

**REPUBLIC OF VANUATU
OFFICE OF THE OMBUDSMAN**

PUBLIC REPORT

ON THE

**ETHICS AND LEGALITY OF THE
TRADE-IN OF THE MINISTRY OF
FINANCE CAR - G188 MOF**

10 February 1999

PREAMBLE

" I charge thee before God that these observe these things without preferring one before another doing nothing by partiality."

Timothy 5 v 21

This report gives evidence of a particularly offensive kind of betrayal of trust - ie: those involved in high responsible positions have violated the very laws which they apply to other people - people making financial decisions which they apply to other people, while benefiting and profiting from evading the laws themselves. All the CRPs ever devised can only fail if those in high places continue to act in devious and shameful ways for their personal desires.

SUMMARY

Late in 1996, the Ministry of Finance decided to trade-in the Ministry's car registration no. G188 MOF which was then 4 years old. The trade-in was done with a motor vehicle dealer (company X). The person involved at Company X sales representative was Mr Daniel Bule who was also Chairman of the Board of the National Bank of Vanuatu. This trade-in was negotiated by Mr Bule and the first Secretary of the Ministry, who was also a Board member of NBV Mr Willie Reuben Abel.

The decision for trading in the public car was made by Mr Abel, and the Director General of Finance Mr Jeffrey Wilfred apparently verbally approved the transaction. On March 1997, Mr Abel was terminated at the Ministry and soon after was appointed by the NBV Board as NBV General Manager.

There was no Board of Survey appointed to survey the car. Mr Abel had Company X a private company who was buying it, valued the car instead of a Board of Survey. Mr Bule of Company X at Vt.400.000, excluding repairs and spare parts needed.

There was also no tender put out for the purchase of this new car which was worth more than Vt.1 million. Section 361 (3) of the Financial Regulation states clearly that where the cost of a specific work or service exceeds 1 Million Vatu, at least three (3) written tenders must be obtained. In this case there was no tender.

The transaction was done with the knowledge of Mr Wilfred the Director General of Finance and the then Minister of Finance Mr Shem Nokaot . Despite this, the procedures set out in the Financial Regulations were ignored. The Director of Finance Mr Wilfred went ahead and approved payments.

On 19 December, 1996 an invoice No. 00345 was issued to the Vanuatu Government for Vt.1,757,800 as the balance amount to pay for the new car. The trade-in was made in the following manner: Company X supplied the Ministry of Finance with a new car worth Vt2,157,800 (including Government Tax and number plates). The Ministry of Finance in return traded in the old car for Vt 400.000.

Upon enquiry of this invoice, Mr Abel explained that he had expressed an interest in purchasing the vehicle from Company X for himself personally. Financing of this purchase was sought from the NBV by Mr Abel, resulting in the invoice being issued to the Bank.

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1. JURISDICTION

- 1.1 Under the Constitution and the Ombudsman Act, following a complaint, I have jurisdiction to enquire into the conduct of government and related bodies, which includes the conduct of the former first secretary of the Ministry of Finance Mr. Willie Reuben Abel and the former Chairman of the National Bank Board of Directors Mr. Daniel Bule, who also happened to be the sales officer of Company X. I also have jurisdiction to enquire into defects in law or administrative practice and possible breaches of the Leadership Code. As Mr Abel was the former first secretary of the Ministry of Finance and Mr Bule the former Chairman of the National Bank, they were both leaders under the Constitution and/or the Ombudsman Act at the time of these events.
- 1.2 The Ombudsman Act continues to apply to this case regardless of its possible repeal, since the investigation began while the Act was in effect. The Interpretation Act [CAP 312] states that any ongoing investigation may be continued as if the repealing Act had not been passed (s.1 (1)(e)).

2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED

- 2.1 The purpose of this report is to present my findings in accordance with Article 63 of the Constitution and Section 24 of the Ombudsman Act.
- 2.2 The scope of this investigation is to ascertain the relevant facts with respect to the trade-in of the Ministry of Financial Car G 188 MOF and to determine whether
 - a) the conduct of Mr. Abel in conducting the trade-in of the Ministry's car was proper
 - b) the trade-in was done in line with the proper procedures set out in the Government Finance Regulations.
- 2.3 This Office acquires relevant information and documentation by informal request, summons, correspondence, personal interviews and research.

3. OUTLINE OF EVENTS

- 3.1 **Late in 1996**, the Ministry of Finance decided to trade-in the Ministry's car registration no. G188 MOF. The car was a Nissan Twin Cam and was four years old. The trade-in was done with Company X (a motor vehicle dealer). The Company X sales representative was Mr. Daniel Bule who was also Chairman of the Board of the National Bank of Vanuatu (NBV). This trade-in was negotiated by Mr. Bule and the first Secretary of the Ministry Mr Abel, who was also a board member of NBV. **In March 1997**, Mr. Abel's position was terminated at the Ministry of Finance and soon after he was appointed by the NBV Board as NBV General Manager.
- 3.2 Mr. Abel confirmed to the Ombudsman that he decided when he was First Secretary at the Ministry of Finance that the Ministry car after being involved in an accident, was not in a very good condition so the Ministry needed a new car. The Ministry decided that it would get a new car by trading in the old one.
- 3.3 The Director General of Finance, Mr. Jeffrey Wilfred apparently verbally approved the transaction.
- 3.4 There was no Board of Survey appointed to survey the car. Mr. Abel had Company X a private company who was buying it value the car instead of the Board of Survey.

On 19 December 1996 Mr. Bule of Company X . and Mr. Abel, his NBV board co-member valued the car (see appendix "A") at Vt.400,000, excluding repairs and spare parts needed.

Details of the Trade - in transaction

- 3.5 **On 19 December, 1996** Company X issued an invoice No. 00345 (appendix "B") to the Vanuatu Government for Vt.1,757,800 as the balance to pay for the new car. The trade-in was made in the following manner: Company X supplied the Ministry of Finance with a new car worth Vt2,157,800 (including Government Tax and number plates). The Ministry of Finance in return traded in the old car for Vt 400,000.

| | |
|-----------------------------------|---------------------|
| Value of the new car | Vt.2,157,800 |
| Less: Trade-in on the old car | Vt. 400,000 |
| Total amount paid by the Ministry | <u>Vt.1,757,800</u> |

Although the new car was well over Vt1. million, the Central Tender Board was not used and competitive bids were not obtained using the tender procedures set out in the Finance Regulations.

- 3.6 The Ministry of Finance issued a Local Purchase Order (LPO) for Vt1,757,800 to the Company X on the same date. (Copy of LPO appendix "C").
- 3.7 **On 7 March 1997**, Company X made out another invoice No. 353 to NBV (appendix "D"). The details are as follows:

| | |
|--|-------------------|
| Net cash price (2nd hand as-is) | Vt.400,000 |
| 4 % Govt. Sales tax as applicable | Vt. 16,000 |
| 2% Govt. Rego. T/Fer Fee as applicable | Vt. 8,000 |
| 1997 annual road tax | Vt. 13,000 |
| Number plates (Fitted) | Vt. 6,000 |
| Total repairs completed as discussed | Vt. 73,100 |
| | <u>Vt.516,100</u> |

- 3.8 Upon enquiry about this invoice, Mr. Abel explained to the Ombudsman that he had expressed an interest in purchasing the vehicle from Company X for himself personally. Financing of this purchase was sought from the NBV by Mr. Abel, resulting in the invoice being issued to the Bank. When he undertook the position of NBV General Manager, the previous acting General Manager and NBV adviser advised him not to buy this car. (See Appendix "E"). However in his new post Mr Abel was given the use of a brand new car.
- 3.9 This report highlights one of the many breaches of proper procedures set out in the Finance Regulations on how to purchase public vehicles and how to use them to the best interest of the Government. As a result of the ignorance and breaches of these procedures, the whole system can collapse.

4. RESPONSES TO THE PRELIMINARY REPORT

- 4.1 The preliminary report in this matter was issued on 28 January 1998 to give the person or body complained of an opportunity to reply.

Responses were received from:

1. Mr. Willie Reuben Abel
2. Mr. Daniel Bule
3. Mr "Y" -Managing Director of company X
4. Jeffrey Wilfred - Director of Finance

- 4.2 The replies of Mr. Abel, Mr. Bule and Mr "Y" were similar. They all denied that the deal was made with the personal interests of Mr. Abel and Mr. Bule in mind. They also argued that there have been a lot of government vehicles purchased in the past

years which did not follow proper procedures and they are surprised to see that the Ombudsman is producing a report on just a Vt.400,000 bad deal compared to the loss of millions of vatu in the other improper purchases.

The Office of the Ombudsman is aware that this type of breaches has occurred in the past and might be continuing now and some other investigations are going on.

- 4.3 Mr. Wilfred confirmed that he could recall his verbal advice to Mr. Abel of the Finance Regulation, and that because Mr Abel did not submit a written request to him he was not able to appoint a Board of Survey as this was the normal practice.

5. RELEVANT LAWS AND REGULATIONS

FINANCE REGULATION

5.1 REG. 313 - APPOINTMENT OF BOARD OF SURVEY

- 313 (1) Boards of Survey shall be appointed by the Director General of Finance as required to verify the correct procedure concerning the disposal of Government property.

5.2 Reg. 315 - DISPOSAL OF GOVERNMENT PROPERTY

- (1) Stores with an individual value of more than Vt5,000, or a collective value of more than Vt20,000, shall not be condemned, declared unserviceable, or obsolete, until they have been inspected by a Board of Survey.
- (2) The above limits of Vt5,000 and Vt20,000 shall be reviewed by the Director General of Finance, and may be altered upon his written instruction.

5.3 Reg. 316 - RECOMMENDATIONS OF BOARD OF SURVEY

- (1) The Board shall inspect, report and make recommendations in respect of items listed as condemned, obsolete or unserviceable. The Report shall be addressed directly to the Director General of Finance, with a copy to the Department requesting the Board of Survey.

The Board of Survey shall recommend whether the items should be disposed of by:-

- (a) Write - off;
- (b) Sale by Auction;
- (c) Sale by Tender; or
- (d) Sale at a Fixed Price
- (2) The Board of Survey shall also determine why or how the Stores or Assets came to be lost, obsolete, surplus, or unserviceable, and make recommendations to prevent a further such occurrence.
- (3) Having considered the Report, the Director General of Finance will recommend to the Minister of Finance the appropriate method of disposal.
- (4) The Minister of Finance will issue instructions for the disposal of the asset as he sees fit.

5.4 **Reg 361 - PROCUREMENT PROCEDURES**

- (3) Where the cost of a specific work or service exceeds 1 Million vatu, at least three (3) written tenders must be obtained. These tenders must be submitted to the Central Tender Board for its evaluation and for the awarding of the contract

5.5 Regulations 361 - 367 set out clear detailed requirements including open Competitive bidding, advertisement, use of and composition of the Central Tenders Board and opening and evaluation of tenders.

6. FINDINGS

Finding 1: The conduct of the Director of Finance Mr Jeffrey Wilfred was contrary to law in that he breached the Finance Regulation Nos. 313(1) and 315(2)

6.1 There was no tender published for the purchase of this new car which was worth more than 1 million vatu. Section 361 (3) of the Financial Regulation states clearly that where the cost of a specific work or service exceeds 1 Million Vatu, at least three (3) written tenders must be obtained. In this case there was no tender made.

6.2 A survey board was not appointed either to survey and verify the correct procedure for the disposal of the vehicle as required by Regulations 313 and 316 of the Finance Regulation.

6.3 The transaction was done with the knowledge of Mr Wilfred and the then Minister of Finance Mr. Shem Nokout. Despite this, the procedures set out in the Financial Regulation were ignored. Mr. Wilfred should have appointed a survey board which is a requirement of S 313 (1) of the Finance Regulation. Instead he simply approved payments on what had been decided by Mr. Abel.

Mr Wilfred has the power to question the issue of LPO, a payment orders if he can see that proper procedures have not been followed. Apparently he did not do this even though his department has been known to do this before.

6.4 It is to be noted that this car was bought for the Ministry of Finance, and that Jefferey Wilfred should have been very careful to follow the Financial Regulations. As Director of Finance, he often is put in a situation where he has to remind of force people to follow the rules. The Director of Finance should follow the rules and set an example for the Public Service, NOT BREAK THEM.

Finding 2: The conduct of the Minister of Finance Mr. Shem Nokout was contrary to law in that he breached the Finance Regulation Nos. 313(1) and 315(2)

6.5 Even though there was no tender board appointed in the first place, the trade- in was done within the Ministry of Finance. The Minister of Finance as head of the Ministry should have recommended the proper procedures required by 313(1) and 315 (2) of the Finance Regulation. The Minister however, allowed the transaction to go ahead and did not recommend the proper method of disposing of the vehicle to his first Secretary.

Finding 3: The Conduct of Mr. Willie R Abel First Secretary of the Finance Ministry was contrary to law in that he breached the chapters 18 and 22 of Finance Regulation.

6.6 Mr. Abel of the Ministry of Finance appeared to be the main person behind this deal. He should have observed the requirements of the Finance Regulations before making any decision about obtaining a new car for the Ministry. His actions in

ignoring and not considering the regulations set out for the disposal of Government property, resulted in a breach of the Financial Regulations by not applying the laws when he decided to make this trade-in with G 188.

Finding 4: Mr Willie R Abel breached the Leadership Code of the Constitution

- 6.7 In his capacity as first secretary to the Ministry of Finance and NBV board member, Mr. Abel should have acted in a responsible manner as required by the Constitution's Leadership Code Article 66. By agreeing with his NBV board colleague to value the car without reference to a Survey Board, Mr. Abel may have stopped the chances of other people to submit their tenders for these cars, thus enabling himself to purchase the car in his private capacity at the same price. Mr Abel allowed his public roles conflict with his private interest, thus allowing his integrity to be called into question. He placed himself in a position where the fair exercise of his public duties was compromised because of his personal interest of the car.

7. RECOMMENDATIONS

7.1 Recommendation 1:

The Director Generals of each ministry to ensure that they are aware and follow the procedures of the Finance Regulations, Government contracts and Tender Act when purchasing and selling vehicles and/or other Government property in future. The Director Generals ensure that all ministries and departments have got a copy of the Finance Regulations.

7.2 Recommendation 2:

The Minister should advise the Director of Finance Mr Jeffrey Wilfred to issue written instructions in the future and not verbal instructions concerning his recommendations regarding matters relating to the disposals and purchase of Government properties, especially now, considering his high position of Director General at the Ministry of Finance.

7.3 Recommendation 3:

Because of the repeated findings of breaches of Finance Regulations, the Training Unit should plan a training course of all government financial procedures to include all heads of departments and all accounting officers.

7.4 Recommendation 4:

The Ministry of Finance should remind the Director General of Finance Mr Wilfred to refuse to process government payment order for vehicles which have not been bought through tender.

The Department of Finance and its Director, should check government orders and not accept payments for vehicles that have not been bought by tender as we understand more vehicles are being, and have been purchased without following the tender procedures of the Finance Regulations.

8. CONCLUSION

- 8.1 In accordance with Article 63(2) of the Constitution and Section 22 of the Ombudsman Act, the Ombudsman requests the Prime Minister, the Minister of Finance and the Director General of Finance to consider these recommendations and to put them into effect.
- 8.2 The Office of the Ombudsman must be notified within thirty (30) days of the date of this report outlining the decision and steps proposed to implement the recommendations.

Dated the 10th day of February 1999

A handwritten signature in black ink, appearing to read 'Marie-Noëlle Ferrieux Patterson', written over a horizontal line.

Marie-Noëlle FERRIEUX PATTERSON
OMBUDSMAN OF THE REPUBLIC OF VANUATU

9. INDEX OF APPENDICES

- A** Valuation of Car by Company X
- B** Invoice no. 00345 issued by Company X to Vanuatu Government
- C** Copy of Government LPO - payment to Company X
- D** Invoice no. 00353 issued by Company X to National Bank of Vanuatu
- E** Mr. Abel's letter to the Ombudsman explaining the invoice issued to the National Bank of Vanuatu.



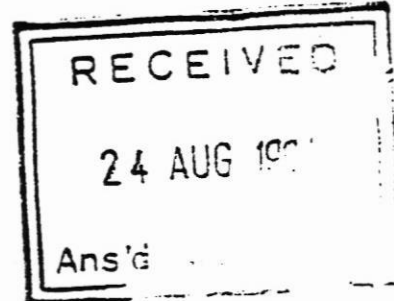
LE SECRÉTAIRE GÉNÉRAL

SECRETARY-GENERAL

22nd August 1994

CM/DC/13/94/CS/ab/94

Hon. Amos Bangabiti
Minister of Transport
Vanuatu Government
Port Vila



~~File~~
- M. Tari - chapt LP=

278-40-201 5

+ 540-65 92

24/8/94

Ⓟ

Dear Minister,

Re : Decision No. 94 of the Council of Ministers' meeting
No. 19/18/08/94

- Purchase of Lorries

The Council of Ministers' meeting No. 19 of August 18th 1994,
approved the purchase of Lorries and accepted the offer from
~~Company A~~ for 14.177.940 VT.

Yours faithfully,

Charlot SALWAI
Secretary General, Prime Minister's Office



cc : Prime Minister
Minister of Minister
Attorney General's Chambers
Director of PWD ✓
Director General of Finance

F A C S I M I L E M E S S A G E
GOVERNMENT OF THE REPUBLIC OF VANUATU
PUBLIC WORKS DEPARTMENT

HEAD OFFICE
PRIVATE MAIL BAG 044
PORT VILA
VANUATU

PHONE : (678) 22888
TELEX : 1106 METEO NH
FAX : (678) 24495

TO: *Company A*
~~XXXXXXXXXX~~
~~XXXXXXXXXX~~
ADDRESS: Port Vila
Vanuatu

FROM: The Director
DATE: 1st September 1994
OUR REF: 1361/94

NO OF PAGES: 1

FAX NO:

Dear Sir,

SUBJECT : POSTPONE THE PURCHASING OF 3 LORRIES.

I regret to inform you that the purchasing of 3 Lorries from your Company has now been postponed until further notice.

I am sorry for the inconvenience that may have arisen.

Please wait for further information.

Yours faithfully



BENOIT SAINT-OMER
Director
Public Works Department

cc : Manasseh Tari, PWD

GOVERNMENT OF VANUATU
PUBLIC WORKS DEPARTMENT
PRIVATE MAIL BAG 044
VILA PHONE 22888

GOVERNEMENT DE VANUATU
SERVICE DES TRAVAUX PUBLICS
SAC POSTAL PRIVE 044
VILA TELEPHONE 22888

Date : 5 Septembre 1994

N/REF : 1388/94

LE DIRECTEUR DES TRAVAUX PUBLICS

A The Honorable Minister of Transport
Ministry of Transport and Public Works

RE : PURCHASE OF LORRIES

On wednesday 31st ^{August} ~~October~~ 1994, you told me that you would like to reverse the decision of the Council of Minister in order to purchase 3 Toyota Lorries instead of Hyundai.

As I had already ordered the Lorries ~~Company A~~ ^{Company A}, I have suspended this order, waiting for the final decision.

As soon as I have the final decision from the Council of Ministers, I will order these lorries.

Yours Sincerely



BENOIT SAINT-OMER
Director
Public Works Department

enc: ~~New~~ ^{Company B's} proposal 1/9/94
Decision of Council of Ministers (22/8/94)
Initial report to the Council of Minister

cc : 2nd Secretary Ministry of Transport
Mianasseh Tari