

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: *ICC-01/14-01/18*

Date: 24 March 2021

TRIAL CHAMBER V

Before: Judge Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Public Redacted Version of “Defence Response to the
‘Prosecution’s Submission on the Appointment of Defence Counsel’”,
(ICC-01/14-01/18-902-Conf), 8 March 2021**

Source: Defence of Patrice-Edouard Ngaïssona

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented
(Participation/Reparation)**

Applicants

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States' Representatives

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I. Introduction

1. After having been vetted, Ms Marie-Hélène Proulx's designation as associate counsel on the Defence team of Mr Ngaïssona was confirmed on 24 February 2021.¹ Ms. Proulx's designation was formalised by way of a filing by the Registry on the same day".²
2. On 4 March 2021, the Prosecution filed the "Prosecution's Submission on the Appointment of Defence Counsel" ("Request") challenging Ms Proulx's appointment as Associate Counsel on the Defence team of Mr Ngaïssona.³ The Prosecution claims that Ms Proulx's former role as OPCD counsel in the context of [REDACTED] may represent an impediment to representation in the present case. The Prosecution further claims that Ms Proulx's 'association' with Mr Thomas Hannis in the *Al Hassan* case 'could' create a conflict of interest. The Prosecution thus requests that the Chamber assess the 'propriety' of Ms Proulx's appointment.
3. The Prosecution's request is baseless. The [REDACTED] in which Ms Proulx took part have no relevance [REDACTED], as stated by the Prosecution itself [REDACTED].⁴ In addition, the professional relationship between Ms Proulx and Mr Hannis in the *Al Hassan* case does not constitute an 'association' for the purpose of Article 12 of the Code of Professional Conduct for Counsel (the 'Code'). The request should be denied.

II. Confidentiality

4. In accordance with regulation 23bis(1) of the Regulations of the Court ("Regulations"), the response is filed confidentially as it responds to a

¹ Letter from CSS/2021/122 dated 24 February 2021, ICC-01/14-01/18-891-Conf-AnxI.

² ICC-01/14-01/18-891.

³ ICC-01/14-01/18-898-Conf (the "Request").

⁴ [REDACTED].

document of the same classification. A public redacted version of the response will be filed in due course.

III. Applicable Law

5. Article 12(1) of the Code of Conduct provides that:

Counsel shall not represent a client in a case:

(a) If the case is the same as or substantially related to another case in which counsel or his or her associates represents or formerly represented another client and the interests of the client are incompatible with the interests of the former client, unless the client and the former client consent after consultation.

(b) In which counsel was involved or was privy to confidential information as a staff member of the Court relating to the case in which counsel seeks to appear. The lifting of this impediment may, however, at counsel's request, be ordered by the Court if deemed justified in the interests of justice. Counsel shall still be bound by the duties of confidentiality stemming from his or her former position as a staff member of the Court.

6. Article 16(1) of the Code of Conduct provides that "Counsel shall exercise all care to ensure that no conflict of interest arises" and "shall put the client's interests before counsel's own interests or those of any other person, organization or State" (....). Article 16(3) provides that where "a conflict of interest arises, counsel shall at once inform all potentially affected clients of the existence of the conflict and either: (a) withdraw from the representation of one or more clients with the prior consent of the Chamber; or (b) seek the full and informed consent in writing of all potentially affected clients to continue representation".

IV. Submissions

7. The Defence submits that no conflict of interest, actual or potential, arises in the present case and wishes to address concerns raised by the Prosecution in its Request. Since Ms Proulx is no longer a member of the OPCD, her access to [REDACTED] has been removed, making it impossible [REDACTED]. The Prosecution Request avoids giving any fact related to [REDACTED] in support of its Request, because these facts do not support its position. The Defence invites the Chamber, in case it deems so necessary, to consult directly with the OPCD, [REDACTED], who will be in a position to confirm the below information.

A. The involvement of Ms Proulx in [REDACTED] does not constitute an impediment to representation

8. Between 24 August and 2 October 2020, Ms Proulx was employed as an external contractor by OPCD, [REDACTED]. As a representative of the OPCD, her role was limited to [REDACTED]. The OPCD, and Ms Proulx, were prevented from [REDACTED].
9. To fulfil the OPCD mandate, Ms Proulx was granted access to a limited number of documents, some of which were heavily redacted, only allowing her to [REDACTED].
10. Article 12(1)(b) of the Code applies to situations whereby [REDACTED]. [REDACTED] is manifestly not the [REDACTED]. The mere fact that [REDACTED] is insufficient to consider that they are the [REDACTED]. The [REDACTED] in which Ms Proulx took part only related to [REDACTED]. It is striking to note that the Request does not even attempt to demonstrate that the two would allegedly be the [REDACTED], and alleges a potential conflict without establishing any foundation for such accusation.

11. In fact, the Prosecution itself put on the record that [REDACTED]. Out of an abundance of caution, the OPCD and Ms Proulx on two occasions raised the potential implications of [REDACTED]. The first time, [REDACTED]. [REDACTED]. [REDACTED] also reminded the OPCD of the very limited nature of OPCD's mandate in [REDACTED].
12. [REDACTED].
13. [REDACTED].
14. Had there been a risk that information or material forming the factual foundation of [REDACTED],⁵ [REDACTED]. Instead, they repeatedly dismissed the OPCD's concerns in this regard, thereby refuting the allegations they are now raising against Ms Proulx. [REDACTED], also would have given credence to the OPCD submissions, had there been any suggestion that the [REDACTED].
15. If there was ever any doubt about [REDACTED], this door was firmly shut by the Prosecution itself. The attempt to reopen this issue in order to object against Ms Proulx's appointment is without foundation. The Prosecution cannot wear two hats: it cannot argue in one instance that [REDACTED], and in the other instance that [REDACTED]. These positions are entirely incompatible, and also for this reason, the request is without merit.
16. In conclusion, it is abundantly clear that [REDACTED] do not constitute [REDACTED]. Therefore, there is no impediment to representation, and the requirement to request the Chamber to lift such impediment is not triggered.
17. Secondly, any confidential information which may have been communicated to Ms Proulx in the context of [REDACTED]. For this reason, Ms Proulx's

⁵ [REDACTED].

duty of loyalty towards Mr Ngaïssona is not jeopardized in any way. Similarly, access to confidential information does not procure Ms Proulx an unfair advantage in the current proceedings as such information [REDACTED]. This also means that Ms Proulx's duty of confidentiality vis-à-vis [REDACTED] is not in any way endangered by her representation of Mr Ngaïssona.

18. Should the Chamber rule that the [REDACTED], the Ngaïssona Defence respectfully submits that lifting the impediment to representation is in the interests of justice, as Ms Proulx is an experienced defence counsel whose assistance is needed by the Ngaïssona defence, taking into consideration that the start of the Prosecution case is imminent, and that Ms Proulx has already started to familiarize herself with the case and is expected to provide support to Counsel during upcoming hearings. In addition, the withdrawal of Ms Proulx at this stage would be prejudicial to the Defence, bearing in mind that resources should be directed to preparing the impending trial.

B. There is no actual or potential conflict arising from Ms Proulx and Mr Hannis's representation of Mr Al Hassan

19. The Prosecution also alleges that the fact that Ms Proulx and Mr Hannis were both Associate Counsel for Mr Al Hassan, who is currently facing trial before the Court, may create a conflict of interest.⁶ This allegation is baseless, without merit, and should be dismissed.

20. Ms Proulx and Mr Hannis's assignment overlapped on the *Al Hassan* case for a period of around three months, from Mr Hannis's appointment on 19 March 2020 to his withdrawal on 15 June 2020. During this time, Ms Proulx and Mr Hannis were colleagues on a case that is completely separate from the current

⁶ Request, para. 8.

proceedings. Their duty of confidentiality and loyalty to Mr Al Hassan are in no way incompatible to their same, respective duties with respect to their current clients.

21. Ms Proulx and Mr Hannis have never been ‘associated’ as per the terms of Article 12(1)(a) of the Code. To the extent that they were ‘associated’ for the three months they overlapped on the *Al Hassan* case, such ‘association’ ceased to exist on 15 June 2020. They do not, and never did, belong to a common law firm, or had any formal association within the meaning of Article 12 of the Code.

22. The suggestion that a potential conflict could arise because they once jointly represented a defendant in a case that has no link whatsoever to the case they are presently assigned to, is without foundation. Ms Proulx and Mr Hannis are independent and professional counsels. There would be no conflict arising from potential adverse defence strategies in the *Yekatom & Ngaïssona* case,⁷ for the mere fact that they represented Mr Al Hassan. Similarly, any suggestion that their enduring duties toward Mr Al Hassan and their respective duties towards their current clients are incompatible is plainly wrong. It is hard to fathom how the Prosecution could have come up with such a far-fetched allegation.

23. Ms Proulx is well aware of her professional obligations under the Code, including the obligation pertaining to confidentiality under Article 8. The Prosecution has not demonstrated that Ms Proulx has, or is at risk of breaching her professional obligations in any way.

⁷ Request, para. 9.

24. Mr Ngaïssona has been informed of Ms Proulx's former role in OPCD and of her former position in the Al Hassan team, and has issued no objection to her appointment as Associate Counsel under the supervision of his Lead Counsel.

25. In conclusion, there is no indicia of the existence of an actual or potential conflict of interest or any impediment to representation concerning Ms Proulx pursuant to Articles 12 and 16 of the Code of Conduct. The request should be dismissed.

26. The Defence remains at the Chamber's disposal should it require any additional information or clarification.

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 24 March 2021,

At The Hague, the Netherlands.