

REPUBLIC OF VANUATU
OFFICE OF THE OMBUDSMAN

PUBLIC REPORT

**IMPROPER APPOINTMENT
OF MRS COULON**

**TO THE PUBLIC SERVICE AND ILLEGAL
PAYMENT OF COMPENSATION BY HER BROTHER**

**FORMER PRIME MINISTER
MAXIME CARLOT KORMAN**

19 February 1999

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REPUBLIC OF VANUATU

OFFICE OF THE OMBUDSMAN

**PUBLIC REPORT ON THE FORMER PM, MR. KORMAN'S USE
OF HIS INFLUENCE IN THE EXERCISE OF HIS OFFICIAL
DUTIES IN FAVOUR OF HIS SISTER, MRS ANTOINETTE
COULON**

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1. SUMMARY

1. In compliance with the provisions of Article 62(c) of the Constitution and Section 14(1) of the Ombudsman Act, the Ombudsman has decided to carry out an investigation on certain incidences concerning Mrs Antoinette Coulon (“**Mrs Coulon**”) and certain acts of maladministration and alleged breach of the Leadership Code by the former Prime Minister, Maxime Carlot Korman (“**Mr Korman**”).

This report is on the act of nepotism by the former head of Government, Mr Korman, in the exercise of his official duties by using his political influence to have his sister, Mrs Coulon, benefit illegally from certain professional and financial favours after having seen to her release from prison before she had served the full length of her prison sentence.

There are four main categories of misconduct that have been found by the Ombudsman against Mr. Korman in this report.

- 1.2 As Leader of the Opposition, Mr. Korman and the former President of the Republic, exerted pressure on the Minister responsible for prisons, Mr. Yolu Abbil at the end of 1990, to personally have his sister, Mrs Antoinette Coulon, released on licence. She had been imprisoned for the embezzlement of funds while she was working with the Port Vila Urban Land Corporation (VULCAN), a government organisation. According to the evidence given by Mr. Yolu Abbil, he acted against his will as provided for under the Prisons Act which gave him discretionary power to this effect.
- 1.3 Mr. Korman appointed his sister to a post in the Lands Department within the Public Service initially as a temporary officer and then as a permanent officer, in breach of Article 57(4) of the Constitution (the Prime Minister’s power to make provision for the recruitment of staff for a specified period to meet unforeseen needs) and Article 60(4) which guarantees the Public Service Commission’s independence. Moreover, the former Prime Minister and those involved in these appointments acted in breach of the Public Service Staff Manual which provides that no person with a criminal conviction may be appointed to an office in the Public Service if he has been convicted of an offence for a period of not less than four years.
- 1.4 The third grievance concerns compensation payments to Mrs Coulon by the Korman Government. The Council of Minister’s decided to compensate Vulcan employees who had been made redundant following its closure in 1987. As Mrs Coulon had been convicted, she was not eligible for compensation, as stipulated by the Employment Act. Korman used his influence as Prime Minister to have his sister compensated, despite legal advice by the Attorney General against any compensation. In the end, Mrs. Coulon received the sum of 1,211,542 vt from the Korman Government despite legal advice by the Attorney General’s Chambers against the payment of such compensation. To justify his actions, Mr. Korman labelled the Supreme Court and Court of Appeal’s decision as “political”.
- 1.5 Prior to being imprisoned in Port Vila, Mrs Coulon borrowed 1,635,737vt in addition to the amount stolen. The Government did not take any step to have these sums reimbursed even though this debt had been owed to the Government since 1990 and such lack of action seems to have been prompted by some kind of fear of the Prime Minister. It wasn’t until August, 1997, six months after the Ombudsman began her investigation, that the Public Service decided to start proceedings so that Mrs Coulon reimburse her debts; by suggesting

to the Department of Finance to seize part of her salaries. When Mrs Coulon was given early retirement in October, 1998, all her entitlements went towards the reimbursement of her debt.

1.6 The Ombudsman found that Mr. Korman's actions were in breach of the Law and Constitution and was clearly unreasonable; he breached the Leadership Code (Article 66 of the Constitution) by abusing his power and placing himself in a situation where there was a conflict of interest, compromising his integrity and that of Vanuatu.

1.7 The members of the Public Service Commission, the Director of Finance and the Minister of Finance also acted against the Constitution by letting Mr. Korman influence them. The Minister of Finance at the time, Mr. Willie Jimmy knew that the payment was illegal but finally agreed to paying Mrs Coulon, to "honour" the Prime Minister's decision so to speak. Such action also constitutes an offence against the Leadership Code, because he has brought discredit on himself as Minister of Finance and compromised his integrity.

1.8 The Ombudsman recommends the following:

- the necessary steps be taken so that Mrs Coulon refunds the full amount of her remaining debt(1,653,463) (Attorney General - Ministry of Natural Resources);
- the Attorney General to reconsider the illegal payment of entitlements so as to establish whether such actions may be held against the people responsible;
- Mr. Korman should not be appointed to any senior Government post;
- the members of the Public Service Commission concerned should not be appointed to any position of responsibility;
- the President of the Republic should remind the Deputy Prime Minister, Willie Jimmy, about his allegiance to the Constitution and the laws of Vanuatu;
- and the lack of action as to the repayment of public debts by the responsible authorities be considered as a professional misconduct.

2 OUTLINE OF EVENTS AND PRELIMINARY FINDINGS

2.1 **22.04.87:** Like her colleagues, Mrs Coulon had signed a contract for a period of three (3) years with Vulcan (Vila Urban Land Corporation/Office Foncier de Gestion de Port-Vila).

2.2 **10.05.88:** The former Minister of Lands, Natural Resources and Fisheries, William Mahit terminated the activities of Vulcan through an Order in accordance with the provisions of Section 19 of Regulation No 31 on Land Reform. Mrs Antoinette Coulon and her colleagues from the ex-Vulcan were then employed by the Lands Department.

2.3 **27.09.88:** The former Acting Accountant General, Mr. Sibley, revealed in a memo that Mrs Coulon had embezzled an amount of 2,297,472 vt while working as an accountant for Vulcan (amount stolen plus funds "borrowed").

2.4 **07.02.89:** The Supreme Court sentenced Mrs Coulon to 4 years imprisonment, for the embezzlement of funds (approximately 661,733 vt) while working as an accountant with the ex-Vulcan. Mrs Coulon admitted having used these funds on herself and her family.

2.5 **30.03.89:** The Council of Ministers decided to compensate Vulcan's former employees.

- 2.6 **04.04.89:** The Court of Appeal confirmed the Supreme Court's decision, following Mrs Coulon's appeal case. **(Appendix 1)**
Mrs Coulon was imprisoned on the same day.
- 2.7 **23.08.89:** Accountant General's letter to the Attorney General listing the amounts owed by Mrs Coulon being a total of 2, 297,472 vt **(Appendix 2).**
- 2.8 **10.10.91:** In compliance with Section 30 of the Prisons Act, Mr. Iolu Abbil, former Minister of Home Affairs, responsible for Prisons had Mrs Coulon released on licence **(evidence provided by Iolu Abbil in Appendix 15).**
- 2.9 **03.02.92** Mrs Coulon filled in an application form which was sent to the Chairman of the Public Service for a post at grade P10, in which she specified that she had '*already been convicted for misappropriation of funds*' and added that it was "*a political influenced affair*"!
- 2.10 **04.02.92** Less than 4 months after leaving prison, Mrs Coulon was appointed by her brother, the former Prime Minister at the time, Mr. Korman, as Lands Officer in the Department of Lands on a temporary basis by illegally using his special powers as provided for in the Constitution **(Appendix 3).**
- 2.11 **07.05.92:** Mr. Oliver Saksak, an officer in the Attorney General's Chambers acknowledged receipt of a letter from Mrs Coulon in which she asked to be paid her entitlements after losing her job with VULCAN. In his reply, Mr. Saksak indicated that with regard to Sections 50 and 55 of the Employment Act (CAP 160), her criminal conviction had deprived her of any entitlements **(Appendix 4)** and reminded her to reimburse the sums of money she had borrowed.
- 2.12 **12.05.92** Letter from Mr. Tary to Mrs Coulon reminding her to repay the money she borrowed from Vulcan (1,635,737 vt).
- 2.13 **04.06.92:** After being informed of this legal advice, the Prime Minister, Mr. Korman, asked Mr. Oliver Saksak to reconsider Mrs Coulon's request because in his opinion, the legal action taken against Mrs Coulon was "**political**" **(Appendix 5).**
- 2.14 Following this letter from Mr. Korman, Mr. Saksak proceeded with the calculation of Mrs Coulon's entitlement as instructed, but only against his will.
- 2.15 **02.07.92:** The letter from the Attorney General's Chamber to the Department of Finance **(Appendix 6)** referred to Mrs Coulon's compensation payment as:

"...a highly controversial claim"

with reference to the Prime Minister, Maxime Carlot Korman's letter of 04.06.92.

- 2.16 **06.07.92:** The Financial Adviser to the Urban Lands Unit, Mr. Terry O'Donnell sent a circular to the Director of Lands asking him to authorise the payment of the sum of 1,211,542 vt.

According to the same circular, the Minister of Lands had already authorised, in another circular, compensation for Mrs Coulon and cancellation of the debt of 2,297,472 vt that she owed to the Government (comprising the amount she borrowed 1,635,737 vt and the amount she misused 661,733 vt). Cancellation of the debt never took place and was never approved by the Council of Ministers (as suggested by certain authorities) and in any case only Parliament had the power to authorise the cancellation of a debt.

- 2.17 **06.08.92:** Letter from Mr. Tary to Mr. Telukluk, Minister of Natural Resources seeking advice as to the request for payment of 2,297,470 vt owed by Mrs Coulon including the order from the Supreme Court for 661,733 vt and 1,635,737 vt (illegal borrowings).
- 2.18 **18.08.92:** Letter from the Director of Finance requesting advice from the Attorney General's Chamber on the payment of entitlements to Mrs Coulon following a letter from the Lands Department instructing him to pay 1,211,542 vt to Mrs Coulon. The Director wanted to know whether these payments were legal considering the amount she owed to the Government: 2,291,470 vt.
- 2.19 **19.08.92:** Oliver Saksak acknowledged receipt of the letter dated 18.08.92. from the Director General of Finance
- 2.20 **27.08.92:** Oliver Saksak informed the Director General of Finance that he had received an order at 2.15 pm from the Prime Minister, Korman, instructing him to prepare a document for the same day to be signed by him immediately. (**Appendix 7**).

As the Principal Legal Officer in the Attorney General's Chamber, Mr Saksak maintained in his letter that such payment was illegal and therefore that no officers from the Attorney General's Chambers would act as witness.

The document concerned Mrs. Coulon's compensation and the reimbursement of the funds she misappropriated.

The same document was supposed to have been signed by Mrs Coulon, the former Minister of Finance, Mr Willie Jimmy on behalf of the Government and Mr. Korman who was Prime Minister at the time; the agreement provided that the latter be the guarantor for Mrs Coulon's debt.

No signed copy of the document has been found and apparently this was not necessary as the sum of 661,733 vt has been reimbursed, partly in cash and partly by deducting part of the entitlements she received from Vulcan.

- 2.21 **27.08.92:** Letter from the Minister of Finance, Mr. Willie Jimmy to the Prime Minister suggesting that the payment to Mrs. Coulon be submitted to the Council of Ministers for decision (**Appendix 8**).

"I refer to our discussion about the above subject which has now become a very complicated matter to deal with legally".

He would also suggest that the total amount of debt owing of 2,297,472vt, be written off as bad debt and a sum of 1,211,542vt be paid to Mrs Coulon in entitlements, through a decision by the Council of Ministers.

He added:

"The Council of Ministers' decision would eliminate criticism from the Auditor General against Attorney General, Department of Finance and the Minister of Finance for unlawfully authorise expenditure of public funds".

Mr Jimmy realised that the payment was illegal. Transferring the decision to the Council of Ministers would not however render it legal since the Council of Ministers is also bound by the laws of the country, and only Parliament has the power to make a decision to write off a debt.

- 2.22 In any case, Mr. Korman did not follow his Finance Minister's advice and did not consult anyone on the matter and Mr Jimmy, as Minister of Finance, ended up signing the deed of settlement regarding payment to Mrs Coulon.

- 2.23 **02.09.92:** Letter from Mr. Willie Jimmy to the Prime Minister Korman (**Appendix 9**) informing him that the deed of settlement of the sum of 611,733 vt to be paid at 20,000 vt per month had been signed following his instructions of 28.08.98, as Prime Minister despite the advice given by the Attorney General and the Director General of Finance to the contrary, and informing him that no officer in the Attorney General's Chambers was prepared to sign as witness. The deed included the decision to pay a compensation amount of 1,211,542 vt.
- 2.24 Towards **September 1992**, Mrs Coulon received a cheque of 1,000,000 vt in entitlements (less the sum of 211,542 vt which was deducted to reimburse part of her Court fees of 661,733 vt).
- 2.25 **17.09.92:** Payment of a sum of 450,191 vt by Mrs Coulon for Court fees (Total amount: 661,733 vt). Without this payment, Mrs Coulon would return to prison to complete her sentence.
- 2.26 **15.06.93:** The former Director of Lands at the time, Roger Tary, in a letter addressed to his counterpart in the Public Service, recommended the permanent appointment of Mrs Coulon to the post of Lands Officer.
- 2.27 **27.07.93:** The Director of Public Services at the time, Andre Lesines, had the vacancy for the post of Lands Officer advertised. This vacancy notice was only reserved for officers who were already in the Public Service. Mrs Coulon was not yet in the Public Service when she applied for this post. She was only a temporary officer.
- 2.28 **28.07.93:** Mr. Telukluk recommended the permanent appointment of Mrs Coulon at grade P10. (**Appendix 10**).
- 2.29 **29.12.93** The Public Service Commission appointed Mrs Coulon as Lands Officer on a permanent basis even though she had never applied for the post.
Those present included **Mr William Mael, Chairman; Mr Daniel Ishmael, Mr. Amos Andeng, Mr. Edwin Basil and Mr. Johnny T Lulu.**
- 2.30 **06.01.94:** The Deputy Director of Public Services, Mr. Andre Lesines advised Mrs Coulon of her new appointment as Lands Officer (**Appendix 11**).
- 2.31 **27.03.97:** Mrs Coulon was suspended by the Director of Lands, Mr. George Tambe, for the following reasons:
- *"regular absence from work;*
 - *she was her own boss, she would come to work or go off whenever she wished;*
 - *the concept of having superiors whom subordinate officers could report to did not exist for her.*
 - *argument with the Principal Lands Officer over her irregular processing of the sale of a leasehold property at Tassiriki..*
 - *threatening to stab her superior with a small knife."*
- 2.32 **30.04.97:** Letter from the Director of Lands to the Director of Public Services explaining the reasons for the suspension (**Appendix 12**).
- 2.33 **08.07.97:** The Public Service's Disciplinary Board determined that Mrs Coulon had committed a serious misconduct and that she failed to fulfil her obligation to reimburse the sum of 1,635,637 vt which she owed Vulcan, to the Government.
- 2.34 **09.07.97:** Mr. Tambe, Director of Lands, confirmed that the Department of Lands structure only provided for two Lands Officers (P10) and that with Mrs Coulon, there were three officers in total.

2.35 **14.07.97:** Mr. Jimmy who was the then Minister of Finance, in a letter to the Ombudsman, stated:

"If my memory is correct, it was the Council of Ministers decision to pay compensation to Mrs. Coulon.

Also, the Prime Minister himself wrote to me at that time instructing me to release funds as payment to Mrs Coulon, which I did in good faith to honour the Prime Minister's instruction."

According to our research there was no specific decision by the Council of Ministers authorising the payment to Mrs. Coulon. The only known decision by the Council of Ministers concerned the normal compensation for all employees of Vulcan after its closure. According to the Attorney General, Mrs Coulon was not entitled to any compensation due to her professional misconduct, that is her theft of funds from Vulcan.

2.36 **28.08.97:** Letter from Mr. Carlot Korman to Ombudsman (**Appendix 13**);

Mr. Korman denied having used any influence in the matter.

1. *I did not use any influence in this matter. A Prime Minister has no right to influence the Government's lawyer. The Government's lawyer defends the rights of the workers and employees of the Government.*
2. *I never insisted that the full amount of her entitlements be paid. It is only fair to pay the debts and pay the difference to the employee.*
3. *In Vanuatu, the Minister recruits on the recommendation of the Minister but never recruits without recommendation, discussion or prior consultation with the Minister.*
4. *Exactly: this met a need. The Minister asked Mrs Coulon especially because she was one of those available who was fairly familiar with urban land issues of Port Vila.*
5. *Ask the Attorney General. He was the one who drafted "the letter-form" for recruitment that is usually signed by the Prime Minister.*
6. *Mrs A. Coulon served two and a half years and not four years. Your question is important; maybe you should follow this up? There is a long list of civil servants who have been in prison or convicted by a court in Vanuatu: civil servants in the Administration, the Police Force, Teaching Service, Health etc...(+ the Teaching Service, Police Force).*
7. *I have already answered this.*
8. *I have already answered this.*

Mrs. Coulon has already been judged for this matter. It is up to the Court to answer us, and not myself as Prime Minister, Minister responsible for the Public Service. A judgement has been passed. Mrs Coulon herself can answer you. She is the one who was convicted, not me. She's the one who was judged. She can tell you whether there is any debt to pay or not???

Comments: *I find your letter on this matter rather petty and spiteful. It is your legal right to investigate this matter. I would advice you to investigate matters in more detail and pass judgements at the end of the investigation and not earlier. Please contact me should you require further details on Mrs. A. Coulon's recruitment.*

Regards.

M. Carlot

2.37 **October 1998:** Mrs Coulon was given early retirement and her entitlements went towards reimbursing her debt. She still owes 653,463 vt to date (amount borrowed).

3. JURISDICTION AND SCOPE OF INVESTIGATION

3.1 In accordance with Article 62 of the Constitution and Section 14 of Act No. 14 of 1995, the Ombudsman has the jurisdiction to enquire into defects in law or administration practices either at the request of a member of the public or on his own initiative.

3.2 Therefore the Ombudsman has conducted an investigation into the events concerning Mrs. Antoinette Coulon.

These facts, which do not seem to be in accordance with the law, took place between 1992 and 1994 when Mr. Korman was at the Head of Government as Prime Minister.

4. RELEVANT LAWS

4.1 The following relevant laws will be examined in relation to the different breaches committed by Mr Maxime Carlot Korman, and other officials concerned.

PRISONS ACT CAP. 20

4.2 Mrs Coulon's release on licence

Section 30 of the Prisons Act CAP. 20 provides that:

“The Minister may order the release of any prisoner on licence for the period of the unexpired portion of his sentence subject to such conditions as may be prescribed in the said order.

4.3 Mrs Coulon's appointment to a post in the Public Service

4.3.1 CONSTITUTION

Article 57(4) of the Constitution stipulates that:

“The Prime Minister or the President of the Provincial Government may, exceptionally, make provision for the recruitment of staff for a **specified period to meet unforeseen needs**”.

Article 57(3) provides that:

“No appointment shall be made to a post that has not been created in accordance with a law.

4.3.2 PUBLIC SERVICE STAFF MANUAL

Chapter 1.4(f) of the Public Service Staff Manual provides that:

“‘temporary officer’ or ‘temporary appointment’ means an officer appointed by a Letter of Temporary Appointment, and recruited for a short-term appointment expected to come to an end in a few weeks or months because of the return of the substantive holder of the post or because of the completion of normal recruitment procedures.”

Chapter 2(3) (b) of the Public Service Staff Manual provides that:

“ a person with a criminal conviction may be considered for appointment if he has not been convicted of an offence for a period of not less than 4 years..”

4.4 Compensation payment by the Government to Mrs Coulon

4.4.1 CONSTITUTION

Article 66 on the Leadership Code concerns this report, particularly Article 66(2) which provides that:

“In particular, a leader shall not use his office for **personal gain**...”

The term “gain” signifies any kind of advantage of any nature that a person receives. The adjective “personal” is not to be taken in the strict sense of the word being only the author the title. In fact the term “personal” in our view also covers the close family of the post holder.

4.4.2 EMPLOYMENT ACT CAP. 30

Section 50(1) of the Employment Act CAP 160 provides that:

“In the case of a serious misconduct by an employee it shall be lawful for the employer to dismiss the employee without notice and without compensation in lieu of notice.

Article 55(2) of the Employment Act stipulates that:

“An employee shall not be entitled to severance allowance if he is dismissed for serious misconduct as provided in section 50.”

4.5 Mrs Coulon’s failure to repay her debts

4.5.1 PUBLIC FINANCES ACT

Section 21 of the Public Finances Act stipulates that:

“Parliament may by resolution authorise the Minister, in his discretion to the extent specified in such resolution, to abandon and remit any claims by or on behalf of the Government or any service thereof and to write-off losses of public monies, stores or other movable property belonging to or provided for the Government.”

4.5.2 FINANCE REGULATIONS

Financial Regulation (68) of Chapter 3 provides that:

“Where an accountable officer is of the opinion that there is a reasonable possibility of recovering of debt through legal action, he shall submit a detailed written report on the debt to the Attorney General, through the Director General of Finance, with a copy to the Auditor General. The report shall contain full details of any action taken to recover the debt.

Financial Regulation 69 adds that:

“It shall be the responsibility of the accountable offer to follow up all cases of unpaid Debit Notes referred to the Attorney General and subsequently taken to court. The accountable officer shall take all such action as shall be available to him to ensure that any Court Orders obtained are put into effect. He shall take care that he does not take any action that shall contravene or hinder the content of any Court Order.”

5. METHOD OF INVESTIGATION

In accordance with the powers conferred to him by Article 62(3) of the Constitution and Section 17 of the Law, the Ombudsman has obtained the necessary information from the departments concerned and other sources. These laws allow the Ombudsman to obtain information and evidences simply by requesting these from any person who is likely to assist him. The documents needed for this inquiry have been taken under oath.

6. RESPONSES FROM PERSONS CONCERNED

- 6.1 We sent a preliminary report to the following persons to give them an opportunity to respond to the complaint made against them as required by the Constitution.

Mr Maxime Carlot Korman, former Prime Minister

Mr Willy Jimmy, former Minister of Finance

Mr Daniel Ishmael, member of the Public Service Commission

Mr Johnny Tinsley Lulu, former member of the Public Service Commission

Mr Oliver Saksak, former officer of the Attorney General's Chamber

Mr Jeffrey Wilfred, Director General of Finance

Mr Edwin Basil, former member of the Public Service System

Mr Iolu Abbil, former Minister of Home Affairs

Mr Amos Andeng, former member of the Public Service Commission

Mr Paul Telukluk, former Minister of Lands

Mrs Antoinette Coulon

Mr William Mael, former member of the Public Service Commission

Mr Roger Tary, former Director of Lands

The names of those who responded to our preliminary report are in bold letters.

-
- 6.2 In his letter received on 17.02.98 (**Appendix 14**), the former Prime Minister **Mr Maxime Carlot Korman**, stated that:

Dear Madam,

In Vanuatu, the Prime Minister never appoints anyone into the Public Service.

The Prime Minister has the constitutional and legal right to recruit staff on a temporary basis for the smooth running of Government service. As for the Public Service, recruitment and permanent appointment of public servants into the Public Administration are made by the Public Service Commission.

Ombudsman's comments:

Temporary appointment of Mrs Coulon:

Mr Korman stated in his letter of 08.02.97 to the Ombudsman that "in Vanuatu, the Minister never appoints anyone without recommendation, discussion or prior consultation with the Minister." Mr Korman did not have the power to even appoint his sister into a temporary position since the former Minister of Lands and former Director denied that this action was taken following their request or to meet an unforeseen need as provided for by the Constitution. They both confirmed that this appointment was made following Mr Korman's request.

Permanent Appointment:

Mr Korman stated in his letter of 28.08.97 to the Ombudsman that "In Vanuatu, the Minister never recruits anyone without prior recommendation, discussion or consultation with the Minister".

In paragraph 2.35 of this report, the former Minister of Lands clearly states that:

- Mr Korman initiated Mrs Coulon's appointment.
- as Minister of Lands, he did not need Mrs Coulon for any special purpose within the Lands Department.
- Mr Telukluk admitted to having known that Mrs Coulon's appointment was in breach of the Public Service Staff Manual (Chapter 2(3)(b)).

Which of them is lying, Mr Telukluk or Mr Korman?

Mr Korman seems to have repeatedly used his position and influence as Prime Minister and Head of Government to force his decisions. Many actions and letters have shown evidence of this:

- against Mr Abbil, former Minister responsible for Prisons to have Mrs Coulon released before completing her sentence (**Appendix 15**).
- pressure on Mr Telukluk to appoint Mrs Coulon.
- against the Attorney General to arrange payment to Mrs Coulon (**Appendix 5,6,7**).
- against Mr Willie Jimmy to sign a cheque for the compensation payment against his will (**Appendix 8,9**).

Therefore it would seem hard for Mr Korman to deny his improper and unlawful actions of influencing the actions of certain officials involved in his sister, Mrs Coulon's case. The evidence is in black and white and the witnesses are many.

It would seem hard to believe Korman's claims that he had nothing to do with this appointment, that the appointment was made solely by the Commission when the only people who would want this appointment to be made were himself and Mrs Coulon, his sister.

6.3 Mr Maxime Carlot Korman's letter of 17.02.98 (cont'd) (Appendix 14)

As for Mrs Coulon's compensation, it was for a breach of contract on the Government's part. The Government decided, through the Prime Minister, to grant Mrs. Coulon the same entitlement as was given to all the former employees of Vulcan who signed a contract with the Government for compensation in the event of a breach of contract.

May I remind you of the following golden rule: democratic or privileged? which means that a Government is not obliged to follow the advice it receives (from advisers or Heads of Department)."

Ombudsman's comments:

These comments seem to contradict his letter of 28.08.97 (**Appendix 13**) "The Prime Minister has no right to exert influence on the Government's lawyer."

His comments do not reveal anything further except that it reveals yet again that Mr Korman does not understand why he should follow the Attorney General's legal advice.

Mr Korman seems to forget that the Government must respect Article 39 of the Constitution on Executive Power.

39. (1) The executive power of the people of the Republic of Vanuatu is vested in the Prime Minister and Council of Ministers and shall be exercised as provided by the Constitution or a law.

The Prime Minister cannot act outside the limits of the law and as the highest legal officer in the country, the Attorney General is the one who is best equipped in advising the Prime Minister.

Mr Korman neither wants to understand nor accept that a Prime Minister and his Cabinet are bound by the rule of law like any other ordinary citizen.

In this case, he did not have the right to order compensation for his sister against the law. If Mr. Korman wanted to take a humanitarian decision in relation to his sister, that should have been a personal decision to use his own funds. He should not have involved public funds. Mr. Korman knew that he was acting against advice from the Attorney General, Minister of Finance and Director of Finance and without the Minister of Lands genuine approval.

Mr. Korman seems to be mistaken about his golden rule which would mean that the Prime Minister was not obliged to follow legal advice from his legal adviser which would in turn mean that he was not obliged to respect the law. The democratic rule is rather the contrary of what Mr. Korman is saying, it is about respecting the law and who would be better equipped to give such advice than the Attorney General, particularly when all the parties concerned are of the same opinion?

Everyone who was involved in this payment knew that it was against the law:

- the former Minister of Finance himself acknowledged the illegality of Mr. Korman's action when he spoke of the "illegal spending of public finances" in referring to the payment.
- the Attorney General did not have any doubt about the illegality of the payment:
- the Director General of Finance expressed the same doubt about the legality of this action.

Mrs Coulon was not a member of Vulcan's staff like the others. She stole money from Vulcan's funds and also "borrowed" other sums of money and with this in mind, the Attorney General advised the Prime Minister that she had lost her entitlements.

6.4 Mr. Maxime Carlot Korman/letter of 17.02.98 (cont'd)(Appendix 4)

It is obvious that all those people mentioned in your preliminary report were playing politics and lingering on personal conflicts and it is sad that the Office of the Ombudsman is politically taking sides with the Attorney General and the Director of Lands against the fair decisions by the Government (Executive) and the Public Service Commission (constitutional body).

These are the comments that I wish to make on the allegations made against the Head of Government which I consider to be exaggerated and false.

Thankyou.

Ombudsman's comments:

Mr. Korman's other comments are personal attacks against the Ombudsman. The Ombudsman's duty under Article 63 of the Constitution is to find out if:

"...the conduct was contrary to the law, based on error of law or of fact..."

and that is what I have done in this case and the Ombudsman's legal advisers have reached the same conclusions as the Attorney General about the illegality of the compensation payment to Mrs Coulon by Mr. Korman.

I repeat: the Executive and the Public Service Commission are not above the law or Constitution. If this basic principle that everyone has sworn to follow is effectively applied, much more acts of maladministration will be avoided.

Mrs. Coulon received 1,000,000 vt and did not repay the money she owed to the Government, 1,635,739 vt, and Mr Korman helped her.

6.5 Mr Daniel Ishmael, member of the Public Service Commission

Mr Daniel Ishmael, as former member of the Public Service Commission, explained in his letter of 20.02.98 (Appendix 16) that it could be argued that Mrs Coulon's appointment was illegal. The following is a summary of his points:

1. When the Korman-led Government came into power, everything became highly politicised overnight.
2. The then Prime Minister placed his supporters in all the important offices and three members of the Commission were very high-powered UMP politicians and their aim was to serve the interest of the party rather than to follow the regulations and control mechanisms. They did not want to know about procedures;
3. He said that he was not trying to defend himself or lay blame on someone else. Votes were carried out by a show of hands and even though it was not indicated in the minutes, the majority of the members voted in favour of Mrs Coulon's appointment against a minority vote to the contrary that was not mentioned.

Ombudsman's comments:

Mr. Ishmael's reply does not require any comment from us.

6.6 Mr. Willie Jimmy, former Minister of Finance

Mr. Willie Jimmy as Minister of Finance in his letter of 23.02.98 (**Appendix 18**) indicated that he did not have any other comment to make in relation to his previous comments contained in the initial report. He reiterated that:

"There is a chain of command that prevails within any administration and I carried out my duties on the basis of this principle"

In his letter to the Ombudsman of 14.07.97, Mr. Jimmy who was then Minister of Finance stated that:

“Also, the Prime Minister himself wrote to me at the time instructing me as the Prime Minister of the Republic of Vanuatu to release funds as payment Mrs. Antoinette Coulon, of which I eventually did in good faith to honour the Prime Minister’s instruction”

Ombudsman’s comments:

All members of the Government made an oath on their appointment, to respect the Constitution and laws of Vanuatu and the chain of command to which he is referring must be included as a basis for such allegiance to the laws and Constitution of Vanuatu.

The basic principle is also that no one is above the law and Mr. Jimmy cannot make excuses for his unlawful actions because the Prime Minister told him to do so. Mr. Jimmy promised to respect the law as a Minister and it is his first duty to the people of Vanuatu and he did not respect this when he agreed to sign the cheque to Mrs Coulon even though he knew that it was illegal. Honouring the Prime Minister should not mean having to breach the law.

6.7 Mr. Oliver Saksak, former Attorney General

Mr. Oliver Saksak in his reply said that he had nothing to add to the facts since the report reflected the real situation in terms of his role as Attorney General in the matter.

7. FINDINGS OF UNLAWFUL ACTS

The Ombudsman’s findings on the facts about this matter are presented in this chapter which will be divided into four parts in terms of the facts concerning the subject of this investigation.

7.1 MRS COULON’S RELEASE ON LICENCE BY THE FORMER MINISTER MR YOLU ABBIL

Mrs. Coulon should have remained in prison until 4 April 1993, but in fact she was released on licence on 21.01.91 through a decision by the former Minister responsible for Prisons, Mr. Iolu Abbil.

- 7.1.1 At the time, prior to the general elections, Mr. Korman was the President of the Union of Moderate Parties, which was in the Opposition.
- 7.1.2 Still at around the same period, according to the former Minister, Mr. Iolu Abbil, Mr Korman consulted the Minister responsible for Prisons twice, asking him to release his sister. The Minister refused on both occasions.
- 7.1.3 Mr. Korman also consulted the President of the Republic of Vanuatu, Fred Timakata on the same matter.
- 7.1.4 It was at the latter’s request that Mr. Iolu Abbil, Minister responsible for Prisons decided to release Mrs Coulon on 21.01.91 according to the power vested in him by Section 30 of the Prisons Act.

In fact Mr Iolu Abbil stated under oath on 02.07.97 (**Appendix 15**) before the Ombudsman that:

“Due to pressure from Mr. Korman and the President of the Republic(Timakata) to release Mrs Coulon, I felt that the best thing to do was to release her on licence like I did.”

- 7.1.5 Mr Korman ignored the provisions of Section 30 of the Prisons Act in exerting pressure on the former Minister responsible for prisons, Mr. Iolu Abbil, to obtain Mrs Coulon's release on licence.
- 7.1.6 Section 30 on the Prisons Act gives the Minister responsible discretionary powers to release a prisoner on licence for the unexpired portion of his sentence.

7.1.7 Section 30 of the Prisons Act provides that:

"The Minister may order the release of an prisoner on licence for the period of the unexpired portion of his sentence subject to such conditions as may be prescribed in the said order."

In the case in point, Mr. Abbil stated under oath on 02.07.97 that he only released Mrs Coulon on licence to defend himself due to pressure from Mr Korman and Mr. Timakata.

- 7.1.8 I conclude that Mr. Abbil's decision to release Mrs Coulon on licence was not made at his discretion as intended by Section 30 of the Prisons Act.
- 7.1.9 Mr. Abbil should not have succumbed to this pressure. He should have made a decision based on more objective principles (lawful conduct etc...) and not only the fact that she was the Leader of Opposition's sister.

7.2 **MRS. COULON'S APPOINTMENT TO A TEMPORARY POST IN THE PUBLIC SERVICE. UNLAWFUL AND IN BREACH OF THE PUBLIC SERVICE STAFF MANUAL**

The public service is not supposed to employ candidates to temporary or permanent posts if they have been convicted of an offence.

7.2.1 On 04.02.92, well before completing her sentence (4 April 1993) Mrs Coulon was appointed as **temporary** Lands Officer by the then Prime Minister Korman, in compliance with his power as provided by Article 57(4) of the Constitution, (Appendix 3). The appointment seems to be in breach of Chapter 2(3) of the Public Service Staff Manual which prohibits the employment of anyone who has been convicted.

7.2.2 This Chapter 2(3)(b) of the Manual provides that:

"a person with a criminal conviction may be considered for appointment if he has not been convicted of an offence for a period of not less than 4 years."

Under the terms of Chapter 2(3) of the Manual, Mrs Coulon could not be appointed to any post in the Public Service until 04 April 1997.

7.2.3 **Breach of Public Service Staff Manual**

7.2.4 The same letter of appointment specified that Mrs Coulon's post would be at grade P12 and that the temporary appointment would last until the appropriate procedure had been completed for a permanent appointment.

7.2.5 **Prime Minister's Power to make temporary appointments**

In terms of Mrs Coulon's temporary appointment as Lands Officer, Article 57(4) of the Constitution provides that the Prime Minister may exceptionally make provision for the recruitment of staff on a temporary basis. However such power can only be used for the purpose of meeting **unforeseen needs and for a specified period.**

- 7.2.6 Such is the Prime Minister's jurisdiction. This, unlike discretionary powers, means that the Prime Minister should exercise this power when the specified conditions (to meet unforeseen needs and for a specified period) go together. However where these two conditions do not exist together, the Prime Minister cannot exercise this power.

Appointment at grade P12 instead of P10 by Mr Korman

- 7.2.7 The issue that concerns us is that Mr. Korman abused this power to appoint Mrs Antoinette Coulon as a temporary Lands Officer for a unspecified period at grade P12.

In his letter of 23.04.97, the Director of Lands, Mr Tambe, indicated that the usual grade for Lands Officers in 1993 was P.10. However, Mr. Korman appointed his sister as a temporary officer at grade P.12 which was higher than that of the other Lands Officers who had more experience and were better qualified.

No unforeseen need as required by the Constitution

- 7.2.8 This appointment did not meet any unforeseen need either, as stipulated by Article 57(4) of the Constitution. In fact as the Director of Lands stated in his letter of 09.07.97 (paragraph 1)

"Mrs Coulon's appointment to a post of Lands Officer which did not exist in the Departmental structure, was a surprise. The structure only provided for two Lands Officers but since Mrs Coulon's appointment there are now three Lands Officers."

The fact that the Prime Minister appointed Mrs Coulon as a temporary officer to a post that did not exist in the Lands Department's structure, and for an unspecified period, constitutes a breach of Article 62 (2) of the Constitution.

- 7.2.9 Such lack of "unforeseen need" and need was confirmed by the former Minister of Lands, Mr. Telukluk.

Such behaviour again shows how Mr. Korman misused his power in favour of his sister, Mrs Coulon.

7.2.10 FORMER MINISTER OF LANDS REPLY

Mr. Telukluk, former Minister of Lands admitted the following facts in his letter to the Ombudsman dated 15.09.97 (Appendix 19).

- Mrs Coulon's appointment was made at the initiative of her brother, Mr. Carlot, who was Prime Minister at the time.
- as a Minister, he did not need Mrs Coulon in the Lands Department.
- Mr. Telukluk admitted that he was aware that Mrs Coulon's appointment was in breach of the Public Service Staff Manual as she had been convicted.
- Mr. Telukluk admitted that there was no vacancy in the Lands Department for the post of Lands Officer when Mrs Coulon was recruited into the Lands Department.
- The Prime Minister, Mr. Maxime Carlot Korman, exerted pressure on civil servants so that his sister's debt of 1,635,733 vt would not be reimbursed (illegal borrowings from Vulcan).

7.3 PERMANENT APPOINTMENT OF MRS COULON INTO THE PUBLIC SERVICE MARRED BY LEGAL IRREGULARITIES

7.3.1 The Prime Minister's illegal engagement in rendering Mrs Coulon's post permanent

Mrs Coulon's appointment is marred by legal irregularities. The former Prime Minister appointed Mrs Antoinette Coulon on 04.02.92 on temporary terms as follows:

"Mrs Coulon's temporary appointment is intended to last until the appropriate procedures have been completed for a permanent appointment".

Mr. Maxime Carlot Korman, as Minister responsible for the Public Service, did not have the right to promise a permanent appointment. This power belongs to the Public Service Commission, whose independence is provided for by the Constitution. Moreover this post neither existed in the Department of Lands structure nor its budget.

7.3.2 POST NOT ADVERTISED

While Mrs Coulon was working in the Department of Lands, the Director at the time, Roger Tary, made a recommendation to his counterpart in the Public Service to appoint Mrs Coulon to the post concerned before the vacancy was advertised.

7.3.3 The Director of Public Services was to publish the vacancy for the post of Lands Officer in July 1993.

7.3.4 The first legal flaw was the act of appointing Mrs Coulon by the Public Service Commission.
In fact according to our information the Public Service Commission decided to appoint Mrs Coulon at its meeting of 29.12.93 based solely on the former Director of Lands, Roger Tary's letter of recommendation. According to Mr William Mael, former Chairman of the Public Service Commission, the Public Service Department did not submit any application to the Commission at this meeting, neither by Mrs Coulon or any other officer.

7.3.5 It should therefore be concluded that this post was never advertised and that the procedure was perverted.

7.4 ILLEGAL COMPENSATION PAYMENT TO MRS COULON BY THE GOVERNMENT

7.4.1 Council of Ministers' decision to compensate Vulcan employees

The Council of Ministers decided, at a meeting in March 1989, that the former employees of Vulcan should be compensated on the grounds of a breach of contract before its completion, which seemed to be a legal decision.

7.4.2 Attorney General's Position

Following her release from prison, Mrs Coulon requested compensation and Mr Oliver Saksak from the Attorney General's Chamber advised her that pursuant to Sections 50 and 55 of the Employment Act CAP 160, her conviction had deprived her of any entitlements (**Appendix No. 4**). In fact Section 55 of the Employment Act provides that:

"An employee shall not be entitled to severance allowance if he is dismissed for serious misconduct as provided in section 50."

7.4.3 **The Prime Minister's decision to compensate Mrs Coulon**

Despite this legal advice, Mr. Korman wrote a letter to Mr. Oliver Saksak on 04.06.92, in his capacity as Prime Minister, to speed up the process so that Mrs Coulon could be compensated as quickly as possible (**Appendix No. 5**). In fact this is what Mr Korman said in paragraph 3 of the letter addressed to Mr. Oliver Saksak:

"...as Prime Minister of Vanuatu, I am asking you to reconsider Mrs Coulon's compensation so that she can enjoy the same advantage as her other colleagues (of Vulcan)".

7.4.4 In September 1992, Mrs Coulon received the sum of 1,211,542 vt from the Government as compensation for a breach of contract.

7.4.5 The cheque concerning the payment of this compensation was signed by Willie Jimmy, Minister of Finance at the time and was issued by the Department of Finance.

7.5 **MRS COULON'S FAILURE TO REIMBURSE DEBTS**

7.5.1 Mrs Coulon owed a total of 2,297,472 vt while working with Vulcan. Mrs Coulon stole a sum of **661,733 vt** from Vulcan for which she was sentenced to prison for 4 years by the Court of Appeal on 1.1.89 and "borrowed" a sum of **1,635,739 vt** from Vulcan which she did not reimburse.

7.5.2 **Reimbursement of embezzled funds: 661,733 vt**

The reimbursement of this sum (661, 733 vt) was made in two instalments:

- The first instalment, a sum of 211,542vt deducted from the 1,211,542vt that was paid in compensation to Mrs Coulon following the Council of Minister's decision of March 1989, was paid directly as part reimbursement of the sum of 661,733vt.
- The second part, being a sum of 450,191 vt, the difference, was paid by Mrs Coulon's family.

In short, Mrs Coulon was acquitted of this first debt.

7.5.3 **Failure to reimburse the so-called "borrowed" funds: 1,635,739 vt.**

She still owed a total of 1,635,739 vt to the Government up to the beginning of 1998.

7.5.4 According to our sources, following Mrs Coulon's release from prison, the Attorney General's Office decided to start proceedings against her so as to obtain reimbursement of her debt, while the former Prime Minister, Mr Korman decided that it was the Government that should compensate Mrs Coulon in accordance with the general decision made by the Council of Ministers about Vulcan's former employees, in March 1999.

7.5.5 Despite letters from the Director of Lands at the time, Mr. Roger Tary, and Oliver Saksak asking Mrs Coulon how she planned to reimburse her debt, no negotiation seems to have been made to that effect.

7.5.6 Mr. Telukluk admitted in his letter to the Ombudsman on 15.09.97 that he had taken the necessary measures as the Minister responsible, to recover Mrs. Coulon's debt to Vulcan of 1,635,739 vt but that the idea was opposed by the Prime Minister, Mr. Maxime Carlot Korman.

7.5.7 Firstly, Mrs Coulon has not reimbursed her debts of approximately 1,635,739 vt despite letters from the Attorney General of 07.05.92 (**Appendix no. 4**) and that of the former Director of Lands, Mr. Roger Tary of 12.05.92 (**Appendix no. 5**) asking her to state how she proposed to repay these debts.

7.5.8 No judicial proceedings or action has been taken to date against Mrs Coulon to obtain the reimbursement of this debt either by the Lands Department, the Ministry of Lands, the Public Service Commission, the Finance Department or the Attorney General's Chambers.

7.5.9 While Financial Regulation 68 of Chapter 3 provides that:

"where an accountable officer is of the opinion that there is a reasonable possibility of recovering a debt through legal action, he shall submit a detailed written report on the debt to the Attorney General, through the Director General of Finance, with a copy to the Auditor General. The report shall contain full details of any action taken to recover the debt.."

7.5.10 Financial Regulation 69 adds that:

It shall be the responsibility of the accountable officer to follow up all cases of unpaid Debit Notes referred to the Attorney General and subsequently taken to court. The accountable officer shall take all such action as shall be available to him to ensure that any Court Orders obtained are put into effect. He shall take care that he does not take any action that shall contravene or hinder the content of any Court Order.

7.5.11 According to these regulations, it is the Department of Lands' accountable officer's responsibility to take the necessary measures, therefore legal action, to make Mrs Coulon repay her debts. In the case in point no action was envisaged to that effect. However, as an example of the Government's dishonesty, in a similar more recent case and involving a more significant amount, the Government made an agreement with its debtor (a former public servant guilty of misusing funds) to reimburse his debts.

7.5.12 Part of this debt was repaid through salary deductions made recently following a decision by the Public Service Commission and also through funds from her early retirement which is due in October 1998. When the report was published, an amount of 653,463 vt was still remaining to be paid by Mrs Coulon.

8. FINDINGS OF MISCONDUCT

8.1 Finding No. 1:

BREACH OF ARTICLE 55(4) OF THE CONSTITUTION ON THE PUBLIC SERVICE, BY MR. MAXIME CARLOT KORMAN

Mrs Coulon's appointment as temporary Lands Officer was not made *"for a specified period"* or *"to meet unforeseen needs"*.

It seems obvious from the statements of the former Minister of Lands, Mr Telukluk, the former Director of Lands, Mr Tary and the current Director of Lands, that Mrs Coulon's post did not exist in the Department of Lands' structure.

- the Minister and Director of Lands confirmed that they did not need another officer.
- the appointment was entirely of Mr. Korman's doing. He used his constitutional power to find an employment for his sister.
- therefore, Mr. Korman acted illegally and in an unreasonable manner.

8.2 **Finding No. 2:**

BREACH OF ARTICLE 57(3) OF THE CONSTITUTION BY MR. MAXIME CARLOT KORMAN IN APPOINTING MRS. COULON AS A TEMPORARY OFFICER

“No appointment shall be made to a post that has not been created in accordance with a law”

As Minister responsible for the Public Service, Mr. Korman appointed his sister, Mrs Coulon, to a post of Lands Officer at grade P12 which did not exist in the Department’s structure and therefore not covered in the Department of Lands budget. Therefore this post was not created in accordance with a law.

Therefore, Mr. Korman acted in breach of the law.

8.3 **Finding No. 3:**

BREACH OF CHAPTER 2(3) OF THE PUBLIC SERVICE STAFF MANUAL BY MR. MAXIME CARLOT KORMAN IN APPOINTING MRS COULON AS A TEMPORARY OFFICER

“a person with a criminal conviction may be considered for appointment if he has not been convicted of an offence for a period of not less than 4 years”

Mrs Coulon could not be nominated to any post in the Public Service.

Mr. Maxime Carlot Korman did not have the right to appoint his sister to this post as the purpose of this provision was obviously to ensure that the Public Service staff have a good morality and to avoid employing someone who had just left prison after being convicted of theft.

Mr. Korman acted in a totally unreasonable manner by not following the provisions of the Public Service staff Manual.

8.4 **Finding No. 3:**

BREACH OF THE LEADERSHIP CODE (ARTICLE 66 OF THE CONSTITUTION) BY THE FORMER PRIME MINISTER MAXIME CARLOT KORMAN

Personal Gain

8.4.1 Article 66(2) of the Constitution stipulates that:

“In particular, a leader shall not use his office for personal gain...”

This Article prohibits any leader from practising nepotism in the exercise of his official duties.

The famous French dictionary, *le Petit Robert*, defines the term ‘nepotism’ as follows:

“practice among people with power or influence of favouring their own relatives or friends”.

8.4.2 This enquiry is a perfect example of the former Prime Minister, Korman’s abuse of his influence to favour his sister, Mrs Coulon, illegally even when such practice was against the Constitution. Mr. Korman breached several laws through his actions.

8.4.3 **The Employment Act**

Sections 50 and 55 of the Employment Act provides that anyone who has been sacked on the basis of serious misconduct shall lose all their entitlements. The fact that Mrs Coulon committed an act of misappropriation, consists of a “serious” misconduct.

Mrs Coulon was convicted in April 1989 by the Court of Appeal for misappropriation. Article 125 of the Penal Code defines the act of misappropriation as follows:

“destroys, wastes, or converts any property capable of being taken which has been entrusted to him for custody, return, accounting or any particular manner of dealing (not being a loan of money or of monies for consumption).

The Employment Act does not provide any definition for serious misconduct. It is therefore the responsibility of the judge to define it but according to the Attorney General’s opinion such offence should be considered as a serious misconduct (imprisonment), and Mrs Coulon was not entitled to any compensation.

8.4.4 **Mr. Korman abused the powers to make appointments, vested in him under Article 57(3)** of the Constitution and breached the Public Service Staff Manual such as the prohibition of appointing anyone who had been convicted of a crime (Chapter 3(3) of the Public Service Staff Manual) and the rules for appointing a permanent officer to the Public Service.

8.4.5 Mr. Korman used his influence for personal gain for his relative when he was the Opposition Leader and on the eve of the General Elections of December 1990 with:

- the former Minister of Internal Affairs, Mr. Yolu Abbil;
- the former President of the Republic, Mr. Timakata.

Mr Iolu Abbil clearly indicated this in his statement to the Ombudsman (02.07.97)

8.4.6 **Using his influence** for personal gain for his relative when **he became Prime Minister**

- Mr Maxime Carlot Korman used his influence as Prime Minister with the Attorney General, the Minister of Finance, Mr. Willie Jimmy, the Director of Finance, the former Minister of Lands, Mr. Telukluk and the former Director of Lands, Mr. Roger Tary, by:
- forcing them to pay Mrs Antoinette Coulon her Vulcan compensation which she was not entitled to since she had stolen money from Vulcan and had been convicted and;
- influencing them so that no administrative action was taken to recover the sums Mrs Coulon claims to have borrowed from Vulcan.

8.4.7 **Conflict of Interest**

The Constitution stipulates that:

66. (1) Any person defined as a leader in Article 67 has a duty to conduct himself in such a way, both in his public and private life so as not to -

- (a) place himself in a position in which he has or could have a conflict of interests or in which the fair exercise of his public or official duties might be compromised;

Mr. Carlot Korman placed himself in a position in which he had a ‘conflict of interest’ and ‘the fair exercise of his public or official duties were compromised’.

Conflict of interest: Acting as a private individual, the Prime Minister acting for the good of the people, and Mrs Coulon’s brother acting in favour of his sister amounts to a conflict of interest.

How did the release of someone before serving the full term of their sentence, who had misappropriated public funds, benefit the public?

What good was it to the public not to proceed to recovering Mrs Coulon’s debts?

What did the public gain from employing Mrs Coulon to the Department of Lands when she had been convicted for the embezzlement of funds in the exercise of her duties and given that she was not qualified as a Lands Officer?

What interest was it to the public to compensate Mrs Coulon when the Attorney General had declared her compensation as illegal?

The only persons who benefited from this action was Mrs Coulon and Mr Korman, her brother who fulfilled a family obligation.

8.4.8 Mr. Maxime Carlot Korman used his influence as Leader of Opposition and as Prime Minister to obtain personal gains and favours for his family.

8.4.9 **Mr. Korman's integrity and that of the Government of Vanuatu, compromised**

The fact that Mr. Korman has shown such contempt of the Supreme Court and Court of Appeal's decision on his sister, by describing it as political (Appendix 1).

- compromises Mr. Korman's integrity. (Article 66 1(c))
- compromises the Government of Vanuatu and Court's integrity (Article 66 1(d)).

Such action and determination to act illegally compromises the fair exercise of his public duties

8.5 **Finding No. 5**

BREACH OF ARTICLE 57(3) OF THE CONSTITUTION IN THE PROCEDURE OF APPOINTING MRS COULON TO A PERMANENT POST, BY THE FORMER MINISTER OF LANDS, MR TELUKLUK; MR ROGER TARY, FORMER DIRECTOR OF LANDS; MR LESINES, DEPUTY DIRECTOR OF THE PUBLIC SERVICE AND THE PUBLIC SERVICE COMMISSION.

The members of the Public Service Commission were:

Mr Mael William
Mr Daniel Ishmael
Mr Amos Andeng
Mr Edwin Basil
Mr Johnny T Lulu

When these people recommended Mrs Coulon's appointment to a permanent post in the Public Service, or appointed Mrs Coulon, they appointed her even though her post had not been created in accordance with the law.

They acted in breach of the law and the Constitution, in an unfair and evidently unreasonable manner.

8.6 **Finding No. 6:**

BREACH OF CHAPTER 2(3) OF THE PUBLIC SERVICE STAFF MANUAL, BY THE FORMER MINISTER OF LANDS, MR TELUKLUK; MR LESINES, ACTING DIRECTOR OF THE PUBLIC SERVICE AND THE MEMBERS OF THE PUBLIC SERVICE COMMISSION

Mrs Coulon who had just left prison after being convicted, should not have been considered for a post in the Public Service.

The people involved above were aware of this, and yet they allowed themselves to be influenced by the Prime Minister. None of them had the courage and will to oppose the Prime Minister's illegal action.

8.7 **Finding No. 7:**

THE MEMBERS OF THE PUBLIC SERVICE COMMISSION WHO VOTED IN FAVOUR OF MRS COULON'S APPOINTMENT ACTED IN BREACH OF ARTICLE 58(4) OF THE CONSTITUTION WHICH STIPULATES THAT:

(4) The Commission shall not be subject to the direction or control of any other person or body in the exercise of its functions.

This report accuses the Public Service Commission of not having fulfilled its duties independently but having ratified the former Prime Minister's illegal decision to place his sister in a permanent post.

Mr. Ishmael was the only member of the Commission who replied (**Appendix 6**) indicating his disapproval of the Public Service Commission's actions. In his opinion, the Commission was completely politically influenced by the former Prime Minister, Mr Korman. The other members did not reply, which is an indication that they accept the facts and allegations of misconduct.

8.8 **Finding No 8:**

BREACH OF THE LEADERSHIP CODE - ARTICLE 66 OF THE CONSTITUTION- BY THE FORMER MINISTER OF FINANCE, MR WILLIE JIMMY

Mr. Jimmy signed the cheque for compensation payment to Mrs Coulon even though he knew that the payment was illegal. He used public funds to make an illegal payment that was requested by Mr. Korman and thus compromised the respect and confidence placed in the integrity of the Vanuatu Government. He admitted that Mr. Korman's decision was illegal.

Although the former Minister of Finance reasoned that he signed the cheque to "*honour the Prime Minister's instructions*", Mr. Jimmy had sworn under oath at the time of his appointment as Deputy PM and Minister to respect the laws and Constitution of Vanuatu. The fact that the Minister of Finance breached the laws because the Prime Minister instructed him to do so is not an excuse. Each leader has his duties as a leader and using the word of a family honour in this circumstances is inappropriate.

Mr. Jimmy knew that Mr. Korman's instructions were illegal, he even indicated this in his letters. It was his duty to the people of Vanuatu, its Constitution and laws that should have guided him. By electing their leaders, Ni-Vanuatus have the right to expect that their leaders respect their Constitution and the laws they passed in Parliament and they have the right to expect that their best interest be served by the Government and not the illegal interest of the Prime Minister to satisfy the

Prime Minister. He has brought discredit on his role as Minister of Finance by compromising his integrity.

9 RECOMMENDATIONS

- 9.1 **The Public Service Commission**, in collaboration with the Attorney General, should reconsider Mrs Coulon's appointment and terminate her on the grounds of her unlawful appointment and the Public Service Commission should consider the non-repayment of the amount owed as another serious professional misconduct. (Recommendation not applicable as Mrs Coulon was given early retirement in October 1998).
- 9.2 The Minister of Natural Resources to ask the accountable officer to make a report on the reimbursement of Mrs Coulon's debt (653,463 vt), the borrowed amount that has not been reimbursed.
- 9.3 It is the Attorney General's responsibility to determine whether it would be possible to take civil action against Mrs Coulon, Mr. Korman and Mr. Jimmy for the compensation payment of 1,211,542 vt - despite contrary legal advice from the Attorney General's Chambers at the time.
- 9.4 **Mr Korman** should not be considered for any post in the Public Service involving a control on public funds since he has proved to be incapable of differentiating between public needs and personal needs or public interest and personal interest. Moreover he did not respect either the Supreme Court decision, that of the Appeal Court, or the laws or Constitution of Vanuatu.
- 9.5 **The former members of the Public Service Commission** (Mael William, Amos Andeng, Edwin Basil, Johnny T. Lulu) who voted in favour of Mrs Coulon's appointment should not be reappointed to any position of responsibility since they could not act independently as required by the Constitution. It is recommended that the financial regulations or the Finance Act be amended.
- 9.6 The administrative delay and inaction by responsible authorities to recover the public debts should be considered as professional misconduct liable to disciplinary action.
- 9.7 The President of the Republic should remind the Deputy Prime Minister, Willie Jimmy about his allegiance to the Constitution and laws of Vanuatu. Honour is overruled by respect for the Constitution and laws.

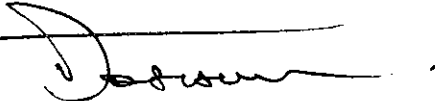
10 CONCLUSION

10.1 To comply with Article 63(4) of the Constitution and Section 23 of the Ombudsman's Act No. 14 of 1995, the Ombudsman is sending a copy of this report to the President of the Republic, the Ministers concerned and the public authorities responsible. The Constitution stipulates that it is their responsibility *"to decide upon the findings of the Ombudsman within a reasonable time and the decision, with reasons, shall be given to the complainant forthwith"*

Therefore, the Ombudsman is requesting all the authorities concerned to decide upon these findings within 21 days of the date of receiving this report:

- His Excellency, the President of the Republic of Vanuatu
- The Prime Minister
- The Public Service Commission
- The Attorney General
- The Minister of Natural Resources

Dated the 19th day of February 1999 in Port Vila



(Sgd)

for
Hannington GODFREY ALATOA
OMBUDSMAN OF THE REPUBLIC OF VANUATU

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BETWEEN: ANTOINETTE COULON
(Appellant)

AND : PUBLIC PROSECUTOR
(Respondent)

JUDGMENT

Antoinette Coulon appeals against conviction and sentence. On 7th February 1989, she was found guilty on 11 counts of misappropriation contrary to Section 125 of the Penal Code Act 1981. She was sentenced to 4 years imprisonment, concurrent, on each count, and ordered to pay compensation of VT661,739 or in default of payment to a further 2 years imprisonment.

Background

The Appellant was the accountant for Vulcan, a body set up to administer land in Port Vila for the benefit of its custom owners. She was responsible for keeping its books and for making all payments on its behalf including salaries. She was not inexperienced - she had previously worked 21 years as "Accountant" at the French Residency.

There were 2 authorised cheque signatories, the Chairman Mr Bogiri and the General Manager Mr Kalo. They used to sign bunches of blank cheques and give them to the Appellant. Between August 1987 and March 1988 she wrote out 11 cheques for sums far exceeding her salary, payable to herself. She completed the cheque stubs to show a figure much lower than that actually paid. Money allocated for salaries having been exhausted, she used money set aside for specific projects.

She admits that she drew the money and spent it on herself and her family. Her defence was that she did not act dishonestly. In support of this she says that she was given permission to do this by the General Manager, Mr Kalo; and that she always intended to pay the money back. She said that the amount shown on the cheque stub represented the salary due to her; and that she kept a separate record showing the total balance which she owed. (Mr Gee in argument seemed to suggest that a genuine intention to repay would be a defence to a charge of misappropriation. It is not. If money is misappropriated today with the intention and ability to repay it tomorrow, the offence is still committed

.../2

as soon as the money is taken. The intention to repay is only relevant as to sentence.)

At the trial the Appellant admitted that the Board had a general policy to limit advances of salary to 3 months salary (corresponding with the period of notice) and that she advanced herself for more than that. But she said that Mr Kalo knew how much she had, and gave consent on each occasion. Mr Kalo said that he never refused a request by her for an advance of salary, but he did not know how much had been advanced; nor that the limit of 3 months' pay had been exceeded; nor that the money was taken from money voted for special projects. He said that if he had known any of these things he would have refused. If true, it is disgraceful that a public body was operated with so little control.

Fresh Evidence

Mr Gee for the Appellant sought to introduce evidence which he said was only drawn to his attention last week. This related to a Board meeting in September 1987 when it was allegedly recommended that the General Manager, Mr Kalo be dismissed for authorising advances of salary in excess of the limits laid down by the Board. We refused this application for 2 reasons:

- (i) If it was common practice to allow such advances, the Appellant being in charge of the financial records would know of it. The matter could and should have been put to Mr Kalo at the trial. There is no reasonable explanation for failure to do so. It is too late to raise it now.
- (ii) Evidence of the opinion of the Board is of no probative value. Their belief that excessive advances had been made does not prove that this had in fact occurred.

Mr Gee also suggested that this evidence would show that Mr Kalo had lied in evidence by saying that he himself had not received advances in excess of 3 months' pay when in fact he had done so. Perusal of the transcript reveals no record of such evidence having been given by him.

Grounds of Appeal against Conviction

The Appellant raises 2 grounds:

1. That the Court erred in accepting the evidence of Mr Kalo and giving too little weight to that of the Appellant.

This was essentially a matter for the trial judge and the assessors. They saw and heard the witnesses. They were in a much better position than us to decide what weight to give to what evidence. An appeal court should not interfere with a finding of fact unless it is manifestly wrong. In the absence of any credible explanation for the difference between the amounts shown on the cheques

and the counterfoils it is not difficult to see why her evidence was not believed. There is no merit in this ground of appeal.

2. That the judge failed to direct the assessors, and himself failed to sufficiently consider, the defence that the Appellant sought and obtained consent for each payment as an advance of salary.

A full record of the summing up is not available. Mr Gee stated that this part of her defence was not referred to at all. Mr Baxter-Wright for the Prosecution was unable to help. There is no specific reference to it in the judgement. We have therefore to consider the possibility that it may have been inadvertently overlooked.

Even if it was, we do not consider that any injustice was done. It is clear that the court below believed the evidence of Mr Kalo and disbelieved that of the Appellant. There was substantial other evidence pointing to her guilt:

- (i) As an experienced book keeper, she wrote different figures on the cheques and their stubs.
- (ii) As an experienced book keeper, she took money for her own "advance" from a vote which she must have known must not be used for this purpose.
- (iii) The total amount of her borrowing reached figures which she had no prospect of repaying. She must have known when she drew these sums that she could never hope to repay them in full.

Having carefully considered all the evidence, we are left in no doubt that the Appellant acted dishonestly. There is no sufficient ground for interfering with the decision of the learned Chief Justice. The appeal against conviction is dismissed.

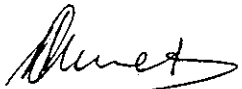
Appeal against Sentence

The Appellant was in a position of trust. She was dealing with public money. There may have been no proper system of financial control but if not, it was her duty to impose one. Instead she abused her position to take advantage of the lack of control for her personal benefit. It was a serious breach of trust by a public servant. Of course she must go to prison. There is nothing wrong in principle with a sentence of 4 years on each count. The compensation order is justified and saves duplication of proceedings by avoiding the necessity for a further civil action.

We are more concerned about the further order that the Appellant should serve a further 2 years in prison if she fails to pay the compensation order. In prison she will have no means of making this payment. So in effect she will have been sentenced to a total of 6 years.

The last step when sentencing is to stand back and consider whether the total of separate sentences is appropriate for the offences committed. Applying this test, the total of 6 years is excessive. We therefore set aside the order for imprisonment in default of payment. The appeal against sentence is allowed to that extent only.

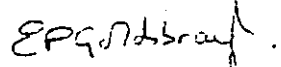
Dated at Port Vila this 4th day of April, 1989.



Mr Justice A. Amet
Court of Appeal Judge



Mr Justice G. Martin
Court of Appeal Judge



Mr Justice E. Goldsbrough
Court of Appeal Judge

Oliver
24/8/89

REPUBLIC OF VANUATU
REPUBLIQUE DE VANUATU

ATTORNEY GENERAL'S
CHAMBERS
24 AUG 1989
AG.15/138
RECEIVED
Attorney General's Chambers.

MEMORANDUM

FROM: Accountant General
Phone: Terry Fisher,
2951, Extn 252

To: ~~Legal Officer~~
cc: General File/Chrono-L

File Ref: IA 4260 Coulon3
Your Ref: AG.15/138/OAS/cn

Date: 23 Aug 1989.

ATTN: MR OLIVER SAKSAK

SUBJECT: M. ANTIONETTE COULON

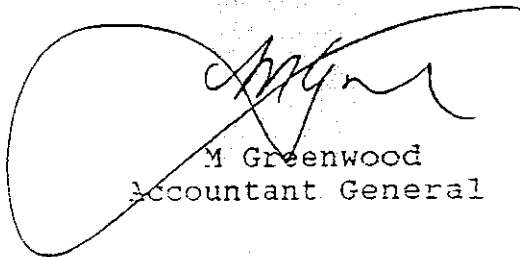
1. Many thanks for your letter of 17 Aug regarding the above. The figure of Vt.974,006 was derived from your letter of 11 April 1989, ref AG 1/2/OAS/cv (Vt.1,635,739 less Vt.661,733). Unfortunately, it is wrong.

2. The figure recoverable IS Vt.1,635,739 - the Vt.661,733 has already been deducted in arriving at Vt.1,635,739.

3. I attach a copy of my Memo of 27 September 1988 and the Schedule thereto. From this you will see that the position is -

TOTAL Recoverable -	2,297,472
Recoverable by CRIMINAL Proceedings -	561,733
Recoverable by CIVIL Proceedings -	<u>1,635,739</u>

4. I trust this clarifies the position. Should you require any further information, please do hesitate to contact me.


M Greenwood
Accountant General

*I find it hard to
proceed against a person
who is in jail. She
has got to be responsible
for her own tort or malfeasance
and on this basis we cannot
proceed against any of her
family.
I will reconsider
matter in due course.
Meanwhile, please file.
Oliver*



BUREAU DU PREMIER MINISTRE

OFFICE OF THE PRIME MINISTER

Ref: 301/1/PM/lr

4 February 1992

Mrs Coulon Antoinette
C/- Erakor Village
PORT VILA.

Dear Mrs Coulon,

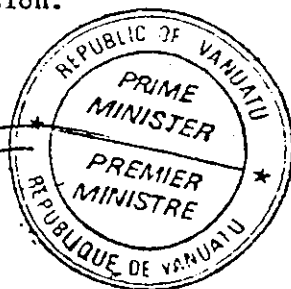
RE: LETTER OF TEMPORARY APPOINTMENT

I am pleased to approve your appointment on temporary terms as a Land Officer in the Land Department of the Vanuatu Government Public Service with effect from 5 February 1992.

2. Your temporary appointment is intended to last until the appropriate procedure have been completed for a permanent appointment.
3. Your appointment may be terminated at any time by either party giving one month's notice.
4. The post is in grade P12.1 of the Public Service Salary Scales and your temporary appointment would be on annual salary of Vt:711.696 plus a supplement of Vt:30.000 per annum. As a temporary officer you are not entitled to Family Allowance and Housing Allowance.
5. You are subject to regulations and instructions applicable to the Public Service, with the exceptions as detailed in the Staff Manual (extended sick leave, maternity leave and special leave). In addition temporary officers are not entitled to receive free medical treatment or become a member of any future pension scheme.
6. Any question of interpretation should be referred to the Prime Minister for decision.

Yours sincerely,


MAXIME CARLOT
PRIME MINISTER



Copies: Director of Public Service (2)
: Prime Minister's Office (2)
: Finance Department
: Lands Department
: Auditor General
: Management Services Unit

GOVERNMENT OF THE REPUBLIC OF VANUATU

Private Mail Bag 048
Port Vila
Vanuatu
South West Pacific
Cable: ATTORNEY
Telex: 1040 VANGO
Telephone: 22362



Our Ref: AG. 15/138/OA

Your Ref:

ATTORNEY GENERAL'S CHAMBERS

7 May 1992

Mrs Antoinette Coulon
c/- Lands Department
VILA

Dear Madame

Re: Reimbursement of Contract - Ex-VULCAN Staff

Tank yu tumas from leta blong yu abaot subjek ia antap.

Ofis ia i luksave we yu bin wok long VULCAN anda long wan contract stat long January 7th 1985 kasem 16 May 1988 taem hemi klos. Contract blong yu hemi bin for 3 yia. Sapos yumi wokemaot gud, 3 yia ia hemi finis long namba 8 January 1988 nomo bifo we VULCAN ites klos. Ofis ia i wantem save wanem nao ibin happen long 4 manis we istap bifo VULCAN i klos, yu bin stap wok yet, mo sapos yes, olsem wanem?

Ofis ia i save we afta VULCAN i klos yu bin stap wok long Lands Dipatmen long 1988 kasem 1989. Ofis ia i save tu se yu bin pass long kot from misuse blong mani blong VULCAN. Kot i passem wan sentence blong -

- (a) 4 yia kalabus;
- (b) Compensation blong 661,733 Vatu; mo
- (c) Prosekusen costs blong 30,000 Vatu.

Follem decision blong kot ia mo follem section 50 mo 55 blong Employment Act, Ofis ia i advaes se yu no gat any entitlement anda long contract blong yu. Hemia i kavremap taem yu bin wok long VULCAN mo Lands Dipatmen.

Mo tu, Ofis ia i wantem remaenem yu se yu gat 1,635,737 Vatu i stap blong pembak long Gavman. Plis yu save talemaot hao nao yu tingting blong pembak bigfala Vatu ia.

Mi hope se mi ansa long olgeta queries blong yu.

Yours faithfully

Oliver A Saksak
Principal Legal Officer
(for) Attorney General



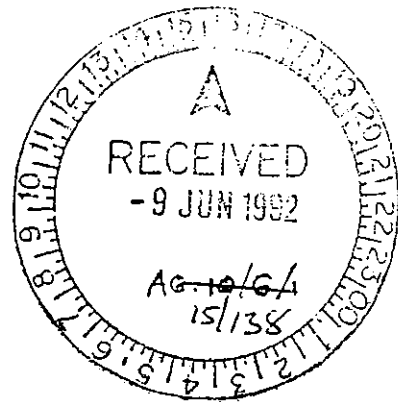


OFFICE OF THE PRIME MINISTER

BUREAU DU PREMIER MINISTRE

4 June 1992

Mr Oliver Saksak
Principal Legal Officer
Attorney General's Chambers
PORT VILA
Vanuatu



Dear Sir,

Re: Mrs Coulon's Reimbursement of Contract - Ex-Vulcan staff
=====

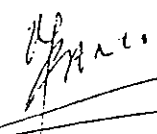
Mi bin aware long wan letter we yu bin raetem long Mrs
Antoinette Coulon abaout sabjek ia antap.

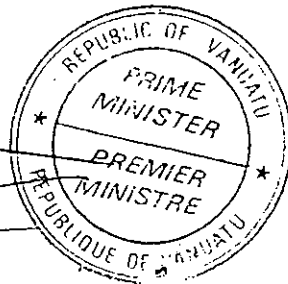
Long look look blong me, al judicial actions againsem Mrs
Coulon oli purely political.

Mo mi ting se, olsem we every colleagues blong Mrs Coulon
oli bin compensated finis, mo as Prime Minista blong
Vanuatu, mi askem you blong reconsiderem compensation long
saed blong hem, blong hem i save benefit long hem.

Abaout sum of 1,635,737 Vatu blong pem back long Government,
bae mi discuss long hem bakagain wetem you taem mi kamback.

Yours sincerely,


Maxime Carlot Korman
Prime Minister



cc. Mme Antoinette Coulon

o Sole
Please file
Oliver
Date 10/6/92

With respect to the P.
this is a wrong
attitude to approach the
problem. Please advise
the PM accordingly that
under the law an
employee who commits a
serious offence is dismissed
without any benefit except
perhaps for leave earned.

FILE

-6.

C O N F I D E N T I A L

ATTORNEY GENERAL'S CHAMBERS

MEMORANDUM

FROM : *Attorney General's Chambers*
TO : *Financial Adviser - Urban Land Section*
Lands Department

OUR REF : *AG.15/138/OAS/CN*
YOUR REF :
DATE : *2nd July, 1992*

SUBJECT

Re: Claim For Unexpired Term of Contract - Ex-VULCAN
Employee - Mrs. Antoinette Coulon

This is a highly controversial claim. Our legal advice is as per our letter dated 7th May, 1992. (Copy attached). However in the light of a response thereto - see letter dated 4th June, 1992, I hereby submit my calculations of what I believe to be the appropriate claim as follows:-

.

URGENT

7

CONFIDENTIAL

Attorney General's Chambers
Director General of Finance

AG.15/138/OAS/cn

27th August, 1992

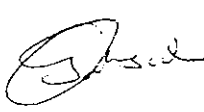
Re: Payment To Antoinette Coulon

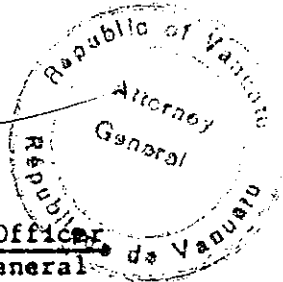
I have received instructions from the Prime Minister at 2.15 p.m. today to prepare clean drafts of Agreement to be signed by them later today without further delay.

In this regard I submit herewith 2 originals and 1 copy for signature by A. Coulon, Maxime Carlot Korman in a personal capacity, and the Minister or his First ^{Secretary} I suggest that the Minister himself signs and witnessed by his First or Second Secretary.

We maintain that this payment would not be in accordance with the law and therefore it would not be proper for any officers of these Chambers to act as a witness.

I trust that you will take necessary action immediately.


Oliver A. Saksak
Principal Legal Officer
(for) Attorney General



Encl.

■
GOUVERNEMENT DE LA
RÉPUBLIQUE DE VANUATU
MINISTÈRE DES FINANCES,
DU COMMERCE, DE L'INDUSTRIE
ET DU TOURISME



■
GOVERNMENT OF THE
REPUBLIC OF VANUATU
MINISTRY OF FINANCE,
COMMERCE, INDUSTRY
AND TOURISM

■
YOUR REF:
V-REF.

OUR REF: 600/6/2/WJ/jn/MFCIT
N/REF.

FROM: Honourable Minister of Finance
DU:

TO: Honourable Prime Minister
À:

DATE: 27th August, 1992.

■
MEMORANDUM



URGENT & CONFIDENTIAL

Subject: Payment to Mrs. Antoinette Coulon.

I refer to our discussion about the above subject which has now become a very complicated matter to deal with it legally. IT was suggested that a paper be introduced to the Council of Ministers for decision, seeing Attorney General has advised the department of Finance that such payment would be unlawful and illegal.

Recommendation to the Council of Ministers would cover :

(a) Debt owing by Mrs. Antoinette Coulon due to overpayment in salary which amounted to two million, two hundred and ninety seven thousand, four hundred and seventy two Vatu (2,297,472 Vt.) be written off as bad debt to Vanuatu government.

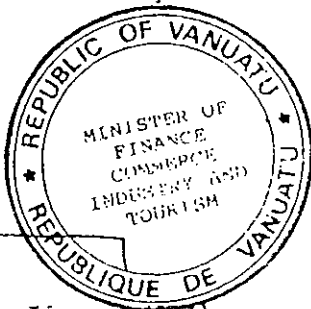
(b) That a payment of one million, two hundred and eleven thousand, five hundred and forty two Vatu (1,211,542 Vt.) be paid to Mrs. Antoinette Coulon related to her employment with Vulcan.

The Council of Ministers decision would eliminate criticism by the Auditor General against Attorney General, Department of Finance and the Minister of Finance for unlawfully authorise expenditure of public funds.

Yours faithfully,

Honourable Willie Jimmy (MP)

Minister of Finance, Commerce,
Industry and Tourism.



cc To Attorney General
To Director of Finance.

① Oliver
② Soti
③ Please file
④ 27.8.92 Oliver
28.8.92

GOUVERNEMENT DE LA
REPUBLIQUE DE VANUATU
MINISTÈRE DES FINANCES,
DU COMMERCE, DE L'INDUSTRIE
ET DU TOURISME

GOVERNMENT OF THE
REPUBLIC OF VANUATU
MINISTRY OF FINANCE,
COMMERCE, INDUSTRY
AND TOURISM

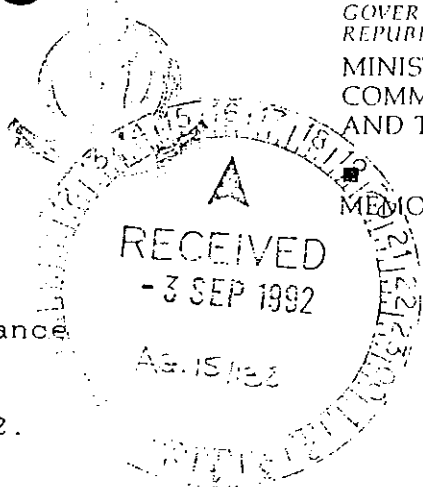
YOUR REF.
V REF.

OUR REF. 600/642/WJ/jn/MFCIT
N REF.

FROM Hon. Minister of Finance
DU

TO Hon. Prime Minister
A

DATE 2nd September, 1992.



MEMORANDUM

PRIVATE and CONFIDENTIAL

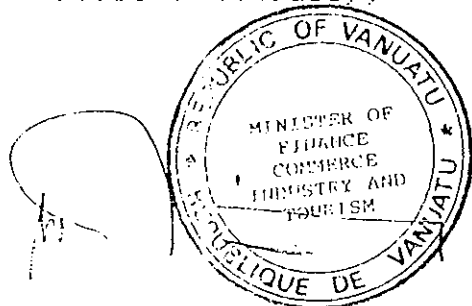
Re: Deed of Settlement Regarding Payment to
Mrs. Antoinette Coulon.

The deed of settlement has now been signed to comply with your instruction as the "Prime Minister" in your letter dated 28th August, 1992 despite the advice given by the Attorney General and Director General of Finance regarding this matter.

Please take note that no officers in the Attorney General Chamber is prepared to sign as witness to this contract.

I hope the matter will now be resolved as required.

Yours faithfully,



Honourable Killie Jimmy, MP.

Minister of Finance, Commerce,
Industry and Tourism.

c.c. To Attorney General
To Director General of Finance
To Mrs. Antoinette Coulon

Noted

Please file!

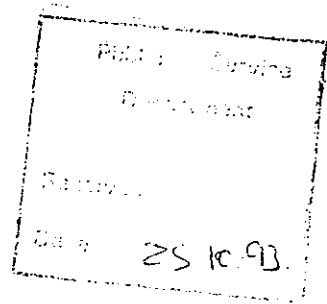
Blair

9/9/92

Clavin

G 3/9/92

10



28.7.93

207/39

Hon Minister

Director of Public Services

Vacancies - Department of Lands

I refer to your circular PSD 105/05/93/pm to all Heads of Department.

May I recommend Antoinette Coulon to the post of Lands Officer, Urban Unit, Vila (P. 10) and Zoe Neirov to the post of Secretary Typist, Urban Unit, Luganville (P. 8) both within the Department of Lands.

Thank you for your cooperation.

Paul B Telukluk
Paul B Telukluk
Minister of Natural Resources



GOUVERNEMENT
DE LA
RÉPUBLIQUE DE VANUATU

SERVICE DE LA
FONCTION PUBLIQUE

Sac Postal Privé No. 017
Port Vila

PSD. 175/08/94/PM/mjm



6-17
GOVERNMENT
OF THE
REPUBLIC OF VANUATU

DEPARTMENT OF
PUBLIC SERVICE

Private mail Bag 017
Port Vila

6th January 1994

Mrs Antoinette COULON
C/- Lands Department
PORT-VILA

Dear Mrs Coulon,

I am directed by the Public Service Commission to offer you a permanent appointment to the post of a Lands Officer in the Lands Department of the Vanuatu Government Public Service subject to the production of a certificate of medical fitness given by a medical practitioner approved by the administration. This medical certificate should be submitted within 28 days from the date of this letter.

The post is in grade P12 of the Public Service Salary Scales and your appointment would be on an annual salary of VT. 711.696 per annum plus a supplement of VT. 51.000 per annum with effect from 29th December 1993.

The terms and condition of service applicable to the Vanuatu Public Service are contained in the Staff Manual for the Public Service and will apply to you. You should familiarise yourself with the contents of the conditions which have been issued so far to amend some of the sections of the Staff Manual which should be available in your Department.

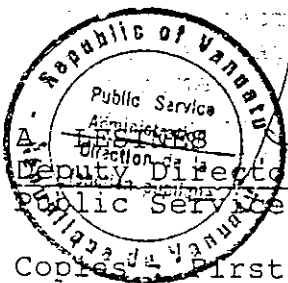
You may be called upon to carry out your duties in any place in the Republic.

.../2...

You will be required to serve on probation for Two years only and confirmation of your permanent appointment will be decided by the Public Service Commission only after the expiry of the probationary period and with the favourable recommendation of your Head of Department. The Commission may extend the probationary period or terminate your employment after giving one month's notice if your service, conduct or health are not satisfactory.

If you accept this offer of appointment, please confirm your acceptance in writing.

Yours faithfully,



 Deputy Director

 Public Service Department

[Handwritten signature]

- Copies:
- First Secretary, Ministry of Lands
 - Lands Department
 - Salary Section
 - Audit
 - MSU
 - PF
 - Chrono



Department
Received
Date 13.5.97

MEMORANDUM

Your Ref.
V/Ref.

Date Wednesday 30th April, 1997

Our Ref. LD: 535/4/13/GT.mkj
N/Ref.

from The Director of Lands
du
to The Director of Public Service
à

RE : SUSPENSION OF LANDS OFFICER, MME ANTOINETTE COULON -
CASE REPORT

Madam Antoinette Coulon had used to be an employee Accountant for the ex-Port Vila Urban Land Corporation (VULCAN) until its closure in May 1988 due principally to gross mismanagement of its affairs and alleged misappropriations of its funds. By this time it had been discovered that Mme Coulon had involved in the misused of some VULCAN funds to the amount of 2.297.474 Vatu. Following this, in 1989 she had been convicted by the Court and sentenced to a term of 4 years imprisonment which she served until her release in early 1992 by the newly elected Korman Government.

Immediately after her release from prison she had been appointed on a temporary basis by the then Prime Minister, Maxim Carlot Korman, to the position of Lands Officer in the newly created Port Vila Urban Land Unit under the Department of Lands. Her appointment had taken effect as from 5 February 1992. She has since then been paid on Salary Scale P.12 whilst the budgetted salary levels for the other more qualified and experienced Lands Officers at the time were graded at P.10.

It was during this early period of her appointment that she was understood to have been paid a certain amount of compensation for the termination of her employment by the ex-VULCAN. Out of her compensation payment, an amount of 661.733 Vatu had been deducted to recover part of the funds she misappropriated, leaving an unrecovered balance of 1.635.737 Vatu which has still been left remaining to this days without any attempt on her part to arrange settlement despite a number of reminders to that effect by the former Director of Lands as well as the Attorney General Chambers.

job
V.S.C.
W.S.

Then it so happened that after the VPSA strike action which took effect as from November 1993 and due to staff shortage in the Department of Lands, not surprisingly, in 1994 she was recommended to a permanent position of Lands Officer by the former Director of Lands. Consequently her position was regularized by the Public Service Commission. In spite of this it could be frankly said in reference to Mme Coulon's work attendance and performance that it has been very unsatisfactorily inconsistent. Her general work attitude used to be that she was her own boss. She could come to work or go off whenever she wished at her purported discretion. The concept of having superiors whom subordinate officers could report to did not exist nor matter to her. She would care less if that sort of administrative hierarchy existed at all. It was therefore surprising to note that her former superiors had done virtually nothing to take or recommend any disciplinary action against her. This cannot be understood when one might consider the necessity of maximizing the output of the limited number of staff one department could have after the strike.

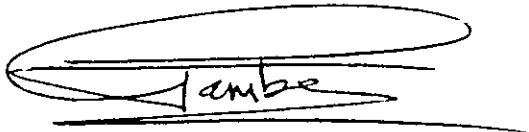
Her unproductive attitude continued unchanged and unchecked until October last year, 1996, when the then First Secretary of the Ministry of Lands, Mr Lionel Kaluat, instructed myself, on my capacity as Principal Lands Officer, to effect the termination of Mme Coulon's appointment. Honestly I could not comply with this instruction knowing very well that Mme Coulon was a permanent officer duly appointed by the Public Service Commission. Instead I resorted to recommend to the Commission, in my memo of 10th October 1996, to grant her compulsory early retirement. What I had in mind when I made such a recommendation was that if she could be granted her retirement, any benefits that she might claimed or entitled to could be deducted to recover the balance of the misappropriated funds still owing to Government. Unfortunately nothing was forthcoming. Despite my note of reminder I made through the Director of Public Service, still nothing happened.

On the 27th of February this year, the Principal Lands Officer (Urban), Mr Michael Mangawai, had gathered courage and made a written report to me (as Director of Lands) regarding Mme Coulon's continued regular absences from work. He made two recommendations : (1) to serve her with a final notice/warning; and (2) to suspend her. While I was still considering what appropriate course of action to take against the officer, taking into account my previous recommendation to the Public Service Commission for her retirement, the incident of 27th March occurred. With not much thought Mme Coulon had deliberately, without respect, made an open argument with the Principal Lands Officer over her somewhat irregular processing of the sale of her leasehold property at Tassiriki. At the same time she was threatening to stick Mr Mangawai with a small knife which she had cunningly indicated to have been kept in her basket. The situation was very much embarrassing and a very bad example for one public officer to have displayed. It was a misconduct in its worst case that linked to a private or personal interest.

You would certainly agree with me that this sort of behaviour or attitude is not acceptable and cannot be tolerated. Accordingly Mme Coulon had to be suspended with immediate effect. You will find attached to this note are relevant correspondences or documents relative to cases involving Mme Coulon for your perusal. Some of these are confidential matters which must be treated as such.

Please process as required for due consideration by the Public Service Commission or the Disciplinary Board. I would be obliged if you give this your prompt attention so as to expedite the conclusion of disciplinary process.

Thankyou very much for your anticipated cooperation.

A handwritten signature in black ink, appearing to read 'Tambe', is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval shape.

George Tambe
Director of Lands

CC : First Secretray,
Ministry of Lands and Natural Resources

'' : Chairman, Public Service Commission

. Attachments

Maxime CARLOT KORMAN
Député de Port Vila
Port Vila MP

Rue André Colardeau
Port Vila, République de Vanuatu

Sac postal privé 052 - PMB 052 Port Vila
Téléphone : (678) 22229
Fax : (678) 24530

Le 28 Août 1997

FAXIN
01.08.97

A Madame M. N. F. PATTERSON,
Médiateur de la République
Port Vila - VANUATU.

Objet: Votre enquête sur Mme A. COUON

Référence: Votre lettre du 21 juillet que j'ai
reçue en Août après mon retour de
l'étranger.

Mme PATTERSON,

Ji suis au courant que Mme A. COUON
a bénéficié des droits versés par le Gouvernement
au même titre que les employés de l'Ancien
VUKCAN cloturé par le Gouvernement hini.
Il est vrai que j'ai demandé au bureau
de l'Attorney Général de conseiller les Finances
de soustraire des droits de Mme COUON les
635.734 et de ne lui verser que la différence.

2- Ji n'ai exercé aucune influence sur
cette affaire. Le Premier Ministre n'a pas
de droit d'exercer des influences sur
l'Attocat du Gouvernement. L'attocat du

II

gouvernement défend le droit des travailleurs
ou employés du gouvernement.

- 2 - Je n'ai jamais insisté pour qu'on
verse la totalité de ses droits. Ce n'ai
que justice de faire ^{payer} les dettes ou les dus
et rendre la différence à un travailleur.
- 3 - Au Vanuatu, le Ministre recrute sur la
recommandation du Ministre et ne recrute
jamais sans recommandation diuissiois et
consultations auparavant avec le Ministre.
- 4 - Tout à fait; cela répondait à un
besoin. Le Ministre a demandé
que l'on s'occupe spécialement de celle était
l'une de celles disponibles qui connaissait
parfaitement les domiers des terres urbaines
de Port Vila.
- 5 - Demandez à l'Attorney Général. C'est
lui qui a rédigé "la lettre-formulaire"
de recrutement que signe le Premier
Ministre habituellement.
- 6 - Madame A. couion a purgé deux ans et
demi de peine de prison et par 14 ans.
Votre question est importante; qu'il
faudrait que son pourcentage peut être?
La liste des personnes qui ont fait de la
prison ou condamnées par un tribunal.

de la République est longue au
niveau des Fonctionnaires; Fonctionnaires
de l'Administration publique, Fonctionnaires
de la Police, de l'Enseignement, de
la Santé etc.... (corps enseignant, corps de la Police)

7 - j'ai répondu.

8 - j'ai répondu.

9 - Mme Coulon a déjà été jugé pour
cette affaire. C'est à la Cour de vous
répondre ce n'est pas à moi le Premier
Ministre, Ministre de la Fonction Publique.
Il y a eu un Jugement. Mme Coulon
n'a même de vous répondre. C'est elle
qui a été condamnée pas moi. C'est elle
qui a été jugée pas moi. C'est elle
qui pourra vous dire s'il y a dette à
payer ou pas???

Comme concurrentes: je trouve votre lettre
sur cette affaire vraiment merquise et
méchante. C'est votre droit légal d'enquête
sur une affaire. Je vous conseillerais d'enquêter
beaucoup plus profondément sur les affaires et
porter des jugements à la fin et non première
ment. Je reste à votre déposition pour vous
donner de plus amples détails sur le recrutement
de Mme A. Coulon. Avec mes Respects
M. Coulon

Rue Lapereuse
B.P. 784 PORT-VILA

FAYIN
17-2-98

A Madame M. N. FERRIÈUX PATTERSON
Médiatrice de la République.

Objet: Recrutement de Mme A. COLON,
Rapport Préliminaire.

Référence: Votre lettre N° 0430427/401/MC

Madame,

Au Vanuatu le Premier Ministre ^{me} nomme
Jamais des personnes dans la Fonction Publi-
que Premier Ministre Constitutionnellement
et légalement recrute temporairement
du personnel pour la bonne marche
ou le bon fonctionnement de ou des services
gouvernementaux. Pour la Fonction Publique
c'est la Commission de la Fonction Publique
qui les recrute et les nomme ^(fonctionnaires) comme
fonctionnaires permanents de l'Administration
Publique.

ce qui concerne l'indemnité versée

à Madame Couron il s'agit d'une indemnité de rupture de contrat par le Gouvernement. Le Gouvernement par son Premier Ministre a décidé de faire bénéficier Mme Couron au même titre que tout le personnel de l'ancien UCLCA qui avait signé un contrat avec le Gouven de l'indemnité de rupture de contrat.

Veuillez vous rappeler cette règle d'ordre démocratique et privilégié qui dit: "qu'un Gouvernement n'est pas obligé de suivre les différents conseils qui lui sont donnés (et, par les Conseillers et, par les chefs de services.)"

Dans cette affaire il est clair que les acteurs dans votre rapport préliminaire font tout simplement de la politique et s'éternisent dans des querelles personnelles et je trouve malheureux que le Bureau de l'Ordre prend politiquement parti du côté de l'A.G. et du chef du service des terres contre les décisions justes du Gouvernement (Exécutif) et de la Couronne de la Fonction Publique (organe Constitutionnel).
Voilà Madame les remarques que je désirais faire sur les allégations que je considère exagérées et même fausses contre un chef de Gouvernement.
Je vous remercie. H. ...

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Mr. Maxime Carlot Korman
Former MP for Port Vila
Rue Laperouse
P.O.Box 784

Ref : Your Letter No. OMB0427/LO1/mok

Mrs Marie-Nöelle Ferrieux Patterson
Ombudsman of the Republic of Vanuatu

Dear Madam,

Re : Recruitment of Mrs. A. Coulon/ Preliminary Report

In Vanuatu the Prime Minister never appoints anyone into the Public Service.

The Prime Minister has the constitutional and legal right to recruit staff on a temporary basis for the smooth running of Government service. As for the Public Service, recruitment and permanent appointment of public servants into the Public Administration are made by the Public Service Commission.

As for Mrs. Coulon's compensation it was for a breach of contract on the Government's part. The Government decided, through the Prime Minister, to grant Mrs. Coulon the same entitlement as was given to all the former staff of Vulcan who signed a contract with the Government for compensation in the event of a breach of contract.

Let me remind you about the following golden rule : democratic or privileged ? which means that a Government is not obliged to follow the advice it receives (from advisors or departmental directors).

It is obvious that all those people mentioned in your preliminary report were playing politics and lingering on personal conflicts and it is sad that the Office of the Ombudsman is politicaly taking sides with the Attorney General and the Director of Lands Department against the fair decisions by the Government (Executive) and the Public Service Commission (a constitutional body).

These are the comments that I wish to make on the allegations made against the Head of Government which I consider to be exaggerated and even false.

Thank you.

M. Carlot

Maxime CARLOT KORMAN
Ancien député de Port-Vila
Rue Laperouse
B.P. 784

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À Madame M. N. FERRIEUX PATTERSON
Médiateur de la République.

Objet: Recrutement de Mme A. COULON / Rapport Préliminaire

Référence: Votre lettre No.OMB0427/L01/mok

Madame,

- Au Vanuatu le Premier Ministre ne nomme jamais des personnes dans la Fonction Publique.
- Le Premier Ministre constitutionnellement et légalement recrute temporairement du personnel pour la bonne marche ou le bon fonctionnement du ou des services gouvernementaux. Pour la Fonction Publique c'est la Commission de la Fonction Publique qui les recrute et les nomme (fonctionnaires) comme Fonctionnaires permanents de l'Administration Publique.

En ce qui concerne l'indemnité versée à Madame COULON il s'agit d'une indemnité de rupture de contrat par le Gouvernement. Le Gouvernement par son Premier Ministre a décidé de faire bénéficier Mme COULON au même titre que tout le Personnel de l'ancien VULCAN qui avait signé un contrat avec le Gouvernement de l'indemnité de Rupture de Contrat.

Puis-je vous rappeler cette règle d'or; démocratique et privilégié? qui dit: "Qu'un Gouvernement n'est pas obligé de suivre les différents conseils qui lui sont donnés (et, par les conseillers et, par les chefs de services)".

Dans cette affaire il est clair que les acteurs dans votre rapport préliminaire, font tout simplement de la politique et s'éternisent dans des querelles personnelles et je trouve malheureux que le Bureau du Médiateur prend politiquement position du côté de l'A. G et du chef de service des terres contre les décisions justes du Gouvernement (Exécutif) et de la Commission de la Fonction Publique (organe constitutionnel).

Voilà Madame les remarques que je désirais faire sur les allégations que je considère exagérées et même fausses contre un chef de Gouvernement.

Je vous remercie.

M. Carlot

5. Who I bin askem you blong releasem hem?

Mi bin stap under pressure blong Korman mo President Timakata.

6. Wanem nao effect blong one release under licence?

Man I no really free, hem I still prisonner be hem I stap oustide long prison and hem I mas comply wetem ol conditions we I stap long Order.

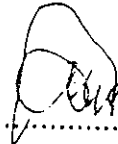
Mi no save spos hem I fullfilem ol conditions blong Order o no from ~~let~~ bet after Government I change, mo mi nomo stap olsem Minister responsible long Prison.

Caem


we

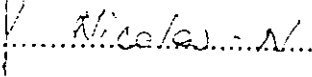
7. Any nara comments?

No

Saen: 

Mi mi ridim toktok ya antap finis mo mi bin gat janis blong stretem mo jenisem toktok ya mo blong putum insaed sam narafala toktok bageken olsem mi mi wandem. Toktok ya I tru.

Saen  Det. 2. 17 / 97

 nao hemi tekem toktok ya.

TOKTOK BLONG WETNES

DIPATMEN

DET: PLES: OFIS BLONG OMBUDSMAN TIME:

NEM: FAMLE YOLOU NEM: ABIL

DET WE MI MI BON LONG HEM: KANTRI BLONG MI: NI-VANUATU

WOK BLONG MI:

LANWIS WE MI MEKEM TOKTOK LONG HEM: BISLAMA

Mi talemot se toktok ya we mi mi mekem mi bilif se hemi tru mo, taem mi mekem toktok ya, mi save gud se mi save pas long kot sipos mi talem wan samting we mi save se hemi kiaman o sipos mi no bilif se hemi stret.

Saen: 

1. You save confirmem se you bin Minister responsible for Prison long 1991?

Yes.

2. You save confirmem se you nao Minister responsible for Prison, you bin releasem Mrs Coulon under long licence?

Yes

3. From wanem you bin releasem hem?

Mi releasem hem from we brother blong hem Korman hem I come look me two times and askem spos me save releasem hem completely (fully free) from we Korman I stap concern tumas long ol pikinini blong A.Coulon and Korman I wantem se Mme Coulon I free blong I go stap lookaotem olgeta.

Be mi talem hem se mi no gat any power blong setem hem I free.

Korman I no bin satisfy long toktok blong mi then hem I go look President Timakata. And President I singaotem mi mi go wetem Atorney General long taem ia blong advisem hem.

President I no gat power blong releasem any prisonner unless by an Act of Parliament.

From we mi bin under pressure blong Korman mo President blong releasem A Coulon, mi bin think se the best thing we mi save mekem I blong releasem hem on licence olsem we mi mekem.

Taem ia youmi stap go kolosap long general elections.

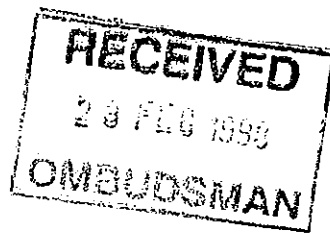
4. Hemi bin long own initiative blong you or no?

No refer to answers of question 3.



VANUATU POST
POSTE DE VANUATU

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20th February 1998

Ref: VP837/049/DI/98/rm

Marie Noelle Ferrieux Patterson
Ombudsman of Vanuatu
P O Box 126
Port Vila
Vanuatu

Dear Madam,

Re: Wrongful Appointment of Mrs Antoinette Coulon into the Public Service

I write to make reference to your preliminary report concerning the wrongful or illegal appointment of Antoinette Coulon into the Public Service and in particular the Department of Lands.

I believe that the former Chairman of the Public Service Commission may have already contributed some information to your office about this case.

However being a member of the Public Service Commission then I consider it fair that I should make the following comments.

1. Whilst it could be argued that the appointment of Antoinette Coulon was illegal and does not follow the right procedures it should be borned in mind by everyone including the Ombudsman office that when the UMP Korman led Government went into power on the 16th of December 1991 the whole Public Service including the Public Service Commission and its executive arm, the Public Service Department were highly politicized overnight.
2. The Prime Minister then (Korman) had to place in very important offices and places his strong supporters so that they could carryout his decisions. This point is reflected in the composition of the Public Service Commission. If one had to look carefully at the membership of the Public Service Commission at that time you will see that apart from the writer and another member you will find three (3) very high powered UMP politicians. These three (3) form the majority within the Public Service Commission and they were bound to serve the interest of their party and leader then in the first place, let alone the

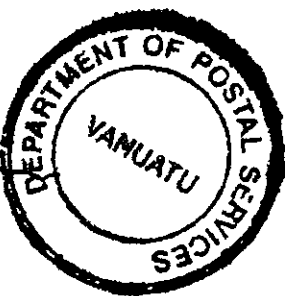
.../2..

regulations and control mechanisms currently in force. Talk about the procedures in the Staff Manual and the independence of the Commission to them and they'd tell you they do not want to know about any procedures.

3. I do not make the above comments to defend myself and put blame on someone else, but what I am merely trying to put across is that it was the normal practice of the Public Service Commission then to approve its decision and resolutions by voting through showing of hands. In this case though it was not shown in the Public Service Commission minutes the majority of the members voted for the appointment of Antoinette Coulon against the better argument of the minority.

I am of the view that the comments provided herein could be worth reading and comprehending.

Yours faithfully



Daniel ISHMAEL
Director of Postal Services
and Former Member of Public Service Commission



Sac Postal Réservé No. 058, Port-Vila

Private Mail Bag 058, Port Vila

REF: MOF/1/1/5/WJ-jn
DATE: 14th July, 1997

Telephone (678) 23032

The Ombudsman,
Office of the Ombudsman,
PO Box 126,
PORT VILA.

Dear Ombudsman,

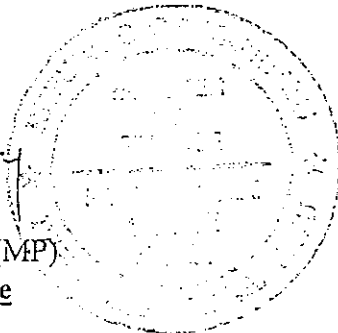
Re: Mrs. ANTOINETTE COULON'S COMPENSATION

I refer to your letter of 27th June concerning the above subject matter and in response I wish to advise that if my memory is correct, it was a Council of Ministers decision to pay compensation to Mrs. Antoinette Coulon.

Also, the Prime Minister himself wrote to me at that time instructing me as the Prime Minister of the Republic of Vanuatu to release funds as payment to Mrs. Antoinette Coulon, of which I eventually did in good faith to honour the Prime Ministers instruction.

Yours faithfully,

Hon. Willie JIMM (MP)
Minister of Finance



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Honourable T.R. Willie Jimmy

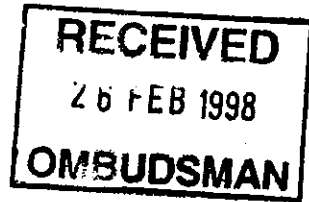
(Minister of Finance 1991 - Feb 1996)

Member of Parliament

P.O. Box 684,

Port Vila,

Republic of Vanuatu.



The Ombudsman,
Ombudsman's Office,
Port Vila

23rd February, 1998

Dear Ombudsman,

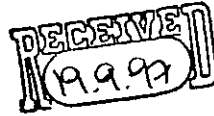
Refer long letter blong you dated 19/2/98
about Wrongful Appointment blong Mrs.
Antoinette Coulon no indemnities payment
we Mrs. Coulon ikarem, mi no ket
any narafala comment blong givin long
you about care ia ontap long olfok.
we mi givin fins long you.

Iket chain of command we i exist
olbaem long any administrator, mi mekem
wok blong mi bare long premise ia
nao.

Thankyou

A handwritten signature in dark ink, appearing to read "T.R. Willie Jimmy".

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Honorable Paul TELUKLUK
Député de Mallicolo
B.P. 495
Port-Vila

Port-Vila le 15 Septembre 1997

Madame Marie-Noëlle FERRIEUX
Médiatrice de la République de Vanuatu
B.P. 126
Port-Vila

Re : Enquête sur la Nomination de Mme COULON

Chère Madame ,

C'est avec regret que je voudrais souligner que toute cette affaire était de l'initiative directe de Mr Maxime CARLOT , ancien Premier Ministre . Veuillez trouver ci-dessous les réponses à vos questions :

- 1 . Mr CARLOT a initié cette nomination .
- 2 . Non .
- 3 . Oui .
- 4 . Je n'ai pas initié sa nomination .
- 5 . Non
- 6 . Le nécessaire avait été fait , mais il existait une opposition . Mr Julian ALA , ex AG , pourra vous donner des informations supplémentaires à ce sujet .

Je me tiens à votre disposition , si de plus amples renseignements vous seront nécessaires .

Je vous prie d'accepter , Madame la Médiatrice, mes salutations les plus distinguées.


Paul TELUKLUK
Membre Parlementaire de Mallicolo

