



**World Bank Administrative Tribunal**

**2008**

**No. 382**

**H (No. 3),  
Applicant**

**v.**

**International Bank for Reconstruction  
and Development,  
Respondent**

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

**H (No. 3),  
Applicant**

**v.**

**International Bank for Reconstruction  
and Development,  
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 Jan Paulsson, President, and Judges Sarah Christie, Stephen M. Schwebel and Francis M. Ssekandi. The Applicant filed his present Application on 14 May 2007. In its jurisdictional ruling, *H (No. 2)*, Decision No. 375 [2007], the Tribunal concluded that

with respect to the application of 14 May 2007, the Tribunal has jurisdiction to consider the merits of the Applicant's claim arising from the Bank's decision not to disclose to the Applicant the letters written to the Bank by his ex-wife's attorney.

**FACTUAL BACKGROUND**

2. The Applicant joined the Bank in 1985 and retired in 2004. On 3 March 2003, his wife ("Mrs. H") applied to a Maryland court for an order of legal separation and ancillary relief from the Applicant. The Maryland Court accepted jurisdiction because the couple had resided in Maryland for nearly 20 years and owned real property there.

3. On 30 June 2003, the Applicant sought to initiate divorce proceedings under the laws of Pakistan at the Pakistani Embassy in Washington, DC. There he signed a "Divorce Deed," which *inter alia* states that "I ... hereby divorce [Mrs. H] by pronouncing upon her Divorce/Talaq three times irrevocably and by severing all connections of husband and wife with her forever and for good." The Applicant also drew a check in favor of Mrs. H in the amount of \$2,500 as "Maher in full and final settlement." He sent the Divorce Deed and

the check to Mrs. H by private process server on 23 July 2003. According to the Applicant, under the laws of Pakistan the divorce became final 90 days from 23 July 2003.

4. On 24 July 2003, Mrs. H's attorney wrote to the Bank's Chief Counsel, Legal Department, stating that Mrs. H had filed for a limited divorce in the Maryland Court and that subsequently the Applicant had initiated divorce proceedings at the Pakistani Embassy in Washington in an attempt "to circumvent the Maryland proceedings." The attorney, in essence, asked the Bank not to take any action with regard to Mrs. H's spousal benefits based on a divorce decree that might be obtained by the Applicant in Pakistan, and to wait until the proceedings before the Maryland Court were concluded. On 22 August 2003, Mrs. H's attorney's office sent copies of legal documents to the Chief Counsel in support of this request.

5. On 12 December 2003, the Applicant amended his Bank records, noting that his spouse was to be prohibited from acquiring any information about his salary or benefits. Under Staff Rule 2.01 (Confidentiality of Personnel Information), paragraph 5.01 (i), the Bank provides such information to spouses unless the staff member prohibits disclosure of such information in writing.

6. On 26 February 2004, the Applicant's divorce under the laws of Pakistan was confirmed by the relevant authority in Pakistan through a "Confirmation Certificate of Divorce."

7. In March 2004, the Applicant presented the Pakistani divorce decree to the Bank's Human Resources Department ("HR") and requested HR to "remove my ex-wife as my dependent in my records," and to "inform the State Department immediately that I am no

longer married to my ex-wife and therefore her name should be removed from my G-4 visa status.”

8. In the spring of 2004, Mrs. H’s attorney telephoned the Bank’s Chief Counsel to inform him that the Applicant had asked the Maryland Court to dismiss Mrs. H’s divorce complaint on the basis that the parties had already been divorced under the laws of Pakistan before the Maryland divorce proceedings had been properly initiated, but the Maryland Court had declined to give effect to the Pakistani proceedings and had continued to exercise jurisdiction. Mrs. H’s attorney asked the Bank to continue to treat Mrs. H as the Applicant’s spouse for the purposes of medical insurance and immigration status until the Maryland Court had completed its adjudication of the divorce proceedings. On 30 April 2004, the attorney confirmed her conversation with the Chief Counsel in writing.

9. The office of the Chief Counsel later informed HR about the letter of 30 April 2004 and the fact that Mrs. H was disputing the validity of the Pakistani divorce decree. According to the Bank, none of the letters from Mrs. H’s attorney was actually forwarded to HR.

10. On 19 May 2004, HR advised the Applicant by e-mail that the Bank had been notified by Mrs. H’s attorney that the status of his divorce was in dispute. In the e-mail an HR manager wrote:

The Bank has been notified by [Mrs. H’s attorney], that you filed a motion with the Circuit Court in ... Maryland, to dismiss divorce proceedings that were initiated there by [Mrs. H] in ... 2003. At issue was whether your divorce was already granted under the laws of Pakistan. We understand that on April 26, 2004, the Court, after reviewing the pleadings submitted by both parties and hearing oral arguments, ruled that it would not dismiss the proceedings, which are still ongoing. [Mrs. H’s attorney’s] position is that the divorce is not final, and that [Mrs. H] should be considered the spouse for purposes of Bank Group benefits, principally coverage under the Medical Insurance Plan.

The Bank is not taking a decision at this time on whether the laws of Pakistan or Maryland would apply to determine your family status. However, in light of the vital importance of health insurance coverage and visa status, and the existence of a good faith legal dispute as to current marriage status, the Bank has decided to continue treating [Mrs. H] as the spouse pending further developments.

11. On 11 April 2005, almost a year later, the Applicant wrote to HR noting that HR had advised him in September of 2004 that it had exchanged information with Mrs. H's attorney. The Applicant requested a copy of all information that HR had provided to and received from Mrs. H's attorney.

12. On 12 April 2005, HR replied to the Applicant by e-mail and stated that it could not comply with the Applicant's request. HR explained that the Bank's policy is to accord spouses privacy in their communications with the Bank, to the effect of prohibiting it from divulging its contacts with a spouse, or a spouse's representative, to the staff member without authorization. HR also pointed out that staff members enjoy similar protection, in that the Bank does not divulge communications between a staff member and the Bank to a staff member's spouse unless the staff member permits it to do so. In the e-mail of 12 April 2005, an HR manager wrote to the Applicant:

I refer to your request ... to receive copies of "all information provided to [Mrs. H's attorney] and received from her." While such an exchange may not be privileged in the definition of client/lawyer privilege, such correspondence becomes part of the Bank's archives and as such becomes inviolable. Archive inviolability is one of the Bank's immunities as provided for in the Bank's Articles of Agreement.

Of course, this dynamic works two ways, and the same logic applies to our correspondence with you: we cannot share that with your ex-wife or your ex-wife's attorney.

Thus, sharing information that we sent to [Mrs. H's attorney] becomes an issue between you and [Mrs. H's attorney], as to whether or not she wants to copy you on any prior correspondence.

...

In addition, from the Bank's perspective, the issues are a) Staff Rule 2.01 with regard to confidentiality/disclosure of a staff member's information, and b) general privacy concerns. In this respect, the above perspective does not absolve us of our obligation to uphold Staff Rule 2.01 and to comply with any staff member's desire to block access by a spouse to his other personnel, pension and benefits information. I can reassure you that your wishes concerning information disclosure to your ex-wife and her lawyer were (and will be) honored by the Bank in all cases. We have consistently complied with Staff Rule 2.01 with regard to confidential information about you and your employment with the Bank and have not disclosed any confidential information without your authorization to [Mrs. H's attorney], your ex-spouse, or anyone else.

Thus, I cannot comply with your request .... Active or former staff do not have any rights of disclosure regarding our dialogue with third parties such as ex-spouses' attorneys, even on cases that concern them directly. Every day we deal with spouses, ex-spouses and attorneys/advocates for spouses and ex-spouses. We never divulge information about these conversations to staff unless the spouse or ex-spouse authorizes us to do so. We simply ensure that we uphold the staff member's wishes with regard to access to personnel information as outlined in SR 2.01.

13. On 25 April 2005, the Applicant wrote to HR alleging that the Bank had improperly disclosed to Mrs. H's attorney a document relating to an emergency loan that he had requested from the Bank in March 2004 ("Emergency Loan Document"). He questioned whether, in the light of the fact that the Bank had communicated the Emergency Loan Document to Mrs. H's attorney, the Bank had indeed complied with Staff Rule 2.01. He also queried: "If this document has been communicated to [Mrs. H's attorney], what other documents/information about me has been exchanged by [HR] without my knowledge?" The Applicant asserted that the "transfer of confidential information" was illegal and he reiterated his earlier request to receive copies of all information provided to Mrs. H's attorney or received from her.

*The Proceedings before the Appeals Committee*

14. On 25 July 2005, the Applicant filed a statement of appeal with the Appeals Committee. His central challenge was the HR decision of 12 April 2005 to deny the

Applicant's request to receive copies of all information exchanged between the Bank and Mrs. H's attorney. The Applicant also alleged that the Bank improperly disclosed the Emergency Loan Document to Mrs. H's attorney.

15. During the proceedings before the Appeals Committee, the Applicant filed a request that the Bank disclose its communications with Mrs. H's attorney. In response to this document request, the Director, Operations, HR, wrote a memorandum to the Appeals Committee, dated 25 April 2006, stating that the Bank had received correspondence from Mrs. H's attorney but would produce the correspondence only for *in camera* review by the Appeals Committee. According to the Bank, even though there was no specific information in them that the Bank was trying to protect, HR believed that it was important to adhere to its policy of not sharing communications from spouses with the staff member, unless it had been authorized to do so, or the information in those communications would be used in a manner that would materially affect the staff member.

16. According to the Bank, the Applicant received a copy of the memorandum of 25 April 2006 either in late April or early May 2006. In the memorandum of 25 April 2006, the HR Director wrote as follows:

While conducting a search in response to this document request, the Respondent discovered correspondence from [the attorney for Mrs. H] to [the Chief Counsel, Legal Department]. The general substance of that correspondence was discussed in an email from [the HR manager] to the [Applicant], dated May 19, 2004.

17. The Appeals Committee conducted a hearing on 14 September 2006, and concluded that the Bank's decision not to disclose the letters from Mrs. H's attorney to the Applicant was reasonable. The Committee found no evidence that showed that the Bank disclosed any confidential information about the Applicant to Mrs. H's attorney. With regard to the Emergency Loan Document, the Committee noted that the evidence

suggested that the Applicant himself, or his divorce attorney, had provided the document to Mrs. H's attorney during the Maryland Court proceedings. It did not find that the Bank had furnished any document relating to the emergency loan. The Committee recommended that all of the Applicant's requests be denied.

*The Application to the Tribunal*

18. The Applicant petitioned the Tribunal on 14 May 2007 for an order that the Bank produce correspondence to and from Mrs. H's attorney.

19. According to the Bank, by May 2007 the Maryland Court had granted Mrs. H a divorce and divided the couple's marital property. Although the Applicant appealed the Maryland Court's decision, the contentiousness that marked the earlier stages of the divorce proceedings appeared to have abated. Important matters like Mrs. H's immigration status and her medical insurance had been resolved. Furthermore, the Applicant's and Mrs. H's connection with the Bank was largely severed since he had retired from the Bank and she was no longer a G-4 spouse. The only outstanding issue between the parties that involved the Bank was the Applicant's pension. The Bank adds that its concerns about protecting Mrs. H's confidentiality and becoming unduly involved in the adversarial divorce were significantly reduced. The Bank thus asked Mrs. H's attorney whether the attorney would authorize disclosure of her letters to the Applicant. The attorney authorized disclosure and the letters were provided to the Applicant in August 2007.

20. The letters in question are as follows:

- (i) a letter of 24 July 2003 informing the Bank's Chief Counsel that Mrs. H had filed for a limited divorce in the Maryland Court, and in essence requesting the Bank not to take any action with regard to Mrs. H's spousal benefits until



the proceedings before the Maryland Court were concluded. The letter was accompanied by certain documents that the Applicant and Mrs. H had filed in the Maryland Court;

- (ii) a letter of 22 August 2003 providing legal authorities to the Bank's Chief Counsel in support of the attorney's request of 24 July 2003, namely copies of certain provisions of the Maryland Code and a 2001 judgment of the Administrative Tribunal of the International Monetary Fund; and
- (iii) a letter of 30 April 2004 informing the Bank's Chief Counsel that the Applicant had asked the Maryland Court to dismiss Mrs. H's application for a divorce, but the Maryland Court had determined that it was not required to give effect to the Pakistani proceedings and had continued to exercise jurisdiction. The letter was accompanied by certain documents that the Applicant and Mrs. H had filed in the Maryland Court, including a copy of the Maryland Court's order denying the Applicant's request to give effect to the Pakistani divorce decree.

#### THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

- 21. The question before the Tribunal is whether, by not sharing the letters from Mrs. H's attorney with the Applicant until August 2007, the Bank abused its discretion.
- 22. The essence of the Applicant's claim is that the Bank's decision not to disclose to him the letters from Mrs. H's attorney to the Bank was arbitrary and unfair. The Applicant invokes Principle 2.1 of the Principles of Staff Employment, which states that the Bank "shall at all times act with fairness and impartiality and shall follow a proper process in their relations with staff members."

23. The Bank argues that its decision was based on a policy as articulated below:

The Bank has a policy of not informing the staff member about communications from a spouse regarding benefits and domestic matters, and *vice versa*, unless: (1) the staff member or spouse authorizes disclosure to the other, or (2) the Bank needs to take an action, based on the information provided by the staff member or the spouse, that materially affects the other person. This policy is unwritten, but is applied consistently in domestic dispute situations. The purpose of the policy is two-fold. It protects each person's privacy to the extent possible, and allows the Bank to provide appropriate assistance to both parties without becoming unduly involved in underlying domestic disputes. It also preserves the Bank's ability to communicate with spouses who may find themselves in difficult or abusive domestic situations, and fear retaliation from the staff member for contacting the Bank. Bank spouses with G-4 visas have reported feeling particularly vulnerable because the staff member controls their and their children's immigration status. This has an impact on the spouse's ability to live and work in the United States, and the children's ability to attend schools in the country. The staff members also control the spouse's access to information about important benefits such as medical insurance coverage and pension rights. The policy permits the Bank to provide *general* information to spouses in these situations, without having to disclose the spouse's inquiry to the staff member. *Specific* information about the staff members' salary and benefits can also be disclosed, unless the staff member explicitly prohibits HR from providing access to a spouse. The policy also permits sharing of information where the Bank needs to make a determination that could affect the parties in an adverse manner, so each person can present arguments in support of his or her position. [Emphasis in the original.]

24. Under the Tribunal's jurisprudence, the Bank's decision not to share the letters with the Applicant could be considered arbitrary if that decision lacks an observable and reasonable basis. *Desthuis-Francis*, Decision No. 315 [2004], paras. 23, 26. In this case, the Tribunal is satisfied that the Bank's practice, although not crystallized in a formal policy, has a reasonable basis.

25. The next question is whether the Bank followed this practice in an unfair manner in its dealings with the Applicant. He complains that the Bank kept the letters in "secret files on him" and did not inform him of their existence until he discovered this during the

Appeals Committee hearing of 14 September 2006. He seeks compensation for pain and stress and for the damage he alleges was caused to him in his divorce proceedings.

26. The Bank submits that consistently with its practice it did not share with the Applicant the correspondence from Mrs. H's attorney because the Bank was not using any information contained in the correspondence to make any determinations adverse to the Applicant.

27. The letters in question are part of the record before the Tribunal. In essence, the letters put the Bank on notice that Mrs. H was contesting the validity of the Pakistani divorce decree, and asked the Bank not to terminate her medical insurance or G-4 visa until the conclusion of the litigation pending before the Maryland Court. When the Applicant asked the Bank to terminate Mrs. H's benefits in March 2004, HR advised him on 19 May 2004 of his spouse's request and informed him that the Bank would maintain Mrs. H's benefits and visa privileges until the parties' matrimonial dispute had been determined by the Maryland Court. On the face of it, the information was general; there was nothing in the documents that was adverse to the Applicant's interests of which he was not already aware. The Applicant has tendered no evidence that the Bank's notification of 19 May 2004 had any adverse impact on him.

28. The Applicant's claim that the Bank did not inform him about the existence of the letters until he found out at the Appeals Committee hearing of 14 September 2006 is not supported by the record. As seen above, on 19 May 2004, HR informed the Applicant about the substance of the correspondence from the Applicant's ex-wife's attorney. The Tribunal confirmed this in its jurisdictional ruling in *H (No. 2)*, Decision No. 375 [2007], para. 28: "The 19 May 2004 e-mail from [HR] to the Applicant should already have put

the Applicant on notice of the existence of communications from his former spouse to the Bank as well as of their subject matter.” Considering that the Bank informed the Applicant about the substance of the correspondence from the attorney as early as 19 May 2004, and in view of the fact that the Bank did not take any decision in response to the correspondence from the attorney that adversely affected the Applicant, the Tribunal concludes that the Bank’s decision not to provide the Applicant with the underlying correspondence from the attorney was, in accordance with its practice, justifiable.

29. The Applicant next complains that the Bank acted inconsistently because in August 2006 it shared his confidential communication to the Bank’s Pension Administration Division (“Pension Administration”) with his former spouse and her attorney, without his permission. The circumstances relating to this claim are that on 30 June 2006, Mrs. H’s attorney presented to the Bank’s Staff Retirement Plan (“Plan”) an order from the Maryland Court, which required the Applicant to pay Mrs. H monthly spousal support from his Bank pension. Section 5.1(c) of the Plan authorizes payment of support to a retiree’s former spouse if the retiree is legally obligated to make such payments by a final court order. On 26 July 2006, Pension Administration notified Mrs. H and the Applicant that payments would be made from his pension in accordance with the Court Order. On 21 August 2006, the Applicant wrote a letter to Pension Administration challenging the validity of the Maryland Court Order; he urged the Bank to give effect to the Pakistani divorce that did not grant any portion of the Applicant’s pension to Mrs. H. The Applicant stated that he had appealed the decision of the Maryland Court to apply the laws of Maryland to the dissolution of his marriage. He asked the Bank not to make any payments to Mrs. H until the appeal process was completed. On 31 August 2006, the Bank

forwarded this letter of 21 August 2006 and its attachment to Mrs. H's attorney. In the Applicant's view, by sharing his August 2006 communication with Mrs. H's attorney, the Bank has acted inconsistently.

30. The Bank explains its actions in the following manner:

In cases such as this one, where pension benefits are at stake and the parties disagree about payment of those benefits, the Bank has a practice of informing both parties of the arguments made by the other party in an effort to be neutral, transparent and fair to the staff member and the spouse. As a result, on August 31, 2006, [the Bank] forwarded a copy of the Applicant's August 21, 2006 letter to [Mrs. H's attorney] in order to provide Mrs. [H] an opportunity to respond to his arguments. On September 7, 2006, [Mrs. H's attorney] wrote to [Pension Administration] presenting Mrs. [H's] rebuttal to the Applicant's letter of August 21, 2006. [Mrs. H's attorney] contended that the Maryland Court Order was valid and should be followed by the Plan. She also pointed out that the Applicant attempted to argue before the Maryland court that he had already been divorced from Mrs. [H] under the laws of Pakistan, but the court rejected his arguments and proceeded to dissolve their marriage under the laws of Maryland. On September 14, 2006, [the Bank] forwarded [Mrs. H's attorney's] September 7, 2006 letter to the Applicant by email. [The Bank] also informed him that the Bank shares information pertaining to spousal support orders with each party so they can respond to each other's arguments. This is particularly important in adversarial situations, where the Bank acknowledges liability to pay a pension, but two individuals are disputing each other's entitlement to the payment. It is incumbent on the Bank to hear both sides before making any determinations. In the end, the Plan accepted the Applicant's argument that the Maryland Court Order was not yet final, and continued to pay the Applicant's pension in full, pending the outcome of his appeal.

The Respondent believes that the Bank's decision to share arguments made by both parties regarding their entitlement to the Applicant's pension is consistent with HR's policy and practice regarding communications received from staff members and their spouses about domestic and benefits matters.

31. The Tribunal considers that the Bank did not act inconsistently. The Bank's practice, as described in paragraph 23 above, states that the Bank shares communications from the spouse with the staff member and *vice versa* when "the Bank needs to make a determination that could affect the parties in an adverse manner, so each person can

present arguments in support of his or her position.” Section 5.1(c) of the Plan authorizes payment of support to a retiree’s former spouse if the retiree like the Applicant is legally obligated to make such payments by a final court order. Mrs. H’s attorney demanded that the Bank pay Mrs. H monthly spousal support from the Applicant’s Bank pension under the terms of the Maryland Court Order. The Applicant objected, relying on the Pakistani divorce decree. The Bank had to decide whether or not to make the payment from his pension. In these circumstances, where pension benefits are at stake, the Bank needed to consider arguments from the Applicant and Mrs. H, and therefore decided to share with both of them each other’s communication with the Bank. In this context, the Bank disclosed the Applicant’s letter of 21 August 2006 to Mrs. H and, similarly, it disclosed Mrs. H’s response thereto to the Applicant. These circumstances are different from those relating to the letters from Mrs. H’s attorney to the Bank dated 24 July 2003, 22 August 2003 and 30 April 2004. As explained before, the Bank did not rely on those letters to make any payments.

32. The Bank’s “practice” of even-handedness with respect to unilateral communications from spouses has an evident rationality, but this case illustrates the possible advantages for the Bank to crystallize this practice into a fully considered written policy to which all concerned parties could refer.

33. Finally, the Applicant argues that the information contained in the letters from Mrs. H’s attorney was used to compromise his job search and requests the Tribunal to order the Bank to allow him to apply for new jobs and “a good faith effort should be made to retain [him] without the stigma of [his] having left the Bank prematurely.”

34. The Tribunal “is bound to note that an allegation is not a substitute for proof.” *Malekpour*, Decision No. 322 [2004], para. 29. The Applicant’s assertions that the Bank maintained a “secret file” on him, and that this file has been used to undermine his job-search efforts, are unsubstantiated. The record shows that during the Appeals Committee proceedings, the Applicant was given an opportunity personally to review his career and benefits files to confirm that they did not contain any hidden information. The Bank asserts that it has searched its records and no “secret” files regarding the Applicant’s career were uncovered during the Appeals Committee proceedings, or at any other time. The Tribunal has no reason to doubt the Bank’s representation that “documents related to the Applicant’s divorce proceedings and spousal benefit issues were never included in his career file and were not accessible to hiring managers.” The Tribunal concludes that the letters in question did not play a role in the Applicant’s job search.

35. The Tribunal notes that in his first Application of 28 February 2005, the Applicant made a similar claim stating that HR and certain managers undermined his job search within the Bank. The Tribunal rejected this claim in the following manner in *H*, Decision No. 342 [2005], paras. 47-48:

The Tribunal notes that the Applicant sets forth no persuasive explanation as to why representatives of HR were predisposed against him. To the contrary, far from there being an interference on the part of HR representatives, the record supports the view of the Respondent that at least a half dozen of them tried to be helpful to the Applicant in his search for other positions within the Bank. For example, with respect to two of his principal alleged adversaries, Ms. Vazquez sent job leads to the Applicant and explored different employment options with him, and Ms. Baptist provided him with extensive support, guidance and career advice while he worked in FINCF.

Indeed, the support of HR and of the Applicant’s managers is conspicuously confirmed by the MAS and re-entry guarantee, which provided the Applicant with repeatedly extended periods of employment for the principal purpose of facilitating his search for sustained

employment at the Bank. The Tribunal is unconvinced by the Applicant's contentions that his efforts in seeking permanent employment were intentionally undermined by the Respondent.

36. The Applicant has set forth no factual basis on which the Tribunal could conclude that the information contained in the letters from Mrs. H's attorney was used to undermine the Applicant's job search.

37. The Bank provided the Applicant with all the letters from Mrs. H's attorney in August 2007. A review of these letters shows that they did not contain so-called "secret" information or anything which "wrongfully defamed" the Applicant as he asserts. The Applicant has not pointed to anything in the correspondence which is defamatory and which caused harm to him in his litigation in the Maryland Court proceedings. The Bank reasonably believed that it was important to adhere to its practice of not sharing communications from spouses with the staff member, unless there was an authorization to do so, or the information in those communications was to be used in a manner that would adversely affect the staff member. There is no evidence that the Bank used the information contained in these letters to make any decision that adversely affected the Applicant.

38. The Tribunal concludes that the Bank did not abuse its discretion in this matter.

#### DECISION

For the above reasons, the Tribunal dismisses the Application.



/S/ Jan Paulsson

Jan Paulsson  
President

/S/ Olufemi Elias

Olufemi Elias  
Executive Secretary

At Paris, France, 18 July 2008