

**REPUBLIC OF VANUATU
OFFICE OF THE OMBUDSMAN**

PMB 081
Port Vila
Vanuatu

**PUBLIC REPORT
ON THE
PURCHASE OF THE LUGANVILLE
LORD MAYOR'S VEHICLE**

12 August 2002

9390/2002/09

PUBLIC REPORT ON THE PURCHASE OF THE LUGANVILLE LORD MAYOR'S VEHICLE

SUMMARY

Outline of events (see further page 5)

After Municipal elections in September 1998, Mr Roy Bongelan was elected Lord Mayor of Luganville. At that time the Lord Mayor had the use of a vehicle less than one year old, however Mr Bongelan wanted Council to buy another "more executive" for him to use instead. The Finance Committee refused because of the Municipality's very poor financial position, however the Health and Sanitation Committee subsequently approved the purchase of a new vehicle at Mr Bongelan's request.

Mr Bongelan then conducted negotiations with Asco Motors in Port Vila and decided, without reference to any Council officers, and contrary to the Council's decision, to purchase a five year old, but more expensive, Toyota Crown instead. After the vehicle was delivered, the Finance Committee tried unsuccessfully to reverse the decision and Council found itself committed to paying a changeover cost (after trade of the previous mayoral vehicle) of VT1,620,208.

Findings (see further page 7)

The Ombudsman found evidence that the Council's Health and Sanitation Committee acted unreasonably and unlawfully when it agreed to Mr Roy Bongelan's request to purchase a new mayoral vehicle for his use when:

- 6 The existing vehicle was less than one year old;
- 7 The Municipality could not afford a new vehicle;
- 8 No provision had been made for the purchase in Council estimates; and
- 9 No competitive tenders were sought.

The Ombudsman found evidence that Mr Roy Bongelan the councillors who approved the purchase breached several provisions of the Leadership Code Act.

Recommendations (see further page 9)

The Ombudsman recommends prosecution of councillors, and in particular Mr Roy Bongelan, for breaches of the Leadership Code Act, the Municipalities Act and the Municipal Councils Financial Regulations.

The Ombudsman also recommends that the Minister appoint an inspector to examine the purchase of the vehicle and suggests that, if justified by the inspector's report, Mr Roy Bongelan should be surcharged VT1,620,208.

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1. JURISDICTION

- 1.1 The Constitution, the Ombudsman Act and the Leadership Code Act allow the Ombudsman to look into the conduct of government, related bodies, and Leaders. This takes in the Luganville Municipal Council and its elected councillors, including the then Lord Mayor of Luganville, Mr Roy Bongelan.

2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED

- 2.1 The purpose of this report is to present the Ombudsman's findings as required by the Constitution and the Leadership Code Act.
- 2.2 The scope of this investigation is to establish the facts about:
- 10 The decision by Luganville Municipal Council to trade in the existing Lord Mayoral vehicle, which was barely one year old, in order to purchase a new vehicle; and
- 11 The subsequent action by the Lord Mayor, Mr Roy Bongelan, in ignoring Council's decision to purchase a new vehicle and instead committing the Municipality to purchase a more expensive second hand vehicle which was already 5 years old.
- 2.3 This Office collects information and documents by informal request, summons, letters, interviews and research.
- 2.4 This investigation, however, has been hampered by the refusal of Mr Roy Bongelan to answer most requests for information or assistance from the Ombudsman. This is despite many letters that were sent to him during the course of the enquiry. He was served personally with a formal Notice to Witness to appear on 27 July 2001, however he close to ignore this document also.
- 2.5 Mr Bongelan's silence has delayed the Ombudsman's investigation considerably. His lack of response suggests contempt for the rule of law and can also be interpreted as an acknowledgment of wrongdoing on his part.

3. RELEVANT LAWS, REGULATIONS AND RULES

Relevant parts of the following laws are reproduced in **Appendix K**.

OMBUDSMAN ACT NO. 27 OF 1998
MUNICIPALITIES ACT [CAP 126] NO. 5 OF 1980
MUNICIPAL COUNCILS FINANCIAL REGULATIONS NO. 66 OF 1983
CONSTITUTION OF THE REPUBLIC OF VANUATU
LEADERSHIP CODE ACT NO. 2 OF 1998

4. OUTLINE OF EVENTS

- 4.1 After elections for the Municipality of Luganville were held in September 1998, the Lord Mayor, Mr Roy Bongelan, requested that Council buy a new car for his use.
- 4.2 At the time the Lord Mayor had the use of a vehicle that was less than one year old, having been purchased new on 18 May 1998.
- 4.3 The matter was considered at the Council Finance Committee meeting held on 25 February 1999. The minutes of the meeting (**Appendix A**) show that the Committee decided that the Council's poor financial situation meant that it could not afford a new car at that time.

- 4.4 Subsequently the Lord Mayor asked that the Health and Sanitation Committee approve a new vehicle instead. The minutes of the committee meeting held on 30 April 1999 (**Appendix B**) give no indication of the reasons for the decision to approve the purchase or why the question of the Lord Mayor's car was considered appropriate for the Health and Sanitation Committee.
- 4.5 Mr Bongelan then visited Asco Motors in Port Vila to discuss the purchase of a new Toyota Camry as the Lord Mayoral vehicle. When he was told the price, he decided that the Council could not afford such a vehicle.
- 4.6 A salesperson from Asco Motors then showed him a second hand Toyota Crown, approximately 5 years old. A "pro forma invoice" (or quotation) was issued for the vehicle (**Appendix C**).
- 4.7 No tender process was undertaken, no quotations were sought from different suppliers, nor is there any evidence that any suppliers were requested to provide trade-in prices for the then current Lord Mayor's vehicle.
- 4.8 Mr Bongelan decided that the Municipality would purchase the more expensive, second hand Toyota Crown, even though Council had only approved a new vehicle. This decision was made without reference to Council or any of its committees or officers. Council administration only became aware of the purchase after the vehicle arrived in Luganville.
- 4.9 There is more confusion about whether or not Asco accepted the previous Lord Mayoral vehicle as a trade in for the Toyota Crown.⁷ In any event, the amount received for the previous car was VT1,300,000 on 25 May 1999. The purchase price, just one year earlier, had been VT2,381,509 - a loss to the Council of VT1,081,509.
- 4.10 In the early part of our investigation, Mr Bongelan responded to some questions about the purchase (**Appendix H**). In his letter he:
- Acknowledged that there had been no tender process because it "took ages for all processes to get through [sic]... I have taken such an initiative step [purchase of a second hand car] to merely avoid all these..."
 - Admitted that he had decided that the Municipality should purchase a second hand car contrary to Council's decision.
 - Claimed that the type of car purchased tends to last longer than other, new, cars offered, even though it is older. The General Manager of Asco subsequently stated that this is "of course, a nonsense" and that, although the Crown was in very good order, it "in no way could compare with a brand new vehicle". (**Appendix J**).
 - Also claimed that the Lord Mayor was to the people of Luganville "a symbol of the President and Prime Minister of Vanuatu" and that this justified buying a car with "more executive features" than the previous vehicle.
- 4.11 After discovering Mr Bongelan's decision, following delivery of the vehicle to Luganville, Council officers obtained two quotations from the Mitsubishi distributor in Santo (**Appendices D & E**). These are compared with the quotation for the Toyota Crown in the table below.

Date	Supplier	Vehicle	New/2 nd hand	Price (VT)	Appendix
8(?) .5.99	Asco	Toyota Crown	2 nd Hand	2,900,000	C
14.6.99	Mitsubishi	L200 4x2 Pickup	New	1,975,125	D
14.6.99	Mitsubishi	Lancer GLS	New	2,152,600	E

⁷ The letter from Asco dated 18 August 1999 (**Appendix G**) states that "Asco Motors did not trade any vehicle from the Municipality or get involved with the valuation or the disposal of their vehicle". However, correspondence from Council officers refers to vehicle as having been traded in (e.g. **Appendix I**) and a later letter from Asco (**Appendix J**) says "As to the condition of the vehicle previously owned by the Council. I believe the new owners are very happy with their purchase and the vehicle is going very well", suggesting that they had at least some involvement with the vehicle's sale.

4.12 On 21 June 1999, the Council's Finance Committee passed a resolution that the Toyota Crown should be returned to Asco (**Appendix F**), and the cheapest car bought instead. However Asco refused to accept the vehicle back.

4.13 The changeover cost to the Council was VT1,620,208, calculated as follows:

Cost of second hand Toyota Crown	VT 2,920,208
Less amount received for former car	- 1,300,000
Changeover cost	VT 1,620,208

4.14 Of this, VT500,000 was paid immediately and the balance over time.

5. RESPONSES BY THOSE WITH COMPLAINTS AGAINST THEM

5.1 Before starting this enquiry, the Ombudsman notified all people or bodies complained of and gave them the right to reply. Also, a working paper was provided prior to preparation of this public report to give the individuals mentioned in this report another opportunity to respond.

5.2 No responses were received to the working paper.

6. FINDINGS

6.1 **Finding 1:** **The Ombudsman finds there is evidence that Luganville Municipal Council, through its Health and Sanitation Committee, acted unreasonably, took into account irrelevant considerations and failed to take into account relevant considerations when it decided to purchase a new car for the Lord Mayor.**

6.1.1 The existing Lord Mayoral car was not yet one year old, and the municipality was acknowledged to be in a very poor financial position. Council members ignored their legal and moral obligations to act prudently and in the best interests of the citizens of Luganville and instead succumbed to Mr Bongelan's request.

6.2 **Finding 2:** **The Ombudsman finds there is evidence that members of Luganville Municipal Council acted unlawfully in committing the Municipality to expenditure for which no provision had been made in any estimates.**

6.2.1 Section 52(1) of the Municipalities Act states:

No expenditure shall be incurred by a council unless it can be properly charged to an item in the approved estimates or in approved supplementary estimates.

6.3 **Finding 3:** **The Ombudsman finds there is evidence that members of Luganville Municipal Council acted unlawfully in authorising the purchase of a new vehicle for the Lord Mayor without publicly calling for tenders.**

6.3.1 Section 27(2) of the Municipalities Act states:

Except as may be permitted by its standing orders a council shall not enter into any contract-

- (a) for the supply of any goods or materials; or
- (b) for the execution of any work or provisions [sic] of any services, other than professional services to or for the council, except after publicly calling for tenders for the same.

6.3.2 Regulation 118 of the Municipal Councils Financial Regulations also imposes an obligation to obtain Ministerial approval for a purchase such as that of a vehicle.

6.4 Finding 4: The Ombudsman finds there is evidence that the elected Councillors breached the Leadership Code Act.

6.4.1 The following is a list of the breaches of the Leadership Code Act for which the Ombudsman has found evidence. The breaches arise from authorising expenditure other than in accordance with estimates and failing to call for public tenders.

Section	Provision	Penalty on conviction
Section 3	A leader must ensure that he or she is Familiar with and understand the laws that Affect the area or role of his or her leadership	Fine not exceeding VT2 Million
Section 13(1)(a)	A leader must comply with and observe the law	Fine not exceeding VT5 Million or imprisonment not exceeding 10 years
Sections 28, 29	Failing to comply with another enactment is a breach of the Code	Fine not exceeding VT2 Million

6.5 Finding 5: The Ombudsman finds there is evidence that Mr Roy Bongelan in particular has committed numerous breaches of the Leadership Code Act in addition to those that Councillors generally may have committed.

6.5.1 Mr Bongelan deliberately and by his own admission (see **Appendix H**) ignored the decision of Council to purchase a new vehicle and instead committed the Municipality to purchasing a car that was already 5 years old. The only reason for this seems to have been to gratify his vanity by having a "more executive" car that he felt was appropriate for his position.

6.5.2 The following is a list of the breaches of the Leadership Code Act (and, where applicable, the Constitution) for which the Ombudsman has found evidence. The breaches arise from requesting Council's Health and Sanitation Committee to authorise purchase of a new car for his use as well as subsequently committing the Municipality to purchase a second hand car when Council's approval had been for a new vehicle.

Section	Provision	Penalty on conviction
Article 66(1)(d)	A leader must not endanger or diminish respect for and confidence in the integrity of the Government of Vanuatu	Fine not exceeding VT5 million or imprisonment not exceeding 10 years
Section 3	A leader must avoid behaviour likely to bring his or her office into disrepute	Fine not exceeding VT2 Million
Sections 3	A leader must ensure that he or she is familiar with and understands the laws that affect	Fine not exceeding VT2 Million

6.5.3 The court, on conviction, may also impose additional penalties such as dismissal, disqualification and loss of employment benefits.

7. RECOMMENDATIONS

7.1 That all councillors of Luganville Municipal Council's Health and Sanitation Committee present at the meeting on 30 April 1999 be prosecuted for breaches of sections 3, 13(1)(a), 28 and 29 of the Leadership Code Act 1998, as detailed in this report.

7.2 That Mr Roy Bongelan be prosecuted for additional breaches of sections 3, 13(1)(a), 28 and 29 of the Leadership Code Act 1998, as well as article 66(1)(d) of the Constitution, as detailed in this report.

- 7.3 That the Public Prosecutor also considers prosecuting councillors for breaches of sections 27(2) and 52(1) of the Municipalities Act and regulations 5 and 118 of the Municipal Councils Financial Regulations.
- 7.4 That the Minister appoint an inspector under section 59 of the Municipalities Act to examine all circumstances surrounding the purchase of the vehicle and, if justified after receiving the inspector's report, surcharge Mr Roy Bongelan under section 60 for an amount equal to the Council's changeover cost in purchasing the second hand vehicle, namely VT 1,620,208.
- 7.5 Since a Commissioner was appointed to Luganville Municipal Council with effect from 2 November 2001, it is not considered useful to make general recommendations about the administration of the Council by its councillors.

Dated the 12th day of **August 2002**.



Hannington G. ALATOA
OMBUDSMAN OF THE REPUBLIC OF VANUATU

8. INDEX OF APPENDICES

- A.** Extracts from minutes of Council Finance Committee meeting held on 25 February 1999.
- B.** Extract from minutes of Council Health and Sanitation Committee meeting held on 30 April 1999.
- C.** Pro forma invoice from Asco Motors for Toyota Crown dated 8(?) May 1999.
- D.** Quotation from Socometra Vanuatu Ltd (Mitsubishi dealer) for L200 Pickup 4x2 dated 14 June 1999.
- E.** Quotation from Socometra Vanuatu Ltd (Mitsubishi dealer) for Lancer GLS dated 14 June 1999.
- F.** Extract from minutes of Council Finance Committee Meeting held on 21 June 1999 (two pages).
- G.** Letter from Asco Motors Vanuatu to Ombudsman dated 18 August 1999.
- H.** Letter from Mr Roy Bongelan to Ombudsman dated 23 August 1999 (two pages).
- I.** Facsimile letter from the Treasurer, Municipality of Luganville, to Ombudsman dated 21 October 1999 (two pages).
- J.** Letter from Asco Motors Vanuatu to Ombudsman dated 29 February 2000.
- K.** Relevant laws.

'A'

Asst. Mayor P. D. D. i. President Treasurer and all around
any Claude Dujour we have no pen room along C. and P. D.

Mr. Cesar i. talem se Council i. talem ever. Bae long ham long
conductor hem long Noussa. Bae fax and telephone. Bae negat gud
world. Follem plenty connect from ol Committee Members. Deputy
Mayor, Kalmer Vocor i. movum was motion along go. Bae month long
Cabinet, Claude Dujour along settlem account along ham, sapos no
Bae Council i. mas tekem legal action against hem, Counsellor
Ham Japhet i. secondem ol in favour.

Deputy Mayor i. movum se ol people we ol gat account long
Council, Administration along Council i. givim wan month long ol
along pem back outstanding along ol long Council, unless Council
i. mas tekem legal action againstem ol, Counsellor Ham J. i.
secondem motion ol in favour.

AGEND 2 REPLACEMENT CAR BLONG LORD MAYOR * Feb 25/02/99

Deputy Mayor i. talem se, igud along changem car along Lord Mayor,
but problem along Council ia i. negat money, oisem we yumi harem
report along Treasurer finis, we Council i. stap long wan situation
along finance along hem ino gud.

Deputy Mayor Kalmer Vocor i. movum motion along committee i. agree
in principle sapos situation along finance along Council i. come
gud long near future bae Council i. luk luk bagegen along official
car along Mayor. Counsellor Gaetan P. i. secondem ol in favour.

OTHER BUSINESS

A. MAYOR FINANCIAL SUPPORT.

Lord Mayor i. givim comment along hem long work along hem long
Sport Club, long think think along hem mo ol saporta along tufala
Parti we i. rannem Council ia, ol talem se i. luk negud along wan
Mayor we i. hollem high office, istap work long wan Public Bar
along mekem service igo long ol people insaed along Bar, from
reason ia nao mi tekem strong decision along mi along resign from
work along mi.

Long plenty tekem long issue along allowance along Mayor, and
Deputy Mayor follem assention along Minister along internal
affairs. And sapos new standing orders along Legislative Municipal
Council follem financial control along Council.

Deputy Mayor i. talem se i. Council i. talem ever. Bae long ham long
conductor hem long Noussa. Bae fax and telephone. Bae negat gud
world. Follem plenty connect from ol Committee Members. Deputy
Mayor, Kalmer Vocor i. movum was motion along go. Bae month long
Cabinet, Claude Dujour along settlem account along ham, sapos no
Bae Council i. mas tekem legal action against hem, Counsellor
Ham Japhet i. secondem ol in favour.

'B'

long St Michel dispensary.

AGENDA 3 REPORT BLONG FOOD STALLS

Chairman Councillor Gaetan Pikioune - ol mama long chapuis oli been holam miting wetem mi aboutem ol food stalls

Environmental Health Officer - emi through ol days blong market wei bin change i affectem bigwan revenue blong Council mo ol mama long food stalls long revenue blong olgeta.

Councillor Jean Delaveau - Council emi mas chanisem ol sports light long market house wetem ol niufala tube.

NB Evri memba oli agri blong changem ol sports light mo putum in ol long tube.

AGENDA 4 OTHER BUSINESS

a) MAYOR'S CAR* *24 April 1999*

Deputy Mayor, Kalmer Vocor - Mi no look any objection long ples ia mi move blong Council i taken wan niu car wetem six (6) months installment per mt.

Councillor Ham Japhet - emi seco dem mover

Vote carried unanimously

Deputy Mayor, Kalmer Vocor - Sapos i now gat emi toktok mi now blong miting i close

Councillor Ham Japhet emi secondam mover

Vote carried unanimously

Clerk Prayer Environmental Health Officer long 1.30pm

NO.
1941.

Asco Motors

BPT (VANUATU) LIMITED

HEAD OFFICE
KUMUL HIGHWAY PORT VILA
TELEPHONE 23341 FACSIMILE 6781 23374
PO BOX 19 PORT VILA VANUATU

PROFORMA INVOICE

Page 1

Inv. No Invoice To:
10617 MUNICIPALITE DE SANTO
P O BOX 232
Date SANMA

For Delivery To:

TO CROWN J2S1031-AEMSE VIN# J2S103-0030695 Reg No 20421
line 0351811 Stock# UV00140

Chassis

Key No

W/Trm 0/GR13W

Aspers 1 Colap 2.12V

Clut No 702100

Cost Price

NO. 10285

PROFORMA INVOICE

Page 1

Inv. No Invoice To:
10617 MUNICIPALITE DE SANTO
P O BOX 232
Date SANMA
05/99

For Delivery To:

TO CROWN J2S1031-AEMSE VIN# J2S103-0030695 Reg No 20421
line 0351811 Stock# UV00140

Chassis

Key No

W/Trm 0/GR13W

Aspers 1 Colap 2.12V

Clut No 702100

Cost Price

OTA Price	V1,443,700
Per Charges Subject to VAT	
Registration	10,000
On Road Costs	200,000
Freight V/Gang	100,000
OTA TOTAL SUBJECT TO VAT	V1,743,700
Total VAT Charge (Registered Supplier)	100,000
OTA TOTAL NOT SUBJECT TO VAT	
OTA Total	V1,843,700

REMARKS

W/Trm 0/GR13W

V1,843,700

[illegible]

'E'

14-Min-99

Acheteur / C

MUNICIPALITE DE LUGANVILLE

LUGANVILLE

Dear Sir,

Further to your recent inquiry, we take pleasure in submitting to you the following quotation:

Make : MITSUBISHI

Model : CK1ASNDL

Specifications:

Exterior High Ground Suspension, Front & Rear Mudguards, High Mount Stop Lamp, Multi Valve SOHC Engine.

Interior AM/FM Radio & Cassette, Power Steering, Airconditioner, Central Locking, Power Windows, Laminated Tinted Windscreen, Tilt Steering Column, Trunk Lid Opener, Fuel Lid Opener, Digital Clock, Variable Wipers.

Designation / Description	Prix Unitaire	Qté	Qté	Total Prix Net
---------------------------	---------------	-----	-----	----------------

LANCER GLS

1 380 000

@

Vt 1 380 000

Accessories as requested: (1)

(2)

(3)

(4)

0

0

0

0

On Road Costs:

0

Freight Costs:

0

Vt

0

Sub Total:	Vt	1 380 000
VAT/Tax:	Vt	104 000
On Insurance Tax:	Vt	17 000
On Fuel:	Vt	1 000
On Road Tax:	Vt	1 000

14-Min-99

14-Min-99

14-Min-99

'FL'

Suspension Long Payment blong Legal Firm

Councillor Gaetan Pikione

Mi bin toktok wetem
suspension ia mo emi
emi kam bak long Tok

Ula

Emi toktok wetem mi mo talem so balda emi kam
bak but emi never kam bak long mi

Councillor Gaetan Pikione

Emi move blong Council mi suspendem
wetem Legal Firm Retainership Fee
until further notice.

I Mayor, Roy Bongelan

Emi secondem

BE CARRIED UNANIMOUSLY

Agenda 3 a) UNELCO PROMOTION

Chairman Councillor Jean Delaveau

Emi wan promotion blong
UNELCO mo mi think se emi
good saposen Council i mak
make use long ol
promotion disem from emi
mo cheap.

Lord Mayor, Roy Bongelan

Emi move blong Council i acceptem
promotion blong UNELCO blong
Council connectem Electricity
long Sarakata Dispensary.

Councillor Gaetan Pikione

Emi secondem

VOTE CARRIED UNANIMOUSLY

AGENDA 3 b) PERSONAL MATTERS

*

Councillor, Oscar Balauna

Wetem quotation... save solven problem... Council bus... Quotation... Long... company blong... vehicle blong LMC.

Councillor, Gaetan Pikione

Emi move blong administration... toktok wetem ASCO MOTOR sapos oli save tekem back car we blong Lord Mayor then yumi go for the cheapest.

Councillor, Sam Mailan

Emi secondem

VOTE CARRIED UNANIMOUSLY

OTHER BUSINESS

a) LMC LABOURER

Town Clerk

I gat about tufala employees blong yumi... Franklyn Philimon... Bob Sul... Long case blong tufala employees ia tufala i stap long suspension asta long oi ripot we Council i receivin.

Councillor Gaetan Pikione

Mi move blong Council i terminatem tufala employees ia... Bob Sul mo Franklyn Philimon.

Lord Mayor, Roy Bongalan

Emi secondem

VOTE CARRIED UNANIMOUSLY

b) RADIO VANUATU / STUDIO 3 WORTH OUTSTANDING RENT

Councillor Gaetan Pikione

Mi move blong Administration... wetem James... Christian... then... the...

Lord Mayor, Roy Bongalan

VOTE CARRIED UNANIMOUSLY

3
4
5
6
7
8
9
10

- a) Tender procedures now it takes weeks for all process to get through. Also some are biased in one way or another and also sometimes being factors controlled should I say. I have taken such an initiative step to merely avoid all these and also I thought that the deal received was fair.
- b) The car purchased was a Toyota Crown and was a second hand car. The Council's approval was for a new car. However, due to some technical aspects that was being considered amongst various discussions between myself and the ASCO Motors Sales Person Mr Caleb Votgon here in Luganville.
- d) One technical reason for buying this car was that this type of car tend to last longer than the usual type of cars offered. This was experienced by this Council in the past years as they were specially manufactured as can be judged by the price. Also in the long run one does not have to pay or replace parts every now and again. In the long run it would be much better off than the proposed new cars offered.

This has been proven by the Mayor's former one year old car purchased by the past Council. This was falling to pieces only 2 months after this Council formed, when I was just using it to and from my home. The new purchased car was warranted for another 3 years by the Chief Mechanics of the ASCO Motors in Vila. Also features of the car are more executive than the former ones and as the Mayor of Luganville is to the people of Luganville a replica of the symbol of the President and the Prime Minister of Vanuatu.

Please find attached are some of the documents required. The new car meets all the requirements.

1. Copy of minutes that approved the purchase of a Mayor's Car.
2. Proforma Invoice of Mitsubishi Car Company of proposed Car.
3. Invoice of present Mayor's Car

I would like to thank you for your understanding and anticipation, and also look forward to a more mutual working relationship between the Ambassador's Office, especially the new Hon. Vanuatu Ambassador.

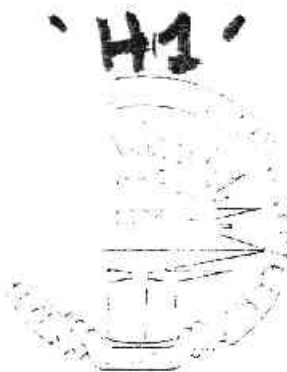
and that we remain any queries still to be raised regarding the above.

Yours faithfully,

Mr. [Name]

[Signature]

PORT VILA
Tel: 388 15 16849
Fax: 388 15 16849
Republic of Vanuatu



PORT VILA
Tel: 388 15 16849
Fax: 388 15 16849
Republic of Vanuatu

OUR REF: LMC/22.16/RB/an

23rd August 1999

The Office of the Ombudsman
Bureau de Mediateur
Private Mail Bag 081
PORT VILA

ATTENTION : MR PASA TOSUSU

Dear Sirs (Madam)

RE: ALLEGED MISCONDUCT OF MAYOR AND COUNCIL IN PURCHASING
NEW CAR - YOUR REFERENCE: CE: 606/9390/554/rb

Firstly, my sincere word of apology for my delay in replying to your letter which I acknowledge receipt of on 25th June 1999. During those times as you are well aware, are very busy times for the two Municipalities, especially as celebrations of our Independence Day for this last century preparations are full on schedule so as to re-entrance its true meaning and spirit in respect of the indigenous people of Vanuatu.

Here are my responses to the complaint that I was alleged of

1. The Council purchased a Car taking into account the financial capability of the present Council.

1. There is sufficient amount of Property Tax which is still outstanding. This should be able to cover the Council's existing loan plus the Car and the Council's day-to-day running of this Municipality. However, as most of our citizens are the local population, therefore, due to the employment opportunity, the local population should be able to pay the loan for consideration compared to the local population who are not employed by the Council. As a result, the local population should be able to pay the loan.

MUNICIPALITÉ
DE
LUGANVILLE

Boite Postale 232
Tel: 36646 / 36840
Telecopier: 36648
Republique de Vanuatu



MUNICIPALITY
OF
LUGANVILLE

P.O. Box 232
Tel: 36646 / 36840
Facsimile: 36648
Republic of Vanuatu

21st October 1999

Your Ref: 7011/9350/L54/06

Office of the Ombudsman
PORT VILA

25/10/99

Dear Sir

Re: ALLEGED MISCONDUCT OF MAYOR AND COUNCIL IN PURCHASING
NEW CAR

As a Treasurer for the Municipal Council, I was informed only of the decision that the Mayor's car would be replaced not immediately but later as there are priority of the Council to spend money on. Also the decision made by the Finance Committee was that negotiation should be made with the car dealers to see whichever is the cheapest.

The Town Clerk have talked verbally with the salesman of Deon Motors which showed that they offered the best service to us and the quotation is attached herewith.

We have also contacted the Mitsubishi Motors who have forwarded their quotation which is cheaper than the Asco Motors.

Following the allegation by your Office, it is true that Mr Roy Bongelan traded in the former Mayor's car which was only one year old to Asco and purchased a second hand at his own discretion. The Council and the administration were only aware of the Mayor's decision when the car arrived from Vila.

However, following the arrival of this second hand car, the Council through its Finance Committee meeting has approved that this car be returned but Asco did not accept the decision of the Finance Committee.

Therefore, as a result of this, the Luganville Municipality has lost a huge amount of money, as a result of Mayor's personal decision.

Former Mayor's car brought in 13 th 98	=	2,381,500 V.T
Traded in on 15-5 99 at a value of	=	1,300,000 V.T
Lost to U.M.C	=	<u>1,081,500 V.T</u>

The present Mayor's car bought by Mr Roy Bongelani was sold to the former New Zealand High Commissioner, Mrs Caroline J. McDonald in 1994 by Cherry Bourgeois when he was a salesman at the Asco Motors. The car is now 5 years old and was sold at a very high price:

The new Mayor's car	=	2,920,208 VT
Traded in former Mayor's car	=	<u>1,300,000 VT</u>
Amount not budgeted for 1998-99	=	<u>1,620,208 VT</u>

Therefore, the misuse of Public Fund in this manner by the Lord Mayor is :-

a) Difference to the value of former Mayor's car	=	1,081,509 VT
b) Cash paid for new car	=	<u>1,620,208 VT</u>
Total Fund misused	=	<u>2,701,717 VT</u>

To end, I would like to apologize for not responding to your request at the required time set by you as I have been busy preparing budget for the Council for the Minister's approval.

Thank you.

Yours faithfully



OSCAR BULEURI
Treasurer
Lucanville Municipal Council

J

23rd February 2000

Off: of the Ombudsman
P.O. Box 81
PORT VILA

DATE: 23/02/2000
TELEPHONE 0684-1111 FAX 0684-1111
PO BOX 133 PORT VILA

SANTO BRANCH
10 GARDENVILLE SANTO
TELEPHONE 0684-1111 FAX 0684-1111
PO BOX 133 SANTO VANUATU

Attention: Mr Pasa Tosusu

Dear Sir

Ref: 2422/9390/L54/dp

Refer you to our letter of 18 August and reiterate our comments.

Mr. Roy Bongelan purchased the used car from Asco because it suited his needs and was in a price bracket that the Council could afford.

I cannot comment on any statements Caleb Vetqon may or may not have made, as I was not there. I will say however, that Caleb could not make any accurate statement about the durability or the economy of the used vehicle, as he had not even seen it.

To say that new cars are not as durable and economical as older ones, is of course a nonsense.

Although the vehicle purchased by Mr. Bongelan was in very good order for its mileage and age, which is normal for a luxury type vehicle such as the Crown purchased by the Council, but in no way could compare with a brand new vehicle, and of course the price paid reflected the age and condition compared to a new model.

As to the condition of the vehicle previously owned by the Council, I believe the new owners are very happy with their purchase and the vehicle is going very well.

Yours sincerely
ANTHONY VANUATU

Appendix 'K'

Relevant laws

OMBUDSMAN ACT NO. 27 OF 1998

DEFINITION

1 "government agency" means:

- ...
(c) a municipal council

MUNICIPALITIES ACT [CAP 126] NO. 5 OF 1980

CONTRACT

27(2) Except as may be permitted by its standing orders a council shall not enter into any contract-

- (a) for the supply of any goods or materials; or
- (b) for the execution of any works or provisions [sic] of any services, other than professional services, to or for the council, except after publicly calling for tenders for the same.

INCURRING EXPENDITURE NOT IN ACCORDANCE WITH ESTIMATES

52(1) No expenditure shall be incurred by a council unless it can be properly charged to an item in approved estimates or in approved supplementary estimates.

FINANCIAL REGULATIONS AND TENDER BOARD OFFERS

57(1) The Minister may after consultation with the Minister responsible for finance make regulations not inconsistent with any of the provisions of this Act for the purchase of-

- ...
(e) regulating the procedure for dealing with tenders;
(f) requiring contracts by councils to be in accordance with such orders and in particular requiring, in the case of contracts for the supply of goods or materials or for the execution of works to the value of VT 150,000 or more or such higher minimum value as the Minister may specify in respect of any council or councils to enter into, the contract shall be published and tenders invited and regulating the manner in which such notice shall be published and such tenders accepted.

DISALLOWANCE AND SURCHARGE

60(1) If, on receipt of the report of the auditor or an inspector, the Minister is satisfied that expenditure has been incurred without proper authority he may either sanction or disallow such expenditure and if he disallows such expenditure, he may, subject to the provisions of section 67 by directive in writing surcharge any person responsible for such expenditure for the whole or any part thereof.

60(2) If, on receipt of the report of an auditor or an inspector, the Minister is satisfied that-

- (a) any failure to collect money due to the council; or
- (b) any loss of money or property; or
- (c) any damage to property;

has occurred by reason of any wilful or wrongful act or any negligence by any councillor or person in the service of the council, the Minister may, subject to the provisions of section 67 by order in writing surcharge such councillor or person for the whole or any part thereof.

60(3) Any sum surcharged on any person under the provisions of this section shall be a debt to the council and shall be payable by such person within 1 month or such longer period as the Minister may approve of the dated of service upon him of the order of the Minister.

MUNICIPAL COUNCILS FINANCIAL REGULATIONS NO. 66 OF 1983

CONTROL OF REVENUE

- 5 No revenue may be collected or expenditure incurred other than in accordance with the approved estimates.

USE OF LOCAL PURCHASE ORDER

- 116(1) A local purchase order will be used-

- (a) where the cost of a specific work or service is less than VT20,000; or
- (b) for all sea/air passages and freight charges within Vanuatu; or
- (c) for the hire of all land transport; or
- (d) for the payment of hotel costs for officers on tour;

except that in circumstances where a cash payment is more practical than the issue of a local purchase order, these requirements may be waived.

- 116(2) The local purchase order shall be in the prescribed form.

EXTRAORDINARY EXPENDITURE

- 117 Specific items that appear in the approved estimates for extraordinary expenditure up to the value of VT 100,000 may be requisitioned by a local purchase order.

FORMAL CONTRACT WITH SUPPLIER

- 118 The purchase of any works and services other than those laid down in regulation 116 and 117 will be made by formal contract with the supplier, and will be subject to approval by the Minister.

CONSTITUTION OF THE REPUBLIC OF VANUATU

CONDUCT OF LEADERS

- 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 interest or in which the fair exercise of his public or official duties might be compromised;
- (b) demean his office or position;
- (c) allow his integrity to be called into question; or
- (d) endanger or diminish respect for and confidence in the integrity of the Government of the Republic of Vanuatu.

- 66(2) In particular, a leader shall not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by sub-article (1).

DEFINITION OF A LEADER

- 67 For the purposes of this Chapter, a leader means the President of the Republic, the Prime Minister, members of Parliament, and such public servants, officers of Government agencies and other officers as may be prescribed by law.

LEADERSHIP CODE ACT NO.2 OF 1998

LEADER'S BEHAVIOUR

3. A leader holds a position of influence and authority in the community. A leader must behave fairly and honestly in all his or her official dealings with colleagues and other people, avoid personal gain, and avoid behaviour that is likely to bring his or her office into disrepute. A leader must ensure that he or she is familiar with and understands the laws that affect the area or role of his or her leadership.

LEADERS

5. In addition to the leaders referred to in Article 67 of the Constitution, the following are declared to be leaders:

- (a) members of the National Council of Chiefs;
- (b) elected and nominated members of local government councils;
- (c) elected and nominated members of municipal councils;

DUTIES OF LEADERS

13(1) A leader must:

- (a) comply with and observe the law;
- (b) comply with and observe the fundamental principles of leadership contained in Article 66 of the Constitution;
- (c) comply with and observe the duties obligations and responsibilities established by this Code or any other enactment that affects the leader; and
- (d) not influence or attempt to influence or exert pressure on or threaten or abuse persons carrying out their lawful duty.

BREACH OF LEADERSHIP CODE

19. A person who does not comply with Part 2, 3 or 4 is guilty of a breach of this Code and is liable to punishment in accordance with Part 6.

OBEYING THE LAW

28. A leader acting in his or her capacity as a leader who fails to abide by an enactment that imposes on the leader a duty, obligation, or responsibility is in breach of this Code.

SPECIFIC PROVISIONS

29. Without limiting the generality of section 28 a leader who fails to abide by the provisions of an Act that provides for:

- (a) the public service; or
- (b) public finance or economic management; or
- (c) expenditure review committee or audit functions; or
- (d) government contracts or tenders;

is in breach of this Code.

FINE OR IMPRISONMENT

40(1) A leader who is convicted of a breach of section 19, or 20, or 21, or 22, or 23, or 24 or 26 or 27 is liable to:-

- (a) a fine not exceeding VT5,000,000; or
- (b) imprisonment for a period not exceeding 10 years.

(2) A leader who is convicted of a breach of section 33 is liable to:

- (a) a fine not exceeding VT2,00,000; and
- (b) if the offence is a continuing one to a fine not exceeding VT20,000 a day for each day or part day the leader remains in breach.

(3) A leader who is convicted of a breach of this code for which no specific penalty is provided is liable to a fine not exceeding VT2,000,000.