

- 10.4 Any notice require to be served by a party hereto shall be valid writing and sent by registered post.

11. COMMENCEMENT

- 11.1 This Agreement shall be deemed to have come into force on the 15
2007

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

SIGNED BY: The Hon SATO KILMAN, Minister of Foreign Affairs
behalf of the Government of the Republic of Vanuatu

Signature:.....

In the presence of:

Sgt Dudley Aru
Acting Attorney General
(Witness)

NAME OF EMPLOYEE

Signature:.....

ANDRE LESINES

In the presence of:

(Witness)





GOVERNMENT OF VANUATU

SALARY AUTHORISATION FORM

This form should be used for additions/changes/deletions to employee payroll details maintained on the Government of Vanuatu Financial Management Information System (FMIS). Explanatory notes are provided separately.

▼ ADMINISTRATION TO COMPLETE ▼

Tick one only

New Employee ☐Amendments only ☒Change of Position ☐Termination ☐

Employee ID:

NPF Number

187 963

OR

Exemption Reference

Payroll/Pay No.

▼ EMPLOYEE TO COMPLETE ▼

Names:

First	Middle	Last
ANDRE	MARTIN	LESINES

Date of Birth:

Day	Month	Year
2	DECEMBER	1991

Accommodation:

Renting ☒

Sex:

M

Male=M, Female=F

Own House ☐

Marital Status:

M

Single=S, Married=M

Government House ☐

Spouse:

Is your spouse a government employee?

Yes/No

NO

Spouse's NPF No.

Children:

Names	Date of Birth
MERESINI LESINES	07 JULY 1991

Banking:

Salary Account:

Bank	Branch	Account Number	Bank/Brch C
NATIONAL BANK	VILA	0009805001	ASD

Other Account:

Home Island:

Name
MALEKOLA

Previous Government Service:

Start Date	Finish Date	Payroll/Pay Number
07/12/2001	31/12/2006	
01/01/2007		

Contact Details:

Name	Address	Tel/Fax Number
ANDRE M. LESINES	BELLEVUE C/O MINISTRY OF MFA	27 045 00 53951

Employee to Sign:

Signature	Date
<i>Andre M. Lesines</i>	24/Jan 2007

IN THE SUPREME COURT)
 OF THE REPUBLIC OF)
 VANUATU)
 PORT VILA DISTRICT)
 (CRIMINAL JURISDICTION))

Criminal Case No. of 2007

The 7th day of December 2007 the Court is informed by the Public Prosecutor that ANDRE LESINES, MALON HOSPMANDER and SANDY LEO are charged with the following offences:

Count 1: Aiding Forgery

That, between the 1st day of June 2007 and the 27th day of June 2007 at Port Vila, in the Republic of Vanuatu, ANDRE LESINES and MALON HOSPMANDER aided SALENDRA SEN SINHA to make a false document, namely a Government of Vanuatu cheque number 2154172, by making a material alteration to the document, with intent that it be acted upon as genuine.

CONTRARY TO SECTIONS 30 AND 140 OF THE *PENAL CODE* [CAP 135]

Count 2: Uttering Forged Document

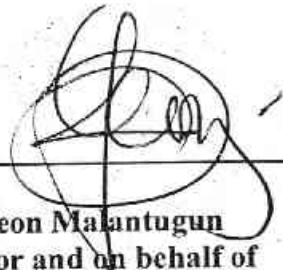
That, on the 27th day of June 2007, at Port Vila, in the Republic of Vanuatu, SANDY LEO, knowing that a document, namely a Government of Vanuatu cheque number 2154172, was forged, dealt with the document as if it were genuine.

CONTRARY TO SECTION 141 OF THE *PENAL CODE* [CAP 135]

Count 3: Theft

That, on the 27th day of June 2007, at Port Vila, in the Republic of Vanuatu, SANDY LEO, without the consent of the Government of Vanuatu, fraudulently and without a claim of right made in good faith, took and carried away property, namely 11,805,000 vatu, with intent to permanently deprive the Government of Vanuatu of the property.

CONTRARY TO SECTION 125 (a) OF THE *PENAL CODE* [CAP 135]



Leon Malantugun
For and on behalf of

Kayleen Tavoia
PUBLIC PROSECUTOR

DECLARATION OF ELECTED 52 MEMBERS OF PARLIAMENT

THEREFORE, IN EXERCISE of the power contained in Rule 21 (1) & 2 of Schedule 5 of the Representation of the People Act [CAP. 146], THE ELECTORAL COMMISSION HEREBY DECLARES the following candidates elected as representatives of their respective constituencies to the National Parliament of the Republic of Vanuatu.

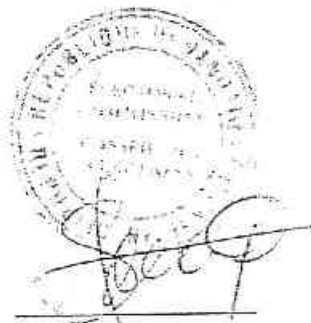
CONSTITUENCY	ELECTED CANDIDATES	AFFILIATION
1. BANKS/TORRES (2) SEATS	1. Dunstan Hilton	PPP
	2. Laliurou Eric Schedrac	NUP
2. SANTO (7 SEATS)	1. Prasad Arnold	GC
	2. Vohor Serge	UMP
	3. John Lum	IND
	4. Sela Molisa	VP
	5. Andikar Philip	IND
	6. Iavcuth Sandie	NUP
	7. Marcellino Pipite	VRP
3. MALO/AORE (1 SEAT)	1. Josias Moli	UMP
4. LUGANVILLE (2 SEATS)	1. George Andre Wells	VP
	2. Eric Jack	NUP
5. AMBAE (3 SEATS)	1. James Bule	NUP
	2. Dickinson Vusilai	IND
	3. Peter Vuta	PAP

6. MAEWO (1 SEAT)	1. Philip Boedoro	VP
7. PENTECOST (4 SEATS)	1. Ham Lini	NUP
	2. Salwai Charlot	UMP
	3. David Tosul	NUP
	4. Tamata Noel	PPP
8. MALEKULA (7 SEATS)	1. Kilman Sato	PPP
	2. Donna Browny	VRP
	3. Paul Telukluk	Namangiatute
	4. Hospmander Malon	PPP
	5. Esmon Saimon	MPP
	6. Calep Isaac	IND
	7. Rokrok Charlie	NUP
9. AMBRYM (2 SEATS)	1. Worwor Raphael	UMP
	2. Jossie Masmias	VRP
10. PAAMA (1SEAT)	1. Sam Dan Avock	VP
11. EPI (2 SEATS)	1. Leinavao Tasso	IND
	2. Isabelle Donald	VP
12. TONGOA (1SEAT)	1. Seule Tom	NUP
13. SHEPHERDS (1 SEAT)	1. Kalo Toara Daniel	UMP
14. EFATE (4 SEATS)	1. Kalsakau Steven	UMP
	2. Josuha T Kalsakau	NCA

	3. Barak T Sope Mautamate	MPP
	4. Roro Sambo	GC
15. PORT VILA (6 SEATS)	1. Nipake Edward Natapei	VP
	2. Pierre Tore	IND
	3. Maxime Korman Carlot	VRP
	4. Taga Henri Tarikaraea	UMP
	5. Carcasses Moana Kalosil	GC
	6. Willie Jimmy	NUP
16. TANNA (7 SEATS)	1. Etap Louis	IND
	2. Joe Natuman	VP
	3. Morking Stevens	NUP
	4. Bob Loughman	IND
	5. Keasipai Song	NCA
	6. Judah Isaac	UMP
	7. Moses Kahu	VP
17. ERROMANGO/ANIWA/FUTUNA/ ANEITYMN	1. Thomas Nentu	MPP

MADE AT PORT VILA THIS 15TH DAY OF JULY 2004.


ETIENNE KOMBE
CHAIRMAN


YOUEN ATNELO
COMMISSIONER


CHEROL K ALA
COMMISSIONER

**GUIDELINES TO FILL THE
MICRO PROJECT APPLICATION FORM**

the applicant must fill properly and clearly **PART I** only of this form i.e. items 1 to 10;

the applicant must have the support of the right authorities of communities, village or charitable associations,

the application must be presented by the Member of Parliament directly concerned;

any item to purchase must be supported by an invoice issued by the supplier; Under no circumstances will a Member of Parliament be paid directly by cash; and

after receiving the Members allocation, the applicant must fill and return as soon as possible the document titled *Micro Project Follow-Up Report* to the Member concerned who will forward it to the Office of Speaker of the Parliament House.

no further disbursement of the allocation of the Member concerned will be considered until the submission of the final report.

OFFICE OF SPEAKERParliament of VanuatuEighth ParliamentMEMBERS OF PARLIAMENT ALLOCATIONMICRO PROJECT APPLICATION FORM

PART I

To be filled by the applicant (pleased read the guidelines at the end of this form)

1. Project title: LOAN Scheme
2. Name of community applying: UWA Community
3. Project Location: UWA Area Island: Malekula
4. Brief description of project request: Give money to help of
People in need long UWA Area long need long of
Emergency cases
5. Number of people directly effected: Approximately 500+ for People
6. Benefits: Every man include old and young
7. Breakdown of costs (including freight):

1	ITEM	SUPPLIER	COSTS (VT)
2			500,000 ^{VT}
3			
4			
5			
6			
7			
8			
		TOTAL COSTS	500,000

RECEIVED
RECEIVED

Leader of the community: Peter Tel. No.: 612
Name Signature

Project supported by chief: Jack Tel. No.: 7216
Signature

Project supported and presented by the Honorable: MALCOLM - RESP MEMBER

Member for: MALOKULA Constituency Malakula Signature

Made at: Port-Vila the 23 day of MAY 2007

PART II
For the Parliament use – Office of Speaker

1. Application received on the 23 day of May 2007

2. Details of Members allocations:

Amount allocated	<u>2 000, 000</u>
(Less) amount already spent	<u>500, 000</u>
Balance Unspent	<u>1 500, 000</u>
(Less) Amount requested	<u>500, 000</u>
New Balance	<u>1 000, 000</u>

3. Project Certification:

I certify that I have checked the project application form and other documents required for screening this project. I am satisfied that this project is ready for approval.

[Signature]
Officer responsible

28, 05, 07
Date

4. Approval granted/rejected/withheld by the Speaker

[Signature]
Honorable Speaker



28, 05, 07
Date

PART III
For the Parliament use - Office of Speaker

5. Project funds released by the Department of Finance

Amount VT..... Date...../...../.....

6. Project implemented: YES or NO

(Project implementation must be supported by the document entitled *Micro Project Follow-Up Report*)

7. Remarks on the project:.....
.....
.....

Officer responsible

...../...../.....
Date



LOCAL PURCHASE ORDER / ORDRE D'ACHAT LOCAL

APPENDIX F Page 1 of 2

L.P.O. No.
020-004673
Change Order No.
0

URGENT

Please supply to the / Prière de fournir au Service

TO (Supplier) / A (Fournisseur)

UNUA COMMUNITY
C/ PARLIAMENT
VILA

National Parliament
Parliament Chambers
Corlardeau Avenue
PMB 052
Port Vila

Order Date	Date Required	Ship Via	Vendor ID
04/06/2007	04/06/2007	Collect	UNU002

Payment Terms
30 Days

Line	Description of goods or services Description des fournitures ou services	Quantity Quantité	Unit Price Prix Unitaire	Total Cost/VT Cout Total/VT
1	DONATION (MP MALON)	1	500,000.00	500,000
TOTAL COST VT TOTAL en VT				500,000

NOTES

REFER ALL ENQUIRIES TO:

Purchase Order contains 1 pages

Name	Telephone
Watson Willie	22229

NOTE TO SUPPLIER: This document must be sent with your invoice to the ordering ministry or department after the goods or services have been supplied.

NOTE AU FOURNISSEUR: Ce document doit être adressé avec votre facture au ministère ou service acheteur après livraison des biens ou services.

Local Purchase Order approved by authorised officer

Order d'Achat approuvé par l'agent habilité

Signature

Print Name /
Nom en majuscule

Goods or Services Satisfactorily Received
Fournitures ou Services conformes

Signature

Not Valid Without Official Stamp Imprint

1. CERTIFICATION
2. PAYMENT CERTIFICATION
04 JUN 2007
3. ACCOUNTING OFFICIAL SIGNATURE
4. INVOICE

Voucher No:

(Dept of Finance Use)

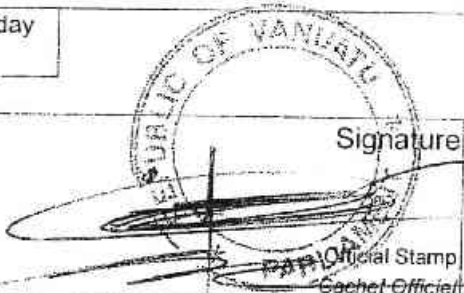
LPO Payment ConfirmationLPO Number **020-004673**

Line No	Order Date	Date Required	Short Description				Qty	Unit Price	LineTotal
Fund Dept Activity Account Job	Project	Location	Proj ID	Comp	Cost Elmnt				
Write any changes to the account code to be charged in this section									
1	6/4/2007	6/4/2007	DONATION (MP MALON)				1	500,000	VT500,000
2	02DC	CBDC	8CAA						

Complete Sections Below on Receipt of Invoice / Compléter les Cadres Ci-Dessous a la Reception de la Facture

Vendor:	UNU002	UNUA COMMUNITY	
Invoice No:		Description to be printed on cheque /	
Invoice Date:		Description des fournitures	
Due Date:		Complete Due Date if different from normal 14 day payment terms	

Certification by Head of Dept. or authorised officer	I certify that the above sum is due for payment in accordance with the Government of Vanuatu Financial Regulations
Attestation du Chef de Service ou de l'agent habilité	Je certifie que la somme indiquée ci-dessus est due pour paiement conformément aux Régulations Financières du Gouvernement de Vanuatu

Signature	
Official Stamp	
Gachet Officiel	
Print Name/Nom en Majuscule	W. Willie
Date	04/6/07

SECOND EXTRAORDINARY SESSION OF PARLIAMENT FOR 2007

MOTION NO. 3 OF 2007

MOVER: Honourable Peter Vuta, MP for Ambae

SECONDER: Honourable Eric Shadrac, MP for Banks and Torres

SUBJECT: APPLICATION OF PARLIAMENTARY DISCIPLINARY ACTION
AGAINST HONOURABLE MEMBERS DUNSTAN HILTON, NOEL
TAMATA AND MALON HOSPMANDER

WHEREAS:

- A. Article 21 (5) of the Constitution states:
"Parliament shall make its own rules of procedure".
- B. Standing Orders 40 (4) provides:
"Parliament may, on a motion moved by a member, suspend any member from the service of Parliament for such period indicated in the motion. A member who is suspended shall not be admitted to Parliament or its precincts during the period of suspension".
- C. Section 5 of Members of Parliament (Powers and Privileges) Act (CAP. 95) provides for the enforcement of the suspension of a member.
- D. The Institution of Parliament must at all times be protected from actions or interferences that may bring its integrity into disrepute.
- E. Honourable Dunstan Hilton, Member for Banks and Torres, Honourable Noel Tamata, Member for Pentecost and Honourable Malon Hospmander, Member for Malekula have brought disrepute to the Institution of Parliament when their cheques, drawn from the Members of Parliament Allocation Fund, were used to defraud the Parliament and consequently the Government of the Republic of Vanuatu of Public Funds, thus, causing public outcry and bringing shame to the good name of Parliament.

NOW THEREFORE PARLIAMENT HEREBY RESOLVES:

1. To suspend Hon. Dunstan Hilton, Hon. Noel Tamata and Hon. Malon Hospmander from the Sittings, Meetings or Sessions of Parliament or a committee thereof for a period of six months from the date this motion is adopted.
2. To withhold payment of monthly representation allowances to the above mentioned Members by half during the period of their suspension.
3. To withhold payment of MP's Allocation Fund to the same mentioned MPs during the period of their suspension.
4. That notwithstanding Resolution 1. above, Parliament may review this suspension periodically with a view to lifting it or extending it.

Signatures:

Moved by.....Seconded by.....

**PARLIAMENT OF THE
REPUBLIC OF VANUATU**

EIGHTH LEGISLATURE OF PARLIAMENT

SECOND EXTRAORDINARY SESSION OF 2007

MONDAY 26 NOVEMBER 2007

SPEAKER : The Hon. Sam Dan AVOCK, Member for Paama

PRESENT : 47 Members

ABSENT : The Hon. Danstan HILTON, Member for Banks/Torres
The Hon. Willie JIMMY TAPANGARARUA, Member for Port Vila
The Hon. Malon HOPSAMANDER, Member for Malekula
The Hon. Noel TAMATA, Member for Pentecost
The Hon. George A. WELLS, Member for Luganville

LATE :

1. The sitting commenced at 8.45 a.m.
2. The Hon. Moses KAIHU, Member for Tanna, said the prayer.
3. The Hon. Speaker AVOCK read the agenda.

WRITTEN MOTION

MOTION NO.3 OF 2007

4. The Hon. Peter VUTA, Leader of Government Business and Member for Ambae, introduced the motion concerning the suspension of the three Members of Parliament; The Hon. Danstan HILTON, Member for Banks/Torres, The Hon. Noel TAMATA, Member for Pentecost, and The Hon. Marlon Hopsmander MALON, Member for Malekula. (Text appended)
5. The Hon. Moana CARCASSES KALOSIL, Leader of the Opposition and Member for Port Vila, raised a point of order and questioned the 3-day notice for

lodging a written motion and if the weekends were also taken into account. He was of the opinion that Saturday and Sunday should be disregarded.

6. The Hon. Sato KILMAN, Member for Malekula, also raised a point of order and quoted Standing Order (SO), section 14(2) and (3) concerning the summoning of Parliament to meet in an extraordinary session. He pointed out that there had been no indication as to a written motion when Parliament issued the summon notice to the Members of Parliament. He continued that extraordinary sessions only dealt with Bill and that written motions were discussed in an ordinary session.
7. The Hon. Speaker AVOCK referred to SO, section 43, "*Matters of privilege*" that the Leader of Government Business, The Hon. Peter VUTA, had requested the motion to be put however he as Speaker, ruled that the motion be put as a written motion instead.
8. The Hon. KILMAN queried if it was in order that a written motion be put during an extraordinary session and also why the Clerk had authorised to disallow entrance to the three MPs named in the motion to attend the sitting.
9. The Hon. Speaker AVOCK reiterated that the Leader of Government Business was allowed to put the motion.
10. Seconded by The Hon. Eric Shedrac LALIUROU, Government Whip and Member for Banks/Torres, The Hon. Peter VUTA, Leader of Government Business, introduced Motion No. 3 of 2007 then moved that Parliament suspend Hon. Dunstan, Member for Banks/Torres, Hon. Noel TAMATA, Member for Pentecost and Hon. Marlon Hopsmander MALON, Member for Malekula. (Text appended)
11. The Hon. Marcellino PIPITE, Member for Santo, questioned if Parliament would continue to debate the motion since the Opposition had walked out of the Chamber and was of the opinion that the motion referred to Parliament funds only.
12. The Hon. Ham LINI, Prime Minister and Member for Pentecost, was sorry to see the Opposition leave the Chamber and stated that the Parliament had its own rules and powers which could not be ignored. He explained that he as Prime Minister had removed the People's Progressive Party (PPP) from the Coalition because he had the power to do so.
13. The Hon. Daniel Toara KALO, Member for Shepherds, remarked that Vanuatu should uphold its motto, "*Long God yumi stanap (In God we stand)*". He continued that should Parliament apply its power to discipline its members for corrupt practices, so should other Government Departments and Institutions. He gave his support for the motion.

14. The Motion No.3 of 2007 was carried by 32 votes in favour.
15. The Hon. Speaker AVOCK apologized for the action taken by the Parliament's Sergeant-at-Arms to prevent the three suspended MPs from entering the Chamber. He added that Parliament had the power to deal with any motion that concerned its own welfare whatever the session.

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

VED
8 JUL 2008
OMBUDSMAN

Criminal Case No. 77 of 2007

PUBLIC PROSECUTOR

-v-

**ANDRE LESINES
MALON HOSPMANDER**

Coram: Justice C. N TUOHY

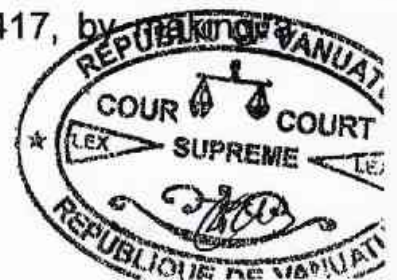
Date of Hearing: 11, 12, 14, March 2008

Date of Decision: 14 March 2008

**Counsel: Ms. Tavoia for Public Prosecutor
Mr. Malcolm for Defendants**

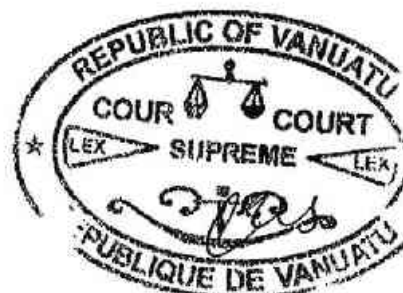
ORAL JUDGMENT

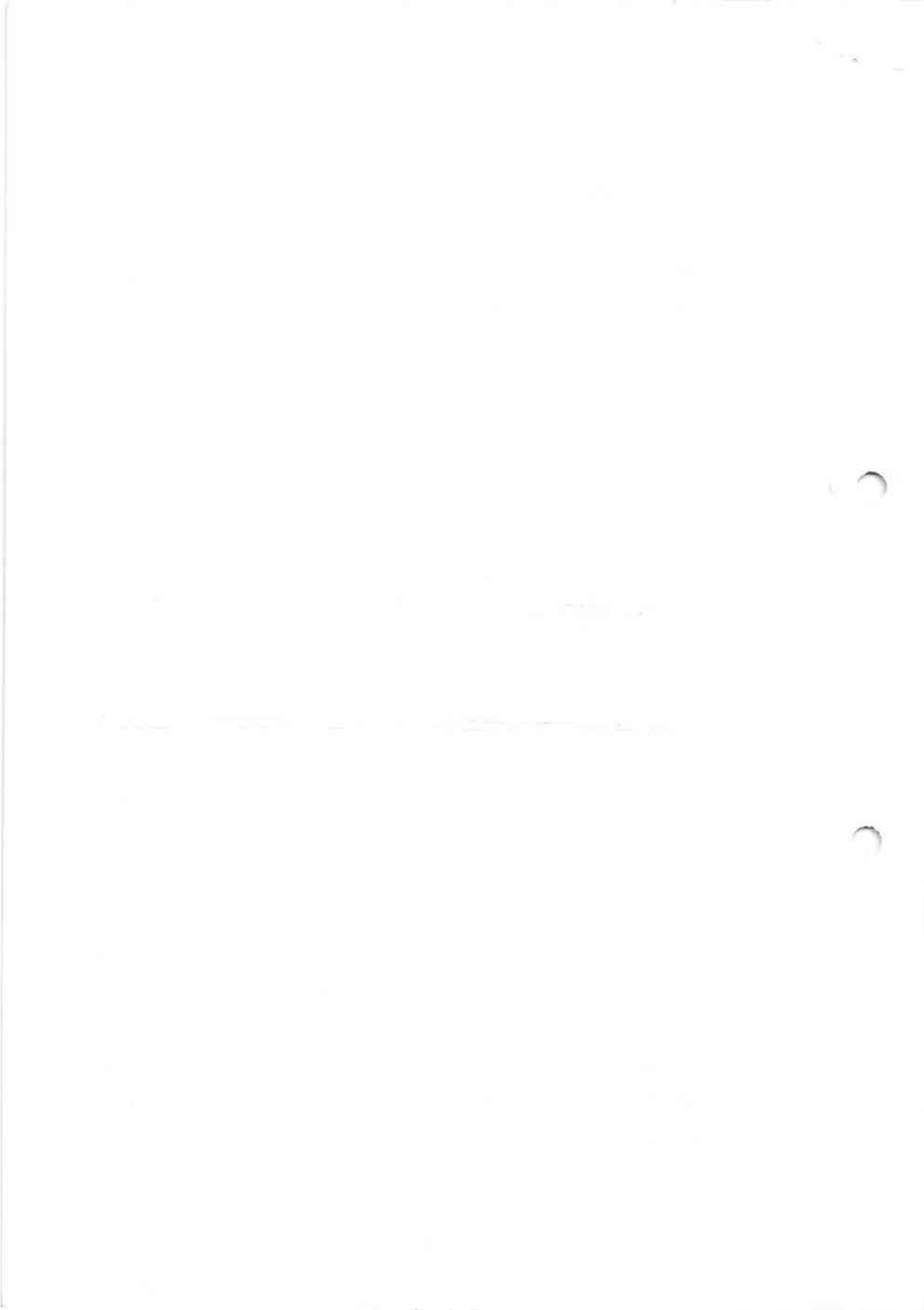
1. The two accused Andre Lesines and Malon Hospmander are charged with one charge of aiding Forgery. The particulars of the charge are that between the 1st June 2007 and 27th June 2007 at Port Vila, Andre Lesines and Malon Hospmander aided Salendra Sen Sinha to make a false document, namely a Government of Vanuatu cheque number 215417, by



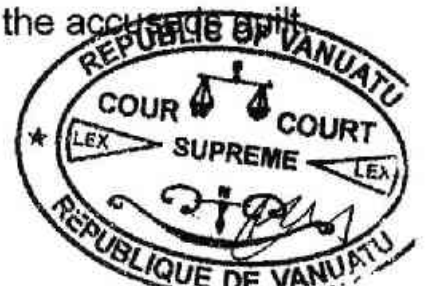
material alteration to the document, with intent that it be acted upon as genuine.

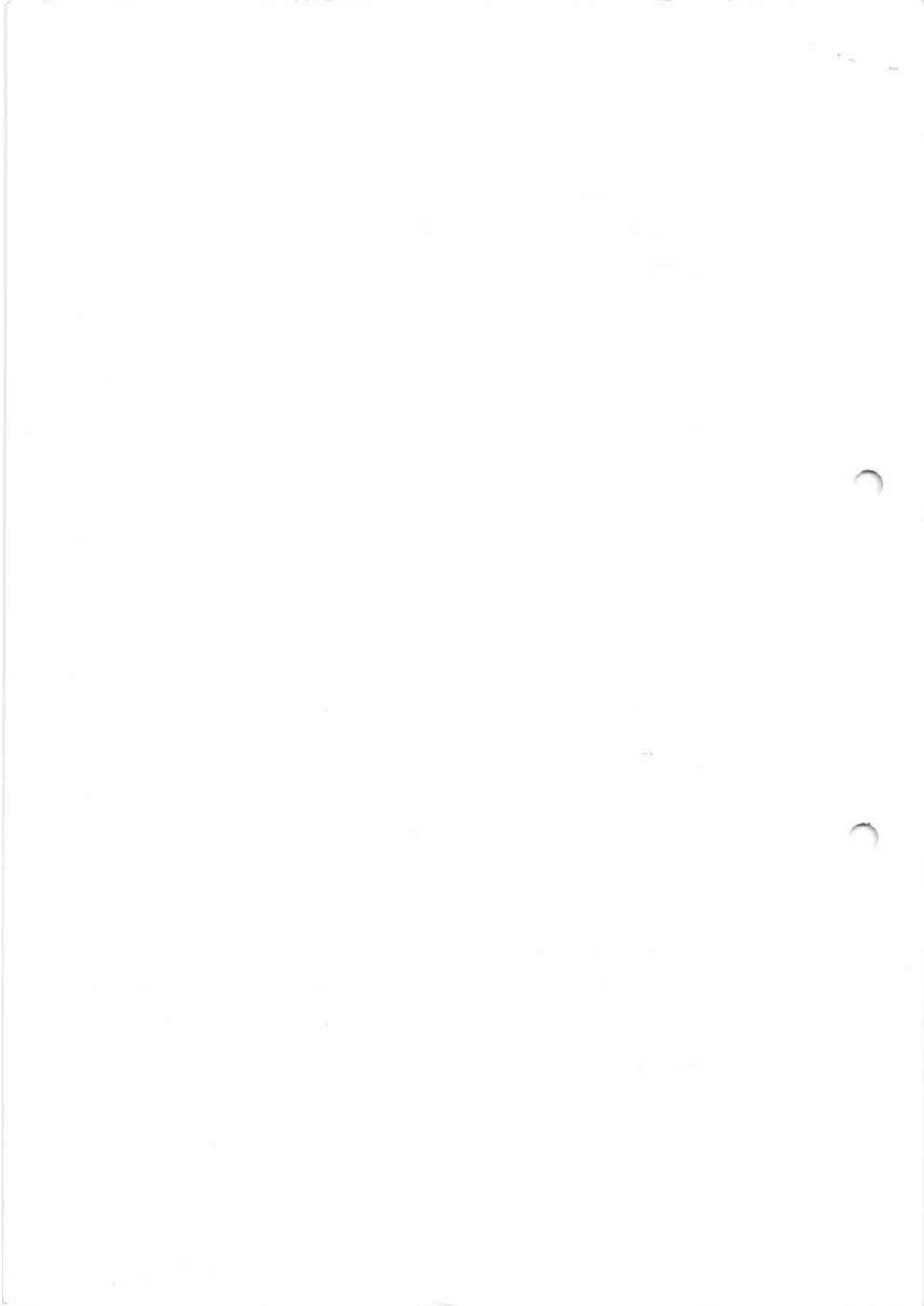
2. The charge is Count 1 in an information containing 3 counts. The other two counts are against Sandy Leo for uttering a forged document and theft of VT11,805,000. Uttering means dealing with the cheque as if it were genuine.
3. Count 1 against these two accused is being dealt with in a separate trial, simply because the accused wanted their trial to be dealt with as quickly as possible and time was available but Sandy Leo was not present. So his trial remains to be held on Counts 2 and 3.
4. In an effort to speed up the trial, the accused made a number of formal admissions which are set out in a written document. I do not intend to reproduce it, but it does enable me to state a lot of the relevant facts shortly and without extensive reference to the evidence.
5. The accused Malon Hospmander is a member of Parliament for a constituency in Malekula. The accused Andre Lesines at the relevant time was 1st Political Advisor to the Ministry of Foreign Affairs. He is a political associate of Mr. Hospmander, he is also of Malekula, he was at the time Chairman of the Regional Coordinators of the People's Progressive Party, the party which Mr. Hospmander represents.



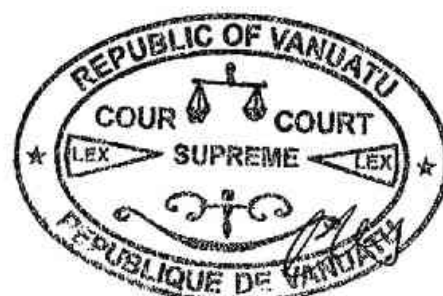


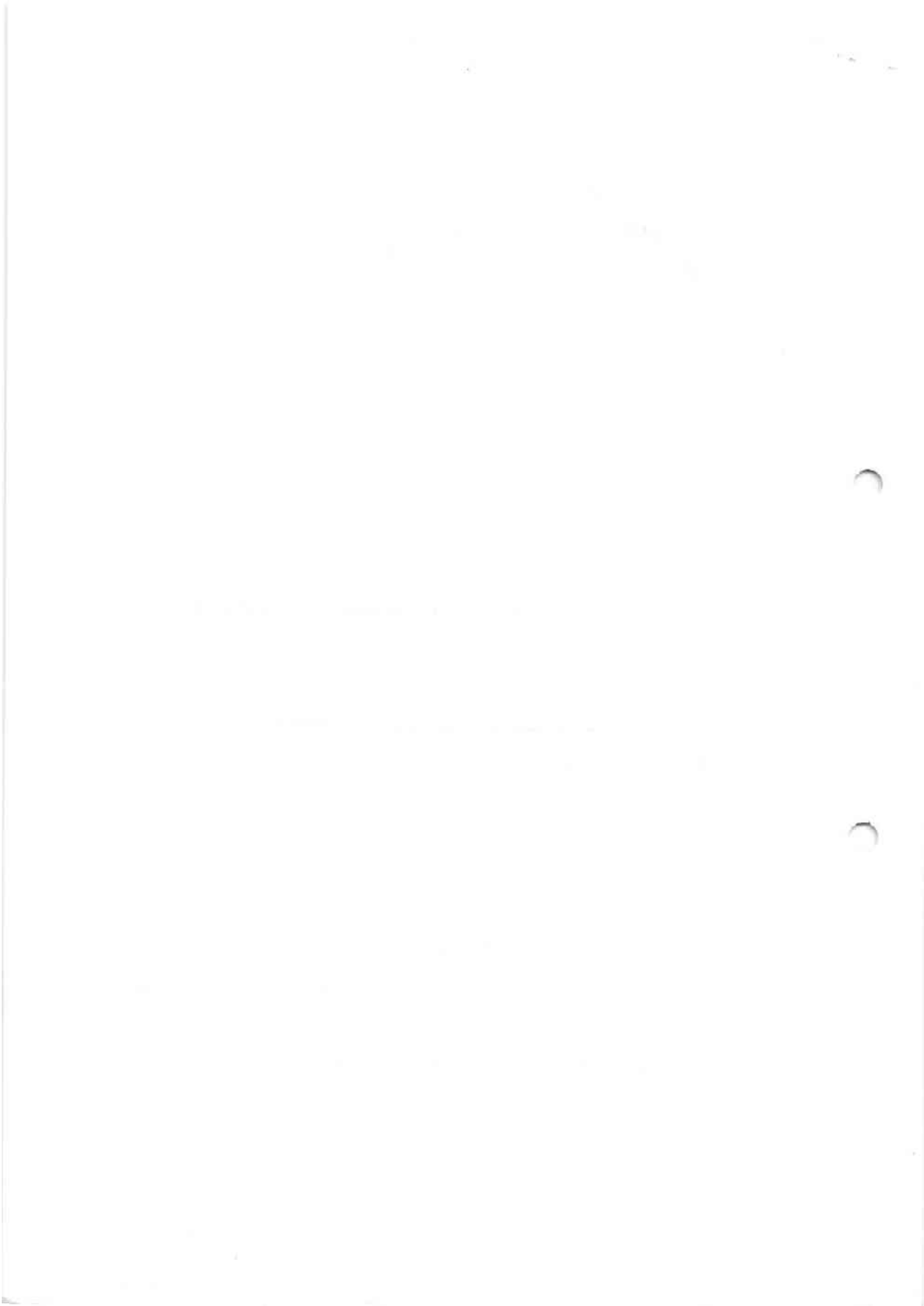
6. Every member of Parliament is entitled to an allocation of VT2.000.000 per annum, payable in three monthly instalments of VT500,000 each, for the use and benefit of the community he represents. In the case of Mr. Hospmander, the Unua Community in Malekula. Mr. Hospmander applied for VT500,000 for the Unua Community and a Government cheque drawn on the Reserve Bank was produced. It was made out to the Unua Community as payee and was for the sum of VT500,000 and was cheque number 2154172.
7. Mr. Hospmander picked it up from the office of Willy Watson at Parliament on or about the 5th or 6th June 2007. There was a bank account at the National Bank of Vanuatu in the name of the Unua Community. Previous MP allocations had been paid into it. The accused gave evidence that there were three signatories for the account and withdrawals required the signature of two of those three signatories. One of the signatories was Mr. Hospmander, the other two were a gardener and a filing clerk at Foreign Affairs. Mr. Lesines was not a signatory on the account.
8. This cheque 2154172 was not banked into the account of the Unua Community. Instead it was given to an Indo-Fijian man by the name of Salendra Sen Sinha. The circumstances in which it was given to Salendra, and the exact involvement of each accused in that will be discussed in more detail later in this judgment as it is very relevant to the issue of the accused's guilt.



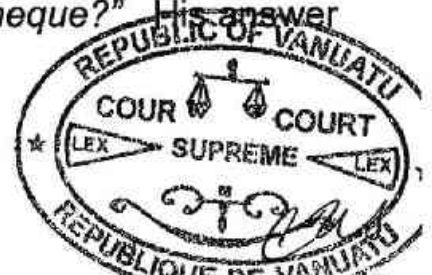


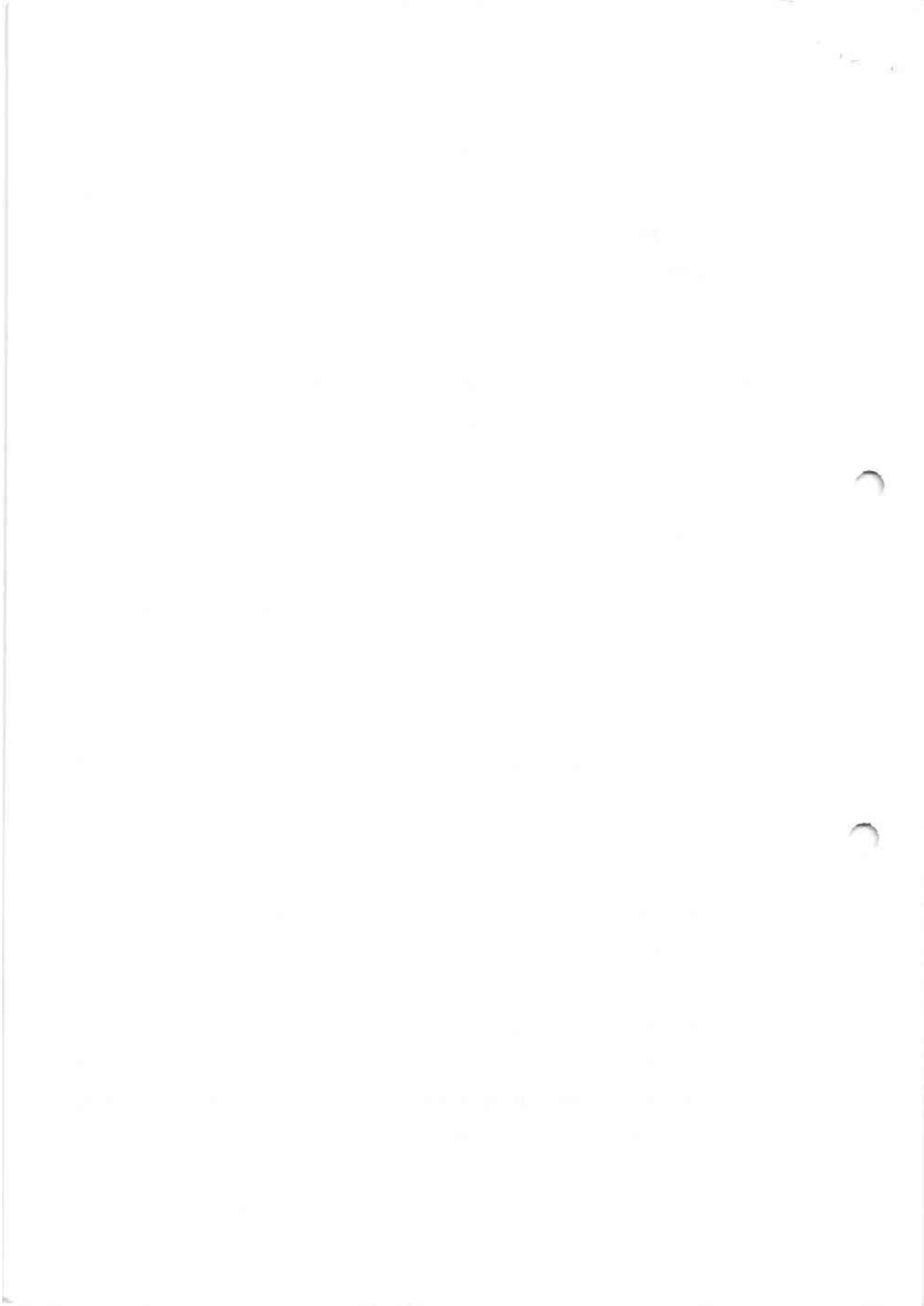
9. On 27th June 2007 the cheque which had been given to Salendra, number 2154172, was presented at the National Bank in Port Vila and deposited into the account of one Sandy Leo. It is admitted by the accused that the cheque had been altered. It was now made out to Sandy Leo as payee, the amount of it had been altered to VT11,805,000. Sandy Leo's account was credited with that amount and virtually the whole amount was withdrawn within a very short time.
10. The case against the accused is that Salendra forged the cheque after it was handed over to him and the accused aided him in that forgery by supplying the cheque to him. While acknowledging that they did hand the cheque over to him, the accused denied that they knew that it would be fraudulently forged.
11. In order to decide whether the charge has been proven for each accused it is necessary for the Court to consider the evidence relating to the circumstances in which the cheque was handed over. There is no direct evidence about that from the prosecution witnesses. The Court is relying on what the accused told other witnesses about it and what each of them said about it in their own evidence because both of them gave evidence. The Court can, of course, also draw inferences, that is, deductions from the surrounding circumstances which have been proven.





12. There were in fact at least three different accounts given to the Court as to what happened. The first account is what the accused are alleged to have said to two employees of parliament, Willy Watson and Lino Sacsac. The second and different account is what the accused said in the written statements they made to the Police after their arrest in early August. The third account, which is different again, is what each of them said in their evidence to the Court.
13. In considering these matters, I remind myself that any statements made by an accused outside the Court, that is, any statement to the Parliamentary employees or any other police statements, is admissible evidence only against the person who made the statement and not against the other one. So that the evidence of what Mr. Hospmander said to Willy Watson and Lino Sacsac is evidence only against him, not against Mr. Lesines. And likewise the evidence of what each of them said in their police statement is evidence against only the person who made that statement.
14. I turn first to the account which is alleged to have been given to Willy Watson and Lino Sacsac. Willy Watson is employed in the Finance Department of the Parliament. He said that after the news came out about the cheque fraud, he asked Mr. Hospmander to come into his office to tell him what had happened. He said that he called the Clerk of Parliament, Lino Sacsac into his office as a witness to what was said. Mr. Watson was asked "What did he tell you about the cheque?" His answer

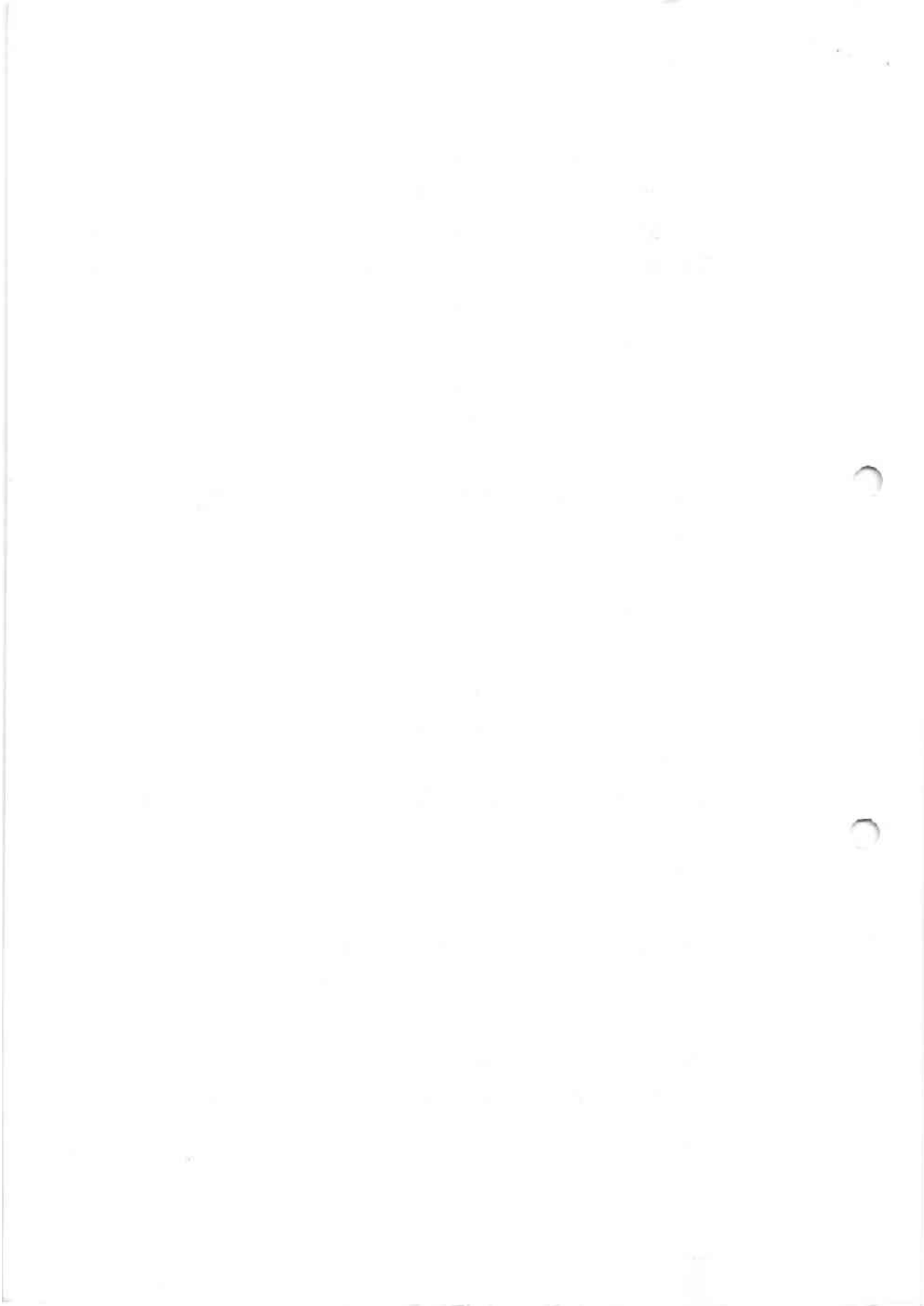




was "He (that is Hospmander) said that he handed over the cheque to a Fijian called Salendra direct." In cross examination he said that Mr. Hospmander called into his office because he had asked him to come in, so Watson could find out his story about what happened. In cross examination he expanded on what Mr. Hospmander had said. He (Watson) said that Hospmander said this: *that he got a cheque, he went down to meet Salendra at the Waterfront, (meaning the Waterfront Bar & Restaurant), that he gave the cheque to Salendra there, and that he received from Salendra an amount of cash greater than the value of the cheque.*

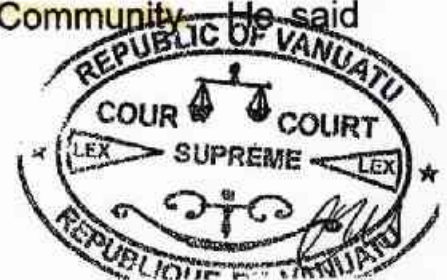
15. Mr. Malcolm correctly put to Mr. Watson what Mr. Hospmander's evidence was going to be about that, which was that there was no discussion at all about the cheque and that Mr. Hospmander was not called in but he came in, of his own accord simply to ask what the balance of his Parliamentary allocation was. And Mr. Malcolm suggested to Mr. Watson that he had become confused and was relating what he had read and heard in media reports and not what Hospmander had told him. Mr. Watson was firm in his evidence. He said that he had not absorbed this from media reports but that this is what Hospmander told him.
16. Then Lino Sacsac, Clerk of Parliament, gave evidence. He has been in the job for 23 years. He said he was present when Mr. Hospmander came into Mr. Watson's office after the news broke. Mr. Sacsac said this. "Watson Willy asked about what happen





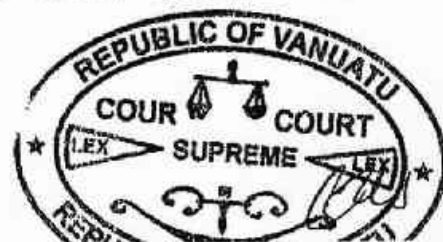
about the cheque he gave him. The Honourable Member said after he got the cheque he went to the Ministry of Foreign Affairs and he met the 1st Political Advisor for the Ministry there and then the 1st Political Advisor asked him if he had with him the cheque. And the Honourable Member told him yes. The 1st Political Advisor told him that if you like you can make a bit of money from the cheque. I will give you a mobile phone number and then the Political Advisor gave him the phone number. Sometime later he rang that number and after he rang the number someone answered and they talked with the person on the line, who asked if he was a member. And when he said he was a member of Parliament, the member said I am a member of Parliament, I am interested to see you. The person on the telephone did not say who he was at that time. Mr. Hospmander then said that he had made an appointment to meet the person on the phone at the Waterfront. He said that he met a man there who was an Indian man. He was at a table at the Waterfront and he called out to Mr. Hospmander to come and sit with him. The Indian ordered some drinks, while they were drinking the Indian asked do you have that thing with you. Mr. Hospmander said yes, and then the Honourable Member said before I give the cheque you give me the VT1.000.000 first. That he gave him VT1.000.000, and the Honourable Member handed over the cheque.

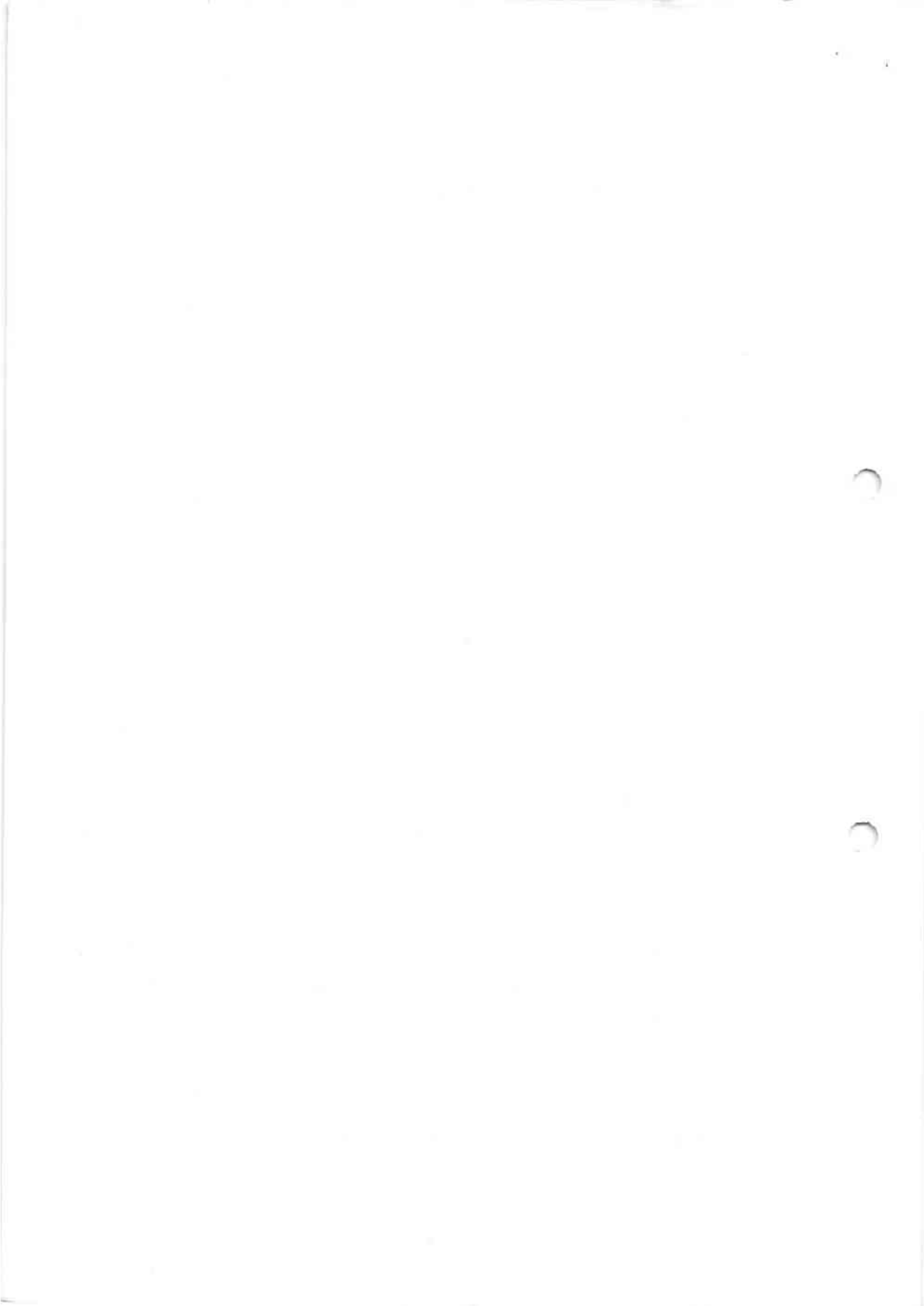
17. He said that after the Honourable Member had given that account, Willy Watson asked him: do you know the cheque does not belong to you it belongs to the Unua Community. He said



that after a pause the Honourable Member's reply was "*Mi mi wantem VT1.000.000 nomo*". So that was Mr. Sacsac's evidence.

18. Again in cross examination it was put to him by Mr. Malcolm that actually Mr. Hospmander might have been saying that it was Mr. Lesines who gave the cheque to the Indian at the Waterfront. However Mr. Sacsac was adamant that Mr. Hospmander was talking about what he, Mr. Hospmander himself, did. So that was the first account of how the cheque had been handed over, the account given which Mr. Watson and Mr. Sacsac say that Mr. Hospmander gave to them.
19. The second account is what is written in the accused's written statements given to the Police on or about 9th August after they had been arrested in Malekula. These written statements were the result of interviews which took place in the Port Vila Police station at that time. They were statements in a narrative form written out by the interviewing officer Fraser Tambe based on answers given by the accused to the questions put to them. Those written statements were signed by each accused. The accused were interviewed separately over some considerable time, about 2 hours in the case of Mr. Hospmander who was the first person interviewed.
20. The statements are in Bislama and I am simply going to record my summary of the important points from them. Mr.

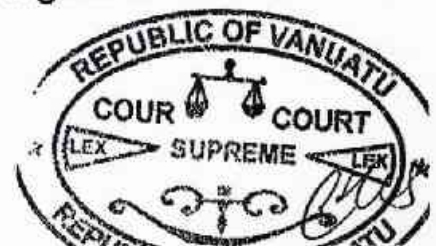


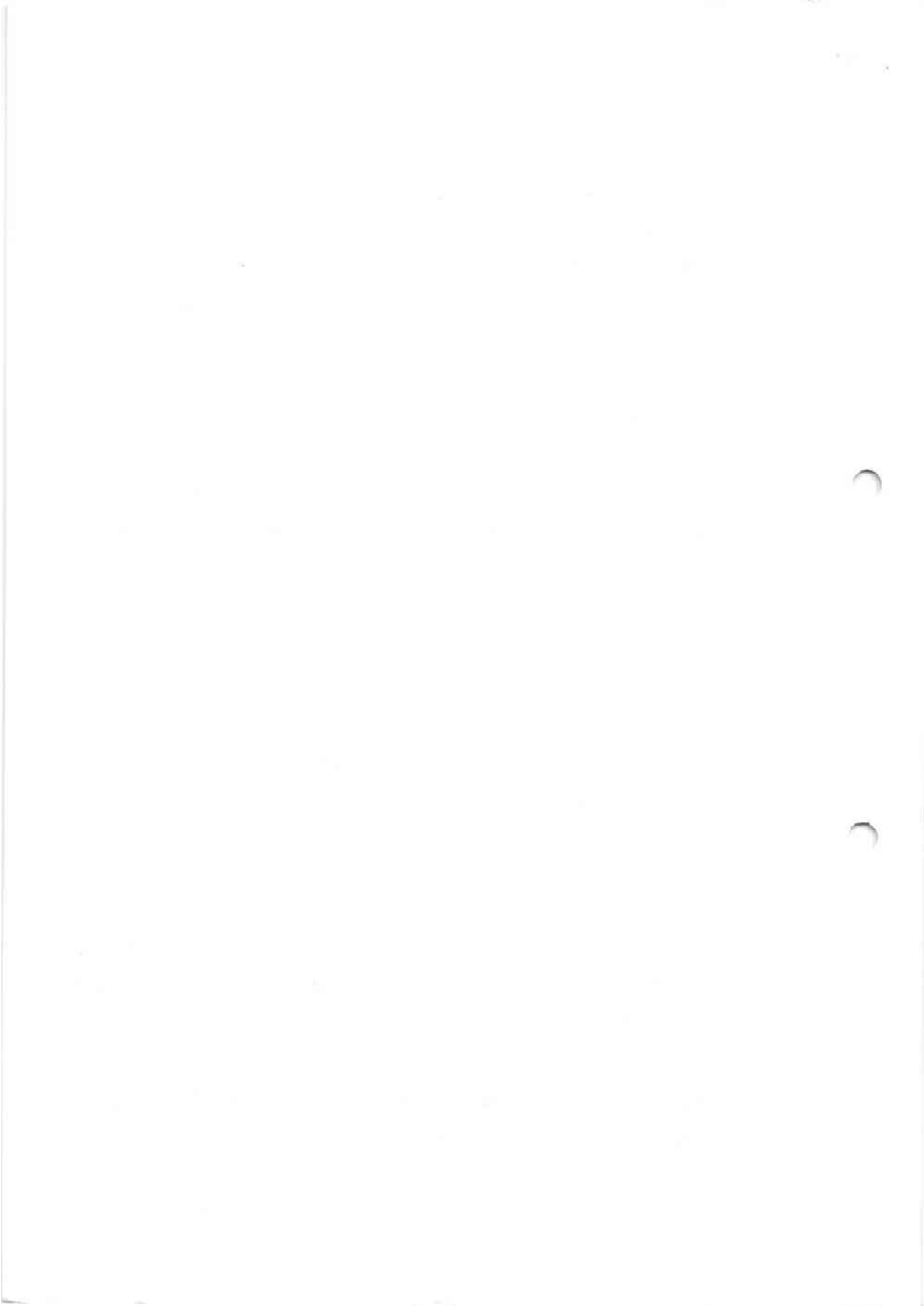


Hospmander said that after he picked up the cheque on 5th June he took it back with him to Malekula. While in Malekula Mr. Lesines rang him and asked him if he still had the cheque. Lesines said that if he gave it to Lesines, he Lesines would give it to a friend of his, who would give Mr. Hospmander VT1.000.000 for it. He said he asked Lesines three times if he was sure and Lesines said it was true. He said that Lesines assured him that the cheque would be alright. He said he came back to Vila on the 27th June and said that he was picked up at the airport by Mr. Lesines together with MP Noel Tamata. He said he gave the cheque to Lesines, Lesines got out at the Waterfront, he came back and said he had handed the cheque over.

21. Next day 28th June, Lesines came to Parliament house and gave him VT500.000 instead of the VT1.000.000 promised and he, Lesines, said he would give him the other VT500.000 the next day but he never did. He said "*Mi agri se mi no gat raet ia blong mi givim personal cheque blong mi I go long narafala man, however follem carelessness mo ignorens blong mi, mi bin givim wetem biliv se mbai mi recivim mo mani I kam. However I no bin kam tru*". He also said he did not know how the cheque amount had been changed to VT11.805.000 and said that if he had known Salendra would change the cheque like that he would never have given it to him.

22. Mr. Lesines in his written statement said that in early June he met Salendra in the Yellow Submarine nightclub and was

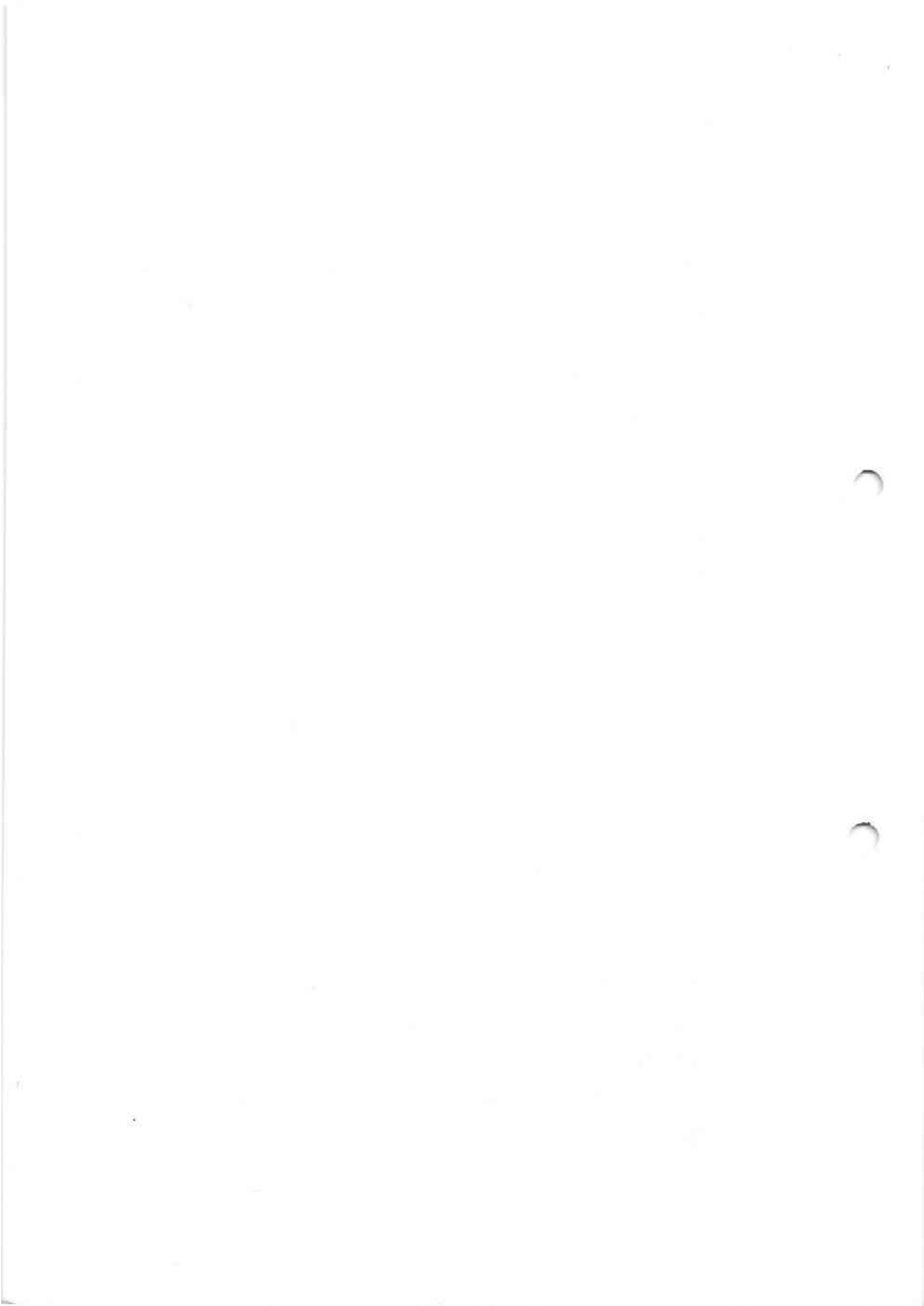




introduced to Salendra there by James Weties. Salendra told him that he had businesses in the United States, Fiji and New Zealand. Salendra told him that he could sponsor the PPP for community projects and Mr. Lesines said that he agreed to meet Salendra two or three times to be sure he was a genuine person.

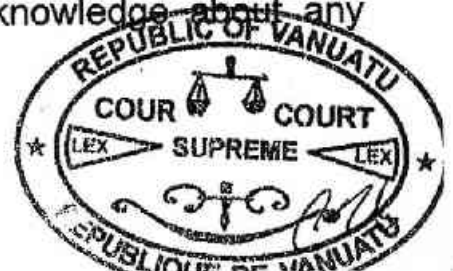
23. At the end of June Salendra asked him if he had VT500.000 in cash and if he, Lesines, would give it to him, Salendra, Salendra would give him back VT1.000.000. So he says that he rang Hospmander in Malekula and asked him if he had any money and Hospmander said no, that he had got the cheque for Unua Community.
24. So Hospmander traveled back on the 27th June to Vila. Lesines with MP Tamata picked him up at the airport. They went to the Foreign Affairs office, discussed what to do with the cheque. While there Salendra rang and told him to bring the cheque to the Waterfront Bar. He went to the Waterfront, Salendra arrived in a taxi, he gave Salendra the cheque. Salendra did not give him the money there and then but promised to give it to him later.
25. The next day Salendra rang and he went to meet him at the Waterfront Bar again with the two members of Parliament waiting for him at Parliament. He said that Salendra gave him VT500.000 and he took it back to Parliament and gave it to Mr. Hospmander. He said that Salendra told him he would give him another VT500.000 later but has never done so, even though Mr.

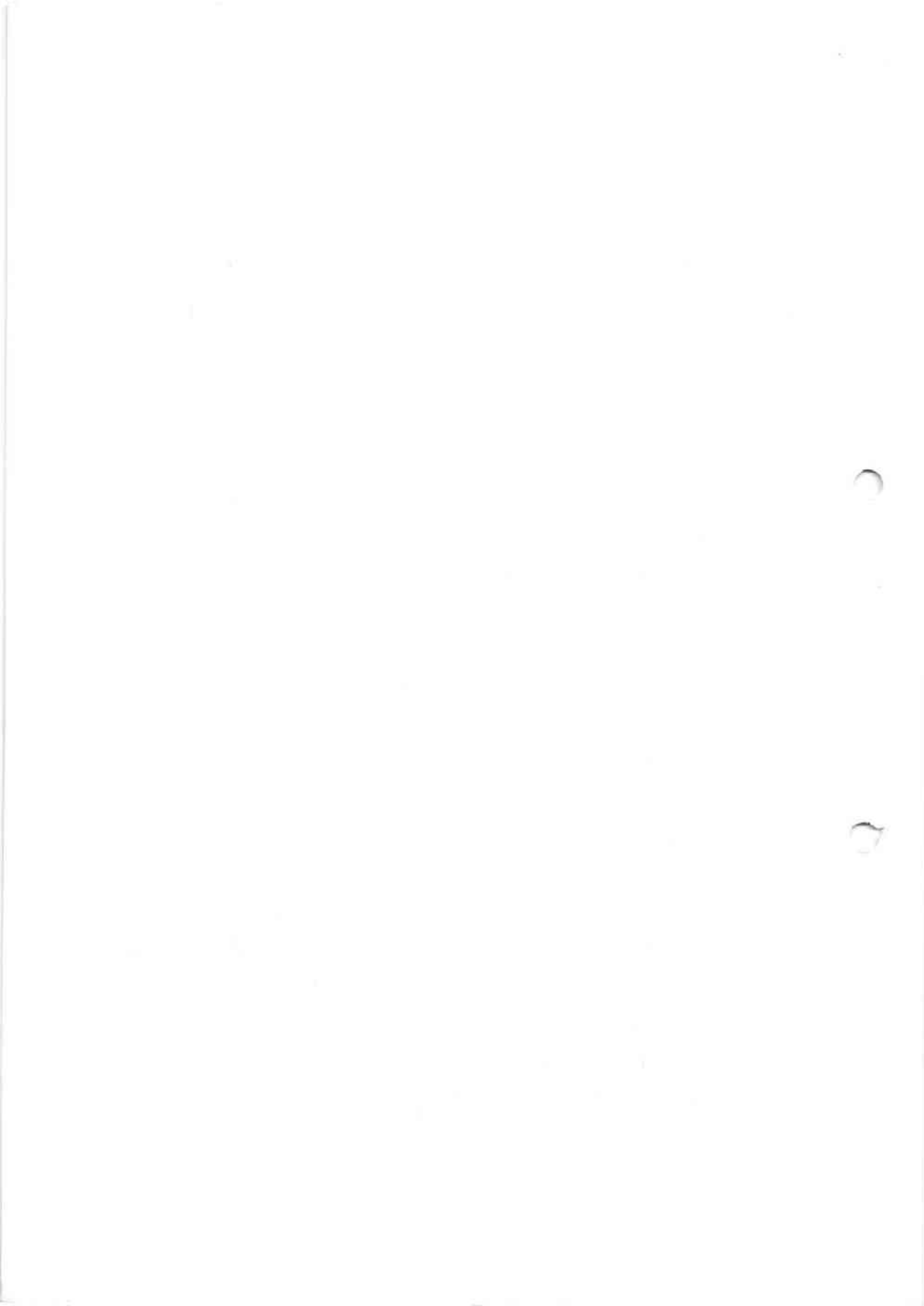




Lesines has tried to get it on more than 1 occasion before going back to Malekula on the 5th July.

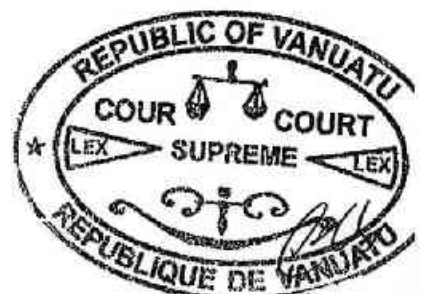
26. He said that he was not aware that Salendra would change the cheque but acknowledged that it was wrong to give a cheque to someone when he knew the cheque was in the name of Unua Community. So that was the second account. More or less the two statements gave the same story.
27. The third story was contained in the evidence of the accused at Court. Mr. Hospmander told the Court that he picked up the cheque from Watson's office on the 5th or 6th June. He said that he went with it to the Ministry of Foreign Affairs, gave it to Lesines for him, Lesines, to cash it. He said the reason he did that is because he was going to Malekula two days later. He said that he went to Malekula leaving the cheque with Lesines, stayed there for about a week and then he rang Lesines from Malekula and asked him if he had cashed the cheque and was told that he had not. He said that flew to Vila the next day the 13th June. He said he was picked up by Lesines, that there was no discussion of the cheque. He was driven to his house in Kawenu and dropped there. He says that he got the cash for the cheque VT500.000 the next morning, Thursday 14th June. He said that Lesines did not say where he cashed the cheque or who cashed it. He said that he had no knowledge it was given to Salendra, he said he had never heard of Salendra up to the time that he received the cash and had no knowledge about any





problem with the cheque until he was on his way back from China, which was about mid July.

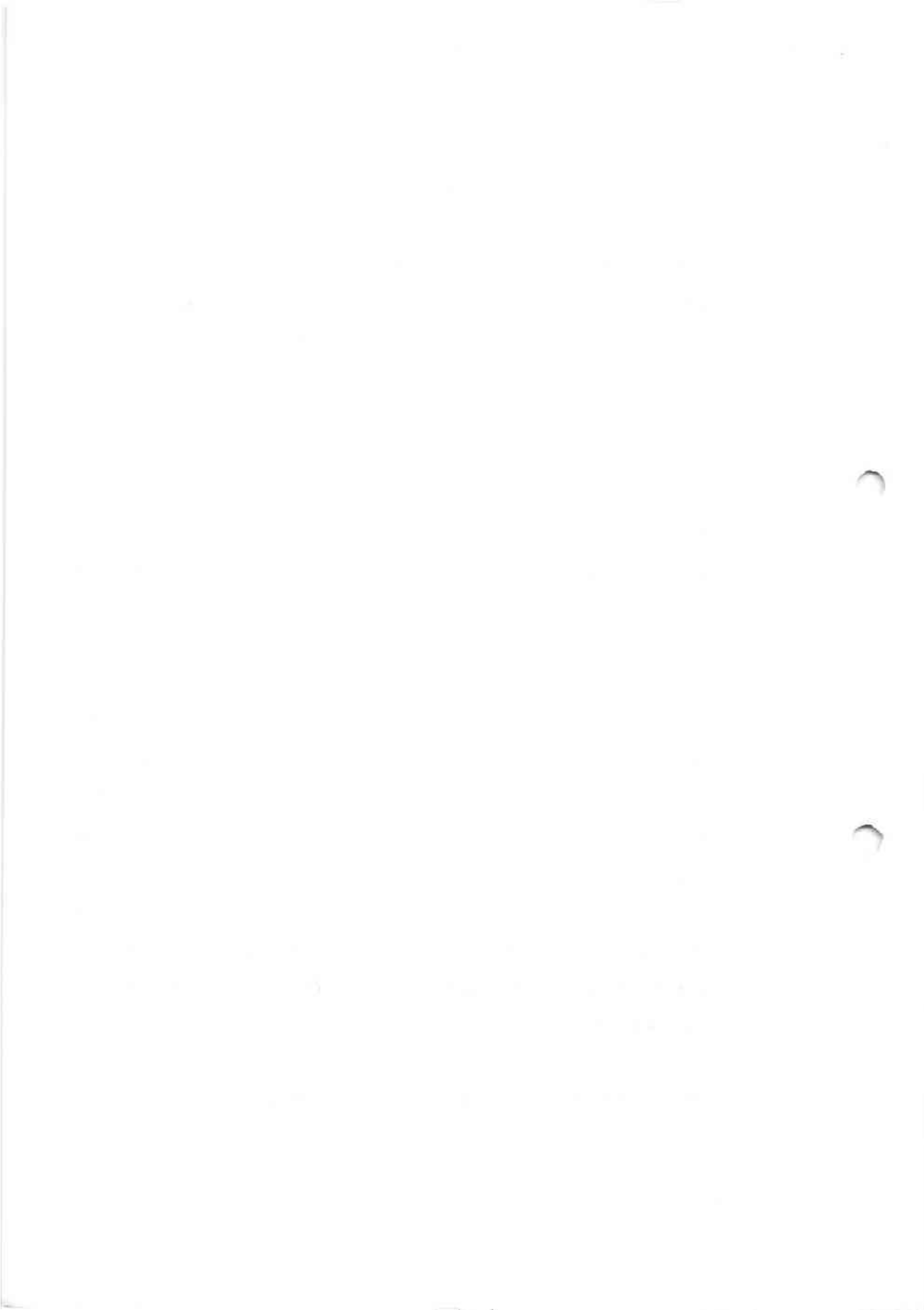
28. He described his arrest in Malekula and the events leading up to the making of the statement to Police Officer Tambe. He appeared to deny that the caution on the statement had been read to him. He did however acknowledge that the statement was read back to him before he signed it. He acknowledges signing it on each page. He said however that even though he signed it, parts of it were true only and parts of it were untrue. In particular he said that it was not true that he was to receive VT 1.000.000 in cash for cheque. He said that he signed it even though it contained untrue things because he was uncomfortable and ill at ease and frightened in the Police Station and because Mr. Tambe told him to sign it, therefore he says that he signed it.
29. In cross examination he acknowledged that he could have deposited the cheque at the National Bank in Lakatoro and withdrawn from it there. He acknowledged banking the previous allocation cheque in Unua Community National Bank account. He said he gave a pass book to Lesines with the cheque. He denied having heard anything about Salendra previously in the media. He denied telling officer Tambe of what was in the statement, namely that he had taken the cheque to Malekula and Lesines had rang him while he was there, telling him he knew a man who would give a million vatu for it. He said he was too



frightened to say at the Police Station that it was untrue, when he was asked why he did not point that out.

30. He was queried about the difference in dates about when he came back from Malekula, 13th June as he said in his evidence or 27th June as he said in his statement, and he explained that it must have been a mistake. He denied that Mr. Tamata was in the car when he was picked up from the airport. He denied saying anything about being offered VT1.000.000 for the cheque. He denied telling Mr. Tambe what is in the statement about the other VT500.000. Again he explained it on the basis that he was afraid. He acknowledged being advised of his rights but said that he was not advised of any more detail than what is in the caution in the box. He said that he did not leave a withdrawal form with Lesines but in reexamination he said that he did leave a withdrawal form with one of the other signatories when he went to Malekula.
31. As to Watson and Sacsac's evidence, he denied their evidence, he said that they were both lying and that all he had called in for to Parliament was to ascertain the balance of his allocation and he was told that it was VT1.000.000. He was not really able to provide any reason why Mr. Sacsac or Mr. Watson might have told untruths.
32. Then Mr. Lesines gave evidence. He said that the cheque was given to him by Hospmander in his capacity





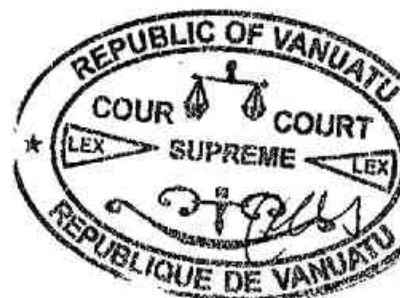
Regional Co-ordinators of PPP on the afternoon of 5th June. He said that Hospmander authorized him, Lesines to cash it later. He said he did not have a withdrawal slip as it was kept by the other signatory, the filing clerk at Foreign Affairs. He said that Hospmander went to Malekula a day or two later to ascertain the needs of the villagers of the Unua Community. He says that Hospmander contacted him from Malekula just before his return a week or so later and enquired whether the cheque had been cashed yet and was told "No" and Hospmander also asked to be picked up from the airport. He said he went to his office where he got the cheque dropped Hospmander off at his house at Kawenu. He said that he then contacted Salendra in order to get some cash for the cheque. He said he did this because the banks were by now closed, it being Wednesday evening.

33. He acknowledged knowing Salendra previously, saying that he met him at the Olympic building. He acknowledged later that the Olympic building contained the Yellow Submarine. He said that he took coffee with Salendra twice. He said that Salendra told him he was a businessman with businesses in the US, Fiji and New Zealand. He said that he had never heard of him before he met him. He did acknowledge some contact with him at Tamanu Beach resort. This was a reference to the evidence of a prosecution witness Mr. Yannick who worked at Tamaunu Beach Resort and knew Lesines and he had seen Lesines in company with Salendra at the Tamaunu Beach Resort, when Salendra

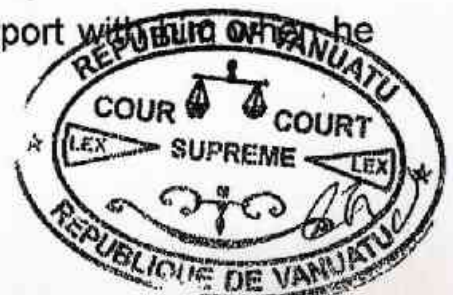


came there to pick up a lobster salad which he had ordered from Breaka's Resort.

34. He, Lesines said that he called Salendra on this night of Wednesday 13th June and asked him if he could cash the VT500.000 cheque in order, he said, so that he could give the cash to the Honourable Member quickly. Salendra said he would ring back. He did so 2 or 3 hours later, saying that he had the VT500.000 cash and would meet Mr. Lesines at the Waterfront Bar. He did meet him there and exchanged the cheque for VT500.000. He denied receiving any further payment of another VT500.000 and denied that he was promised a further VT500.000.
35. He said that the next morning Thursday 14th June he gave Mr. Hospmander the VT500.000 cash in an envelope at Parliament House. He said that he only heard that there was a problem with the cheque at the end of July when he was in Malekula. He said he was arrested at his village, Rano, in Malekula. He was back there to recover from an illness, which had caused weight loss and which he ascribed to black magic. He said that he was put into Number 6 at Lakatoro but because of his condition stayed at a Police Officer's home there, overnight. He was then flown to Vila in the custody of a Police Officer from Malekula and in company with Hospmander.

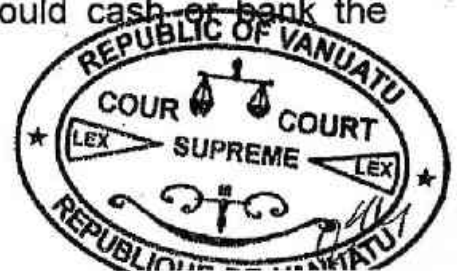


36. At Bauerfield he was re-arrested, quite unnecessarily it appears, and quite obviously for the benefit of the crowd and the media who were gathered there. He was handcuffed, put into the back of a Police van which has got a cage around it and taken to Vila with the siren sounding. He was put in a holding cell in the Vila Police Station and questioned in the Fraud Squad office by Mr. Tambe in the company of two others after Mr. Hospmander had been questioned.
37. He described the same process as Mr. Hospmander had described, except that he said that the way that he was questioned is that Hospmander's statement which had already been taken was put to him and he was asked whether he agreed or not to what was in it. He also said that he was told to sign it, his statement, and did so even though it was read back to him and even though he said that it was in part not truthful and not what he said. He said that he did that because he was unaccustomed to the situation, not well, under pressure and afraid because of the situation he was in and what had happened on the preceding day or so.
38. He was taken through his statement and denied saying many of the things which are recorded in it. He denied that Salendra had offered to sponsor any PPP projects. He denied that Salendra had made an offer of VT 1.000.000. On the question of the difference in dates, he said that it must have been his mistake. He denied that Mr. Tamata was at the airport with him.



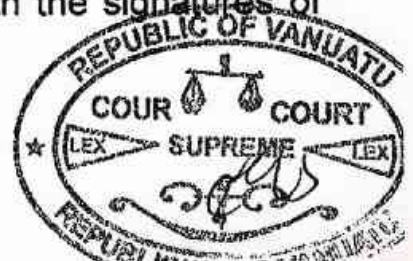
picked up Mr. Hospmander at the airport. He denied telling Mr. Tambe the Police officer that Salendra rang him first; he denied saying that Salendra did not give him any money when they met; he denied saying that Salendra gave him VT500.000 the next day; he said that he did not say that Salendra promised VT1.000.000 and said that he did not ask for the extra VT500.000 and did not tell that to Mr. Tambe. He says he nevertheless signed the statement for the reasons that I have already mentioned.

39. He was cross examined by the Prosecutor at considerable length. When asked why did not try to cash the cheque between the 5th and 13th June, he said that it was because he put the cheque in his desk and that his priority was his work duties for the Government as a political advisor. He was asked why he did not just cash the cheque on Thursday when the bank was open. His answer to that was unclear, but it was to do with the need to carry out the trust placed in him by his political associate, the Honourable Member. He acknowledges that he did not know what business Salendra was in, he said that he asked Salendra that but Salendra did not specify.
40. When asked by the Court twice, what made him think Salendra would have VT500.000 cash available at night, he gave answers but they did not address the question, at least certainly not in any direct way. When asked what did he think Salendra was going to do with the cheque, he answered he would cash or bank the



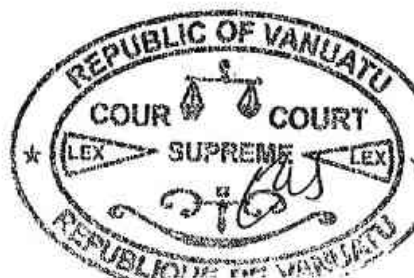
cheque. When it was then put him that the cheque was made out to Unua Community, he said he did not think about what would happen to the cheque.

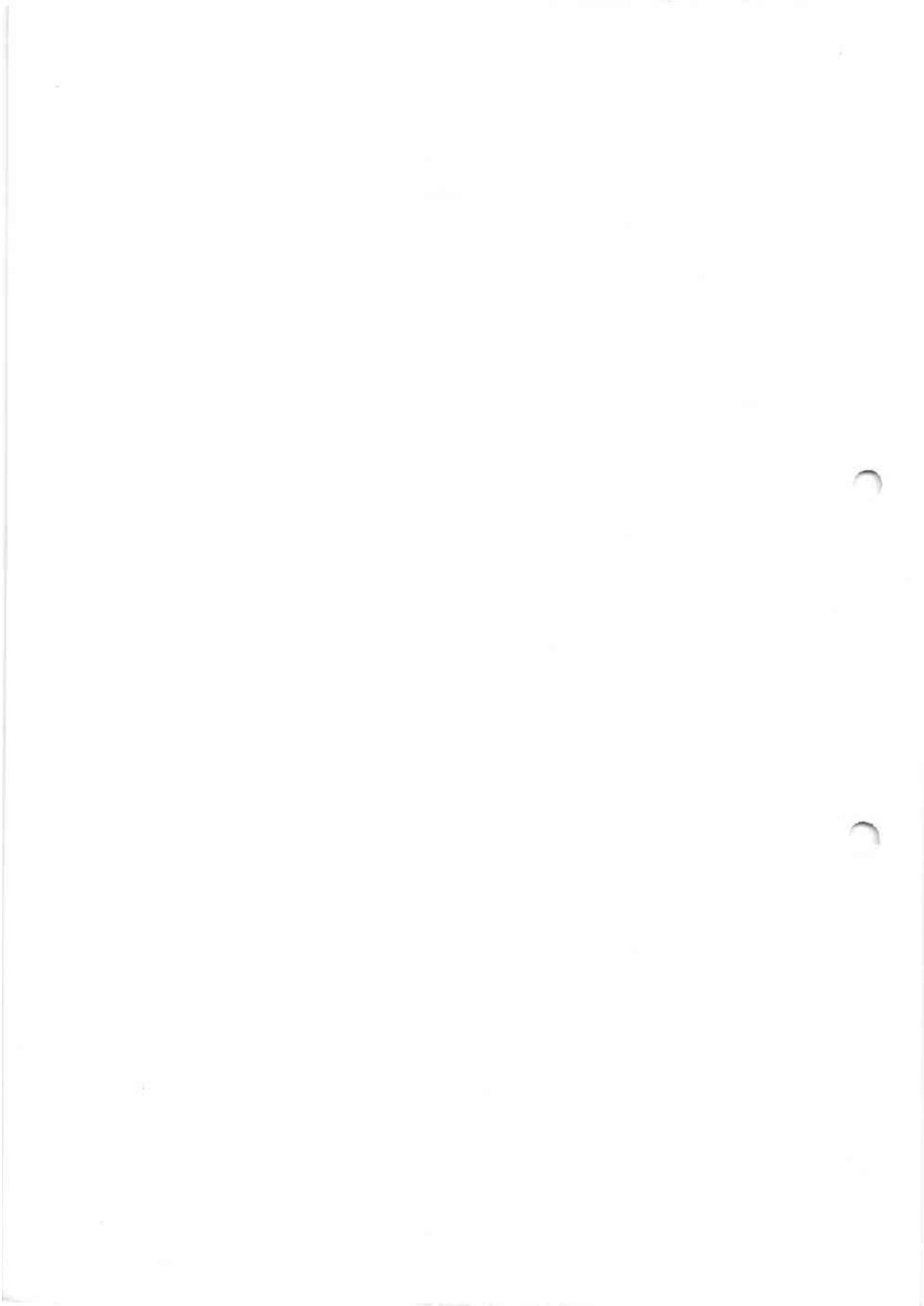
41. He acknowledged that he held the passbook and that the signatories were not him but Hospmander and two others. He was taken through his written statement and gave the explanations which I have already mentioned for signing the statement when according to him there were things in it which he did not say to the Police and which were not true. He finally said that he gave the VT500.000 to Hospmander on the Thursday the 14th and he thinks that Hospmander went back to Malekula on the following Saturday.
42. The first thing that the Court needs to comment on or make findings on is the credibility of the accused's evidence. I have to say that I do not believe the evidence that each of them gave in the Court, which was more or less the same in the main points. In fact I consider that they have concocted an untruthful story.
43. I say that for the following reasons: the first is that the story that they told the Court was completely implausible, it is not believable. Specifically the story that the cheque was left with Lesines in Vila to cash makes no sense. Why give the cheque to Lesines when it was not Lesines's cheque, it is Hospmander's community and Lesines was not a signatory on the account and could not withdraw money from it except with the signatures of



the two signatories, he not being one? Hospmander was the signatory, Hospmander could cash the cheque himself a lot more easily in either Vila or Lakatoro, and he was the one who received the money and had to distribute it.

44. Finally on that point if it truly had been left with Lesines to cash it, why did he not do so in the week that he said that he had it? The reason he gave for not cashing it is not believable. He said that it was because of his work duties. Even if his story was true that he had the cheque, he had many chances to cash it, even on the way to the airport to pick up Mr. Hospmander, if he wanted to give Mr. Hospmander the money straight away.
45. Even more unbelievable is the evidence of Mr. Lesines that he rang Salendra to cash the cheque because the bank was closed on Wednesday night and he wanted to give the cash quickly to Mr. Hospmander. The fact is according to his evidence, that he gave the cash, the VT500.000, to Mr. Hospmander the next morning Thursday, when the banks were open. Why not wait until Thursday morning, go to the bank, cash it and take the money up to Mr. Hospmander and deliver it to him at exactly the same time on Thursday morning? It is ridiculous that in those circumstances someone would be looking around on Wednesday night to find some person to cash a cheque which is made not into the name of that person, and not payable to that person.





46. Anyway Mr. Hospmander only needed the money when he went to Malekula to distribute it. And Mr. Lesines said that he did not go until the Saturday anyway. So what was the hurry to cash the cheque at night time on Wednesday night? There was none. Furthermore, if he really wanted to cash a cheque on Wednesday night, even though there was no sensible reason to do so, why ring Salendra? What would make Mr. Lesines think that he, Salendra, had VT500.000 available in cash at night when Salendra was not even from Vanuatu and does not even have a business in Vanuatu? Why would Mr. Lesines think Salendra would cash a Vanuatu cheque in vatu made out to someone else's name? It is simply nonsense to expect the Court or anyone really to believe that story, it does not make sense. As well as not making sense it is in conflict with the statements made to the Police, direct conflict.
47. Despite the various matters attested to by Messrs. Hospmander and Lesines, neither of them said that there was any duress or force or threat of any nature made to them by Mr. Tambe or anyone else to make them sign those statements. I would accept that they would have been ill at ease, uncomfortable and probably even afraid in the Police station. I imagine that most suspects would feel like that when they were inside the Police station being interviewed by the Police.
48. However that does not explain how the details in the Police statement got there, except that they told the Police about them.



And it does not explain how all these things about selling the cheque for a million vatu were put in the statement, read out by the Police and not only did they each sign their statement but according to their evidence as I understood it they did not even make a protest to the Police officer that they never said those things that were read out and that those things read out were untrue.

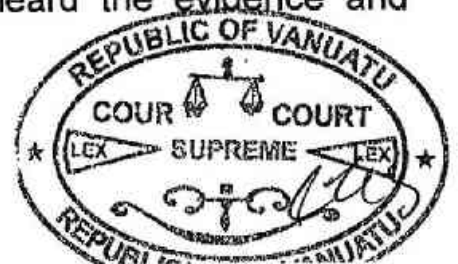
49. If they had not said those things, I am sure they would have mentioned that to the Police at that time. If they were untrue, I am sure they would have mentioned it to the Police. I draw the conclusion that they have simply changed their story from what they told the Police.
50. What they said in Court was also in conflict with what Mr. Watson and Mr. Sacsac said that Hospmander had told them. Mr. Watson and Mr. Sacsac gave a very detailed account of what Mr. Hospmander had told them. Lots of little details in it. They could not have imagined all of that detailed account. There is no reason whatever suggested for them to have come to Court and told the Court a whole lot of lies about what Mr. Hospmander said to them. But of course there is every reason for Mr. Hospmander now to deny it.
51. I am quite satisfied that these two witnesses Mrs. Watson and Sacsac were telling the truth and that means that Mr. Hospmander was not telling the truth when he gave his evidence





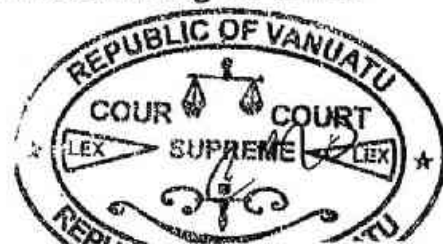
in Court. So I reject the evidence of both the accused, as not being believable and not being truthful. Nevertheless, the Court must still look at all the evidence and put aside the accused's evidence to see whether the charges have been proven. Having put aside their evidence, it is still necessary for the Court to make such findings as it can in relation to what happened to the cheque.

52. The story that Mr. Hospmander told Mr. Watson and Mr. Sacsac is different in part from the story that he and Mr. Lesines both told to the Police and which is contained in their written statements signed by them. But some of the details or some of the main themes are consistent.
53. I am able to make some findings about what happened. I find:
- i) the cheque was indeed given to Salendra on the basis that he was to pay VT 1.000.000 for it. There is no other reason for the accused to have given the cheque to him. If they were only to have got VT500.000 as they said in evidence, they would have simply put it in the bank. That was the obvious easy thing that was always available to do.
 - ii) I find that both accused were party to giving the cheque to Salendra. On one story, Hospmander handed it over, on the other story Lesines handed it over. On both stories it was Lesines who was the go between. I cannot say for sure, having heard the evidence and



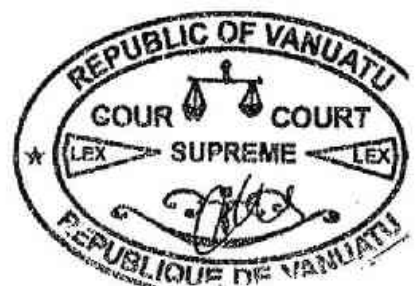
heard both stories, each of which came originally from the accused or one of them, who actually handed it over or even if both of them were present at that time. I am however satisfied that Mr. Hospmander deliberately gave the cheque to Salendra, either directly or through Mr. Lesines knowing who it was that it was being given to. I am also satisfied that Mr. Lesines arranged the hand over to Salendra and he also either gave it to Salendra directly or he arranged for Mr. Hospmander to give it over directly.

- iii) I am satisfied that they intended to personally keep and share between themselves the extra VT500.000 over and above the face value of the cheque. Whether they actually got it, I cannot be certain. On Hospmander's story to the Parliament officers they did get it, or he got it. On their police statements they both say that they are still waiting for it, which is just possible because undoubtedly Mr. Salendra is a very dishonest person. Although I have to say it is far more likely that they have received the extra VT500.000 and did not tell the truth about that to the Police, in an effort to lessen their responsibility for what happened. It is not necessary for me to make a certain finding about whether the extra VT500.000 was actually received, but I am satisfied that was the deal that they had with Salendra.
- iv) I am also satisfied that the timing given in the Police statement is much closer to the correct timing of when



they handed the cheque to Salendra. That is close to the 27th June, if not on the 27th June. I reach that conclusion because the altered cheque the forged cheque was in fact presented at the National Bank altered on the 27th June and I am sure that Salendra would act very quickly once he got hold of a cheque to forge, he would not be sitting on it for weeks.

54. I turn to consider whether the charge has been proven in the case of each accused. I keep in mind that the onus of proof of the charge and each element of the charge is on the prosecution throughout. Even though the accused gave evidence that does not alter the onus of proof which remains on the prosecution throughout the case. I have said that I do not believe the accused's evidence. It does not mean that they are automatically to be found guilty. The Court must simply put aside their evidence and consider whether on the remainder of the evidence the Prosecution has proven the charge.
55. I record that the standard of proof in this case as in all criminal cases is beyond reasonable doubt. I keep in mind also that this is a joint trial, and although the accused are charged jointly, I have to consider the evidence against each of the accused separately and not reason that because one is guilty the other must also be automatically guilty. As I have already said that principle applies particularly to the out of Court statements of the

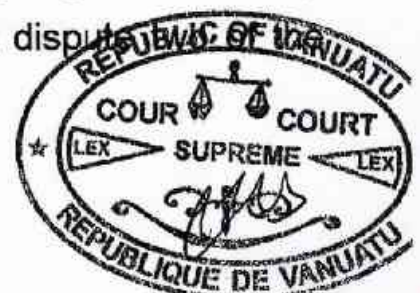


accused, which are admissible evidence only in relation to the person who made it.

56. I now turn to the elements of the charge that have to be proven. Every criminal charge can be broken down into a number of elements, usually two or more, each one of which have to be proven before an accused can be found guilty. In this case Aiding a Forgery, there are three elements that have to be proven. Firstly, that a crime, the crime of forgery, was committed by the principal offender Salendra. Secondly it must be proven that the accused aided, that is helped and assisted the principal offender Salendra to commit that forgery. They did something to assist it, that has to be proven. Finally it has to be proven that when they did so, they had the knowledge and intention required by the law before they can be found guilty and I will discuss that issue a little more deeply further on.

57. The accused did not really dispute the first two elements. They have formally admitted the cheque 2154172 was forged after Salendra came into possession of it. And they acknowledged that each of them played a part by supplying the cheque to him on which the forgery was carried out, and in that way assisted the forgery.

58. However they do dispute they are guilty of any offence because they deny that they knew that Salendra was going to dishonestly alter the cheque. Even though they do not dispute



elements, the Court itself must still be satisfied that all three elements had been proven before it can convict. So I am going to consider each one of them as I must, separately.

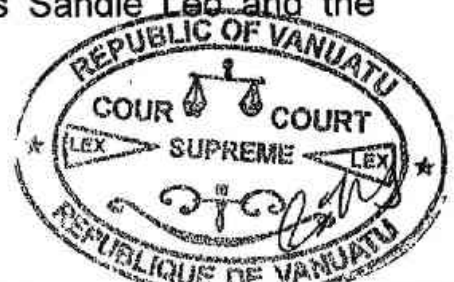
59. The first thing that has to be proven is that Salendra forged the cheque. Forgery is defined in Section 139 of our Penal Code Act, it provides:

- (1) *Forgery is making a false document knowing it to be false with the intent that it shall in any way be used or acted upon as genuine whether within the Republic or not or that some person shall be induced by the belief that it is genuine to do or refrain from doing anything, whether within the Republic or not.*

Subsection 2 provides: *"For the purpose of this section the expression making a false document includes making any material alteration and a genuine document, whether by addition, insertion, obliteration, erasure, removal or otherwise".*

60. I am satisfied that Salendra forged the cheque because:

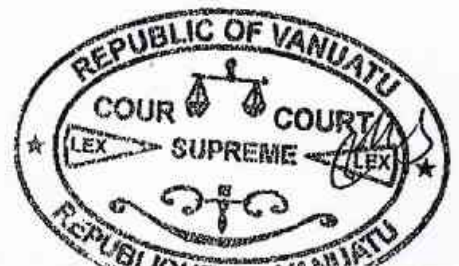
- cheque 2154172 was originally made out to Unua Community for VT500.000. It was given to Salendra Sen Sinha who had no right to it and no means of accessing the bank account of Unua Community. The same cheque was later presented at the National Bank and the payee now showed as Sandie Leo and the

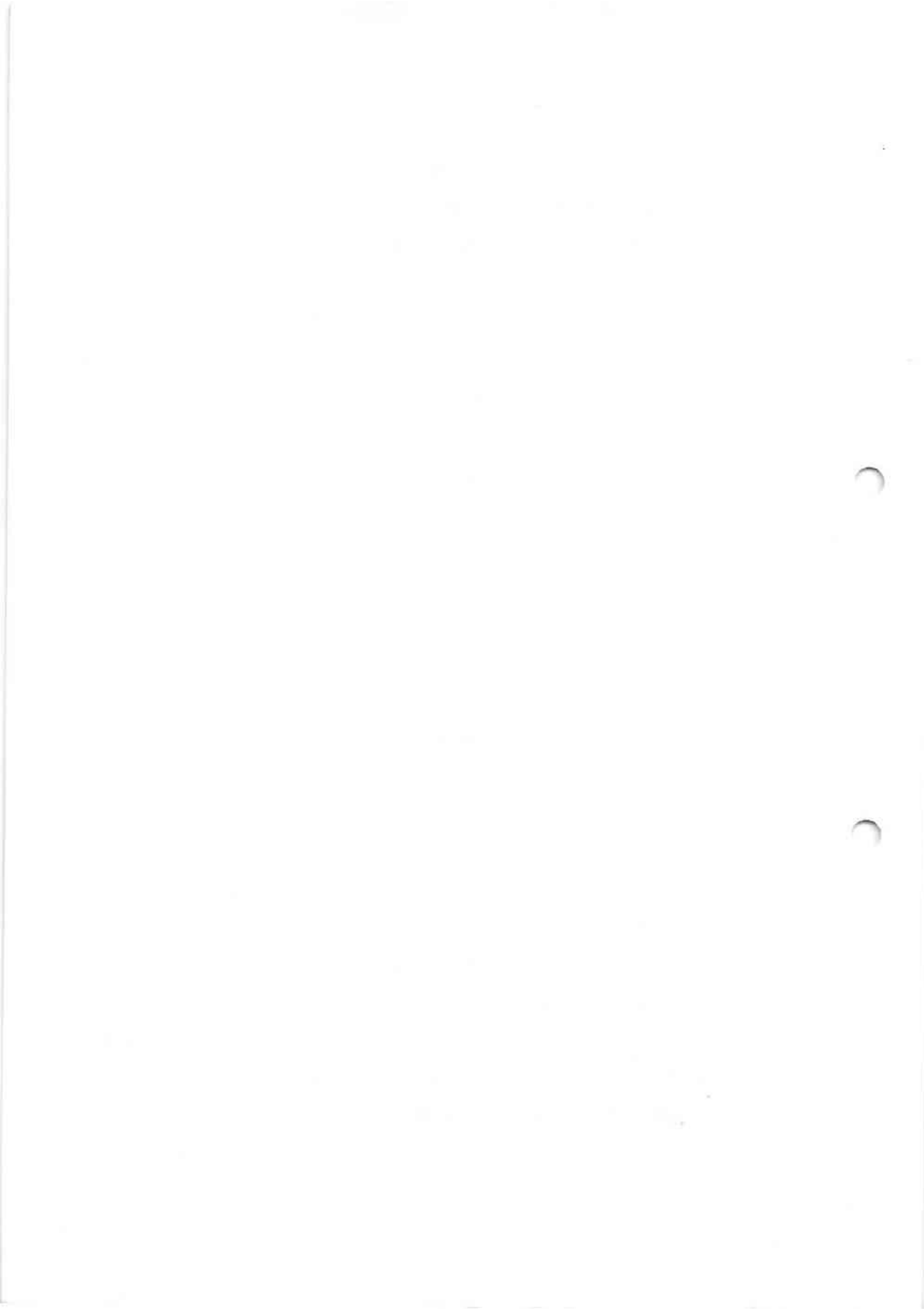


amount now showed as VT11.805.00 and after it was deposited, the amount of it was immediately drawn.

- The cheque itself actually shows visible evidence of erasure, if you look closely at it and it was produced as an exhibit. It is visible to the naked eye that there has been some erasure where the amount of the cheque is given in words and figures.
- The overwhelming inference in those circumstances is the cheque has been altered after it came into the possession of Salendra by erasure of the original payee and amount and the insertion of a new payee and a new amount and that had been done knowingly with intent that it would be acted upon as genuine, as indeed it was. It is also a reasonable and logical inference that the forger was the person the cheque was given to, Salendra.

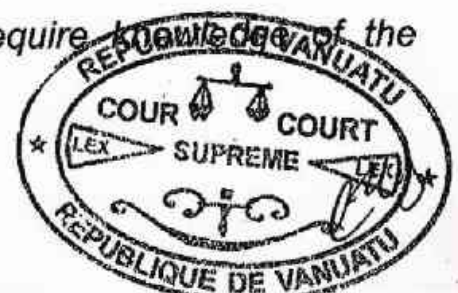
61. Second it has to be proven that the accused did an act which assisted him to commit that forgery. The act relied upon by the prosecution is the supply to him of the cheque which was a subject of the forgery. For the reasons already discussed I am satisfied that each of the accused took part in the supply of the cheque to Salendra. I am also satisfied that that action assisted Salendra to commit the forgery, because it gave him the raw material on which the forgery was carried out. He could not have forged that cheque unless it was given to him.





62. Finally the accused must be proven to have had what lawyers call a guilty mind. It means it has to be proven that they had the required intention and knowledge, about what would happen. This is the issue which the accused dispute in this case and it is necessary to articulate just what knowledge and intention the prosecution must prove in a case like this, where the persons who do something which helps the crime to be committed by someone else, do it before the crime has actually been committed.
63. First of all the accused must intend to hand over the cheque to the forger Salendra. They would not be guilty for example if they had somehow accidentally given the cheque to him. There is no doubt that they intended to give it to him.
64. They must also have some knowledge about what he would do with it. But it is not necessary to prove that they knew exactly what would happen. On that issue I quote, as a correct statement of the law the following extract from the decision of the English Court of Appeal in a case called **R v. Bryce** in which the Court said this:

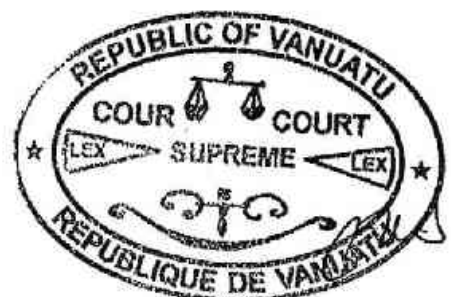
"In the context of a person charged as an accessory who has rendered assistance prior to the commission of the crime by the perpetrator, the circumstances in respect of which knowledge is sufficient for liability, may go wider than that of the specific crime actually committed. This is because it is inappropriate and unworkable to require knowledge of the

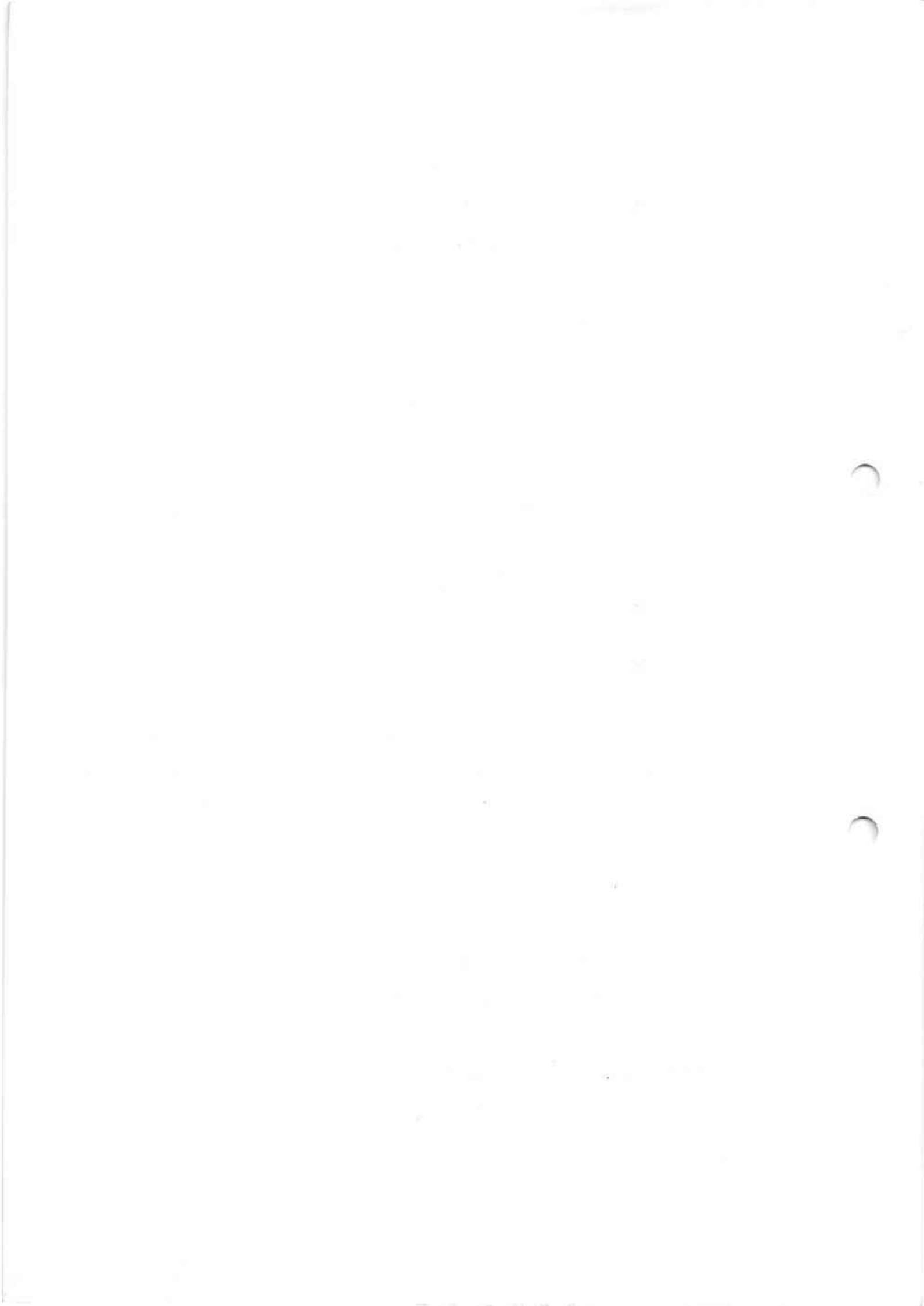


essential matters constituting the event in a situation where the offence is yet to be committed in the future, or by a person whose precise intention, the accused cannot be certain in advance. It is thus sufficient for the accused to have knowledge of the type of crime in contemplation; thus where a person supplied equipment to be used in the course of committing an offence of a particular type, he is guilty of aiding and abetting the commission of any such offence committed by the person to whom he supplied the equipment, providing the he knows the purpose to which the equipment is to be put or realizes that there is a real possibility that it will be used for that purpose and the equipment is actually used for that purpose".

I should add that the type of crime in contemplation may cover a number of different specific offences and that proposition is supported by a case called **Director of Public Prosecutions for Northern Ireland v. Maxwell**.

65. As well as that the Court in the **Bryce** case held that the accused must have intended to assist the principal offender as opposed to intending to prevent or hinder. That does not mean that it has to be proven that the motive in helping him was so that the crime would be committed and it does not have to be proven that they wanted the crime to happen.



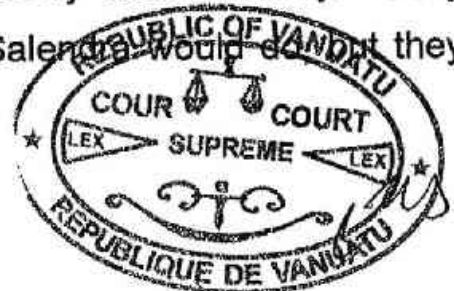


66. To summarize what has to be proven in relation to the intent and knowledge of the accused is this:

- a) that they deliberately took part in supplying the cheque to Salendra, realizing that what they were doing was capable of assisting him to commit the type of offence which he did commit.
- b) That at that time they foresaw that that type of offending by Salendra was a real or substantial risk or a real possibility.
- c) That when they did it, they intended to assist him in what he might do, even though they might not have supplied the cheque for that reason and even if they would have preferred that he did not use it in that way.

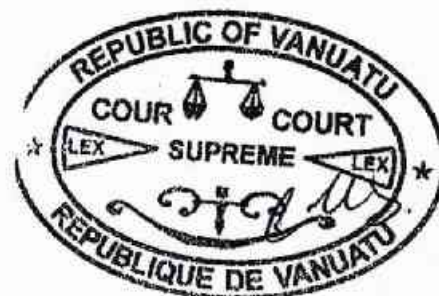
67. I do not see the position of each accused as being significantly different in this respect. It seems evident that the accused Lesines had a closer association with Salendra than Mr. Hospmander. And I suspect he had much more to do with Salendra than he acknowledged in Court and that he knew much more about what Salendra was up to than he said in Court. But hard evidence of that is lacking. I do infer that Mr. Lesines would have passed on to Hospmander what he knew about Salendra.

68. I am satisfied that they knew that the cheque would be fraudulently used in order to dishonestly obtain money. They may not have known exactly what Salendra would do but they



must have known that alteration of the cheque was a real or substantial risk or a real possibility. They must have known this because they were aware of the following circumstances:

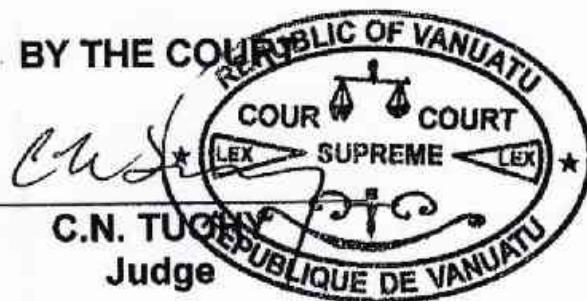
- i) that Salendra was not entitled to the Government cheque that they gave to him.
- ii) That it was made out to Unua Community and that Salendra had no access or ability to draw on the Unua Community account.
- iii) They knew that Salendra was not from Vanuatu and knew he had no legitimate business here. I suspect that in fact they may have known more than that about Salendra but there is no hard evidence about that.
- iv) They must have known that the whole transaction was dishonest. It was a Unua Community cheque they were selling for double its face value and in my judgment the accused were going to pocket themselves the difference. They were carrying that transaction out with a foreigner who had no legitimate business in Vanuatu known to them and carrying it out outside office hours in a bar.
- v) They knew that Salendra has agreed to pay them twice the face value of the cheque. The extra amount he was paying was large, VT500.000. They must have known that he would not pay that sum, unless he could use that cheque to get an even greater amount for himself.



69. They must have known that there is no way a cheque for VT500.000 can be used to get VT1.000.000 or more except by using it dishonestly and illegally, and they must have known that tampering with the cheque ie. forgery was a real possibility and even a probability in the circumstances. I am satisfied also that when they gave him the cheque in that knowledge they intended to assist him in using it fraudulently and in order to obtain money dishonestly.
70. Their motive of course was the extra VT500.000 and they probably did not care what Salendra did with the cheque once they got their money. But nevertheless in legal terms they have intention of assisting him. They certainly did not give him the cheque with any other intention. So I find the third element, the guilty mind, proven in respect of both accused and they are convicted of the charge Count 1.

Dated at Port Vila, this 14th day of March, 2008

BY THE COURT



C.N. TUOHY
Judge

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OFFICE OF THE OMBUDSMAN

**PUBLIC REPORT
ON THE BREACH
OF THE LEADERSHIP CODE ACT
BY MALON HOSPMANDER
AND ANDRE LESINES**

15 October 2010



REPUBLIC OF VANUATU

0119/2010/03

**PUBLIC REPORT ON THE BREACH OF THE LEADERSHIP CODE ACT
BY MALON HOSPMANDER AND ANDRE LESINES**

SUMMARY

"Judas Iscariot, who was one of the twelve, went to the chief priests in order to betray him [Jesus] to them. When they heard it, they were greatly pleased, and promised to give him money. So he began to look for an opportunity to betray him" (Mark 14:10-11).

Section 27 of the Leadership Code Act No. 27 of 1998 provides that whenever a leader is convicted by a court of law of an offence under the Penal Code Act [CAP135] and is listed in subsection (2), he is in breach of this Code.

On 14 March 2008 two prominent leaders: Malon Hospmander and Andre Lesines were convicted by the Supreme Court in a Criminal Case No.77 of 2007 [Public Prosecutor v Andre Lesines and Malon Hospmander] on the charge of aiding forgery between 1 June 2007 and 27 June 2007 – that which is prohibited by both sections 140 of the Penal Code Act and section 27(2)(t) of the Leadership Code Act.

The accused persons Honourable Malon Hospmander and Andre Lesines did an act which assisted an Indo-Fijian man by the name of Salendra Sen Sinha to commit forgery. The act being relied upon by the prosecution was the supply to him (Salendra Sen Sinha) of the cheque number 2154172 which was the subject of forgery – the supply of the very raw material on which forgery was carried out, and in that way assisted the forgery. Of course, the Indo-Fijian could not have forged that cheque unless it was given to him. And as such, both leaders Honourable Malon Hospmander and Mr Andre Lesines have breached section 27 of the Leadership Code Act No.2 of 1998 – that which was subsequently conducive to their conviction at the Vanuatu Supreme Court on 14 March 2008.

Upon that conviction the Ombudsman has made the subsequent findings:

1. That former MP Malon Hospmander and First Political Advisor Andre Lesines as leaders pursuant to Article 67 of the Constitution and section 5(d) of the Leadership Code Act No.2 of 1998 respectively were in breach of section 27 of the Leadership Code Act.
2. That apart from being in breach of section 27 of the Leadership Code Act, Messrs Malon Hospmander and Andre Lesines were also liable to be dealt with under sections 41 and 42 in addition to any other punishment that may be imposed under any other Act.
3. That Salendra Sen Sinha has breached section 30 of the Leadership Code Act No.2 of 1998 by engaging himself in the act of forgery – the very conduct that is prohibited under both sections 27(2)(t) of the Leadership Code Act and 140 of the Penal Code Act [CAP135]

Despite having such breaches, Mr Salendra Sen Sinha cannot be and will never be extradited from Fiji to Vanuatu to face judicial charges as section 56(1)(3)(b) of the Extradition Act [CAP287] is defective. Section 56(1) provides that a person surrendered to Vanuatu must only be detained or tried in Vanuatu for an offence for which he/she was surrendered. Furthermore,

subsection (3)(b) of the same Act provides that subsections (1) and (2) do not apply if the person has left, or has had the opportunity of leaving Vanuatu. As such and since Mr Salendra Sen Sinha did manage to make his way out of the country avoiding police security, Mr Salendra Sen Sinha is now a free man according to section 56(3)(b) of the Extradition Act.

4. That pursuant to section 56 of the Extradition Act [CAP287]

- "(1) A person surrendered to Vanuatu must not be detained or tried in Vanuatu for an offence that is alleged to have been committed, or was committed, before the person was surrendered, other than (a) an offence for which the person was surrendered; or (b) another offence (for which the penalty is the same or less) of which the person could be convicted on proof of the conduct constituting the extradition offence; or (c) another offence for which the surrendering country consents to the person being detained or tried.
- (2) A person surrendered to Vanuatu must not be detained in Vanuatu for surrender to a third country for trial or punishment for an offence that is alleged to have been committed, or was committed, before the person was surrendered to Vanuatu.

However, the above subsections are not applicable as provided in subsection (3) of the Act if (a) the country surrendering the person to Vanuatu consents to the person to be so detained, and tried or surrendered; or (b) the person has left, or has had the opportunity of leaving Vanuatu. In fact, while considering the case of Mr Salendra Sen Sinha, he has left or has had the opportunity of leaving Vanuatu. Thus, Mr Salendra Sen Sinha is now a free man – that which is, indeed, in contravention to the spirit and purpose of this Act. As such, section 56(3) of the Extradition Act is defective.

5. That Mr Sandie Leo was in breach of section 30 of the Leadership Code Act by allowing the cheque number 2154172 amounting to VT11,805,000 to be deposited in his bank account by Mr Salendra Sen Sinha at the National Bank of Vanuatu and was withdrawn within a very short time afterwards.

On the basis of the above findings, the Ombudsman recommends that:

1. The Public Prosecutor lays charges against Malon Hospmander and Andre Lesines for breach of section 27 of the Leadership Code Act No.2 of 1998.
2. Having breached section 27 of the Leadership Code Act No.2 of 1998, both convicted leaders be dealt with in accordance with sections 41 and 42 of the Leadership Code Act No.2 of 1998. In fact, section 42 of the Leadership Code Act provides that *"Where a leader is dismissed from office under section 41 the leader is disqualified from standing for election as, or being appointed as, a leader of any kind for a period of 10 years from the date of the conviction"*.
3. The Public Prosecutor lays charges against Mr Sandie Leo for breach of section 30 of the Leadership Code Act No.2 of 1998 for assisting the forgery of the cheque number 2154172 to be deposited in his bank account at the Vanuatu National Bank and withdrawn within a short time. Indeed, section 30(1) of the Leadership Code Act provides that a *"person other than a leader who: (a) takes part in a conduct that is a breach of this Code is guilty of a breach of this Code"*.

4. In conjunction with the State Law Office, the Ministry of Foreign Affairs may consider:
- (a) the presentation of a bill to Parliament for an amendment of section 56(3) of the Extradition Act – that which is in contravention to the purpose and spirit of the Act; and
 - (b) the ratification of the United Nations Convention Against Corruption whose Article 44 provides for extradition on the basis of further consultation and exchange of information relevant to the allegation or criminal offence. Only then will it be possible to extradite any person such as Mr Salendra Sen Sinha to face trial in Vanuatu for committing forgery with the assistance of both Malon Hospmander and Andre Lesines.

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1. JURISDICTION

- 1.1 The Constitution, the Leadership Code Act [CAP 240] and the Ombudsman Act [CAP 252] allow the Ombudsman to look into the conduct of government, related bodies, and Leaders. This includes former Member of Parliament Honourable MALON HOSPMANDER and former political advisor Mr ANDRE LESINES to the Deputy Prime Minister and Minister for foreign Affairs on their conducts as leaders of the Republic of Vanuatu. Despite the fact that they were given the trust to maintain, protect the financial welfare of the Republic, they both fell short by deliberately breaching the trust placed upon them by the people of Vanuatu.

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, the Ombudsman Act and the Leadership Code Act.
- 2.2 The scope of this investigation is to establish the facts surrounding and leading to the conviction on 14 March 2008 of Honourable Malon Hospmander MP for Malekula and Mr Andre Lesines who was first political advisor to the former deputy Prime Minister Sato Kilman for aiding forgery when they assisted a Fiji national SALENDRA SEN SINHA to make a false document namely a Government cheque by making alterations to the document with intent that it be acted upon as genuine and to determine whether Malon Hospmander and Andre Lesines are leaders who have both breached the Leadership Code when they were convicted by the Supreme Court of Vanuatu and are liable to be charged under section 27 of the Leadership Code Act [CAP 240].
- 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 the attachment as **Appendix A:**
- Article 67 of the Constitution
- Sections 5, 27, 30, 41, 42 of the Leadership Code Act [CAP 240]
- Sections 30, 139, 140 of the Penal Code Act [CAP 135]
- Section 56 of the Extradition Act [CAP287]

4 BACKGROUND INFORMATION

A. ANDRE LESINES

- 4.1 On 22 January 2007 Mr Andre Lesines signed his contract of employment as First Political Advisor to the Deputy Prime Minister and Minister for Foreign Affairs Honourable Sato Kilman. It was then concluded that such a contract began on 1 January 2007.

By this appointment Mr.Lesines became a leader by virtue of section 5(d) of the Leadership Code Act [CAP 240]. Attached as **Appendix B** is the copy of his contract of employment as First Political Advisor.

- 4.2 Between 1 June 2007 and 27 June 2007 both Malon Hospmander and Andre Lesines were leaders pursuant to Article 67 of the Constitution and section 5(d) of the Leadership Code Act No.2 of 1998 respectively.
- 4.3 On 7 December 2007, the Public Prosecutor laid charges of aiding forgery contrary to sections 30 and 140 of the Penal Code Act [CAP 135] against Malon Hospmander and Andre Lesines. Attached as **Appendix C** is the copy of the charge Sheet.

B. MALON HOSPMANDER

- 4.4 On 19 July 2004 the Electoral Commission declared Mr Malon Hospander in the Official gazette as an elected representative of Malekula constituency to the National Parliament of Vanuatu. Attached as **Appendix D** is the copy of the list of persons declared by the Electoral Commission as appeared in the Official Gazette No. 20 of 2004. Included in the list and underlined is the person Malon Hospander from the People's Progressive Party.
- 4.5 On 2004, Malon Hospmander was duly sworn in at the Vanuatu Parliament House as a member of Vanuatu Parliament. As one of the members of Parliament, he was a leader pursuant to Article 67 of the Vanuatu Constitution
- 4.6 On 25 May 2007 Honourable Malon Hospander filled a micro project application for the sum of VT500,000 to assist the people of Unua Community on Malekula. Every member of Parliament is entitled to an allocation of VT2,000,000 per annum for the use and benefit of the community he/she represents.
- 4.7 On 28 May 2007 the Speaker of Parliament approved the application. Attached as **Appendix E** is the copy of the approved application form.
- 4.8 On 4 April 2007, a local purchase order (LPO) was issued by the National Parliament for an amount of VT500.000 to the Unua Community. Attached as **Appendix F** is the copy of the LPO.
- 4.9 On the same date a Government cheque numbered 2154172 (Reserve Bank of Vanuatu) for VT500.000 was issued to MP Malon Hospmander.
- 4.10 In the Daily Post Issue No.2077 of Friday 13 July 2007 it was reported that the National Bank of Vanuatu (NBV) has been defrauded of quite a substantial amount of money after three Government cheques were fraudulently cashed at the bank. The fourth cheque was refused by the bank on Monday 9 July 2007. In fact, the three cheques were Vanuatu government GPVs and those using them had apparently modified them by increasing the amounts that were supposed to have been drawn. They were cashed at the Bank on three separate occasions. The cash that were issued to some communities were less than the amount that were actually stated in the cheques and were cashed at the bank. Investigations also revealed that those involved in this alleged fraud included an expatriate by the name of Salendra Sen Sinha (being an Indo-Fijian citizen) and some nationals/locals. A suspect was arrested by the police while the expatriate involved has allegedly fled the country.

- 4.11 As the issue became public knowledge in the media, Honourable Peter Vuta, MP for Ambae had, on 26 November 2007, taken the initiative to move a Motion No.3 of 2007 during the second extraordinary session of Parliament for 2007 – that which was seconded by Honourable Eric Sadrac, MP for Banks and Torres requesting a parliamentary disciplinary action against Honourable Members Dunstan Hilton, Noel Tamata and Malon Hospmander (**APPENDIX G**). The motion created a deadlock between both the Government and Opposition parliamentarians on whether or not those said members of parliament should attend the session. In spite of such a dispute, it is clearly stipulated in the motion that the said members of Parliament

"have brought disrepute to the Institution of Parliament when their cheques, drawn from the Members of Parliament Allocation Fund, were used to defraud the Parliament and consequently the Government of the Republic of Vanuatu of Public Funds, thus, causing public outcry and bringing shame to the good name of Parliament".

Finally, the motion was passed with 32 votes in favour out of 47 Members of Parliament being present. Furthermore, it has been reported that during the debate on the motion the three suspended MPs were prevented from entering Parliament Chamber by the Sergeant-at-Arms.

5. OUTLINE OF EVENTS

Between 1 June 2007 and 27 June 2007, the cheque numbered 2154172 as recorded in the Department of Finance for VT500,000 was subsequently changed from VT500,000 to an amount of VT 11,805,000.

- 5.1 The cheque was picked up from the office of Willy Watson at Parliament on or about the 5th or 6th June 2007. Instead of depositing the cheque into the Unua Community's bank account at NBV having three signatories (being Mr Hospmander and the other two were a gardener and a filing clerk at Ministry of Foreign Affairs), it was given to an Indo-Fijian man named Salendra Sen Sinha

- 5.2 On 27 June 2007 the same cheque No.2154172 – that which was given to Salendra was presented at NBV in Port Vila and deposited into the account of one Sandy Leo. Mr Leo admitted that the cheque had been altered. It was then made out to him (Leo) as payee and its amount had been also altered to VT11,805,000. Mr Sandie Leo's bank account was credited with that very amount and was withdrawn within a very short time.

The case against MP Hospmander was that Salendra forged the cheque after it was handed over to him and he (Hospmander) aided him in that forgery by supplying the cheque to him. While acknowledging its handing over, the accused denied that they knew that it would be fraudulently forged.

- 5.3 As there was no direct evidence from the prosecution witnesses to substantiate the charge for each accused, the Court had to consider the evidence relating to the circumstances in which the cheque was handed over. In order to draw conclusion as to evidence relating to the charge, the Supreme Court had to rely on (a) what the accused had told other witnesses about it and (b) on what each of them said about it in their own evidence in court. The Court also drew inferences by way of deductions (not retroductions) from the surrounding circumstances which have been proven.

While considering the issue, the Court reminded itself that any statements made by an accused outside the Court that was, any statement to the

parliamentary employees or any other police statements, was admissible evidence only against the person who made it but not against the other one. As such, the evidence of what Mr Hospmander said to Willy Watson and Lino Sacsac was evidence only against himself, not against Mr Lesines. Similarly, the evidence of what each of them revealed in their police statements was only evidence against the person who made that statement.

5.4 FIRST ACCOUNT AS GIVEN TO MESSRS WILLY WATSON AND LINO SACSAC:

That upon hearing the news on the alleged fraud case, Mr Willy Watson asked MP Hospmander to attend to his Office in person in order to explain to him what had happened. Upon his attendance therein, Mr Lino Bulekuli dit Sacsac was also called in to witness what was said.

5.4.1 In cross examination Mr Watson revealed that Mr Hospmander said¹:

"that he got a cheque, he went down to meet Salendra at the Waterfront, (meaning the Waterfront Bar and Restaurant), that he gave the cheque to Salendra there, and that he received from Salendra an amount of cash greater than the value of the cheque".

By witnessing what was to be said by Honourable Hospmander, Mr Sacsac said that upon getting "the cheque he went to the Ministry of Foreign Affairs and he met the 1st Political Advisor Mr Andre Lesines who asked him if he had the cheque with him. The Honourable Member's answer was yes. As such, Mr Lesines *"told him that if you like you can make a bit of money from the cheque. I will give you a mobile phone number and then the Political Advisor gave him the phone number"*².

Upon ringing that [given] telephone number, someone answered wanting to know who was on the line and upon identifying himself as the Member of Parliament, he (Hospmander) further said "I am interested to see you"³. By that point in time, Honourable Hospmander did not yet know the identity of the person on the phone. Honourable Hospmander went on to say that he made an appointment on the phone to meet the person at the Waterfront. Out there, he met an Indian man who, already sitting at a table called out to him (Hospmander) and invited him to the table. Mr Salendra Sen Sinha ordered some drinks. And upon enjoying or savouring them, Mr Salendra asked "do you have that thing with you"⁴. The reply was yes but reiterated that "before I give the cheque you give me the VT1,000,000 first"⁵. Upon conditionally making such a request, Mr Salendra *"gave him VT1,000,000, and the Honourable Member handed over the cheque"*⁶.

That upon giving that account or story at Parliament's office, Mr Willy Watson asked Hospmander "do you know the cheque does not belong to the Unua Community?"⁷ To which he answered "Mi mi wantem VT1,000,000 nomo"⁸ and that was Mr Sacsac's evidence.

¹ *Public Prosecutor v Andre Lesiness and Malon Hospmander* [2007] Criminal Case No.77 of 2007 (14 March 2008) 6.

² *Ibid* 7.

³ *Ibid*.

⁴ *Ibid*.

⁵ *Ibid*.

⁶ *Ibid*.

⁷ *Ibid*.

⁸ *Ibid* 8.

- 5.4.2 In cross examination the defendants' Council Mr Malcolm attempted to deviate the account by saying that it was Mr Lesiness who gave the cheque to the Indo-Fijian at the Waterfront but still Mr Sacsac was adamant reiterating that Honourable Hospmander was referring about himself doing the action of handing over the cheque.

So that was the first account being given by both Messrs Watson and Sacsac on how the cheque was handed over - that which they say was given by Honourable Hospmander.

5.5 THE ACCUSED'S WRITTEN ACCOUNT TO THE POLICE:

On or about 9th August 2007, the accused persons Honourable Hospmander and Lesines were arrested in Malekula and were interviewed by Police Officer Frazer Tambe in Bislama at the Port Vila Police station.

- 5.5.1 **Mr Hospmander** collected the cheque on 5th June 2007 and brought it with him back to Malekula. While he was there, Mr Lesines rang him up and asked him about the cheque. In the event that he still had it in his possession and had it been given to him, Mr Lesines would have given it to a friend of his, who would in turn give Mr Hospmander an amount of VT1,000,000 for it. Upon hearing this "surprising news" Honourable Hospmander asked Mr Lesines three times whether such information was sure, genuine and true. To this Mr Lesines gave him his assurance of his word. When he (Hospmander) was back in Vila on 27th June 2007, he was picked up by Mr Lesines together with MP Noel Tamata. He said that the cheque was given to Mr Lesiness who set out to hand it over at the Waterfront. On 28th June 2007 Mr Lesines went to Parliament and instead of giving him VT1,000,000 as promised, he (Hospmander) only received VT500,000. The other half was to be given to him the next day but he never received it. Honourable Member further explained that "*Mi agri se mi no gat raet ia blong mi givim personal cheque blong mi i go long narafala man, however follem carelessness mo ignorens blong mi, mi bin givim wetem biliv se mbai mi ricevim mo mani i kam*"⁹ Furthermore, he did not know how the amount was altered to VT11,805,000. Had he known that, for sure he would not have given it to Mr Salendra.

- 5.5.2 **Mr Lesines** did develop an acquaintance with Mr Salendra who, at the end of June 2007, asked if he had VT500,000 in cash to be given him (Salendra) would be in position to pay back VT1,000,000. With that information Mr Lesines called Honourable Hospmander requesting him if he had any money. To this the Member of Parliament said no but that he only got a cheque for the Unua Community.

Upon travelling back to Vila on 27th June 2007 both Mr Lesines with MP Tamata went to pick him up at the airport and headed to the Foreign Affairs Office where discussion was centred around what to do with the cheque. While there Mr Salendra called and asked Mr Lesines to meet him at the Waterfront Bar with the cheque. They did meet there where the cheque was handed over to Salendra but in return did not receive the money. Instead, he was promised to receive it later.

⁹ *Public Prosecutor v Andre Lesiness and Malon Hospmander* [2007] Criminal Case No.77 of 2007 (14 March 2008) 9.

The next day they once again met at the Waterfront while the two MPs were waiting at Parliament. Mr Lesines said to have received only an amount of VT500,000 and the other half was to be given him later. However, Mr Salendra has never done so, despite attempting to get it on more than one occasion prior to flying back to Malekula on 5th July 2007.

In this account Mr Lesines mentioned that he was not aware that the Indo-Fijian man would change the cheque but acknowledged his wrongdoing in handing over the cheque that was in the name of Unua Community to someone else.

This second account is more or less similar to the first one.

5.6 THIRD VERSION OF THE ACCOUNT AS PROVIDED DURING COURT:

5.6.1 Hospmander

The Honourable Member said that he picked up the cheque from Mr Watson's office at Parliament on 5th or 6th June 2007. Having it in his possession, he gave it to Mr Lesines at the Ministry of Foreign Affairs in order for him to cash it. While in Malekula, he rang Mr Lesines so as to find out whether the cheque was already cashed. To this request, the answer was negative. He then flew to Vila on 13th June 2007 and was picked up at the airport by Mr Lesines prior to dropping him at his Kawenu residence.

With regard to the money, he got the cash from Mr Lesines for the cheque of VT500,000 on 14th June 2007. The latter did not mention where he cashed it nor who cashed it. He said that he did not know that the cheque would be given to Mr Salendra – the one who was unknown to him up until the time he received the cash and had no knowledge of any problem associated with the cheque until he came back from an overseas trip to China around mid July 2007.

Mr Hopsmander denied that the caution on the statement had been read to him. He acknowledged having the statement read to him prior to affixing his signature thereon. However, despite signing the document he said that parts of it were true only and parts of it were untrue. In particular, he denied having received VT1,000,000 in cash for the cheque. Furthermore, parts of the signed statement were untrue as he was uncomfortable and ill at ease and frightened in the Police Station.

In cross-examination Mr Hopsmander said that the cheque was given to Mr Lesines thus, it was not possible for him to deposit it at the National Bank in Lakatoro. He not only denied having read about Mr Salendra in the media but also denied having told officer Tambe that he had taken the cheque to Malekula from where Mr Lesines called him to inform him of the man of his acquaintance who could give a million vatu in exchange for the cheque. He alleged to have been frightened at the Police Station – that which was conducive to telling lies.

Upon questioning him about the difference in dates (13th June or 27th June) about when he returned to Port Vila, he replied that it must have been a mistake.

With regard to both Messrs Watson and Sacsac's evidence, Mr Hopsmander denied their evidence saying they were telling lies. He asserted to have gone to Parliament to ascertain the balance of his allocation – that which was VT1,000,000. However, when queried about the reason for which both

persons could have told untruths, Mr Hopsmander could not possibly explain it.

5.6.2 Lesines

In his evidence, Mr Lesines asserted that the cheque was given to him on the afternoon of 5th June 2007 by Mr Hopsmander in his capacity as Chairman of Regional Co-ordinators of Peoples Progressive Party (PPP). He said that Mr Hopsmander did authorize him to cash it later. However, having no withdrawal slip – that which was kept by the other signatory who was the filing clerk of Foreign Affairs, he could not have access to the money. He also asserted that Mr Hopsmander went to Malekula in order to ascertain the needs of the people at Unua. Some time prior to his return to Port Vila, Mr Hopsmander enquired whether or not the cheque had been cashed but was told “No”. He also asked to be picked up from the airport. Upon arrival, Mr Hopsmander was dropped off at his Kawenu house. He then contacted Mr Salendra in order to obtain some cash for the cheque as the banks were already closed that afternoon.

5.6.2.1 He acknowledged having known Mr Salendra as he met him at the Olympic building. On two occasions he took coffee with Mr Salendra. It was during such meeting that the businessman Salendra told him of having businesses in the United States, Fiji and New Zealand. He also made contact with him (Salendra) at Tamanu Beach Resort – that which was in line with the evidence given by a prosecution witness Mr Yannick who was working at Tamanu Beach Resort. Mr Yannick had seen Mr Lesines in company with Mr Salendra there when he (Salendra) picked up a lobster salad that was ordered from Breaka's Resort.

5.6.2.2 On the night of Wednesday 13 June 2007 Mr Lesines called Salendra to quickly cash the VT500,000 cheque in order to give it to Honourable Member. Some hours later Mr Salendra rang to say that he (Salendra) had VT500,000 in possession and would want to meet him at the Waterfront Bar. He met him there and exchanged the cheque for VT500,000. He denied having received or promised any further payment of another VT500,000.

On 14 June 2007 Mr Lesines gave an amount of VT500,000 cash in an envelope at Parliament House to Honourable Hopsmander. The unlawful receipt of the amounts of money, as proceeds of fraudulent cheque, only came to his knowledge while he was in Malekula. As a result of his involvement, he was arrested at his village, Rano but could not be locked up into Number 6 at Lakatoro due to his poor health condition. Instead, he stayed at a Police Officer's home overnight before taking a flight to Vila in the custody of a Police Officer and in company with Honourable Hopsmander.

5.6.2.3 Upon arrival to Bauerfield airport, he was handcuffed and put into a police van to be taken to a holding cell at the Police Station for questioning by the Fraud Squad Officer Tambe.

In his statement Mr Lesines described the same process as Mr Hopsmander had relayed with the exception that he was asked whether or not he agreed with what Mr Hopsmander had already said. Mr Lesines did not actually agree with the content of his statement but went on to sign it – this is simply because he was under pressure and afraid because of the situation and events he was implicated in.

5.6.2.4 Upon cross-examination Mr Lesines was taken through his statement but denied many of the things that were recorded therein:

- That Salendra had offered to sponsor any PPP projects.
- That Salendra had made an offer of VT1,000,000.
- He admitted his mistake in the difference in dates
- That Mr Tamata was at the airport with him when he picked up Mr Hospmander
- Telling Police Officer Tambe that Salendra rang him first
- Having received any money from Salendra when they met
- Not only saying that Salendra gave him VT500,000 the next day and promised VT1,000,000 but also asking for the extra VT500,000 – that which was purportedly revealed to Mr Tambe.

Despite the reasons above, Mr Lesines nevertheless signed the statement.

Upon cross-examination by the Prosecutor for quite some time, Mr Lesines was asked why he did not cash the cheque between the 5th and 13th June 2007. He responded by saying that his priority was his work but the cheque was left in his desk. He was also asked why he did not cash the cheque on Thursday while the bank was opened. To that, his answer was not clear. He also said that he did not know the business activity Salendra was engaged in, even upon making a request to him on the issue but to no avail.

The Court also ask him (Lesines) twice as to what made him think that Salendra would have VT500,000 cash available at night. To that he did not provide a clear direct answer. Furthermore, what did he think Salendra would do with the cheque – to which he answered that he (Salendra) would cash or bank it. Upon putting to him that the cheque was made out to Unua Community, he said that he did not think about what would happen to the cheque.

Mr Lesines did acknowledge having the passbook in his possession and was not one of the signatories. As he was taken through his written statement he repeated that there were things therein which he did not tell the Police and that they were not true. He finally said that on Thursday 14th (June 2007) he gave VT500,000 to Hospmander who went back to Malekula the following Saturday.

5.7 Having gone through his statement, the Court was primarily to comment or make findings on the credibility of the accused's evidence. Commenting on the said documentary and verbal evidence before the Court, the ruling judge did not believe it but would consider that they have concocted an untruthful story on the subsequent basis.

5.7.1 The story was completely implausible and unbelievable. Specifically the story that the cheque was left with Lesines in Vila to cash makes no sense. What was the reason behind leaving the cheque with Lesines when it did not belong to him but it was Hospmander's community and not being a signatory on the account he could not withdraw the money from it except with the signatures of the other two signatories? Indeed, as one of the signatories to the account, Hospmander could easily cash the cheque either in Vila or Lakatoro, and he was the one to receive the money and had to distribute it.

- 5.7.2 Lastly if the cheque had been left with Lesines to cash it, why didn't he do so during the week when he had it in his possession? The provided reason for not cashing it is unbelievable. He mentioned that it was because of his work commitments. Even if his story was true that he had the cheque, he would, of course, have had many chances to cash it, even on the way to the airport to pick up Mr Hospmander, if he wanted Mr Hospmander to straight away enter into possession of the money.
- 5.7.3 Even more unbelievable is another of his evidence that he rang Salendra to cash the cheque because the bank was closed on Wednesday night and wanted to quickly handover the cash to Mr Hospmander. According to his evidence, he gave VT500,000 to Mr Hospmander the next morning Thursday when the banks were open. Why didn't he wait until Thursday morning in order to go to the bank, cash it and give the money to Mr Hospmander at exactly the same time on Thursday morning? To see someone in those circumstances looking around on Wednesday night to find someone to cash a cheque which is made not into the name of that person and not payable to that person is none other than ridiculous.
- 5.7.4 Mr Hospmander needed the money for the purpose of distributing it when he went to Malekula. And Mr Lesines did not go there until Saturday. So what was the reason for which he was in a hurry to cash the cheque at night time on Wednesday night? There was none. Moreover, if he really wanted to cash a cheque on Wednesday night, why did he call Salendra? What would make Mr Lesines think that Salendra had VT500,000 available in cash at night when Salendra did not even have a business in Vanuatu and was not even from Vanuatu. Why would Mr Lesines think Salendra would cash a cheque in vanu made out in someone else's name? It is illogical to expect the Court or anyone to believe that story. In addition to that, it is conflicting with the statements being made to the Police.
- 5.7.5 In their statements none of them mentioned that there was any duress or threat or force of any nature made to them by the Police Officer or anyone else to make them sign those statements. It would be acceptable that they would have been ill at ease, uncomfortable and even afraid in the presence of the Police.
- 5.7.6 However, this does not explain how the detailed information as contained in the Police statements got there, except that they would have told the Police about them. Furthermore, it does not explain how all these things about selling the cheque for a million vanu were put in the statements, read out by the Police and not only did they each sign their statement. According to their evidence they did not make a protest to the Police officer that they never said those things that were read out and that those things read out were untrue.
- 5.7.7 If they did not say those things or that those things were untrue, they would have mentioned them to the Police at that time. In conclusion they have simply changed their story from what they told the Police.
- 5.7.8 Their version of the story as heard in Court was also in conflict with what parliamentary officers Mr Watson and Mr Sacsac said to have been told them by Hospmander. Indeed, both parliamentary officers (Sacsac and Watson) gave a very detailed account of what Mr Hospmander had told them. They could not have imagined all of that detailed account. There is no reason whatsoever suggested for them to have come to Court and told the Court a

whole lot of lies about what Mr Hospmander relayed to them. But of course there is every reason for Mr Hospmander to deny it.

5.7.9 The trial Judge was satisfied that the parliamentary witnesses were telling the truth whereas Mr Hospmander was telling lies when he gave his evidence in Court. As such the trial Judge rejected the evidence of both the accused, as not being believable and not being truthful. Nevertheless, the Supreme Court was obliged to look at all evidence and put aside the accused's evidence in order to see whether the charges were proven. As such, it was still expedient for the Court to make such findings as it could in relation to what actually happened to the cheque.

5.7.10 The stories of both Messrs Hospmander and Lesines as relayed to parliamentary officers (Watson & Sacsac) are different from what is contained in the written and signed Police statements. However, some of the details or some of the themes were consistent.

5.7.11 On some of the findings being made, the trial Judge found that:

- i) The cheque was given to Salendra on the basis that he was to pay VT1,000,000 for it. There was no other reason for the accused to have given the cheque to him. If they were to only obtain VT500,000 as advanced by them, they would have simply put it in the bank – that which was the obvious easy thing to have been done.
- ii) Both the accused to be party to the giving of the cheque to Salendra. On one story, Hospmander handed it over while the other story had Lesines handing it over. In both stories Mr Lesines was the go between. The trial Judge could not for sure say, upon hearing the evidence and both stories that each of which came from the accused or one of them, who actually handed it over or even if both of them were present at that material time. The trial Judge was however satisfied that Mr Hospmander deliberately gave the cheque to Salendra, either directly or through Mr Lesines knowing who it was that it was given to. The trial Judge was also satisfied that Mr Lesines made the arrangement for its handing over to Salendra and he also gave it directly to Salendra or he arranged for Mr Hospmander to give it over directly.
- iii) They personally intended to keep and share between themselves the extra VT500,000 over and above the face value of the cheque. On Hospmander's story to the parliamentary officers they did get it, or he got it. On their police statements they both say that they were still waiting for it – that which was a possibility because Mr Salendra is without doubt a very dishonest person. Although the trial Judge had to say that it was far more likely that they had received the extra VT500,000 and did not tell the truth about that to the Police, in an effort to lessen their responsibility for what had happened. It was seen as not expedient for the trial Judge to make any finding about whether the extra VT500,000 was actually received but instead was satisfied that it was the deal that they had with Salendra.
- iv) The timing being given in the Police statements was much closer to the correct timing of when they handed the cheque to Salendra – that which was close to 27 June, if not on 27 June. That conclusion was reached by the trial Judge because the altered and forged cheque was

in fact presented at the National Bank on 27 June. The trial Judge was sure that Salendra would have acted very quickly once he got hold of a cheque to forge and that he would not be sitting on it for weeks.

- 5.7.12 The trial Judge then went ahead to consider whether the charge had been proven in the case of each accused. He kept in mind that the onus of proof of the charge and each element of the charge was on the prosecution throughout. The accused gave evidence that did not alter the onus of proof which throughout the case remained on the prosecution. The trial Judge had said that he did not believe the accused's evidence – that which did not mean that they were automatically to be found guilty. The Court had to put aside their evidence and consider on the remainder of the evidence whether the Prosecution had proven the charge.

As the standard of proof in this case as in all criminal cases is beyond reasonable doubt, the trial Judge kept in mind that this was a joint trial where the accused were jointly charged. In this situation the trial Judge had to consider the evidence against each of the accused separately but not that because one was guilty that the other was also to be automatically guilty. That principle was particularly applicable to the out of Court statements of the accused – that which were admissible evidence only in relation to the person who made it.

- 5.8 Turning to the elements of the charge, it is understandable that every

*"criminal charge can be broken into a number of elements, usually two or more, each one of which have to be proven before an accused can be found guilty. In this case Aiding a Forgery, there are three elements that have to be proven. Firstly, that a crime, the crime of forgery, was committed by the principal offender Salendra. Secondly, it must be proven that the accused aided, that is helped and assisted the principal offender Salendra to commit that forgery. They did something to assist it, that has to be proven. Finally it has to be proven that when they did so, they had the knowledge and intention required by the law before they can be found guilty"*¹⁰.

Indeed, the accused did not really dispute the first two elements. They made formal admission that the cheque 2154172 was forged upon getting into possession of Salendra. Also, they acknowledged having each played a part by supplying the cheque to him on which the forgery was carried out, and in that way assisted the forgery. However, both Hopsmander and Lesines denied having any knowledge that Salendra was to dishonestly alter the cheque.

- 5.8.1 The first element was that the crime of forgery, being committed by the principal offender Salendra, was to be proven before the Court could convict. As such, the word 'forgery' as defined by section 139(1)(2) of the Penal Code Act

(1) *"is making a false document knowing it to be false with the intent that it shall in any way be used or acted upon as genuine whether within the Republic or not or that some person shall be induced by the belief that it is genuine to do or refrain from doing anything whether within the Republic or not"*.

(2) *"For the purpose of this section the expression making a false document includes making any material alteration and a genuine document, whether by addition, insertion, obliteration, erasure, removal or otherwise"*.

¹⁰ *Public Prosecutor v Andre Lesiness and Malon Hospmander* [2007] Criminal Case No.77 of 2007 (14 March 2008) 25.

Having defined the word 'forgery' the Court was satisfied that Salendra forged the cheque because:

- The cheque was originally made out to Unua Community for VT500,000. Despite having no right to it and no means of accessing the bank account of Unua Community, it was given to him. That same cheque was later presented at the National Bank showing Sandie Leo as payee and VT11,805,000 as the amount. It was deposited but was immediately withdrawn.
- Having a close look at it with naked eyes, the cheque itself showed visible evidence of erasure particularly where the amount of the cheque is given in words and figures.
- The main inference in those circumstances is the cheque has been altered by erasure of the original payee and amount and insertion of a new payee and a new amount upon coming into Salendra's possession. That very action "*had been done knowingly with intent that it would be acted upon as genuine, as indeed it was. It is also a reasonable and logical inference that the forger was the person the cheque was given to, Salendra*"¹¹.

5.8.2 The second element to be proven was that the accused assisted Salendra Sen Sinha to commit that forgery. The act being relied upon by the prosecution was the supply to him of the cheque – that which was the subject and raw material on which the forgery was carried out. Relying on the reasons as already discussed above, the Court was satisfied that each of the accused took part in the supply of the cheque to Salendra. He could not have forged that cheque unless it was given to him.

5.8.3 The third element to be proven was the legal expression "a guilty mind" meaning that the accused had the required intention and knowledge of what was to occur. And that is exactly what the accused disputed in this case. It was "*necessary to articulate just what knowledge and intention the prosecution must prove in a case like this, when the persons who do something which helps the crime to be committed by someone else, do it before the crime has actually been committed*"¹².

The accused ought to have the intention to hand over the cheque to the forger Salendra. In this case, if they had accidentally given it to him, for sure, they would not be guilty. However, there is no doubt that they intended to supply it to him.

The accused must have some knowledge about what Salendra would do with the cheque. But it was not expedient to prove that both Hopsmander and Lesines knew exactly what would happen. On that issue there is a precedent from the decision of the English Court of Appeal in a case referred to as **R v. Bryce**¹³ in which the Court pronounced that:

In the context of a person charged as an accessory who has rendered assistance prior to the commission of the crime by the perpetrator, the circumstances in respect of which knowledge is sufficient for liability, may go wider than that of the specific

¹¹ *Public Prosecutor v Andre Lesiness and Malon Hopsmander* [2007] Criminal Case No.77 of 2007 (14 March 2008) 27.

¹² *Ibid* 28.

¹³ *R v. Bryce* [2004] EWCA Crim 1231 (18 May 2004) p.11 at <http://www.bailii.org/ew/cases/EWCA/Crim/2004/1231.html>

crime actually committed. This is because it is inappropriate and unworkable to require knowledge of the essential matters constituting the event in a situation where the offence is yet to be committed in the future, or by a person whose precise intention, the accused cannot be certain in advance. It is thus sufficient for the accused to have knowledge of the type of crime in contemplation, thus where a person supplied equipment to be used in the course of committing an offence of a particular type, he is guilty of aiding and abetting the commission of any such offence committed by the person to whom he supplied the equipment, providing th[at] he knows the purpose to which the equipment is to be put or realizes that there is a real possibility that it will be used for that purpose and the equipment is actually used for that purpose.

In the Bryce case the Court of Appeal held that the accused must have intended to assist the principal offender as opposed to intending to prevent or hinder. The motive to help him so that the crime would be committed needed not to be proven as well as their wanting to have the crime occurred. And this is a summary of what needed to be proven in relation to the intent and knowledge of both Hopsmander and Lesines:

- a) That they deliberately took part in supplying the cheque to Salendra, realizing that what they were doing was capable of assisting him to commit the type of offence which he did commit.
- b) That at that time they foresaw that that type of offending by Salendra was a real or substantial risk or a real possibility.
- c) That when they did it, they intended to assist him in what he might do, even though they might not have supplied the cheque for that reason and even if they would have preferred that he did not use it in that way¹⁴.

In that respect the position of each of the accused was not significantly different. It is apparent that Lesines had a closer association with Salendra than Mr Hopsmander. Despite the fact that he had much more to do with Salendra than he acknowledged in Court and that he knew much more about what Salendra's plan than he revealed in Court, hard evidence of that reasoning was lacking. The Court would infer that the accused Lesines would have disseminated what he knew of Salendra to Mr Hopsmander. The Court was further satisfied that the accused knew that the cheque 2154172 would fraudulently be used in order to dishonestly obtain money. Both the accused may not have known exactly what the Indo-Fijian Salendra Sen Sinha would do but they must have known that alteration or forgery of the "*cheque was a real or substantial risk or a real possibility*"¹⁵. They must have known it because of their awareness of the subsequent circumstances:

- i. That Salendra should not have come into possession of the Government cheque if the accused did not give it to him.
- ii. That the cheque was made out to Unua Community and Salendra could not possibly have access to the bank account of Unua Community.
- iii. Knowing that Salendra was not from Vanuatu and did not have a legitimate business undertaking here, it is suspected that they may have known more about Salendra but this lacks hard evidence.
- iv. The accused knew perfectly that their transactional actions of selling the cheque made out to Unua Community for double its face value

¹⁴ *Public Prosecutor v Andre Lesiness and Malon Hopsmander* [2007] Criminal Case No.77 of 2007 (14 March 2008) 30.

¹⁵ *Ibid* 31.

outside of official hours in a bar – thus pocketing themselves the difference, were dishonest.

- v. They knew that Salendra agreed to pay them double the face value of the cheque that was VT500,000 – that which was a large amount of money. The payment of the sum could only be done if Salendra had to use the cheque so as to obtain an even greater amount of money for himself.

They knew exactly that there was no way a cheque of VT500,000 could be used to obtain VT1,000,000 or more except by tampering with it in a dishonest or illegal manner, for instance “forgery was a real possibility and even a probability in the circumstances”¹⁶. The Court was also satisfied that upon handing the cheque over to him they knowingly intended to assist him in using it fraudulently and in order to obtain money dishonestly. On this issue the trial judge elaborated as such:

“Their motive was of course the extra VT500,000 and they probably did not care what Salendra did with the cheque once they got their money. But nevertheless in legal terms they have intention of assisting him. They certainly did not give him the cheque with any other intention. So I find the third element, the guilty mind, proven in respect of both accused and they are convicted of the charge Count 1”¹⁷.

- 5.9 On 14.March 2008, both Malon Hospmander and Andre Lesines were convicted in the Supreme Court in Vila for aiding forgery. Attached as **Appendix H** is copy of the Supreme Court judgement.

- 5.10 As a result of their fraudulent action the Government of the Republic of Vanuatu lost an amount of eleven million three hundred and five thousand (VT11,305,000) vatu.

6. PUBLIC REPORT

- 6.1 This public report is prepared and issued on the basis of the rendered Supreme Court judgement of the Criminal Case No.77 of 2007 dated 14 March 2008.

7. FINDINGS

- 7.1 **Finding 1: Former Member of Parliament Honourable MALON HOSPMANDER and First Political Advisor ANDRE LESINES as leaders pursuant to Article 67 of the Constitution and section 5(d) of the Leadership Code Act No.2 of 1998 respectively were in breach of section 27 of the Leadership Code Act.**

Section 27 of the Leadership Code Act No.2 of 1998 provides that:

A leader who is convicted by a court of an offence under the Penal Code Act CAP 135 and is listed in subsection 2 is (a) in breach of this Code; and (b) liable to be dealt with in accordance with section 41 and 42 in addition to any other punishment that may be imposed under any other Act.

¹⁶ *Public Prosecutor v Andre Lesiness and Malon Hospmander* [2007] Criminal Case No.77 of 2007 (14 March 2008) 32

¹⁷ *Ibid.*

Indeed, on 14 March 2008 both Honourable MP Malon Hospmander for Malekula constituency and Mr Andre Lesines were convicted of the charge of aiding forgery between 1 June 2007 and 27 June 2007 (**APPENDIX H**).

Mr Andre Lesines was a political associate of MP Hospmander and was at that time Chairman of the Regional Co-ordinators of the People's Progressive Party (PPP), the party which MP Hospmander represented.

The accused did an act which assisted an Indo-Fijian man by the name of Salendra Sen Sinha to commit forgery. The act being relied upon by the prosecution was the supply to him (Salendra Sen Sinha) of the cheque number 2154172 which was the subject of forgery – the supply of the very raw material on which forgery was carried out, and in that way assisted the forgery. Of course, the Indo-Fijian man could not have forged that cheque unless it was given to him. And as such, both leaders Honourable Malon Hospmander and Mr Andre Lesines have breached section 27 of the Leadership Code Act No.2 of 1998 – that which was subsequently conducive to their conviction at the Vanuatu Supreme Court on 14 March 2008.

- 7.2 Finding 2: Former Member of Parliament Honourable MALON HOSPMANDER and First Political Advisor ANDRE LESINES were not only in breach of section 27 of the Leadership Code Act but were also liable to be dealt with in accordance with section 41 and 42 in addition to any other punishment that may be imposed under any other Act.**

As Honourable Hospmander and Lesines were convicted by the Supreme Court in the Civil Case No.77 of 2007 on 14 March 2008 on the charge of aiding forgery and theft to subsequently take place, they should be dealt with in accordance with sections 41 and 42 of the Leadership Code Act – the very provisions which provide that where a leader is dismissed from office under section 41 the leader is disqualified from standing for election as, or being appointed as a leader of any kind for a period of 10 years from the date of conviction.

- 7.3 Finding 3: Salendra Sen Sinha has breached section 30 of the Leadership Code Act No.2 of 1998 by engaging himself in the act of forgery - the very conduct that is prohibited under both sections 27(2)(t) of the Leadership Code Act and 140 of the Penal Code Act [CAP135].**

Pursuant to section 139 of the Penal Code Act forgery as an offence is defined as '*making a false document knowing it to be false*' or '*uttering forged documents*'. The expression '*making a false document*' "*includes making any material alteration in a genuine document whether by addition, insertion, obliteration, erasure, removal or otherwise*".

By making use of his allocation fund of VT2,000,000 per annum Mr Hospmander applied for VT500,000 on behalf of Unua Community and a Government cheque number 2154172 as drawn on the Reserve Bank was produced. It was made out to the Unua Community as payee having a bank account at the National Bank of Vanuatu (NBV) and was for the sum of

VT500,000. That cheque was not banked in the respective account but was instead given to an Indo-Fijian man (Salendra Sen Sinha). On 27 June 2007 the cheque was presented at NBV in Port Vila and was deposited into the account of one Sandy Leo as payee. In fact, the amount of the cheque had been altered to VT11,805,000 by Salendra Sen Sinha and virtually the whole amount was withdrawn within a very short time. As such, Mr Salendra Sen Sinha has not only breached section 30 of the Leadership Code Act by making a false document or committing forgery but has also breached section 27(2)(t) of the Leadership Code Act and section 140 of the Penal Code Act.

Despite having such breaches, Mr Salendra Sen Sinha cannot be and will never be extradited from Fiji to Vanuatu to face judicial charges as section 56(1)(3)(b) of the Extradition Act [CAP] is defective. Section 56(1) provides that a person surrendered to Vanuatu must only be detained or tried in Vanuatu for an offence for which he/she was surrendered. Furthermore, subsection (3)(b) of the same Act provides that subsections (1) and (2) do not apply if the person has left, or has had the opportunity of leaving Vanuatu. As such and since Mr Salendra Sen Sinha did manage to make his way out of the country avoiding police security, Mr Salendra Sen Sinha is now a free man according to section 56(3)(b) of the Extradition Act.

7.4 Finding 4: Section 56(3) of the Extradition Act [CAP287] is defective.

Pursuant to section 56 of the Extradition Act [CAP287]

- "(1) A person surrendered to Vanuatu must not be detained or tried in Vanuatu for an offence that is alleged to have been committed, or was committed, before the person was surrendered, other than (a) an offence for which the person was surrendered; or (b) another offence (for which the penalty is the same or less) of which the person could be convicted on proof of the conduct constituting the extradition offence; or (c) another offence for which the surrendering country consents to the person being detained or tried.
- (2) A person surrendered to Vanuatu must not be detained in Vanuatu for surrender to a third country for trial or punishment for an offence that is alleged to have been committed, or was committed, before the person was surrendered to Vanuatu.

However, the above subsections are not applicable as provided in subsection (3) of the Act which states that

- (3) Subsection (1) and (2) do not apply if:
 - (a) the country surrendering the person to Vanuatu consents to the person to be so detained, and tried or surrendered; or
 - (b) the person has left, or has had the opportunity of leaving Vanuatu.

In fact, while considering the case of Mr Salendra Sen Sinha, he has left or has had the opportunity of leaving Vanuatu. Thus, Mr Salendra Sen Sinha is now a free man – that which is, indeed, in contravention to the spirit and purpose of this Act. As such, section 56(3) of the Extradition Act is defective.

- 7.5 **Finding 5:** Mr Sandie Leo was in breach of section 30 of the Leadership Code Act by allowing the cheque number 2154172 amounting to VT11,805,000 to be deposited in his bank account by Mr Salendra Sen Sinha at the National Bank of Vanuatu and was withdrawn within a very short time afterwards.

Pursuant to Section 30(1) of the Leadership Code Act it is provided that "*A person other than a leader who: (a) takes part in conduct [forgery] that is in breach of this Code is guilty of a breach of this Code*".

On 27 June 2007 Mr Sandie Leo aided the Indo-Fijian Salendra Sen Sinha to commit the act of forgery by allowing him (Salendra) to deposit the cheque number 2154172 amounting to VT11,305,000 and to withdraw it once again from this NBV account within a short time.

8. RECOMMENDATIONS

- 8.1 **Recommendation 1:** The Ombudsman recommends that the Public Prosecutor lays charges against Malon Hospmander and Andre Lesines for breach of section 27 of the Leadership Code Act No.2 of 1998.
- 8.2 **Recommendation 2:** Having breached section 27 of the Leadership Code Act No.2 of 1998, the Ombudsman recommends that both convicted leaders (Malon Hospmander and Lesines) be dealt with in accordance with sections 41 and 42 of the Leadership Code Act No.2 of 1998. In fact, section 42 of the Leadership Code Act provides that "*Where a leader is dismissed from office under section 41 the leader is disqualified from standing for election as, or being appointed as, a leader of any kind for a period of 10 years from the date of the conviction*".
- 8.3 **Recommendation 3:** The Ombudsman recommends that the Public Prosecutor lay charges against Mr Sandie Leo for breach of section 30 of the Leadership Code Act No.2 of 1998 for assisting the forgery of the cheque number 2154172 to be deposited in his bank account at the Vanuatu National Bank and withdrawn within a short time. Indeed, section 30(1) of the Leadership Code Act provides that a "*person other than a leader who: (a) takes part in a conduct that is a breach of this Code is guilty of a breach of this Code*".

- 8.4 **Recommendation 4:** In conjunction with the State Law Office, the Ministry of Foreign Affairs may consider:
- (a) the presentation of a bill to Parliament for an amendment of section 56(3) of the Extradition Act – that which is in contravention to the purpose and spirit of the Act.
 - (b) the ratification of the United Nations Convention Against Corruption whose Article 44 provides for extradition on the basis of further consultation and exchange of information relevant to the allegation or criminal offence. Only then will it be possible to extradite any person such as Mr Salendra Sen Sinha to face trial in Vanuatu for committing forgery with the assistance of both Malon Hospmander and Andre Lesines.

Dated this 15th day of October 2010



Pasa TOSUSU
OMBUDSMAN OF THE REPUBLIC OF VANUATU

9. INDEX OF APPENDICES

- A. Relevant laws
- B. Andre Lesines' copy of the contract of employment.
- C. Copy of the charges being laid by the Public Prosecutor.
- D. Electoral Commission's declaration of the winners at the national election.
- E. Copy of the micro project application
- F. Copy of the Local Purchase Order (LPO)
- G. Copy of the application of parliamentary disciplinary action and copy of parliamentary debate on the matter – that which was conducive to Hospmader's suspension from Parliament
- H. Supreme Court Judgment: Public Prosecutor v Andre Lesines and Malon Hospmader [2007] in Criminal Case No. 77 of 2007 (14 March 2008).

APPENDIX A

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—
- place himself in a position in which he has or could have a conflict of interests or in which the fair exercise of his public or official duties might be compromised;
 - demean his office or position;
 - allow his integrity to be called into question; or
 - 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 and other Ministers, 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

5. LEADERS

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

- members of the National Council of Chiefs;
- elected and nominated members of local government councils;
- elected and nominated members of municipal councils;
- political advisors to a Minister;
- directors-general of ministries and directors of departments;
- members and the chief executive officers (however described) of the boards and statutory authorities;
- chief executive officers or secretaries-general of local government;
- the town clerks (or their equivalent in name) of municipal councils;
- persons who are:
 - directors of companies or other bodies corporate wholly owned by the Government; and
 - appointed as directors by the Government;
- the Attorney General;
- the Commissioner and Deputy Commissioner of Police;
- the Solicitor General;
- the Public Prosecutor;
- the Public Solicitor;
- the Ombudsman;
- the Clerk of the Parliament;
- the Principal Electoral Officer;
- the Auditor-General;
- the Chairperson of the Public Accounts Committee;
- the Chairperson when acting in that capacity of the Tenders Board;
- members of the Public Service Commission;

- (v) members of the Teaching Service Commission;
- (w) members of the Police Service Commission;
- (x) members of the Electoral Commission;
- (y) the Commander of the Vanuatu Mobile Forces.

OTHER OFFENCES PUNISHABLE UNDER THIS ACT

27. (1) A leader who is convicted by a court of an offence under the Penal Code Act CAP 135 and is listed in subsection 2 is:

(a) in breach of this Code; and

(b) liable to be dealt with in accordance with section 41 and 42 in addition to any other punishment that may be imposed under any other Act.

(2) The offences are:

- (a) intentional homicide
- (b) intentional assault causing death or of permanent nature
- (c) rape or attempted rape
- (d) abduction
- (e) incest
- (f) sexual intercourse with girl under care
- (g) indecent assault
- (h) a serious intentional assault
- (i) perjury
- (j) making false statement
- (k) fabricating or destroying evidence
- (l) conspiracy to defeat justice
- (m) corruption and bribery of officials
- (n) theft or misappropriation or false pretences
- (o) fraud or fraudulently obtaining credit
- (p) receiving property dishonestly obtained
- (q) demanding with menaces
- (r) robbery
- (s) extortion
- (t) forgery or uttering forged documents
- (u) unlawful discrimination
- (v) unlawful entering
- (w) any offences under the Representation of the People's Act CAP 146
- (x) attempting to commit any of these offences

(3) This section does not limit the power of the court to deal with any person under any other Act.

OFFENCES BY OTHER PERSONS

30 (1) A person other than a leader who:

- (a) takes part in conduct that is a breach of this Code; or
 - (b) obtains a benefit, directly or indirectly from an act or omission that is a breach of this Code;
- is guilty of a breach of this Code.

(2) A person other than a leader must not exercise undue influence over or in any other way bring pressure to bear on a leader, so as to influence, or attempt to influence, the leader to act in a way that is in breach of this Code.

(3) A person who is found guilty of a breach under this section is liable, on conviction, to a penalty of:

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

(4) If a person obtains a benefit as a result of acting in breach of this section, the court may make an order that the benefit be recovered in accordance with section 45 or 46.

DISMISSAL FROM OFFICE

(1) Where a leader is convicted of a breach of this Code the court may, if it regards the breach as serious, make an order dismissing the leader from office.

(2) In determining whether the breach of this code is serious, the court may have regard to:

- (a) in the case of a breach involving a financial matter, the amount involved;
- (b) whether the conduct of the leader was significantly below what would be expected of a leader;
- (c) where it is possible to discern, the motives of the leader;
- (d) the extent to which the breach diminished the respect or public confidence in the leader's position; and
- (e) whether the leader has been previously convicted of a breach of this Code.

DISQUALIFICATION FROM FUTURE OFFICE

42 Where the leader is dismissed from office under section 41 the leader is disqualified from standing for election as, or being appointed as, a leader of any kind for a period of 10 years from the date of the conviction.

PENAL CODE ACT CAP 135

COMPLICITY

30 Any person who aids, counsels or procures the commission of a criminal offence shall be guilty as an accomplice and may be charged and convicted as a principle offender.

FORGERY DEFINED

139 (1) Forgery is making a false document knowing it to be false, with intent that it shall in any way be used or acted upon as genuine, whether within the republic or not, or that some person shall be induced by the belief that it is genuine to do or refrain from doing anything, whether within the republic or not.

(2) For the purpose of this section, the expression "making a false document" includes making any material alteration in a genuine document whether by addition, insertion, obliteration, erasure, removal, or otherwise.

(3) For the purpose of this section the expression "false document" means any document-

- (a) of which the whole or any material part purports to be made by any person who did not make it or authorise its making;
- (b) of which the whole or any part purports to be made on behalf of any person who did not authorise its making;
- (c) in which though it purports to be made by the person who did in fact make it or authorise its making, or purports to be made on behalf of the person who did in fact authorise its making, the time or place of its making, whether either is material, or any number or distinguishing mark identifying the document whether either is material is falsely stated;
- (d) of which the whole or some material part purports to be made by a fictitious or deceased person, or purports to be made on behalf of any such person, or which is made in the name of an existing person either by him or by his authority with intention that it should pass as

- being by some person, real or fictitious, other than the person who makes or authorises it.
- (4) It is immaterial in what language a document is expressed or in what country or place and whether within or beyond the republic it is expressed to take effect.
- (5) The crossing of any cheque, banker's draft, post office money order, postal order or other document the crossing of which is authorised or recognised by law is a material part of such document

FORGERY

140 No person shall commit forgery.

Penalty: Imprisonment for 10 years

EXTRADITION ACT [CAP287]

56. Treatment of persons surrendered to Vanuatu

- (1) A person surrendered to Vanuatu must not be detained or tried in Vanuatu for an offence that is alleged to have been committed, or was committed, before the person was surrendered, other than:
- (a) an offence for which the person was surrendered; or
- (b) another offence (for which the penalty is the same or less) of which the person could be convicted on proof of the conduct constituting the extradition offence; or
- (c) another offence for which the surrendering country consents to the person being detained or tried.

- (2) A person surrendered to Vanuatu must not be detained in Vanuatu for surrender to a third country for trial or punishment for an offence that is alleged to have been committed, or was committed, before the person was surrendered to Vanuatu.

- (3) Subsection (1) and (2) do not apply if:

- (a) the country that surrendered the person to Vanuatu consents to the person being so detained, and tried or surrendered; or
- (b) the person has left, or has had the opportunity of leaving, Vanuatu.

EMPLOYMENT AGREEMENTFORMINISTERIAL SUPPORT STAFF

Ministry of FOREIGN AFFAIRS.

AN AGREEMENT made the...22...day of...January...2007

BETWEEN: The Hon SATO KILMAN, Minister of FOREIGN AFFAIRS of the Government of the Republic of Vanuatu, care of the Ministry of FOREIGN AFFAIRS PMB 9051 Port Vila, Republic of Vanuatu (hereinafter called "the Employer");

AND: ANDRE LESINES, care of the Ministry of FOREIGN AFFAIRS, PMB 9051, Port Vila, Republic of Vanuatu (hereinafter called "the Employee")

WHEREAS:

- A. The Employer wishes to employ the Employee as the Minister's FIRST POLITICAL ADVISOR, Ministry of FOREIGN AFFAIRS (hereinafter called "the Ministry");
- B. The Employee is desirous of obtaining employment in the Ministry as the FIRST 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 Ministry as the FIRST POLITICAL ADVISOR to the Minister for a period commencing from the 1st day of January...2007.
- 1.2 This Agreement shall continue until terminated under clause 5.1 or 5.2.

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 Ministerial 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 FIRST 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 Ministerial 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 FIRST POLITICAL ADVISOR in the Ministry, 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 Ministerial 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 Ministerial 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 periods 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;
 - (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 Ministry 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 decision or matter decided or attended to by the Ministry or received by the Ministry, which



may come to his knowledge in the course of his employment by the Employer as the FIRST 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 sick leave exceeding 21 days, such number of days taken in excess of the 21 days shall be taken as leave without pay.

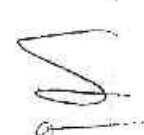
4.3 No sick leave is valid unless it is supported by a medical certificate issued by a registered and duly qualified medical practitioner.

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;

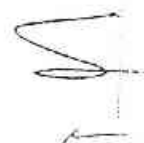
- (c) If the Employee persistently and willfully disobeys, disregards, neglects or refuses to carry out any lawful instructions or directions of the Employer, the employment may at the option of the Employer be terminated forthwith without notice or payment in lieu of notice or severance allowance;
- (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 Minister of the State for the Ministry of FOREIGN AFFAIRS or,
- (b) The present Prime Minister ceases to hold office; or
- (c) The Ministerial 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 5.1 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.

