



OFFICE OF THE OMBUDSMAN

PUBLIC REPORT

**ON THE BREACH OF LEADERSHIP CODE IN
USING PUBLIC OFFICE FOR PERSONAL GAIN
BY HON SAM DAN AVOCK SPEAKER OF
PARLIAMENT AND THE ABUSE OF SECTION 3
OF THE OFFICIAL SALARIES AMENDMENT ACT
1989 BY THE HONOURABLE PRIME MINISTER**

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**PUBLIC REPORT ON THE USE OF OFFICE FOR PERSONAL GAIN BY
HONOURABLE SAM DAN AVOCK SPEAKER OF PARLIAMENT AND THE ABUSE
OF SECTION OF THE OFFICIAL SALARIES AMENDMENT ACT 1989 BY THE
HONOURABLE PRIME MINISTER**

SUMMARY

The Ombudsman is issuing this Public Report to illustrate the use of office for personal gain by Honourable Sam Dan Avock, the Speaker of Parliament of the Republic of Vanuatu and to outline the possible abuse of section of the *Official Salaries Amendment Act 1989* by Honourable Ham Lini Vanuaroroa the Prime Minister.

Sam Dan Avock is the Speaker of Parliament of the Republic of Vanuatu. As the Speaker he is a leader as defined by the *Constitution of the Republic of Vanuatu* and the *Leadership Code Act 1998* and is mandated to conduct himself according to the leadership provisions under the *Constitution of the Republic of Vanuatu* and the *Leadership Code Act 1998*.

One of the persons he appointed to be part of his staff at the Parliament House is Mr John Tomake. He is the 3rd Political Secretary in the Office of the Speaker of Parliament and is on the official Government pay roll. The Office of the Speaker is located at the Parliament House in Port Vila.

Between July 2005 to early 2006, Mr Tomake was not always in the Office of the Speaker at Port Vila. He was on the island of Paama where Honourable Sam Dan Avock comes from. He first went to Paama to represent the Speaker during the 25th Silver Jubilee Independence Celebrations there.

After representing the Speaker in the Silver Jubilee Independence celebration, Mr. Tomake travelled to and from Paama Island and Port Vila until early 2006. His various travels to Paama were not related to the official work of the Speaker of Parliament; Mr. Tomake was performing other duties such as conducting community meetings, school meetings, Vanuaku Pati supporters meetings and ceremonies for chiefs and people who were changing their political affiliation from a different political party to Vanua'aku Pati.

He was away from the Office of the Speaker at the Parliament House in Vila in order to conduct all these political activities and continued to receive his salary from the Government as third political secretary to the Office of the speaker of Parliament.

The duties that were conducted on Paama by Mr Tomake were pure political work that was for the benefit of the political party that the Honourable Speaker and Mr Tomake are affiliated to which is the Vanua'aku Pati. These duties were not related to the official duties of the Speaker as per the *Constitution of the Republic of Vanuatu* and the *Parliament (Administration) Act 2005*.

Public funds [total of VT 501,412] in the form of Mr Tomake's salary were thus used for the continuous political campaign and promotion of Vanua'aku Pati on the island of Paama and the campaign for Honourable Avock.

As such, the Honourable Speaker and Mr Tomake had used the Office of the speaker for personal gains in political activities which is contrary to Article 66 (2) of the *Constitution of the Republic of Vanuatu* and section 2 of the *Leadership Code Act 1998*.

The Ombudsman finds that the Speaker of Parliament has breached the *Leadership Code Act 1998* and Article 66 [2] of the *Constitution of the Republic of Vanuatu* by using his office for personal gains in political activities

Furthermore, the Ombudsman has found that there is the possible abuse of section 3 of the *Official Salaries (Amendment) Act 1989* by the Honourable Prime Minister Ham Lini Vanuaroroa. This said provision allows the Prime Minister, with the prior consent of the Council of Ministers, to add to, vary or replace the Schedule of the *Official Salaries Act*.

This provision of law allows for a possible abuse of this power by the Honourable Prime Minister in that extra political posts have been created in the various ministries including the Office of the Speaker of Parliament. In particular, the personal political advisors to the Speaker of Parliament are posts that are not provided for by Article 58 of the *Constitution of the Republic of Vanuatu*. Thus, it has been further found that the authority exercised by the Prime Minister allows him to create extra political posts that may be deemed to be unconstitutional.

Such extra political posts exist for the benefit of a political party and not in the state interest. As such, public funds in the form of the salaries and allowances of these political appointees are used to conduct pure political work for the benefit of the political parties that they are affiliated to in preparation for the following general elections.

Following the above findings, the Ombudsman has made the following recommendations to rectify the situation:

Recommendation 1: The Government should not pay salaries to political appointees who are based in the islands.

Recommendation 2: The Public Prosecutor considers prosecution actions against the Speaker of Parliament and Mr Tomake under the *Leadership Code Act 1998*.

Recommendation 3: The Government considers amending section 3 of the *Official Salaries (Amendment) Act 1989* and remove the power of the Prime Minister and trusts this back to Parliament.

Recommendation 4: The posts of the personal political advisors to the Speaker of Parliament should be abolished as they are positions that are not provided for by Article 58 of the *Constitution of the Republic of Vanuatu*.

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1. JURISDICTION

- 1.1 The *Constitution of the Republic of Vanuatu* (the Constitution), the *Ombudsman Act 1998* and the *Leadership Code Act 1998* (LCA 1998) allow the Ombudsman to look into the conduct of government, related bodies, and Leaders. This includes the conduct of the Speaker of Parliament of the Republic of Vanuatu and his Political Advisors as appointed under the *Official Salaries Act* [CAP 168]. The Ombudsman can also consider certain laws or administrative practices that may be abused which includes section 3 of the *Official Salaries (Amendment) Act 1989* [CAP 168] which may have been abused by the Honourable Prime Minister.

2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED

- 2.1 The purpose of this public report is to present the Ombudsman's findings on this enquiry as required by the *Constitution*, *Ombudsman Act 1998* and the *LCA 1998*.
- 2.2 The scope of this investigation is to establish the facts about the use of office for personal gain by the Speaker of Parliament, Honourable Sam Dan Avock and his 3rd Political Advisor and to determine whether section 3 of the *Official Salaries (Amendment) Act 1989* is being abused by the Honourable Prime Minister.
- 2.3 This Office collects information and documents by informal request, summons, letters, interviews and research.

3. RELEVANT LAWS

- 3.1 Relevant parts of the following laws are reproduced in **Appendix 'A'**.
Constitution of the Republic of Vanuatu.
Leadership Code Act 1998.
Parliament (Administration) Act 2005.
Official Salaries (Amendment) Act 1989.
Official Salaries Order No. 37 of 2004.

4. OUTLINE OF EVENTS

- 4.1 On 2 March 2006, the Ombudsman received a complaint alleging that the 3rd Secretary to the Speaker of Parliament, Mr John Tomake, has been away on the island of Paama since July 2005 however, he is still receiving his full salary from the Vanuatu Government. The complainant stated that salary should only be paid to those who are working and not to those who are not working but spending time on the island.
- 4.2 After assessing the complaint, the Ombudsman launched an investigation into this allegation on 14 March 2006 by issuing letters of enquiry to the Speaker of Parliament, Honourable Sam Dan Avock and the Director of the Department of Finance, Mr Benjamin Shing.
- 4.3 Honourable Avock was requested by the Ombudsman to provide his response to the following:
- To confirm if Mr Tomake was his 3rd Secretary;
 - To state how many such secretaries he has;
 - To advise on how these secretaries were appointed;

- To advise on the law that provides for the appointment of such secretaries;
- To provide a copy of these secretaries' contract and/or letter of appointment including that of Mr Tomake if applicable;
- To explain what Mr Tomake is doing on Paama;
- To confirm if Mr Tomake is receiving salary from the Government while residing on Paama;
- To state Mr Tomake's monthly salary and
- To provide any further information and documents that are relevant to this matter.

A response from Honourable Avock was received by the Ombudsman on 3 May 2006 in which the following information and documents were supplied:

- Confirmation that Mr Tomake is the 3rd Political Secretary in the Office of the Speaker.
- The Office of the Speaker has three such Secretaries and they are :
Mr Orrison Ores, Private Secretary
Mr Jacob Mata, 2nd Political Secretary and
Mr John Tomake, 3rd Political Secretary.
- The Parliament Secretaries including the Ministries were appointed under the Official Salaries Act (OSA), which includes Mr John Tomake's appointment.
- Copies of the employment contracts of these Secretaries were submitted which were signed between the Employer, Attorney General, the Employee and a witness.
- Mr Tomake was the Speaker's representative to attend the 25th Silver Jubilee Independence celebration in July 2005 as the Speaker was officially invited to be the Guest of Honour in similar celebrations in Luganville, Santo. Mr Tomake returned to Office after the celebration and returned to Paama in September 2005.
- Mr Tomake was in Paama to perform tasks allocated to him by his Employer, the Speaker of Parliament as the Speaker has official duties to attend to so Mr Tomake was sent to Paama to carry out the following activities on his behalf :
 - community meetings
 - school meetings
 - supporters meetings
 - ceremonies – for chiefs and for people changing their affiliation from a party to Vanua'aku Party.
- Mr Tomake continued to receive his salary as he was performing his duties on the field.
- Mr Tomake's monthly salary is VT 125,353 (copy of pay slip was attached).
- Any question regarding the legality of Mr Tomake's appointment should be referred to the Attorney General's Office.

- 4.4 On 8 May 2006, the Ombudsman issued a letter to the Acting Attorney General, Mr Dudley Aru, informing him of the complaint against Mr Tomake and also of the response received from the Honourable Speaker of Parliament. Mr Aru was then requested to advise on the legal basis on which the Employment Contract for the political secretaries in the Office of the Speaker was made.

Mr Aru was also requested to provide the Attorney General's opinion on the type of work that Mr Tomake was performing on Paama and to state whether it was in line with Mr Tomake's employment contract and the relevant sections of the *Government Act 1998*.

- 4.5 A response was received by the Ombudsman from Mr Dudley Aru, Solicitor General on 3 July 2006. Mr Aru advised that the Official Salaries Order No. 37 of 2004 which commenced on 4 August 2004 established the positions of political advisors to the Office of the Speaker of Parliament.

The job descriptions of these political advisors is silent and not provided for by any other enactment except that they are purely political. It has been the case that over the years, the Prime Minister with the prior approval of the Council of Ministers, has been exercising his powers under section 3 of the Official Salaries Act to create extra political advisor posts to the office of the Prime Minister, Deputy Prime Minister and Ministers. The Prime Minister and Deputy Prime Minister may employ up to 5 political advisors under the Official Salaries Act whilst a Minister, a possibility of 4 at their discretions. Political advisor posts have been equally created in the same way in the Office of the Speaker and the Leader of Opposition.

Unless there is an amendment to control or limit the powers exercised by the PM in creating these extra positions for political advisors, such positions are valid and legal.

Mr Aru further stated that he understands from the Ombudsman's letter that Mr Tomake, 3rd Political Secretary in the Office of the Speaker of Parliament is on the island of Paama where he conducts his work as a political advisor lobbying support for the Speaker and his affiliated Vanua'aku Pati and receiving full salary from the Government since July 2005. Whilst there is no job description with regards to these political advisor posts as mentioned earlier, these political appointments are made to the office of the Speaker of Parliament.

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, on 15 January 2007 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 Responses to the working paper were received from the following:

- On 18 January 2007, the Ombudsman received a response from the Minister of Agriculture, Quarantine, Forestry and Fisheries, Honourable Marcellino Pipite. Hon Pipite stated that in his opinion, Hon Sam Dan Avock did not do anything wrong due to the following :
 - (i) Many reports have shown that since 1980, most MPs have not provided good service to their electors. It can be said that they have stolen their voices but have not really considered their needs.
 - (ii) The Council of Ministers have decided through the Official Salaries Act that a Minister can recruit a political staff to look into the affairs of the constituency. This is to answer point (i).

- (iii) All staff in a Ministry are there because of politics and they do political work therefore everywhere they are, they do political work including the Minister.

If Hon Sam Dan Avock did something wrong, then the Council of Ministers' decision is also wrong and it also puts the Minister's work in question because when will he have time to go and visit his electors.

Following the above response, the Ombudsman still maintains his stand as reported in this public report.

- On 18 January 2007, the Ombudsman received a response from the Director of Finance, Mr Benjamin Shing. Mr Shing advised in his response that after perusing the working paper, he has no further comments on the said paper as it is well researched and written report with excellent recommendations.
- On 23 January 2007, the Ombudsman received a response from the Minister of Finance and Economic Management, Honourable Willie Jimmy Tapanga Rarua. Hon Tapanga Rarua advised in his response that he has no comments on the working paper and no documents in his file that may assist the Ombudsman to investigate the matter.
- On 23 January 2007, a meeting was held between the Speaker of Parliament, Hon Sam Dan Avock and the Ombudsman to discuss the working paper. The first point that Hon Avock wanted to stress was that Mr John Tomake is not based on the island of Paama. In July 2005, he was sent to Paama by the Speaker to represent him at the Silver Jubilee Independence celebrations there. He returned to Port Vila after this.

In September 2005, there was a problem at Lehili School on Paama. There was a division between the school teachers and the parents of the students there and they wanted to close the school down. The Speaker was requested to go to Paama and hold a meeting with the two parties. Due to work commitments, the Speaker could not go to Paama so he sent Mr Tomake instead. This was the second time Mr Tomake returned to Paama but he came back to Port Vila after a reconciliation ceremony that was held between the teachers and the parents.

In December 2005, Mr Tomake returned to Paama for the Christmas holidays then came back to Port Vila. During the times that Mr Tomake was there, he also witnessed some custom ceremonies there and also held meetings with the sub committees there. Hon Avock further stated that there are other ministries that have 3rd PAs stationed on the island and not in Port Vila and he gave as an example, the 3rd PA of the MOIA who is stationed on Santo.

The second point that Hon Avock wanted to state was that the post of 2nd PA and 3rd PA to the Speaker of Parliament did not exist in the past. The Government of Serge Vohor had created these posts while Hon Josias Moli was the Speaker of Parliament. The posts remained unoccupied until there was a change of Government. It was during this present government and his term as the Speaker that Mr Tomake and other advisors were appointed.

Hon Avock further stated that unlike other countries in the region, our Speaker is elected from within Parliament. Therefore, while assuming the duties of the Speaker, his duties as a politician in his constituency are neglected so somebody has to do it. This was the main reason why he decided to send Mr Tomake to Paama to carry out the above duties.

The Ombudsman then advised the Speaker that the Speaker's Office is a high Constitutional office that should not have political advisors as other ministries who are appointed under the *Official Salaries Act*. The Speaker has power under the *Parliament Administration Act 2005* to appoint his own staff. With regards to politic related work, the Ombudsman suggested that the MP's allocation fund

should be made available for MPs to use to pay people on the island to carry out politic related work.

The Ombudsman further stated that he had wanted to discuss this issue with the Prime Minister but as he is currently on leave on his home island, he has not had an opportunity to meet him.

- On 12 February 2007, the Ombudsman received a response from the Acting Attorney General, Mr Dudley Aru. Mr Aru raised the following points in his response :
 - (i) Order No. 37 of 2004 of the *Official Salaries Act* CAP 168 (the OSA) which commenced on 4 August 2004 established the positions of second and third political advisors to the office of the Speaker of Parliament.
 - (ii) The job description of these political advisors is not provided for in or by any other enactment. The SLO has advised the Ombudsman of this by letter dated 29 June 2006 that these are political appointments.
 - (iii) Under section 3 of the OSA, it provides that the Prime Minister, with prior approval from the Council of Ministers has the power to create extra advisor posts to the Office of the PM, Deputy PM and the Ministries. In the same manner, political advisor posts have been created equally for the Office of the Speaker and the Leader of Opposition. Therefore, Order No. 37 of 2004 was made by the Prime Minister exercising his power under section 3 of the OSA.
 - (iv) The *Ombudsman Act* No. 27 of 1998, subsection 11 (1) (b) provides that one of the functions of the Ombudsman is to enquire into any defects in any law or administrative practice appearing from any matter being enquired into.

The principle issue is whether section 3 of the OSA is a defect in law.

The law gives the Prime Minister the power to add, vary or replace the Schedule of the OSA upon prior approval from the Council of Ministers. The law grants the Prime Minister such power until otherwise stated. Therefore in order to limit his power, only an amendment to section 3 of the OSA may do so. As it stands, section 3 is a valid law until such time it may be challenged or reviewed by the Supreme Court as being defective.

Further, with regards to the position of political advisors, they are political appointees and there is no job description that clearly outlines their role. Unless there is a specific law that will be made to suggest that political posts should not exist for the benefit of a political party, appointments of political advisors are to be deemed as political and impliedly their job descriptions would be the same.

- On 28 February 2007, the Ombudsman received a response from the Honourable Minister of Youth Development and Training, Dunstan Hilton. Hon Hilton stated that as Hon Sam Dan Avock is the Speaker of Parliament, it is only proper for him to respond to the allegations raised by the Ombudsman.
- The Ombudsman did not receive any response to the working paper from the following people :
 - Honourable Ham Lini Vanuaroroa, Prime Minister;
 - Honourable Sato Kilman, Minister of Foreign Affairs;
 - Honourable Maxime Carlot Korman, Minister of Lands;
 - Honourable George A. Welss, Minister of Internal Affairs;
 - Honourable Morkin Stevens, Minister of Health;
 - Honourable James Bule, Minister of Trade;
 - Honourable Judah Isaac, Minister of Ni-Vanuatu Business;
 - Honourable Edward Natapei, Minister of Infrastructure;
 - Honourable Joe Natuman, Minister of Education;
 - Honourable Isabelle Donald, Minister of Justice and Social Welfare;

- Ms Kayleen Tavoia, Public Prosecutor and
- Mr John Tomake, 3rd Political Advisor for the Speaker of Parliament.

6. FINDINGS

6.1 Finding 1: **USE OF OFFICE FOR PERSONAL GAIN BY THE SPEAKER OF PARLIAMENT, HONOURABLE SAM DAN AVOCK AND MR JOHN TOMAKE AS THIRD POLITICAL ADVISOR**

Article 66 (2) of the *Constitution* (please refer to **Appendix 'A'**) and section 2 (2) of the *LCA 1998* (please refer to **Appendix 'A'**) state that a leader shall not use his office for personal gain.

Article 22 of the *Constitution* (please refer to **Appendix 'A'**) and Part 3 of the *Parliament (Administration) Act 2005* (please refer to **Appendix 'A'**) refer to the duties of the Speaker of Parliament which is primarily to preside in parliamentary sittings. The *Official Salaries Act* and the *Parliament (Administration) Act 2005* are however silent on what the job description of a 3rd Political Secretary is.

It was found in this enquiry that the Speaker of Parliament had some duties to perform in his capacity as a Member of Parliament affiliated to the political party, Vanua'aku Pati. These duties are purely political and are not part of his official duties as the Speaker of Parliament as prescribed in the *Constitution* and the *Parliament (Administration) Act 2005*. It was these duties that Honourable Avock as the Speaker of Parliament, delegated to his 3rd Political Secretary, Mr Tomake. Such duties as mentioned in paragraph 4.3 above which included community meetings, school meetings, supporters meetings and ceremonies for chiefs and people changing their affiliation from a party to Vanua'aku Pati.

Mr Tomake was on the island of Paama for a few weeks to carry out these political duties whilst receiving his full salary from the Vanuatu Government as the 3rd Political Secretary. The duties that he was performing on Paama were not for the benefit of the state or in the state interest but for the continuous political campaign for Honourable Avock as a MP for Vanua'aku Pati and for the benefit of the Pati itself.

Furthermore, section 2.5 (b) of Mr Tomake's Employment Agreement (please refer to **Appendix 'B'**) states that the employee shall not engage himself as an employee, agent of principal of any other person, corporate body or any other similar organization. However, in conducting purely political work on Paama, Mr Tomake had acted as an agent for Vanua'aku Pati, a political party.

By allowing Mr Tomake to perform these political duties which were outside the official duties of a Speaker of Parliament and also being contrary to Mr Tomake's Employment Agreement, the Speaker of Parliament, Honourable Avock and Mr Tomake had used their respective offices for personal gain. This is contrary to Article 66 of the *Constitution* and section 2 of the *Leadership Code Act 1998* and is an abuse of state funds for political purposes.

6.2 **Finding 2: POSSIBLE ABUSE OF SECTION 3 OF THE OFFICIAL SALARIES (AMENDMENT) ACT 1989 BY THE HONOURABLE PRIME MINISTER**

Section 3 of the *Official Salaries (Amendment) Act 1989* (please refer to **Appendix 'A'**) allows the Prime Minister, with the prior approval of the Council of Ministers, to add to, vary or replace the Schedule.

It has been found in this enquiry that this provision of law allows for a possible abuse of this power by the Honourable Prime Minister. By allowing the Prime Minister, with the prior approval of the Council of Ministers, to add to, vary or replace the Schedule, extra political posts have been created in the various ministries including the Office of the Speaker of Parliament.

Such political posts exist for the benefit of a political party and not in the state interest. As such, public funds in the form of the salaries and allowances of these political appointees are used to conduct pure political work for the benefit of the political parties that they are affiliated to.

Thus, the power entrusted to the Prime Minister in section 3 of the said *Act* should be limited or removed.

6.3 **Finding 3: SECTION 3 OF THE OFFICIAL SALARIES (AMENDMENT) ACT 1989 ALLOWS THE PRIME MINISTER TO CREATE EXTRA POLITICAL POSTS THAT MAY BE UNCONSTITUTIONAL**

It has also been further found that section 3 of the *Official Salaries (Amendment) Act 1989* allows the Prime Minister to create extra political posts that do not conform to Article 58 (1) of the *Constitution*. The latter refers to the personal political advisors of the Prime Minister and Ministers with no reference to such advisors for the Speaker of Parliament.

Section 9 of the *Interpretation Act* [CAP 132] (please refer to **Appendix 'A'**) states that Acts of Parliament are to be subordinate to the *Constitution*. As Article 58 of the *Constitution* does not provide for the rule of security of tenure for the personal political advisors to the Speaker of Parliament, section 3 of the *Official Salaries (Amendment) Act 1989* allows the Prime Minister to create political advisor posts that may be deemed to be unconstitutional.

Mr Tomake and the other personal political advisors that are currently serving the Speaker of Parliament are occupying positions that may be unconstitutional.

6.4 **Finding 4: HONOURABLE SPEAKER OF PARLIAMENT AND JOHN TOMAKE HAVE BREACHED SECTION 15 OF THE LEADERSHIP CODE ACT 1998**

Section 19 of the *LCA 1998* makes it an offence for a leader not to comply with Part 2 of the *Act*. Section 15 in Part 2 of the *LCA 1998* states that a leader must always give priority to his or her official business over their private business interests.

It is evident that Mr Tomake has been acting as an agent of Vanau'aku Pati on Paama by conducting various meetings and ceremonies on behalf of the Speaker of Parliament. As such they are in breach of section 15 of the *Leadership Code Act 1998*.

6.5 **Finding 5: HONOURABLE SAM DAN AVOCK AND JOHN TOMAKE HAVE CAUSED THE GOVERNMENT TO LOSE MONEY THROUGH SALARIES FOR WORK THAT IS NOT RELATED TO ROLES OF THE OFFICE OF THE SPEAKER OF PARLIAMENT**

Between September 2005 and January 2006, Mr. Tomake received a total of VT501,412 as salaries from the Vanuatu Government to perform political duties on Paama Island. These duties are not related to the roles and functions of the speaker of Parliament spelled out in the *Constitution* and the *Parliament [Administration] Act 2005*.

As a result of the decision and conduct they both have caused the Government of the Republic of Vanuatu to make a loss of VT 501,412 as the salaries received between this period was not to compensate for official work done for the office of the speaker but rather political work done to promote the speaker's political standing in his constituency and the political party the speaker is affiliated to at the Governments expenses.

7. **RECOMMENDATIONS**

7.1 **Recommendation 1: The Government should not pay salaries to political appointees who are based in the islands.**

A state minister who appoints a personal political appointee and sends him to his island to carry out political duties must be paid by the minister personally. Political appointees when appointed must serve in the office of the Minister in Port Vila. It is not correct or proper to spend state funds to pay salaries for someone who is based in the island carrying out the minister's political ambitions or his political party's interests and ambitions. Additionally, Employment contract of political appointees should clearly indicate their roles and responsibilities.

7.2 **Recommendation 2: The Public Prosecutor considers prosecution actions against the Speaker of Parliament and Mr Tomake under the *Leadership Code Act 1998*.**

Using public funds for political matters denotes a misuse of state funds. Mr Tomake was on the island of Paama purposely to conduct political meetings and ceremonies in the interest of their political party. Conducting the VP supporters meetings and overseeing custom ceremonies for people changing their political affiliation is not a state interest but a personal political interest.

7.3 **Recommendation 3: The Government considers amending section 3 of the *Official Salaries Amendment Act 1989* and remove the power of the Prime Minister and trusts this back to Parliament.**

- 7.4 Recommendation 4: The posts of the personal political advisors to the Speaker of Parliament should be abolished as they are positions that are not provided for by the *Constitution*.

Dated this 14th day of May 2007



Peter K. TAURAKOTO
OMBUDSMAN OF THE REPUBLIC OF VANUATU

8. INDEX OF APPENDICES

A Relevant laws

B Employment Agreement For Ministerial Support Staff –
Mr John Tomake



CONSTITUTION OF THE REPUBLIC OF VANUATU

SPEAKER AND DEPUTY SPEAKER

22. (1) At its first sitting after any general election Parliament shall elect a Speaker and one or more Deputy Speakers.
- (2) The Speaker shall preside at sittings of Parliament and shall be responsible for maintaining order.
- (3) The functions of Speaker may be exercised by a Deputy Speaker.

CONDUCT OF LEADERS

- 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).

LEADERSHIP CODE ACT 1998

SUMMARY OF OBLIGATIONS IMPOSED ON LEADERS BY CHAPTER 10 OF THE CONSTITUTION

- (2) Article 66 also provides that, in particular, a leader must 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 66(1).

PARLIAMENT (ADMINISTRATION) ACT 2005

PART 3 – PARLIAMENTARY MANAGEMENT BOARD

DIVISION 1 – ESTABLISHMENT, FUNCTIONS AND POWERS

9 Establishment of the Board

The Parliamentary Management Board is established.

10 Functions of the Board

The Board has the following functions:

- (a) to oversee the efficient and effective management of Parliament;

'A'

- (b) to determine the terms and conditions of appointment (including dismissal and suspension) of the Clerk, the Assistant Clerks and the other staff of Parliament;
- (c) to oversee the management and operation of the Standing Committees and the Adhoc Committees of Parliament;
- (d) such other functions as are conferred on the Board by or under this Act.

11 Powers of the Board

The Board has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

DIVISION 2 – MEMBERSHIP OF BOARD AND MEETINGS

12 Composition of the Board

- (1) The board consists of 4 members.
- (2) The members are :
 - (a) the Speaker of Parliament; and
 - (b) the Prime Minister; and
 - (c) the Leader of Opposition; and
 - (d) the Parliamentary Counsel.

13 Meetings of the Board

- (1) The Board may hold such meetings as are necessary for the proper performance of its functions.
- (2) The Speaker is to Chair all the meetings of the Board. If the Speaker is absent the First Deputy Speaker will chair the meeting or in his or her absence the Second Deputy Speaker will chair the meeting.
- (3) At a meeting of the Board a quorum consist of the Chairman and two other members present at that meeting. The Board

may meet despite any vacancies in its membership so long as a quorum is present.

- (4) If a member referred to in paragraph 12(2)(b), (c) and (d) is absent, he or she may nominate a representative to represent him or her at the Board meeting.
- (5) Each member present at a meeting has one vote and questions arising at a meeting are to be decided by a majority of votes.
- (6) Subject to this Act, the Board may determine and regulate its own procedures.

14 Secretary of the Board

- (1) The Clerk is to be the Secretary of the Board.
- (2) If at a meeting of the Board, the Board deliberates on the performance of the Clerk or a matter affecting the Clerk, the Speaker is to nominate a senior officer of the administrative section of Parliament to be the Secretary of the Board at that meeting.

PART 4 ADMINISTRATIVE STAFF

20 Staff of the office of the Speaker

- (1) The staff of the office of the Speaker are to be appointed by the Speaker.
- (2) The terms and condition of employment of the staff of the office of the Speaker are to be determined under the Official Salaries Act [CAP 168] and the contract of employment between the Speaker and the staff.
- (3) To avoid doubt, the Board does not deal with employment matters relating to the staff of the office of the Speaker.

OFFICIAL SALARIES (AMENDMENT) ACT 1989

An Act to amend the Official Salaries Act No. 11 of 1983, as amended.

BE IT ENACTED by the President and Parliament as follows:-

AMENDMENT OF ACT No. 11 OF 1983

1. The Official Salaries Act No. 11 of 1983, as amended, is further amended by the repeal of section 3 and the substitution of the following section:-

"AMENDMENT OF SCHEDULE

3. (1) Subject to subsection (2), the Prime Minister may with the prior approval of the Council of Ministers, by Order -
 - (a) add to, vary or replace the Schedule;
 - (b) remove any of the various allowances or benefits specified in the Schedule.
- (2) Nothing in this section shall be construed as giving power to or authorising the Prime Minister to amend the various salaries set out under column 2 in Part 1 of the Schedule to the detriment of the holder of any office set out therein.
- (3) An order made under this section shall come into force on the day of its publication in the Gazette."

COMMENCEMENT

This Act shall come into force on the date of its publication in the Gazette.

INTERPRETATION ACT [CAP 132]

PART III

ACTS OF PARLIAMENT AND STATUTORY ORDERS

ACTS SUBORDINATE TO THE CONSTITUTION

9. (1) Every Act shall be read and construed subject to the Constitution and where any provision of an Act conflicts with a provision of the Constitution the latter provision shall prevail.
- (2) Where a provision in an Act conflicts with a provision in the Constitution the Act shall nevertheless be valid to the extent that it is not in conflict with the Constitution.

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EMPLOYMENT AGREEMENT

FOR

MINISTERIAL SUPPORT STAFF

THE OFFICE OF THE SPEAKER OF PARLIAMENT

AN AGREEMENT made the... 24th day of... January..., 2005

BETWEEN: The Hon SAM DAN AVOCK, SPEAKER OF PARLIAMENT of the Government of the Republic of Vanuatu, care of the office of the Speaker of Parliament 9052 Port Vila, Republic of Vanuatu (hereinafter called "the Employer");

AND: JOHN TOMAKI, care of the OFFICE OF THE SPEAKER OF PARLIAMENT, PMB 9052, Port Vila, Republic of Vanuatu (hereinafter called "the Employee")

WHEREAS:

- A. The Employer wishes to employ the Employee as the THIRD POLITICAL ADVISOR, OFFICE OF THE SPEAKER OF CPARLIAMENT(hereinafter called "the OFFICE");
- B. The Employee is desirous of obtaining employment in the Ministry as the; THIRD POLITICAL ADVISOR
- C. The parties agree that the employment of the Employee by the Employer shall be made subject to and in accordance with the terms and conditions set forth hereunder.

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:-

1. APPOINTMENT

- 1.1 The Employer agrees to employ and the Employee agrees to serve the OFFICE as the THIRD POLITICAL ADVISOR to the SPEAKER for a period commencing from the ...13...day of ...January...2005.
- 1.2 This Agreement shall continue until terminated under clause 5.1 or 5.2.

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2. DUTIES AND RESPONSIBILITIES

2.1 The Employee shall punctually, diligently and to the best of his skill and ability perform, carry out and be responsible for all those duties, functions and responsibilities which the Employer from time to time issue by means of a Job Description to the Employee.

2.2 Without derogating from the generality of the provisions of Clause 2.1, the Employee

(a) Shall attend punctually at the OFFICE or at such other place or places as his duties may from time to time require;

(b) Shall devote his whole time and attention to and diligently and to the best of his skill and ability to perform his duties as the THIRD POLITICAL ADVISOR between the hours of 0730 and 0430 (reasonable intervals being allowed for meals) on every workday;

(c) Shall not be absent at any time during the said hours from the said OFFICE without the consent of the Employer or such other person authorized to give such consent on behalf of the Employer;

(d) Understands and accepts that in his position as the THIRD POLITICAL ADVISOR in the OFFICE, he is personally responsible to the Employer for the due performance of his duties and responsibilities and he is obliged to carry out all lawful instructions which the Employer may from time to time give or issue to him.

2.3 Attendance at the said OFFICE referred to in Clause 2.1 shall not be required on public holidays.

2.4 If and whenever it may be necessary for the proper discharge of his duties, responsibilities or functions the Employee shall attend the OFFICE or elsewhere including outside the Republic of Vanuatu as may be required on such day other than normal working days and at such early hour or for such longer period as may be required.

2.5 During the term of this Agreement the Employee: -

(a) Shall devote the whole of his time to his employment by the Employer;

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- (b) Shall not engage himself or act as an employee, agent of principal of any other person, corporate body or any other similar organization;
 - (c) Shall use his best endeavor and take all such proper steps or precautions as may be required, appropriate or necessary to prevent the loss, destruction, damage or waste of any deeds writings, papers, books, monies, assets or other property of the OFFICE or the Government; and
 - (d) At all times comply with the requirements of the laws of Vanuatu.
- 2.6 The Employee shall not at any time whether during his employment or at any time thereafter except so far as is necessary and proper in the ordinary course of his employment make public or disclose to any person any information as to any dealing or matter decided or attended to by the OFFICE or received by the Ministry, which may come to his knowledge in the course of his employment by the Employer as the THIRD POLITICAL ADVISOR.

3. REMUNERATION, ALLOWANCES AND BENEFITS

- 3.1 The remuneration of the Employee shall be:
- (a) A fixed salary as prescribed under the Official Salaries Act (CAP. 168) ("the OSA"); and
 - (b) All those allowances and benefits as prescribed by the OSA.
- 3.2 Payment of salary, allowances or other benefits to the Employee shall be made in such manner and in accordance with such rules and procedures as the Government may from time to time prescribe.
- 3.3 The Employer may deduct a proportionate amount from the Employee's remuneration for every day of absence from his employment without previous permission unless, subject to the limitations set out in clause 4.2 below, the absence is the result of illness or injury.

4. ANNUAL LEAVE AND SICK LEAVE

- 4.1 The Employee is entitled to take annual leave upon approval by the Employer. Such leave shall be calculated and granted under the OSA.
- 4.2 The Employee is entitled to take sick leave at the rate of 21 days per 12 months of service. Where in any period of 12 months the Employee takes

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sick leave exceeding 21 days, such number of days taken in excess of the 21 days shall be taken as leave without pay

- 4.3 No sick leave is valid unless it is supported by a medical certificate issued by a registered and duly qualified medical practitioner.

5. TERMINATION OF AGREEMENT AND EMPLOYMENT

- 5.1 The Employee's employment under this Agreement may be terminated at any time in any of the following events, namely:

- (a) Either party may terminate this contract by the giving of notice or payment in lieu of notice in accordance with the provisions of the *Employment Act* [CAP 160];
- (b) If the Employee becomes permanently incapacitated by reason of injury or illness and is certified by a qualified and registered medical practitioner as medically unfit for service, the employment shall come to an end and terminate upon the Employer giving two (2) weeks notice in writing to the Employee. For the avoidance of doubt, "permanently incapacitated" includes incapacity requiring absence from work of two (2) consecutive months or more in any period of 12 months;
- (c) If the Employee persistently and willfully disobeys, disregards, neglects or refuses to carry out any lawful instructions or directions of the Employer, the employment may at the option of the Employer be terminated forthwith without notice or payment in lieu of notice or severance allowance;
- (d) If the Employee is convicted by a Court of any offence involving moral turpitude, or the Employee is convicted by a Court of any offence and is sentenced to prison, the employment may at the option of the Employer be determined forthwith and without any notice or payment in lieu of notice;
- (e) If the Employee becomes a member of a political party which is not the same as that of which the Employer is a member, the employment may at the option of the Employer be terminated forthwith without notice or payment in lieu of notice;
- (f) If the Employee shall be guilty of any misconduct or breach of the terms, conditions or stipulation on his part herein contained, the employment shall at the option of the Employer be terminated forthwith without notice or payment in lieu of notice.

5.2 Notwithstanding the provisions of Clause 5.1, the Employee's employment under this Agreement will automatically cease if the:

- (a) Employer ceases to hold office as the Speaker of Parliament or,
- (b) The present Prime Minister ceases to hold office; or
- (c) The Office in which the Employee holds office is abolished

5.3 Notwithstanding the provisions of the *Official Salaries Act* [Cap 168] and any other clause of this contract, where the employee's employment ceases under clause 5.2 of this contract, the employee shall be paid his entitlements (if there is any) pursuant to the *Employment Act* [Cap 160].

6. SURRENDER OF GOVERNMENT PROPERTY

6.1 Upon termination of this Agreement, the Employee shall promptly deliver up to the Employer (whether or not demand therefore is given by the Employer) all stores, articles, property, motor vehicle or other assets belonging to the Government.

6.2 If upon termination of employment the Employee is occupying a Government House, he shall deliver up to the Government such house and vacate the same not more than 30 days after his employment has ceased. Any occupation of any Government house beyond the said period of time shall constitute trespass and render the Employee liable to be evicted from such house.

6.3 Where upon the surrender of any Government property, the property is found to have suffered damage and it is proven that the employee caused the damage, the employee shall be personally liable for the damage.

6.4 The employee's liability under clause 6.3 shall not be affected whether or not the damage was caused in the course of his employment and whether or not after the damage the employee is still employed under this contract.

7. AMENDMENTS TO THIS AGREEMENT

7.1 No amendment to this Agreement is valid unless such amendment is made in writing and executed by both parties.

7.2 Where as a result of amendments made by the Government to the OSA it is necessary to amend this Agreement to reflect such amendments, the parties shall enter into discussions with a view to including such changes in this Agreement.

8. **PROPER LAW**

- 8.1 This Agreement including any amendment thereto shall be governed and construed in accordance with the laws of the Republic of Vanuatu.

9. **ENTIRE AGREEMENT**

- 9.1 This Agreement constitutes the entire agreement reached between the Employer and the Employee and it shall supercede any previous understanding or agreements between the two parties.

10. **MISCELLANEOUS PROVISIONS**

- 10.1 The Headings included in this Agreement are for convenience only and shall not form part of this Agreement.
10.2 Any word importing the singular includes the plural and vice versa.
10.3 Any word importing the masculine gender includes the feminine gender.
10.4 Any notice require to be served by a party hereto shall be valid if it is made in writing and sent by registered post.

11. **COMMENCEMENT**

- 11.1 This Agreement shall be deemed to have come into force on the day of 2005.

IN WITNESS WHEREOF the parties hereto have hereunto set their respective seals and hands on the day and in the year hereinbefore mentioned.

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SIGNED BY: The Hon SAM DAN AVOCK, SPEAKER OF
PARLIAMENT on behalf of the Government of the Republic of Vanuatu.

Signature:.....)

In the presence of:

.....)
✓ Sampson Endehipa
Attorney General
(Witness)

NAME OF EMPLOYEE

JOHN TOMAKI

Signature:.....)

In the presence of:

.....)
(Witness)

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