBC investigation,

multiple witnesses told EBC that Ms. A had disclosed to another staff member that the Applicant was married to a man.

11. In its Case Closure Memorandum of 25 June 2015, EBC concluded that there was not a sufficient factual basis to issue a Notice of Alleged Misconduct with respect to the Applicant's allegations that the selection process was discriminatory. EBC also concluded that there was insufficient evidence to substantiate the Applicant's allegation about retaliation because any decrease in the Applicant's workload was due to conditions that existed prior to the Applicant's report to EBC. EBC stated

that the alleged hostile work environment or harassment arose after Reporter 1's unsubstantiated belief that: (i) he was not going to be (and was not) selected for the [...] position based on his sexual orientation; and (ii) several other staff within the unit found out about his sexual orientation based on the Subject's disclosure.

12. With respect to the allegation regarding the unauthorized disclosure of confidential personal information, on 29 July 2015, EBC transmitted its Final Report to the HRVP. The Final Report states the following:

Investigators found sufficient evidence to substantiate the allegation that the Subject obtained confidential personnel information about the Reporter's marital status (i.e., he is married to a man) and sexual orientation from the Reporter's application [...] and disclosed his marital status and sexual orientation [...] without authorization. Investigators did not find sufficient evidence to substantiate the other allegations against the Subject.

13. On 2 October 2015, the HRVP determined that Ms. A had not engaged in misconduct. She was encouraged, however, "to more carefully consider what may be potentially sensitive personal staff matters and be prudent in [her] communications with others about the same."

14. The Applicant claims that Ms. A continued to discriminate against him and retaliated against him after he reported her to EBC. The alleged acts of discrimination and retaliation, which are disputed, are set out in paragraphs 62 to 86 below.

15. The Applicant and Ms. B, another STC, both applied and were shortlisted for the advertised positions. As internal candidates, they bypassed the telephone interview stage and went directly for face-to-face interviews. The Applicant was scheduled to be interviewed on 23 September 2014 and Ms. B on 24 September 2014. Both were provided with their respective interview schedules and the names of the individual panel members by email, sent within minutes of each other, in the afternoon of 22 September 2014.

16. The Applicant was interviewed on 23 September 2014 by three panels. One of the panels was composed of Ms. A and two other members of the unit. The Applicant complained to EBC and Human Resources about what he considered to be an unfair selection process. On 21 November 2014, the Applicant was notified by Ms. A that “due to internal hiring controls, we are not moving forward with the [...] position to which you have applied at this time.”

17. On 21 January 2015, the Executive Vice President approved hiring for the two positions, and the following day, the Director of Human Resources allowed Ms. A to proceed with hiring for the positions, subject to “additional steps in the selection process.” Three of the five shortlisted candidates, including the Applicant were interviewed by a fourth panel that did not include Ms. A. On 2 March 2015, the Director of the unit notified the Applicant that he was not selected for the position. On 6 April 2015, staff members in the unit were informed that Ms. B had been selected for one of the two positions.

18. The Applicant contacted several officials in the IFC and the Bank in an effort to seek “interim help or protection” from the alleged ongoing discrimination and retaliation by Ms. A. He contacted Ombuds Services in October 2014 and told them about his claims of discrimination, disclosure of his confidential information, and the unfair selection process. He also requested information on how he could take his allegations to IFC management and Human Resources. He also communicated with the then Coordinator of the Conflict Resolution System and a Senior Human Resources Officer in November 2014. In an email dated 2 November 2014, the Applicant mentioned the allegedly discriminatory selection process as well as “[Ms. A’s] evidenced bias against [his] sexual orientation.”

19. The Applicant also contacted the IFC Vice President and General Counsel. At the Applicant's request, the IFC Vice President and General Counsel was also contacted by the Chair of the IFC's LGBT ERG and the President of the World Bank Group Employee Resource Group for LGBTI staff (GLOBE). On 21 March 2015, the IFC Vice President and General Counsel responded to the Applicant that, having reviewed the selection process, they were satisfied that the best qualified candidates had been selected for the positions.

20. The Applicant also approached the Director of Human Resources and had the Vice President of GLOBE contact the HRVP on his behalf. On 30 December 2014, the Director of Human Resources replied to the Applicant as follows:

Unfortunately, I do not have any news yet regarding next steps in the hiring process for the position to which you have applied. As I explained when we met, it is subject to the very stringent employment controls put in place for the entire WBG by Senior Management and applies to all external recruitment – and as you are aware, the hiring of current STCs is considered external recruitment in the context of these hiring controls.

I am very sorry to hear that you continue to perceive discrimination and retaliation in your current role and I am glad the colleagues from the Ethics Office are fully aware of the situation and the urgency. As per our discussion, such matters need to be addressed by way of an Ethics investigation, which I understand is underway. Management and HR will be in a position to take action once the investigation has been completed.

21. The Applicant's lawyer contacted the World Bank Group President on 3 February and 13 March 2015. The two letters to the World Bank Group President detailed the Applicant's discrimination and harassment claims as well as his claim about unfairness in the selection process. The World Bank Group President was requested to intervene to protect the Applicant. There was no response to the first letter, but on 17 March 2015, a Senior Counsel, Institutional Administration, Legal Vice Presidency responded as follows:

At present, the Office of Ethics and Business Conduct is reviewing the complaints raised by your client according to their process. The President will not interfere in that ongoing, independent process. Your letters also refer to a recruitment process in which your client was involved. As I understand it, this process has concluded, and your client has been informed of the results.

22. On 4 June 2015, the Applicant was notified that his STC contract would not be extended beyond 30 June 2015 because two additional officers had been hired. The Applicant reported the non-extension of his contract to EBC and stated that there was no “prior consultation or conversation” before he was sent the email that informed him about the non-extension decision.

23. Although the Applicant’s contract expired on 30 June 2015, his email account was not closed until 5 or 6 August 2015. The Applicant contacted EBC on 27 September 2015 requesting that a new investigation be opened against Ms. A, Ms. B, and another staff member from the unit because he alleged that they attempted to manipulate or succeeded in manipulating his email account. On 16 October 2015, EBC notified him that it had closed the case since there was no factual basis for his allegations and “no ill intent in the time it took the WBG to close [his] account after [his] contract ended on 6/30/2015.” EBC also attached certain emails in which it was confirmed that no one accessed the Applicant’s email account after his contract ended, and that the account was disabled on 3 July and deleted on 7 August 2015.

24. On 2 October 2015, the Applicant submitted this Application to the Tribunal. In his Application, the Applicant challenges the following: (i) the non-renewal of his contract; (ii) the unauthorized disclosure of confidential personal information about him; (iii) harassment and discrimination based on his sexual orientation; (iv) retaliation for reporting Ms. A to EBC; (v) failure of senior management, Human Resources, and EBC to protect him; and (vi) the unlawful manipulation of his email account after the termination of his contract. The Applicant also argues that the EBC investigations into his complaints were procedurally improper and that the HRVP should have recused himself from being the decision maker in Ms. A’s case.

25. The Applicant seeks his appointment to a staff position at Level GG but not under Ms. A as manager and written apologies from the HRVP, the Chief Ethics Officer, the Vice President and General Counsel, and the Director of the unit. Moreover, he seeks compensation in the forms of: (i) payment for at least 34 consultant days due to the IFC’s alleged failure to provide him adequate notice of the non-renewal of his contract; (ii) back pay from 1 October 2014 at the rate of a Level GG officer until he “is appointed to a comparable staff position”; (iii) at least two years’

consultancy fees (i.e. \$126,900) for the pain and suffering caused by the discrimination and retaliation he allegedly suffered; and (iv) legal fees and costs in the amount of \$34,821.41.

26. On 23 November 2015, the IFC filed a preliminary objection. It contended that the Applicant did not exhaust internal remedies for the following claims because he did not allege them before Peer Review Service (PRS): (i) disclosure of confidential personal information; (ii) harassment and discrimination on the basis of sexual orientation; (iii) retaliation; (iv) failure by senior management, Human Resources, and EBC to protect him; and (v) unlawful manipulation of his email account after the termination of his contract. The IFC also argued that the first four claims were not filed in a timely manner with EBC. Finally, the IFC contended that the Applicant's claim of non-selection was not filed in a timely manner before PRS.

27. In *DJ*, (preliminary objection) Decision No. 536 [2016], the Tribunal held that the following claims were admissible: (i) non-renewal of the Applicant's contract; (ii) unauthorized disclosure of confidential personal information about him; (iii) harassment and discrimination on the basis of sexual orientation; (iv) retaliation; (v) failure of senior management, Human Resources, and EBC to protect him; and (vi) unlawful manipulation of his email account. The Tribunal held that the Applicant's non-selection claim was inadmissible. However, to the extent that there are any matters relating to the non-selection decision that were referred by the Applicant to EBC, these matters are properly before the Tribunal for review.

28. The World Bank Group Staff Association submitted an *amicus curiae* brief on 29 July 2016. The Staff Association expressed concern that the World Bank Group did not take action on the Applicant's claims for over a year and took issue with the EBC investigative process.

## SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

### THE APPLICANT'S CONTENTIONS

29. The Applicant claims that Ms. A breached her obligation to maintain the confidentiality of personal information in his job application. Instead, she disclosed his marital status and sexual orientation, implied that the Applicant would not be suited for the position because of his sexual



orientation, and questioned his integrity. The Applicant argues that he had chosen to keep this information private and that its disclosure has caused immediate and long-lasting harm to him and to his spouse. He further claims that Ms. A's disclosure created a hostile and offensive work environment.

30. The Applicant contends that Ms. A discriminated against him once she discovered that he was gay. He claims that her homophobia was revealed in her comments to another staff member when she disclosed the Applicant's sexual orientation and questioned his integrity. He further claims that her harassment and abuse continued and also took the form of retaliation once she learned that the Applicant had reported her to EBC and Human Resources. The Applicant contends that Ms. A shunned him and gave him fewer assignments, instead giving assignments to Ms. B even when it was not warranted, and interfered in the recruitment process to ensure that the Applicant would not be hired. According to him, as of January 2015, Ms. A subjected him to a rule under which the Applicant could only work on projects that were pending for longer than 30 days, which were rare, and this deprived him of work. Finally, the Applicant contends that the non-renewal of his STC contract was discriminatory and retaliatory.

31. The Applicant also contends that the selection process was discriminatory against him and favored Ms. B. He contends that Ms. A's negative assessment of him was based solely on his sexual orientation. He claims that Ms. B, but not other shortlisted candidates, was granted "multiple unfair privileges, coaching, written inside information, and advantages." He argues that he was treated differently from other candidates, for example, not undergoing a telephone interview, not being included in lunches with team members in the hiring unit, and receiving information about the interview and the identities of the panel members at the last moment.

32. The Applicant contends that the IFC failed in its duty to protect him because it ignored his appeals for protection. The Applicant maintains that had the IFC placed Ms. A on paid administrative leave pending the outcome of the EBC investigation, he would have been spared harassment, discrimination, retaliation, and humiliation. The Applicant argues that the promise that the selection process would be conducted in a fair and equitable manner and the constitution of the fourth interview panel did not protect him. Rather, it left him "in an intolerable hostile work

environment with no relief at all.” He claims that the additional steps in the selection process, instead, “were a sham designed to make the process appear to be more fair and yet to reach the same outcome.”

33. The Applicant claims that his privacy was invaded by Ms. A and/or other IFC staff members, who accessed his emails without authorization after the end of his contract. The Applicant contends that his emails were accessed without his knowledge or consent, and this is proven by the delay in closing his email account. The Applicant claims that no satisfactory explanation was provided as to the delay.

34. The Applicant contends that EBC’s investigation into his complaints of discrimination and retaliation was inadequate. He claims that the investigation, which lasted from 1 October 2014 to 25 June 2015, took longer than six months. He also claims that of the six witnesses who were interviewed by EBC, all except two were interviewed regarding the breach of confidentiality claim, while the investigation into his discrimination and retaliation claims included interviews with only two new witnesses. In addition, he criticizes EBC for not conducting any “electronic searches” regarding his discrimination and retaliation claims, for example, by reviewing all of Ms. A’s emails. The Applicant also claims that EBC “completely ignored or misrepresented his very persuasive evidence.” He criticizes the EBC Case Closure Memorandum for omitting to address his evidence regarding the application of the “30-day rule” and not making any findings on this issue. The Applicant argues that EBC did not conduct an investigation into his report about abuses in the hiring process at the first stage of the selection process. Rather, EBC’s investigation only looked at the fourth panel’s process. In respect of the Applicant’s complaint about tampering with his email account, the Applicant contends that the EBC investigation was inadequate because there was no satisfactory explanation for the delay in closing his account, no supporting evidence for the assertion that no one had accessed his account, and EBC did not conduct any interviews.

#### THE IFC’S CONTENTIONS

35. The IFC argues that the disclosure of the Applicant’s marital status was not misconduct, and Ms. A did not unreasonably invade the Applicant’s privacy. It contends that information about the Applicant’s marital status and the name of his spouse are a matter of public record. The IFC

does not discriminate against homosexual staff members or treat their personal and spousal information any differently than heterosexual spousal information.

36. The IFC contends that EBC did not find evidence to substantiate the Applicant's claims that Ms. A discriminated and retaliated against him and created a hostile work environment. EBC found that witnesses did not confirm the Applicant's allegations that Ms. A discriminated against him. EBC also found that the alleged hostile work environment or harassment arose after the Applicant believed that he would not be selected based on his sexual orientation and several other staff within the unit found out about his sexual orientation.

37. EBC found that any decrease in the Applicant's workload was due to conditions that existed prior to the Applicant's report to EBC. The "30-day rule" was adopted by Ms. A's supervisor to reduce the backlog of cases and was consistently applied to all STCs in the unit. The IFC argues that even if it were true that the Applicant was being denied work, there was no harm to the Applicant because he was paid for all of the days available under his STC contract and he was not penalized for allegedly not having enough work. The IFC argues that there is no evidence that the Applicant was singled out or treated differently from others in the unit.

38. Finally, the IFC contends that the decision to allow the Applicant's STC contract to expire was based on the IFC's legitimate business needs, namely, that by hiring two additional officers, the unit no longer had a need for STCs. It states that "an STC appointment is by its nature ambiguous in its duration and stability, and does not guarantee continuous employment."

39. The IFC contends that it reasonably responded to the Applicant's requests for protection because he received responses from the officials he contacted. The IFC further contends that it also took substantive steps to ensure that the Applicant's concerns about the selection process would not result in any unfairness. To ensure that Ms. A could not influence the hiring process in any improper way, the IFC states that it convened a completely new, objective and independent interview panel to evaluate the qualifications of the Applicant and other candidates for the position. According to the IFC, the constitution of this fourth panel was to avoid any possible bias related to the Applicant.

40. The IFC submits that it attempted to balance the due process rights of Ms. A with the Applicant's concerns about being persecuted, and argues that it was reasonable to await the outcome of the EBC investigation process before deciding whether to take action against Ms. A. The IFC states that it is neither mandatory nor routine for the IFC to place a staff member on administrative leave pending an EBC investigation.

41. The IFC argues that the EBC investigation concluded that no one had access to the Applicant's email account after the end of his contract. Although EBC found that the IT department had not complied with the requirement that email accounts should be disabled within 24 hours after the end of a staff member's employment, EBC confirmed that no one had accessed the Applicant's email account after his last day. The IFC further contends that since the email system is an institutional asset, emails belong to the IFC and not the Applicant.

## THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

### UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL PERSONAL INFORMATION

42. In the EBC Final Report,

Investigators concluded that the Subject obtained the Reporter's marital status (i.e., married to a man) and sexual orientation from the Reporter's job application on July 29, 2014, based on the fact that: (i) the Reporter disclosed that he was married to [...] on his job application; (ii) the Reporter did not disclose his sexual orientation to the Subject; (iii) [...] stated that they did not disclose the reporter's sexual orientation or sex of the Reporter's spouse; (iv) the Subject admitted that she became aware of the fact that the Reporter was homosexual and married to a man after reading his job application; (v) the Subject logged into *myJobWorld* on July 29, 2014 and her activity was 'Query Applications' [...]; (vi) the Subject logged into *myJobWorld* (on July 29, 2014) after the Reporter submitted his application and before [...] informed the Reporter of her conversation with [...]; and (vii) witness statements corroborate that the Subject made statements to the effect that the Reporter was married to a man.

EBC concluded that Ms. A disclosed to another staff member that the Applicant was married to a man. In doing so, she also disclosed the Applicant's sexual orientation, which she learned through his job application.

43. The Tribunal must consider whether the disclosed information, i.e. the Applicant's marriage to a man, is confidential information and whether its unauthorized disclosure is prohibited. The distinctive feature in this case is that the disclosure of the Applicant's marital status is a *de facto* disclosure of the Applicant's sexual orientation. While one's sexual orientation should not have to be a secret, it is significant that sexual orientation is one of the explicitly prohibited grounds of discrimination. Accordingly, such information should be treated more sensitively precisely because of the risk of discrimination.

44. The Applicant's addition to his own surname of his spouse's surname suggests a disposition to proclaim rather than to conceal their relationship. However, there is so much variation among different cultural traditions as to the use of double-barreled or hyphenated surnames that having such a surname is not necessarily indicative of marital status. Even if one were to assume that the Applicant's hyphenated surname indicates that he is married, without knowing the first name of his spouse, there would be no way to identify the Applicant's sexual orientation since his spouse's surname is a fairly common one.

45. Staff Rule 2.01, paragraph 1.03 defines "Staff Records" as "a staff member's biographical, work history and leave and attendance data maintained by the Human Resources Vice Presidency and the staff member's benefits, pension, payroll and tax files" and "Personnel Information" as "all documents and information maintained by the Bank Group pertaining to a staff member, including but not limited to Staff Records, Pre-Appointment Records, and Working Papers."

46. Staff Rule 2.01, paragraphs 2.01 and 2.02 state:

Personnel Information shall not be disclosed by the Bank Group, except as provided in this Rule.

Staff members who engage in unauthorized review or disclosure of Personnel Information in a manner not permitted under this Rule are subject to action under the provisions of Staff Rule 3.00.

47. Staff Rule 3.00, paragraph 6.01(a) states that misconduct under the Staff Rules includes the “[f]ailure to observe obligations relating to health and safety, personnel information, [and] disclosure of non-public information.”

48. Staff Rule 2.01, paragraph 3.01 addresses who may have access to staff records within the World Bank Group. The rule restricts such access in the following ways: (i) staff members may examine their own records “in the presence of the staff member’s manager or supervisor, a member of the staff member’s Human Resources Team, the Ombudsman, or a staff member of the Human Resources Operations”; (ii) supervisors have access to the staff records of the staff members who report to them; (iii) selecting officials have access to certain limited records of staff members “who are candidates for vacancies in the selecting officials’ unit”; and (iv) if they need to consult staff records in the performance of their assigned duties, other officials in the World Bank Group have access to the records relevant to their work.

49. It is material that Ms. A learned about the Applicant’s marital status and sexual orientation through his job application. Under Staff Rule 2.01, she was allowed to have access to this information either as the Applicant’s manager or as “a selecting official.” However, the staff member to whom she disclosed this information was not entitled to have access to the Applicant’s records or personnel information under Staff Rule 2.01.

50. Moreover, under Principle 2.1 of the Principles of Staff Employment, Ms. A, as a manager and a representative of the World Bank Group, had an obligation to “respect the personal privacy of staff members and protect the confidentiality of personal information about them.” When she disclosed personal information about the Applicant, i.e., his marital status and sexual orientation, to staff members outside the unit who had no need to know the information under the Staff Rules, she failed in her responsibility to respect the Applicant’s privacy and protect the confidentiality of his personal information.

51. The IFC maintains that being married is a matter of public record, whereas the Applicant claims that he comes from a legal environment which has strict data protection laws. The Tribunal does not look to the privacy laws of any particular national regime. It also observes that Ms. A did

not obtain the information about the Applicant through the public record. If she had, the situation might be different. Rather, the Tribunal takes note of the IFC's own admission that "generally, the World Bank Group treats the marital status of a staff member, and the identity and contact information of the staff member's spouse, as confidential," subject to certain exceptions. Having stated that marital information is confidential and subject to disclosure only in limited circumstances which do not exist here, the Tribunal finds that the IFC's treatment of the information as "a matter of public record" is unavailing.

52. As stated earlier, Ms. A obtained the information from the Applicant's job application and not through a public records search. When the Applicant completed the job application, he had a reasonable expectation that the information in it would be kept confidential by those who had access to it.

53. The IFC also argues that since the World Bank Group does not discriminate on the basis of sexual orientation, Ms. A was not on notice that the Applicant's particular marital status and sexual orientation constituted information that was more protected than if he were married to a woman. Although Ms. A's disclosure would have been a violation of his privacy even if he were married to a woman, for LGBT staff members, as a practical matter, their marital status and sexual orientation may be considered as even more of a personal, private matter. The Applicant states that he did not disclose his sexual orientation to staff members in his unit or to his manager before he applied for the position. Even in an organization that strives not to discriminate on the basis of sexual orientation, LGBT staff members may have greater concerns than heterosexual staff members with regard to the privacy and confidentiality of certain information about them. The Applicant contends, for example, that this information was a serious threat for his spouse who worked in a country where homosexuality is a criminal offense. Therefore, it would have been prudent for Ms. A to be even more careful with the Applicant's information so as not to expose him to potentially discriminatory comments or treatment from other staff members.

54. The Applicant claims that as a result of this disclosure, there was immediate and long-lasting harm to him and his spouse, namely, that they had to endure gossip and jokes about their

sexual orientation and had to endure a hostile working environment. The witnesses interviewed by EBC denied hearing any gossip about the Applicant's sexual orientation.

55. The Tribunal finds that the information improperly disclosed by Ms. A was confidential personal information. Therefore, the Tribunal concludes that the HRVP erred in considering that such action was not contrary to the Staff Rules and the Principles of Staff Employment.

DISCRIMINATION AND HARASSMENT BASED ON SEXUAL ORIENTATION AND RETALIATION FOR  
REPORTING TO EBC

56. The Tribunal has long established that decisions that are arbitrary, discriminatory, improperly motivated, carried out in violation of a fair and reasonable procedure, or which lack a reasonable and observable basis, constitute an abuse of discretion and will be set aside. *See Sekabaraga*, Decision No. 494 [2014], para. 30; *AK*, Decision No. 408 [2009], para. 41; *Desthuis-Francis*, Decision No. 315 [2004], para. 19; *Marshall*, Decision No. 226 [2000], para. 21; and *de Merode et al.*, Decision No. 1 [1981], para. 47.

57. Principle 2.1 of the Principles of Staff Employment provides that the Bank “shall not differentiate in an unjustifiable manner between individuals or groups within the staff.” Staff Rule 3.00, paragraph 6.01(e) makes clear that wrongful discrimination by Bank staff members including “on the basis of age, race, color, sex, sexual orientation, national origin, religion or creed” constitutes prohibited misconduct. Staff Rule 3.01, paragraph 4.01 states that supervisors’ treatment of staff shall not be influenced by “the race, nationality, sex, religion, political opinions or sexual orientation of the supervisor or the staff member.”

58. The Tribunal’s established practice regarding the burden of proof in cases of alleged discrimination was set out in *de Raet*, Decision No. 85 [1989], para. 57, as follows:

[I]t is not the obligation of the Bank to demonstrate that there has been no discrimination or abuse of power – not, that is, until an [a]pplicant has made out a *prima facie* case or has pointed to facts that suggest that the Bank is in some relevant way at fault. Then, of course, the burden shifts to the Bank to disprove the facts or to explain its conduct in some legally acceptable manner.



*See also Bertrand*, Decision No. 81 [1989]; *AI*, Decision No. 402 [2010]; and *Sekabaraga (No. 2)*, Decision No. 496 [2014].)

59. The Staff Rules and the Tribunal's prior jurisprudence also make clear that adverse actions or decisions that are taken against staff members must not be retaliatory. Specifically, Staff Rule 3.00, paragraph 7.06 states:

Retaliation by a staff member against any person who provides information regarding suspected misconduct, who cooperates or provides information in connection with a preliminary inquiry or investigation conducted under Staff Rule 8.01 or in connection with an initial review or subsequent procedures set forth in sections 8 [through] 10 of this Rule, or who uses the Conflict Resolution System, is expressly prohibited and shall result in proceedings under this Rule.

60. In *O*, Decision No. 337 [2005], para. 47, the Tribunal noted:

The burden lies with an applicant to establish facts which bring his or her claim within the definition of retaliation under the Staff Rules. An [a]pplicant bears the onus of establishing some factual basis to establish a direct link in motive between an alleged staff disclosure and an adverse action. A staff member's subjective feelings of unfair treatment must be matched with sufficient relevant facts to substantiate a claim of retaliation, which in essence is that the allegation of poor performance is a pretext to mask the improper motive.

61. In *AI*, Decision No. 402 [2010], para. 80, the Tribunal clarified: "The burden of proof in the case of alleged retaliation is no different from the burden of proof in the case of alleged discrimination."

*Examples of isolation and exclusion*

62. The Applicant claims that Ms. A's "anti-homosexual animus" was demonstrated in her comment to another staff member when discussing him and in her discrimination towards him and her creation of a hostile work environment. According to the Applicant, when Ms. A disclosed his marital status in July 2014, she added "who knows what else he is hiding," implying that he would not be suitable for the position. The record, which includes witness interviews, does not support this contention, and the evidence does not indicate that the discussion in question touched upon the recruitment process.

63. The Applicant claims that he was shunned in the office (i.e., Ms. A no longer accepted his lunch invitations, did not respond to his emails, kept conversations to a minimum) and was excluded from events such as a forum in November 2014, and that he was given fewer assignments. Linked to his decreased workload was the discriminatory application of the “30-day rule,” which applied only to him, and meant that he could only work on projects that were pending for longer than 30 days. The effect of this rule was to deprive him of work because projects were being reviewed on a timely basis. Finally, the Applicant claims that the non-renewal of his STC contract was discriminatory. He claims that Ms. A’s harassment and abuse increased, constituting retaliation, when Ms. A learned that he had reported her to EBC and Human Resources.

64. The Tribunal finds that there is no evidence to support the Applicant’s assertions that he was shunned by Ms. A or excluded in the office due to his sexual orientation. Any perceived preferential treatment of Ms. B may have been due to the existing relationship between Ms. A and Ms. B. Ms. C, another STC in the unit, told EBC investigators that she felt Ms. A treated her differently from Ms. B because Ms. A and Ms. B had a very close relationship. The picture that emerges is of Ms. B having a close, personal relationship with Ms. A, whereas the Applicant and Ms. C remained at a professional distance.

65. The Applicant also cited a specific instance of discrimination. He claims that the STCs were prohibited from attending a forum in November 2014, but in fact, Ms. B did attend. The record shows that all of the STCs were initially told the forum was only for staff so they could not attend; in this respect, they were treated equally. However, this decision was changed at the last minute when the STCs were approached and invited to attend parts of the forum, although the Applicant may have felt this was too late. While the Tribunal does not have information about how Ms. B came to attend the forum, there is evidence that Ms. C was only told on the second day of the forum (she was not at work on the first day of the forum) that she could attend the last session, if she wished. Again, while the Applicant may not have been treated as he had wished, there is insufficient evidence to conclude that he was treated worse than others in the same position or that his treatment was due to his sexual orientation.

*Work assignments*

66. The IFC relies on EBC's investigation, which found that the decrease in the Applicant's workload was due to conditions that predated Ms. A's discovery of his sexual orientation or report to EBC, and that the "30-day rule" was not created by Ms. A and was applied consistently to all STCs. The IFC claims that since the Applicant was paid for all of the days available under his STC contract, he was not penalized for allegedly not having enough work.

67. The Tribunal has examined the assignment of projects to consultants in the unit between April 2014 and June 2015. The record shows that the Applicant was assigned more projects by Ms. A than any other consultant in August, September, and October 2014, notably, substantially more projects in August 2014. This belies the Applicant's contention that as soon as Ms. A discovered he was gay, she discriminated against him and diverted work away from him.

68. If the Applicant's contention is correct that he was subjected to discrimination and retaliation in terms of work assignments, one would also expect a corresponding increase in the assignments given to the other consultants. While there is an increase in Ms. B's workload, there is no corresponding increase in the workload of Ms. C, the other STC in the unit, and this is confirmed by Ms. C's testimony that she was "working less." Although the Applicant may complain that one consultant was given preferential treatment, although not necessarily by Ms. A as the Tribunal will explain below, a preference for one consultant does not necessarily mean that the Applicant suffered discrimination and retaliation. The Tribunal rather finds that the Applicant and Ms. C were similarly situated, with Ms. C having even less work.

69. The record also shows that the increase in Ms. B's workload, as compared to the Applicant's, after January 2015, noting that the Applicant was on leave for most of December, was not due to Ms. A, but rather to another officer assigning Ms. B his projects to review. The evidence is that it was up to the discretion of each officer, and not Ms. A, to allocate projects directly to the consultants. There is also an example in the record, in September 2014, where Ms. A suggests to an officer to divide the projects among the three consultants and if one consultant is not available, to divide the projects between the remaining two. The Tribunal finds that there is no evidence to prove that Ms. A influenced the other officers to divert projects away from the Applicant.

70. Moreover, the Tribunal takes notice of the evidence of Ms. C, who told EBC investigators that generally the consultants' workload was less, as compared to previous years, due to the backlog being cleared and fewer missions by officers, which meant that they could review more policies and would assign less to the consultants. Ms. C also noted that she worked less in FY 2015 than in the previous fiscal year, and that the change in workload was noticeable in October, November, and December. The record shows that Ms. A assigned significantly less projects to STCs after November 2014.

71. Ms. C supports the Applicant's contention that Ms. A was giving policies to Ms. B that, in the past, had been given to the Applicant such as Spanish language policies, and that Ms. B was being assigned policies in foreign languages in which she did not have facility. While the witness' evidence supports the Applicant's claim that he was getting less work and there was a perception that Ms. B was getting more work, the Tribunal is not convinced that the change in the Applicant's workload was due to his sexual orientation or his report of Ms. A's conduct to EBC. As compared to previous fiscal years, and bearing in mind the addition of a third STC, it appears that there was less work generally and that another STC was similarly situated to the Applicant.

72. The Tribunal also finds that there is documentary evidence that contradicts the Applicant's claim that the 30-day rule was applied only to him since January 2015 and that Ms. A no longer gave work to him to discriminate and retaliate against him. For example, when the Applicant emailed colleagues in the unit on Friday, 31 October 2014 asking to be assigned projects, Ms. A responded to him on the same day that she had additional projects to give him on Monday. There is also evidence that as early as August 2014, as reflected in emails from Ms. A and another officer to the consultants, that the consultants' focus should be on reviewing projects over 30 days.

73. Regarding the Applicant's contention that some consultants were given projects to review that were less than 30 days old while the Applicant was given none by Ms. A, the Tribunal recalls that the allocation of projects was at the discretion of individual officers, although all staff in the unit were reminded periodically to ensure that reviews were done within 30 days and that consultants should be used to assist with the backlog. The record shows that, after January 2015,

all of the consultants, including the Applicant, were assigned projects that were less than 30 days old by different officers.

74. The Applicant argues that, after 21 November 2014, Ms. A stopped assigning any of her projects to the Applicant to discriminate and retaliate against him. The record shows that after 21 November 2014, with the exception of one of Ms. A's projects which the Applicant reviewed on his own initiative because he was copied on the initial email, Ms. A assigned work to the other consultants and did not assign any to the Applicant. The Tribunal finds that the Applicant has sufficiently demonstrated a link between his report about Ms. A to EBC and Human Resources and the absence of assignments from Ms. A after 21 November 2014. The IFC has explained that the allocation of work to STCs by individual officers depended on workload, availability, or other business-related factors. The Tribunal finds this explanation unconvincing.

75. The IFC has argued that the Applicant could not have suffered discrimination or retaliation because he was paid for all of the days available under his STC contract. The Tribunal rejects this contention. Discrimination and retaliation refer to a staff member's treatment and the workplace environment. Recognizing the intrinsic value of work, the Tribunal observes that it is possible to discriminate or retaliate against a staff member by withholding work and isolating him or her, even if there is no decrease in compensation.

#### *Non-selection*

76. The Applicant also contends that the selection process was discriminatory against him and favored Ms. B. He contends that Ms. A's negative assessment of him was based solely on his sexual orientation. He claims that Ms. B, but not other shortlisted candidates, was granted "multiple unfair privileges, coaching, written inside information, and advantages." He argues that he was treated differently from other candidates, for example, not undergoing a telephone interview, not being included in lunches with team members in the hiring unit, and receiving information about the interview and the identities of the panel members at the last moment.

77. The IFC claims that it always acted fairly towards the Applicant. Its defense with respect to ensuring the integrity of the selection process is that it constituted "a completely new, objective

and independent interview panel to again evaluate the qualifications of Applicant and other applicants for the remaining [...] position.” Ms. A was not part of the interview panel, and the panel members were chosen to be and to be seen as objective.

78. Although the Applicant’s non-selection claim is inadmissible, the Tribunal will examine the selection process to determine whether there was discrimination towards or retaliation against the Applicant.

79. The Applicant alleges discrimination during the process in the fall of 2014. The record shows that, as a result of the fall 2014 interviews, one candidate was clearly found suitable and recommended for one of the two positions, the other candidate was found not suitable, and the panels’ view on the remaining three candidates was inconclusive. The Tribunal finds that to the extent that no clear candidate emerged for the second position, it was appropriate to limit the fourth panel process to consideration of the Applicant’s candidacy and the other two candidates. The Tribunal is conscious that its review is limited to whether the Applicant was a victim of discrimination and retaliation in the selection process. Accordingly, the Tribunal will not examine the non-selection claim itself. *DJ*, (preliminary objection) Decision No. 536 [2016], para. 57.

80. In expressing these views to the Applicant at a meeting on 25 November 2014, the Director of Human Resources assured him that the views of the third panel, composed of Ms. A and two members of staff who reported directly to her, were not considered. The Tribunal finds that the constitution of the fourth panel addressed any concerns about the fairness of the selection process. Moreover, by displacing the recommendations of the other interview panels, the constitution of the fourth panel afforded the Applicant another opportunity to have his candidacy considered without the alleged bias of the first process.

81. The Applicant claims that the constitution of a fourth panel was “a sham designed to make the process appear to be more fair and yet to reach the same outcome.” He takes issue with the fourth panel process because the hiring manager was the unit’s Director, who had already approved the decision from the first hiring process, the interview panel was composed of managers at the GH level so no other grade levels or functions were represented except for a single HR

representative, two of the members of the panel had worked with the unit's Director, and one panel member had been selected and previously proposed by Ms. A.

82. As the Applicant's non-selection claim is inadmissible, the Tribunal will limit its review to determining whether the fourth panel process was discriminatory towards or retaliatory against the Applicant. The Tribunal finds that the Applicant has not claimed that any of the panel members knew about his sexual orientation, such that they would discriminate against him, nor has he claimed of any protected act for which the panel members would be motivated to retaliate against him. The Applicant seems to imply that there was a chain of improper influence from Ms. A to the unit's Director and ultimately to the panel members. The record shows that Ms. A was removed completely from the fourth panel's process, only being told that the panel had been constituted and the interviews would take place shortly, but not told of the identities of the panel members or when the interviews would take place. As for the unit's Director, the Tribunal finds that he acted appropriately as the hiring manager in his dealings with the fourth panel and accepted their recommendations without unduly influencing the panel members. The Tribunal concludes that the constitution of the fourth panel provided the Applicant the opportunity to have his candidacy considered fairly.

#### *Non-renewal*

83. Finally, the Applicant argues that the non-renewal of his STC contract was discriminatory and retaliatory. In response, the IFC contends that the non-renewal decision was based on legitimate business considerations, namely, the unit had hired two officers and no longer had a need for STCs. The IFC also states that an "STC appointment is by its nature ambiguous in its duration and stability, and does not guarantee continuous employment."

84. The Applicant received notice that his contract would not be renewed on 4 June 2015. He argues that he received this notification three weeks after EBC told him that it expected to send the Final Report to the HRVP "in the next week or so." The Applicant contends that this means that Ms. A had either already received the Draft Report or would receive it soon. He argues that since he received notice that his appointment would not be renewed soon after Ms. A received the Draft Report, the non-renewal of his appointment was an act of retaliation.

85. However, the facts do not follow the scheduled timeline that EBC had initially planned. The record shows that EBC sent the Draft Report to Ms. A on 8 July 2015 and the Final Report to the HRVP on 29 July 2015. Since the Applicant was notified one month before Ms. A received the Draft Report that his appointment would not be renewed, the non-renewal decision could not have been an act of retaliation that Ms. A committed after she received the Draft Report.

86. The Applicant also alleges that the non-renewal decision was discriminatory. He claims that “he had always been re-contracted before without question [...] his work was exemplary, and [...] his language skills were invaluable to his unit [...] The only thing that counted against him was his sexual orientation.”

87. In response, the IFC contends that the non-renewal decision was based on legitimate business needs, namely, that by hiring two additional officers, the unit no longer had a need for STCs. The contracts of the Applicant and the only other STC in the unit were not renewed, and both were separated on 30 June 2015 for identical reasons.

88. Therefore, the Tribunal finds that the IFC has provided a non-discriminatory and legitimate business rationale for its decision not to renew the Applicant’s contract. The Tribunal considers that the Applicant has not established that the decision not to renew his STC contract was discriminatory or retaliatory.

#### DUTY TO PROTECT DURING THE EBC INVESTIGATION

89. The Applicant contends that his appeals for protection were ignored by various offices in the World Bank Group. The IFC states that it replied to the Applicant. The record shows that the IFC did respond to the Applicant’s complaints by modifying the selection process to exclude Ms. A, and subjecting the candidates, including the Applicant, to a fourth interview panel. The record also shows that the Applicant met with and exchanged emails with Human Resources regarding his claims of discrimination, harassment, and retaliation. It is not the case that the Applicant’s pleas were met with total silence by the IFC, although the Applicant may not be satisfied with the IFC’s response or lack of action thereon.



90. The Applicant suggests that the IFC should have placed Ms. A on paid administrative leave pending the outcome of the EBC investigation. He claims this would have protected him from harassment, discrimination, and retaliation.

91. The Tribunal takes note of the Staff Association's *amicus curiae* brief criticizing the World Bank Group's failure to protect the Applicant, but observes that the Staff Association does not suggest what measures of protection could have been taken in this case.

92. The decision to place a staff member on administrative leave pending an investigation is always an exercise of managerial discretion. There is no requirement that the IFC must have conclusive evidence of misconduct before placing a staff member on administrative leave. *AE*, Decision No. 392 [2009], para. 28.

93. The jurisprudence on administrative leave demonstrates that the IFC has generally placed staff on administrative leave where doing so would be in the IFC's interests or where the staff member's continued presence would otherwise be disruptive to the IFC's operations. *See AE*, Decision No. 392 [2009]; *AF*, Decision No. 393 [2009]; *Yoon (Nos. 13, 14, 16, 17, & 18)*, Decision No. 447 [2013]; and *Ismail*, Decision No. 305 [2003]. While the IFC has an interest in ensuring that its staff is protected from discrimination and retaliation, the IFC does not usually place a staff member on administrative leave to protect the interests of an individual staff member, on the basis of unproven allegations and where personal security is not an issue.

94. The Tribunal accepts that, in trying to balance the rights of the Applicant and Ms. A, it was reasonable in the circumstances of this case for the IFC to await the outcome of the EBC investigation process before deciding whether or not to take action against Ms. A. The Tribunal notes that other than suggesting that Ms. A should have been placed on administrative leave, the Applicant does not contend that any other arrangements would have been feasible to protect him in the workplace, for example, by having him report to another supervisor.

95. The Applicant also contends that the IFC failed to protect him during the recruitment process. The Tribunal finds that there is no evidence to support the Applicant's contention that the

fourth panel was “a sham designed to make the process appear to be more fair and yet to reach the same outcome.” The record shows, instead, that the IFC did exclude Ms. A from discussions regarding the Applicant’s candidacy after November 2014. As discussed above, the Tribunal finds that the fourth panel process was not discriminatory or retaliatory against the Applicant and was an appropriate response to the Applicant’s complaints.

96. The Tribunal finds that while the Applicant was dissatisfied with the IFC’s response to his pleas for protection, the IFC acted reasonably and tried to address the Applicant’s concerns, notably by introducing additional steps in the recruitment process, to ensure that the Applicant’s candidacy would be given fair consideration.

#### TAMPERING WITH THE APPLICANT’S EMAIL

97. The Applicant contends that, after his departure from the IFC, his email account was accessed, or an attempt was made to access his account, without his knowledge or consent. This contention is solely based on the delay in closing his email account after the expiry of his contract.

98. The IFC admits to the delay. However, the EBC investigation, which included findings from ITS, concluded that “no one requested or authorized access to [the Applicant’s] account at any time after 30 June 2015.” As set out in the EBC Case Closure Memorandum, ITS explained that

once the Complainant’s Outlook account had been disabled on July 3, 2015, no one could have accessed his emails regardless of the fact that his Computer Login, Outlook email and Notes Profile were deleted only on August 7, 2015. ITS could not provide an explanation as to why the Complainant’s accounts were deleted only on August 7, 2015, however ITS emphasized that no one could have or did access his email accounts after June 30, 2015.

99. The Tribunal observes that the IFC is unable to explain why it took over one month to close the Applicant’s accounts. However, there is no reason to doubt the veracity of the information shared by ITS confirming that no one had access to the Applicant’s accounts, and the Applicant has not alleged any improper motive vis-à-vis ITS. As the Tribunal held in *Lysy*, Decision No. 211

[1999], para. 71, “[a] finding of improper motivation cannot be made without clear evidence.” In this case, there is no such evidence in the record.

100. The IFC also contends that the emails belong to the IFC and not the Applicant since the email system is an institutional asset. The Tribunal holds that this issue is moot since there is no evidence to suggest that anyone accessed the Applicant’s email after the end of his contract.

#### ADEQUACY OF EBC’S INVESTIGATION

101. The Tribunal will consider whether there were inadequacies in EBC’s investigation and if so, whether they amount to bad faith and infringed the Applicant’s rights. Concerning its review of the investigative process, the Tribunal stated in *K*, Decision No. 352 [2006], para. 20:

[The Tribunal’s] assessment of the Bank’s conduct at the prior stage, i.e. the investigative process, is limited to verifying that the requirements of due process have been met.

102. Regarding the length of EBC’s investigation, the Tribunal has stated that it “has no authority to micromanage the activity of INT” (*G*, Decision No. 340 [2005], para. 73) and that “a lengthy investigation is [not] *per se* an interference with due process if the investigation is reasonably proportionate to the complexity of the facts of the case.” *L*, Decision No. 353 [2006], para. 31.

103. In this case, the Applicant’s complaint about the disclosure of confidential information was first made to EBC on 1 October 2014; interviews were conducted between 16 October 2014 and 10 March 2015. The Applicant subsequently made claims regarding discrimination, harassment, and retaliation. In April 2015, investigators received and reviewed emails from ITS about Ms. A’s access to *myJobWorld*, the World Bank Group’s online job application system. Ms. A was provided with a draft report on 8 July 2015, and on 21 July 2015, she informed EBC that she would not be providing comments. The EBC report was sent to the HRVP on 29 July 2015, approximately ten months after the initial complaint.

104. The Tribunal notes that the investigation substantiated only the Applicant's claim as to disclosure of his confidential information, while there was no evidence to substantiate his other claims. The Applicant has not demonstrated that he has suffered harm as a result of the delay in investigation.

105. The Applicant also contends that the investigation was inadequate because EBC only interviewed two witnesses regarding his discrimination and retaliation claims, and no "electronic searches" were conducted into these claims. He also claims that EBC ignored or misrepresented evidence, and did not look into the application of the "30-day rule" or the Applicant's charge of abuses in the selection process at the first stage of the process.

106. The Tribunal observes that two witnesses who worked with the Applicant and Ms. A and would have had first-hand knowledge specifically denied observing any discrimination and retaliation. Two other witnesses also contradicted the Applicant's claim that Ms. A's remarks revealed homophobic animus towards him. There is also evidence that EBC considered that the Applicant's claims about abuses in the hiring process at the first stage of the selection process, as EBC extensively questioned one witness who was involved in the process.

107. The Tribunal finds that EBC's investigation into the Applicant's claims of discrimination, harassment, and retaliation was reasonable and complied with the requirements of due process. The Tribunal acknowledges that there are always many avenues for investigation and, in this case, EBC exercised its discretion properly. Although the Applicant is not satisfied with the outcome of EBC's investigation, the Tribunal does not find reason to question EBC's conduct of the investigation in this case.

#### CONFLICT OF INTEREST

108. The Applicant contends that the HRVP had a conflict of interest because the Applicant had specifically charged him with a failure to protect him pending the EBC investigation so it was in the HRVP's interests to find that Ms. A had not engaged in misconduct.

109. The Tribunal rejects the Applicant's reasoning, as it would mean that by accusing every possible decision maker of a failure to protect, a staff member could preclude a decision being taken because everyone would have a conflict of interest. A conflict of interest does not arise merely because the Applicant claims that the HRVP failed to protect him during an EBC investigation. The Tribunal finds that the circumstances of the case do not show that there was a conflict of interest that would have required the HRVP to recuse himself from deciding Ms. A's case.

### CONCLUSION

110. The Tribunal finds that the information improperly disclosed by Ms. A was confidential personal information. Therefore, the Tribunal concludes that the HRVP erred in considering that such action was not contrary to the Staff Rules and the Principles of Staff Employment.

111. The Tribunal finds that the Applicant has not demonstrated that he suffered discrimination or harassment on the basis of his sexual orientation.

112. The Tribunal concludes that the Applicant has demonstrated a sufficient link between his report of Ms. A's alleged harassment and discrimination to Human Resources and EBC, and an adverse action, namely, the absence of work assignments from Ms. A after 21 November 2014.

113. The Tribunal concludes that the IFC acted reasonably to protect the Applicant during the EBC investigation, and that the placement of Ms. A on paid administrative leave pending investigation, which is the protection the Applicant maintains should have been instituted, would not have been reasonable in the circumstances. The Tribunal acknowledges the Staff Association's *amicus curiae* brief and the Applicant's submissions that reflect a frustration that the IFC would not take action before the conclusion of the EBC investigation. The Tribunal takes this opportunity to remind EBC of the importance of a timely investigation in these types of cases.

114. The Tribunal finds that the record does not show that the Applicant's email account was tampered with after the end of his contract.

115. The Tribunal has reviewed the EBC investigation and is satisfied that EBC conducted its investigation in good faith and with respect for due process.

116. The Tribunal concludes that there was no conflict of interest in the specific circumstances of this case when the HRVP decided that Ms. A had not engaged in misconduct.

#### DECISION

- (1) The IFC shall pay the Applicant compensation in the amount of the salary due for 150 days' employment (the maximum number of days an STC is allowed to work in a fiscal year) at his most recent STC rate;
- (2) The IFC shall pay the Applicant the amount of \$34,821.41 in legal fees and costs; and
- (3) All other claims are dismissed.

/S/ Stephen M. Schwebel

---

Stephen M. Schwebel

President

/S/Olufemi Elias

---

Olufemi Elias

Executive Secretary

At Washington, D.C., 4 November 2016