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

Civil Case No. 71 of 2011

**BETWEEN: THE COMMISSIONER OF POLICE**
Claimant

**AND: THE JUDICIAL SERVICE COMMISSION**
First Defendant

**AND: HON. MINISTER OF JUSTICE**
Second Defendant

**AND: REPUBLIC OF VANUATU**
Third Defendant

***Coram:*** *Justice D. V. Fatiaki*

***Counsels:*** *Mr. S. Stephens for the Claimant/Respondent*
*Mrs. V. M. Trief for the Defendants/Applicants*

***Date of Decision:*** *18 May 2012*

# DECISION

1. At the outset although there has been no real objection taken to the parties or defendants named in the claim for judicial review this Court has had some considerable difficulty in understanding why the particular defendant(s) have been named.

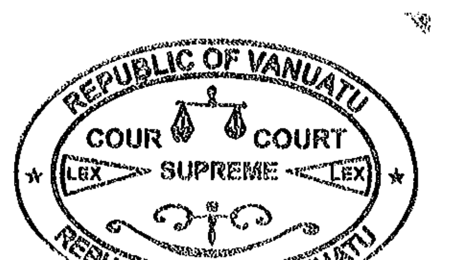
2. In this latter regard **Section 5 (2)** of the **Government Proceedings Act** relevantly provides:

   "*(2) A proceeding instituted under Section 3 and being a proceeding by way of judicial review must include as defendants only:*

   *(a) the person who appears to be most directly responsible for the matter giving rise to the proceeding, by the persons designation, and, where such person is an individual, also by his or her name;"*

   (my underlining)

3. This direction is further reinforced by the provisions of **Rule 17.4** of the **Civil Procedure Rules of 2002 (CPR)** of which **subrule (2) (b)** states:



"*(2) The claim <u>must name as defendant</u>:*

*(b) for an order about a decision, <u>the person who made ... the decision</u>;*"

(my underlining)

4. Clearly the Coroner in the Inquest into the death of **John Bule** namely, **Justice Nevin Dawson** is the most obvious defendant to the claim for judicial review, just as, the claimant Commissioner of Police **Joshua Bong** is a potentially aggrieved party who claims to be adversely affected by the findings and comments made in the Coroner's Report.

5. The "*Minister of Justice*" may have been named because of his appointment of a Commission of Inquiry, but, in the absence of any orders being sought against the establishment of the Commission of Inquiry, and given the clear terms of the proviso to **Section 1** of the **Commissions of Inquiry Act [CAP. 85]**, there is no longer any need for the Minister to continue to be a defendant in the present proceedings.

6. The reason for naming, the "*Judicial Services Commission*" established under **Article 49** of the **Constitution** completely escapes me and, subject to counsel's clarification, I propose to remove it from being a defendant.

7. The inclusion of the "*Republic of Vanuatu*" is perhaps understandable on the basis that this is a civil proceeding in which the Government may be interested not only, in representing the Coroner who is no longer in the country, but also in the eventual outcome of these proceedings given Government's publicly announced commitment to implementing the Report.

8. In light of the foregoing the parties to this claim are amended as follows:

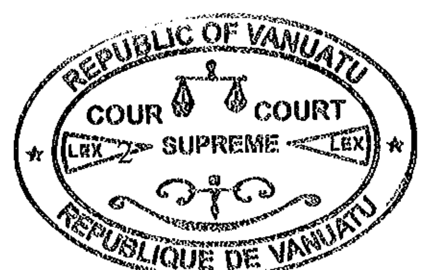
   (a) The **Judicial Service Commission JSC** and the **Minister of Justice** are removed as defendants;

   (b) The Coroner in the Inquest into the death of John Bule **Justice Nevin Dawson** is substituted as the First Defendant;

9. So much then for those preliminary matters of form, I now set out a brief chronology of the events and matters giving rise to this claim for judicial review.

- <u>24 February 2009</u> **John Bule** a prisoner at the ex-British prison escaped from lawful custody;

- <u>29 March 2009</u> **John Bule** was recaptured at about 12pm and escorted to **VMF camp** at **Cook Barracks** for interrogation;



- 29 March 2009 at about 1.30pm **John Bule** was driven to the **Vila Central Hospital** and admitted into intensive care;

- 29 March 2009 **John Bule** was pronounced dead at about 4.50pm;

- April 2009 the **Minister of Internal Affairs** appointed a **Commission of Inquiry** into the circumstances surrounding the death of **John Bule**;

- 23 April 2009 at the request of the **Public Prosecutor** Justice Dawson was appointed a coroner with effect from 31 March 2009 to hold an inquest into the death of John Bule;

- 1 October 2009 the Claimant was appointed **Commissioner of Police**;

- 23 November 2009 the Coroner's inquest begins;

- 17 December 2009 the taking of evidence before the Coroner was concluded;

- 4 March 2010 the Coroner published his report and copies were forwarded to all interested parties including members of the public, the media and the Ministry of Justice.

  In this regard **Section 224 (7)** of the **Criminal Procedure code** requires the Coroner to forward his report and any further information bearing on the case "*to the Public Prosecutor*". No one else is named as entitled to a copy of the Coroner's report.

- 30 March 2010 Claimant's counsel wrote to the **Chief Registrar** of the Supreme Court requesting "*the Coroner's transcript of evidence including audio tape-recording of every witness who were summoned to give evidence at the Inquest*".

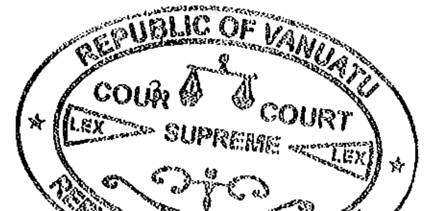
- November 2010 the **Chief Registrar** indicated to the claimant that tape recordings of the inquest were finally ready and available for inspection;

- 20 April 2011 the **Minister of Justice** appointed a **Commission of Inquiry** to investigate and ensure the full implementation of the Coroner's Report recommendations;

- 21 April 2011 a police officer collected **52** audio tape recordings of the Coroner's inquest from the Supreme Court registry;

- 26 April 2011 Claimant issued an **Application for Judicial Review** of the Coroner's Report together with an application for leave for extension of time pursuant to **Rule 17.5 (2)** of the **Civil Procedure Rules** supported by two sworn statements;

- 20 May 2011 Claimant filed a sworn statement outlining the difficulties it had in obtaining the transcript and audio recordings of the Inquest proceedings;



- 24 June 2011 Claimant filed a formal application for leave to extend the time for applying for judicial review;

- 27 June 2011 Claimant filed a further sworn statement in support of the application for extension of time;

- 29 June 2011 the respondent filed a defence to the substantive claim for judicial review and a response opposing the extension of time;

- 24 August 2011 the **Minister of Justice** filed a sworn statement confirming the appointment of a **Commission of Inquiry** "*to investigate and ensure the full implementation of the Coroner's Report*";

  Why a further **Commission of Inquiry** was considered necessary is unclear but, in any event, its authority was immediately terminated upon the commencement of the Claimant's claim for judicial review of the Coroner's Report. (***see***: the *proviso* to **Section 1** of the **Commission of Inquiry Act** [CAP. 85]).

- 5 September 2011 counsel representing the Coroner filed an application to strike out both the application for extension of time and the application for judicial review together with written submissions;

- 8 September 2011 the **Chief Registrar** of the Supreme Court filed a sworn statement confirming that "*... it took the court registry more than 8 months to complete the tape recording* (of the Inquest proceedings) *which explains the delay in their availability*";

- 19 September 2011 and 30 September 2011 Claimant filed written submissions responding to the strike-out application;

- 3 October 2011 the proceedings were adjourned for ruling on the strike out and the Claimant's application for an extension of time.

10. Although **Rule 17.5** chronologically occurs before **Rule 17.8** for convenience state counsel's submissions addressed, the **four (4)** matters under **Rule 17.8 (3)** of the **CPR** of which a judge needs to be satisfied if a claim for judicial review is to proceed to a hearing. These are:

    (a) Whether the claimant has an arguable case;

    (b) Whether the claimant is directly affected by the decision;

    (c) Whether there has been undue delay in filing the claim for judicial review; and

    (d) Whether there is another remedy that would resolve the matter fully and directly.

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- As to **(a)** state counsel submits that the claimant has **no** standing to pursue this claim given that the claimant is an employee of the Government pursuant to **Article 57** of the **Constitution** and, presumably, it would be incongruous for one arm of government to sue another arm of government;

- As to **(b)** counsel's simple submission is that the claimant is **not** "*affected*" by the Coroner's report **but** by the decision of the Minister to appoint a Commission of Inquiry to investigate and implement the Report. Why the mere appointment of a Commission of Inquiry should "*affect*" the claimant as opposed to the Coroner's clear findings and comments in his Inquest Report is unclear, but, in any event, I disagree with the submission;

- As to **(c)** the claim for judicial review was filed 13 months after the expiry of the 6 months time limit provided in **Rule 17.5** and this constitutes "*undue delay*" for the filing of a claim for judicial review;

- Finally as to **(d)** relying on dicta in the Supreme Court decision in **Vanuatu Maritime Authority v. Athy** Civil Case 17 of 2006 (*per* **Treston J.**) counsel submits, without elaboration, that there is "*another remedy*" to resolve the matter fully and directly within the government itself.

11. The claimant's response is equally brief and may be summarized as follows:

- As to **(a)** and **(b)** the claimant submits that he is clearly "*affected*" by the Coroner's Report in his official capacity and, whatsmore, the Report is biased and incomplete in that it contains materials not volunteered by the witnesses at the Inquest or omits relevant materials that were produced at the Inquest;

- The claimant also submits that the relevant **Civil Procedure Rules** do **not** exclude his claim and the idea that a claimant for judicial review cannot be both a claimant and a defendant in the same proceeding "*is a foreign precedent which is only persuasive*" (whatever that may mean);

- As to **(c)** the claimant counters that he is "*only seven (7) months late in filing the claim*" and the claimant submits that "*substantial justice requires that the claimant be granted extension of time to file the claim for judicial review. It is not just to penalize the claimant on a biased and incomplete report*";

- Finally as to **(d)** the claimant submits that the issues proposed to be raised in the claim for judicial review concerns matters of bias and the incompleteness of the Coroner's Report which are **not** an internal matter of Government which can be dealt with by other means except by recourse to the Courts.

12. On 20 January 2012 at a conference in chambers, counsels for the parties were advised that the Court, after considering the papers filed in the proceeding and counsel's written submissions, was satisfied that the claim should proceed to a hearing and leave was granted to the parties to file and serve additional sworn

statements relating to the substantive grounds asserted in the claim and the response filed in opposition.

13. The defendants then produced a large pink folder containing a typed transcript of the inquest proceedings <u>and</u> two ring binder volumes of attachments to a further sworn statement of the Chief Registrar. Supplementary submissions were also received from the parties on 24 February 2012 (the claimant) and 6 March 2012 (state counsel).

14. On 3rd April 2012 at the request of the parties final submissions were ordered to be filed by 13 April 2012. These were eventually filed in May 2012 and adds little to the earlier submissions of counsels.

15. I propose to determine this application on the basis of the written submissions and sworn statements filed in the absence of any cross-examination or a formal hearing which was not required by the parties. Additionally and for convenience, I propose to adopt as subheadings (with slight amendment) the four (4) matters set out in **Rule 17.8 (3)** of the **Civil Procedure Rules**.

16. Six (6) sworn statements were filed in support of the application for judicial review as follows:

- **<u>Joshua Bong</u>** (Commissioner of Police) who filed two sworn statements dated 26 April 2011 and 27 June 2011;

- **<u>Jesse Temar</u>** who filed two statements dated 26 April 2011 and 20 May 2011;

- **<u>Terry Tulang</u>** who filed a statement dated 7 May 2011;

- **<u>Fred Roy Seule</u>** who filed a statement dated 26 April 2011.

17. For the defendants the Court received sworn statements from:

- **<u>John Obed Alilee</u>** (Chief Registrar) who filed two statements dated 6 September 2011 and 14 February 2012;

- **<u>Hon. Ralph Regenvanu</u>** (then Minister for Justice) who filed a statement dated 24 August 2011; <u>and</u>

- **<u>Eric Molbaleh</u>** (counsel assisting the Coronial Inquest) who provided a statement dated 10 February 2012.

**(c) <u>WHETHER THERE HAS BEEN UNDUE DELAY IN FILING THE CLAIM FOR JUDICIAL REVIEW AND WHETHER AN EXTENSION OF TIME SHOULD BE GRANTED?</u>**

18. In this claim for judicial review the claimant seeks various quashing orders relating to the Coroner's Report on the Inquest held to establish the cause of

death of John Bule. The various grounds which are drafted as lengthy narratives includes complaints about:

- The Coroner dwelling on irrelevant issues;

- The validity of the Coroner's retrospective appointment;

- The Coroner considering extraneous matters and evidence **not** produced at the inquest;

- Various breaches of the applicable provisions of the **Criminal Procedure Code**;

- The Coroner omitting to refer to certain relevant evidence led at the inquest;

- The Coroner's comments, findings, and recommendations on ancillary issues that were outside a Coroner's jurisdiction and powers, and, in circumstances indicating bias and involving unfairness and breaches of the rules of natural justice;

- The Coroner making findings that were **not** supported by the evidence.

In summary, the claimant seeks an order "*quashing the entire Coroner's Report in respect of the Inquest into the cause of death of John Bule dated 4 March 2010 ...*".

19. A consideration of the claimant's sworn statements and the nature of the complaints or grounds for seeking the quashing orders demonstrates the vital importance to the claimant in the first place, of receiving **both** the written transcript as well as the original audio recordings of the inquest proceedings.

20. I am mindful that despite the Coroner's contrary indications of readiness in the concluding paragraph of the Report, it took the Supreme Court **eight (8)** months to transcribe and compile the audio tapes of the Inquest proceedings into a form that they were ready for inspection by the claimant who still maintains that the audio tapes are inaudible in parts and, in other parts, appear to have been tampered with. Furthermore, twelve (12) months expired before the **Minister of Justice** took any steps with a view to implementing the recommendations in the Coroner's Report.

21. In such circumstances, although the claimant's application for judicial review was made well outside the 6 months period provided in **Rule 17.5 (1) CPR**, nevertheless, I am satisfied that substantial justice requires that an extension should be granted to the claimant in this instance and I so order in disposing of matter **(c)** above.

22. Needless to say, any further delay in the Report's implementation that may be caused by these proceedings is, in my view, of minimal prejudice to the

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respondents in so far as it is as much in their interests, that any legal challenge or doubts as to the completeness and lawfulness of the Coroner's Report should be first eliminated before full implementation of the Report occurs.

23. As was said in the joint judgment of **Richardson P, Henry and Keith JJ** in **Peters v. Davison** [1999] 2 NZLR 164 (Part 2) (looseleaf volumes) at p. 190:

> "*There are however, situations in which a declaration that an error of law has been made in the commissions final report does have real value. First the Minister and others involved in setting up the inquiry and in considering how to respond to the resulting report are informed by the Court judgment of that defect – as are the public at large. Such a Court ruling is of real practical value. To repeat, there will in general be a strong public interest in ensuring the correctness of determinations of law in the report of a commission of inquiry. Second where a court rules that a commission has made a material error of law which damages reputation the plaintiff gain the significant comfort of a ruling that the findings damming them are based on an error of law. In such cases the court is not embarking upon a hypothetical exercise, rather judicial review is appropriate because its declarations will serve some useful purpose in protecting a private or public interest.*"

(my underlining)

24. Having said that, there are numerous unchallenged recommendations in the Coroner's Report that could be implemented without prejudicing or affecting the outcome of the present proceedings, such as, the recommended adoption of electronic means of recording police interviews and reviewing the legislation governing the holding of inquests to give but two examples.

25. I turn next to consider matters **(a)**, **(b)** and **(d)** above and I propose to deal with **(a)** and **(b)** together for convenience and because of the inevitable relationship between them.

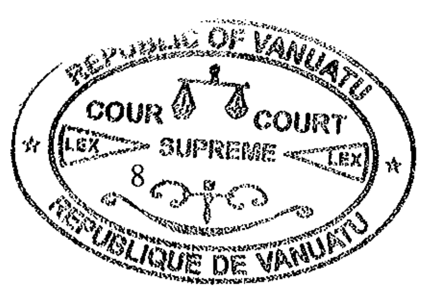
**(a) WHETHER THE CLAIMANT HAS AN ARGUABLE CASE; and**

**(b) WHETHER THE CLAIMANT IS AFFECTED BY THE DECISION**

26. The **Criminal Procedure Code** ('CPC') which contains the only legislative provisions dealing with the appointment of a coroner and the holding of an inquest relevantly provides:

> "***225.*** *When the coroner has heard the evidence tendered by or on behalf of the Public Prosecutor, he shall give his findings as to the cause of death*"

(my underlining)



It is significant that the evidence tendered at an inquest is expressed to be "*... by or on behalf of the Public Prosecutor*". This is entirely consistent with the scheme envisaged in **Section 224** especially subsections **(7)** and **(8)** read with S**ections 225** and **227** and has a limiting or dampening effect on the otherwise wide powers of a coroner to summon witnesses before the inquest as well as the nature of the evidence to which he shall have regard in reaching his findings. It also qualifies the level of control the coroner has over the inquest and the nature of the assistance that he may command or be provided with in terms of legal counsel.

27. In short, the **Public Prosecutor** is the initiating officer for a coronial inquest, has carriage or control of the evidence led before the inquest, and receives the coroner's report of his findings. The **CPC** also provides:

> "***226.*** *The coroner shall <u>not express an opinion</u> as to the guilt or innocence or otherwise <u>of any person who may have been called to give evidence at the inquest</u>, even if that person has not volunteered to give evidence therein.*"
>
> (my underlining)

28. This statutory prohibition is clearly directed at ensuring that the Coroner's Report or record of findings does **<u>not</u>** prejudice any possible accused by adverse pre-trial findings and is plainly fortified by considerations of fairness.

29. The use of the phrase "*or otherwise*" also serves to widen the section's ambit to encompass more than a coroner's opinion of guilt or innocence and extends to recommendations and criticisms of any witness summoned to attend the inquest.

30. I can sympathize with the Coroner's view about the inadequacy of the legislative provisions dealing with coronial inquests and would fully support his recommendations in that regard, but, until amending legislation is passed, Coroners must continue to closely adhere to the existing provisions of the **Criminal Procedure Code** however archaic and inadequate they may appear to be.

31. In this regard too the common law is also a valuable source as to the nature, and function of the ancient office of Coroner. For instance, although there is no clear statutory basis for the making of recommendations in a coroners report beyond his findings of the "*... cause of death and the circumstances connected therewith*", at common law, a coroner could add a rider or recommendation, at the time the findings are made or reported, if their nature was concerned with avoiding repetition of a like event or circumstance, albeit, that they formed no part of the findings and have no legal effect whatsoever [*<u>per</u>* **Darling J.** in **R. v. Harding** (1908) Criminal Appeal Rep. 219].

32. Plainly, a coroner conducting an inquest in accordance with the provisions of the **Criminal Procedure Code** is exercising a public statutory function and any determinations, actions, findings and recommendations made in the course of

and at the conclusion of the inquest constitutes "*decisions*" within the definition of the term in **Part 17** of the **CPR** which deals generally with claims for judicial review.

33. Even if the Coroner's findings, actions, or recommendations are **not** binding, nevertheless, consistent with developments in other common law jurisdictions, they would still constitute a reviewable "*decision*" if such, finding, or recommendation "*can … jeopardize a person's status or livelihood*" to adopt the expression used in the **CPR** in the definition of a "*non-public function*".

34. In this latter regard **Woodhouse P** in his joint judgment with **McMullin J.** in **Re Erebus (No. 2)** [1981] 1 NZLR 618 in addressing a not dissimilar matter raised in that case said, in words that are equally applicable to the present case (**at p. 627**):

> "*We think it would be very difficult to justify an argument that findings likely to affect individuals in their personal civil rights or to expose them to prosecution under the criminal law are not decisions 'affecting' their rights … In the present case, for example, it was virtually certain that the findings of the Erebus Commission would be published by the Government. The effect on the reputation of persons found guilty of the misconduct described in the Report was likely to be devastating. At common law every citizen has a right not to be defamed without justification. Severe criticism by a public officer made after a public inquiry and inevitably accompanied by the widest publicity affects that right especially when the officer has judicial status and none the less because he has judicial immunity.*"

(my underlining)

35. Later, in support of the Court's unanimous view that the **Erebus Commission** was bound by the broad requirements of natural justice, the learned **President** said (at **p. 628**) again in words that would equally apply to the Coroners Report in the present case:

> "*A suggestion of an organized conspiracy to perjure is different from the possibility commonly faced by individual witnesses that their evidence may be disbelieved. Grave findings of concerted misconduct in connection with the inquiry ought not to be made without being specifically raised at the inquiry. Once the thesis of such a conspiracy had emerged in the Commissioner's thinking as something upon which he might report, he would have had power, if that question were indeed reasonably incidental to his terms of reference, to reconvene the hearing if necessary so that the alleged conspirators could be fairly confronted with the allegation.*"

(my underlining)

36. For completeness, **Lord Diplock** in delivering the judgment of the **Privy Council** in **Re Erebus Royal Commission; Air New Zealand Ltd. v. Mahon** [1983] NZLR 862 where Air New Zealand successfully challenged various findings and

criticisms of it in the Commissioner's Report, identified the two (2) applicable rules of natural justice as follows (**at p. 871**):

> "*The rules of natural justice that are germane to this appeal can in their Lordship's view be reduced to ... two ... The first rule is that the person making a finding in the exercise of (an investigative jurisdiction) must base his decision upon evidence that has some probative value in the sense described below. The second rule is that he must listen fairly to any relevant evidence conflicting with the finding and any rational argument against the finding that a person represented at the inquiry, whose interests (including in that term career and reputation) may be adversely affected by it, may wish to place before him or would have so wished if he had been aware of the risk of the finding being made.*
>
> *.......... What is required by the first rule is that decision to make the finding be based on some material that tends logically to show the existence of facts consistent with the finding and that the reasoning supportive of the finding, if it be disclosed, is not logically self-contradictory.*
>
> *The second rule requires that any person represented at the inquiry who will be adversely affected by the decision to make the finding should not be left in the dark as to the risk of the finding being made and thus deprived of any opportunity to advance additional material of probative value which, had it been placed before the decision maker, might have deterred him from making the finding even though it cannot be predicated that it would inevitably have had that result.*"
>
> (my underlining)

37. It is no longer possible to reconvene the inquest and the Court must deal with the claim on that basis and on the basis that the publication of the Coroner's report has brought the inquest to an end such that the Coroner would now be "*functus officio*" in any event.

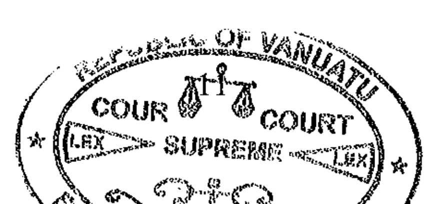
38. At the outset I note that the Coroner pointedly states:

> "*The principal purpose of this report is to focus upon the main* (unidentified) *issues that have arisen and have it promulgated so the appropriate actions can be taken by the relevant authorities to ensure that there can be no repeat of this whole sorry and sordid series of events*".

39. Clearly, in writing the report the Coroner was intent on doing more than just "*... giving his findings as to the cause of death* (of John Bule)" and "*the circumstances connected therewith*" which was his sole legitimate function in terms of **Sections 224 (5)** and **225** of the **Criminal Procedure Code**. In this regard it is noteworthy that the relevant "*findings*" are contained in the first page of the Coroner's 39 page Report under the heading: "***Executive Summary – Formal Findings***" as follows:

"***Name of Deceased:*** *John Bule*

***Place of Death:*** *Vila Central Hospital*



***Date and Time of Death:*** *29 March 2009 at or about 4.50 pm (1650 hours)*

***Cause of Death:*** *The Deceased died as a result of complications of injuries sustained in the setting of blunt force trauma. Such complications were likely to have included a combination of hypovolaemic shock and fat embolism. The Deceased suffered at least 32 different apparent injuries to his head, chest, abdomen, right upper limb, left upper limb, right lower limb, left lower limb and back. The deceased sustained compound fractures to his left tibia and fibula (lower leg, between his knee and ankle), proximal and mid left ulna (forearm), the 2nd, 3rd, 4th and 5th metacarpal bones on his left hand and to his right patella (kneecap).*

***Circumstances:*** *The Deceased's injuries were sustained in an interrogation room at the Vanuatu Mobile Force (VMF) Cook Barracks at or about 1.00 pm on 29 March 2009 while the Deceased was in the custody of a number of VMF officers. The injuries sustained by the Deceased were reflective of multiple episodes of blunt trauma and involved no less than 20 separate impacts. Many of the injuries sustained were caused by the impact of cylindrical or straight edged objects."*

40. The next **38** pages of the Coroner's Report contains:

- An Introduction (1 page – 6 paragraphs);
- A Chronology of events (3 pages);
- Relevant Legislation (2 pages);
- A Summary of the Evidence led during the inquest and considered by the Coroner (18 pages);
- Ancillary Issues (3 paragraphs);
- Recommendations (12 ½ pages); and
- A Concluding paragraph which reads:

"*Far too much information relating to the death of the Deceased and the behaviour of law enforcement officers has been concealed and obscured by the very same law enforcement agencies who have a duty to enforce the law without fear or favour and to uphold the rule of law in Vanuatu. It is very doubtful that all the information relevant to this Inquest has yet been revealed as the law enforcement agencies have volunteered no information and have only revealed what the Inquest had some evidence about and required them to reveal. This lack of candour can only be due to a desire to protect their own, which is a breach of their duty under the Police Act [CAP. 105], it is also shameful and wrong. This Report, the transcript from the Inquest hearing, and all exhibits are all to be made available to the public. Copies of this Report and transcript are available by e-mail from the Supreme Court Office. The exhibits will be held at the Supreme Court Office where they can be made available for inspection for anyone so interested and can be photocopied with the normal Court*

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*photocopying fees applying. The shining light of the public scrutiny is the best protection of the rule of law.*"

(my underlinings)

41. The above summary indicates that most of the Coroner's Report was devoted to dealing with "*ancillary issues*" and with addressing the systemic organizational, administrative, and investigatory short-comings of the **VPF** and the **VMF** rather than confining itself to the limited statutory ambit of a coronial inquest into a case of violent death in police custody as mandated under provisions of the **Criminal Procedure Code**.

42. In doing so the Coroner's Report bears the hallmark of a coronial inquest having transmorphed into a wide-ranging Commission of Inquiry into the workings, short-comings and relationships (if any) that existed within and between the **VPF** and the **VMF** albeit, conducted within the context of a search for the "*cause of death*" of John Bule and the circumstances connected therewith.

43. I reproduce below with my underlinings, the Coroner's particular findings and comments within the Report about the **VMF/VPF** and the claimant's evidence which reads as follows:

> "***VMF/VPF evidence***
>
> ***The evidence of the VMF/VPF Commanders***
>
> *The evidence given by members of the VMF and VPF was marked by obfuscation and non-cooperation. Most of these witnesses were warned about the provisions of the Penal Code [CAP. 135] relating to perjury. Most failed (at least initially) to properly comply with their summonses by not producing all books and records relating to matters concerning the Inquest. Evidence given to the Inquest by members of the VMF appeared contrived and indicated a pre-determined plan of what would be told to the Inquest and what would be withheld. When trapped by their own contradictory answers, a common response was "there must be a mistake" but they were unable or unwilling to explain what was the mistake.*
>
> ***Joshua BONG, Commissioner of Police***
>
> *The current Commissioner of Police, Joshua Bong, did not initially comply fully with his summons and, as a result had to be recalled twice to produce a number of documents (Exhibits 6 – 11). A significant exhibit he produced was Exhibit 11, a bundle of statements from VMF officers who were directly involved in either the recapture or interrogation of the Deceased. It is notable that until that time, no other witness or document produced to the Inquest or made available to Counsel to assist the Inquest had revealed the identity of any officers. It should also be noted that each of the statements were prepared and signed in April 2009, several weeks after the VPF Inquiry Team had finalized and presented its report.*

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*Commissioner Bong repeatedly justified his lack of personal knowledge about the matter touching upon the Inquest by answering that, at the time of the death of the Deceased, he was suspended from duty. Despite repeated warnings given to him, he continued to be uncooperative.*

*The attitude of Commissioner Bong indicated an indifference he had to the investigation into the cause of death of the Deceased and the surrounding circumstances. It is concerning how unconcerned he appeared to be about how inadequately he had been briefed as Commissioner of Police on these matters.*

*Commissioner Bong produced a Duty Roster of the VMF members who purportedly were on duty on 29 March 2009 (Exhibit 10). The provision of this document was called into question by later evidence, when Sgt. David Mathias revealed that he had been directed to attend Commissioner Bong's residence in the week prior to the Inquest and directed to draw up a Duty Roster for that date. He then drew up a Duty Roster eight months later after the event entirely from his recollection of which VMF officers he believed would have been on duty that day. The document was further brought into disrepute by the fact that Sgt. Mathias, who was listed as the senior officer on duty on 29 March 2009, testified that, despite being rostered for duty that day, he did not attend work due to the fact that the rostered VMF driver failed to collect him from his home that morning. If Sgt. Mathias is correct, then the Commissioner of Police has deliberately produced a manufactured, unreliable document to the Inquest and he has concealed the original documentation or failed to explain to the Inquest why the original documentation could not be produced. This would constitute the most extraordinary obstructive behaviour to a judicial body by the country's leading law enforcement officer if found to be correct*".

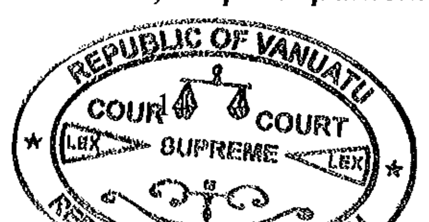
44. Later in **Recommendation 3** relating to "***Perjury Inquiries***", the Coroner said:

"*Many of the witnesses before the Inquest were less than frank in their evidence to the Inquest. Some however went beyond confusion or a lack of frankness. The police statements and oral evidence before the Inquest by some witnesses were so contradictory as to lead to the conclusion that at least some parts of their evidence were lies.*

*The Commissioner of Police presented documentary evidence to the Inquest, and on viewing of that document [Exhibit 10] and hearing evidence of a later witness it has the appearance of being concocted evidence*

*It is recommended that the Public Prosecutor examine all available evidence with a view to assessing whether there are reasonable prospects of securing perjury convictions.*"

45. **Recommendation 9**: "***Use of force; corporal punishment***"



*"Clearly, an unacceptable culture of violence has developed within the VMF (and possibly also the VPF). There is no doubt that the frequency and repetition of escapes from the correctional centres in Port Vila throughout 2008 and 2009 caused frustrations to law enforcement officers as well as to the general public. Public pressure was bearing down upon Correctional Services, the VPF and the VMF to prevent prisoner escapes and to detain escapees. However, such frustrations and pressure can never justify the use of unlawful, excessive force and brutally ritualized corporal punishment at the time of recapture.*

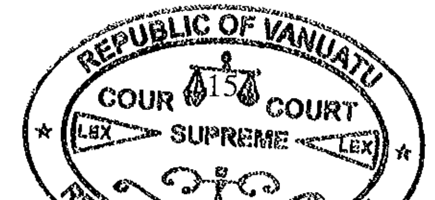
*The evidence led at the Inquest established that the use of force by members of the VMF on the body of John Bule at the Cook Barracks was not an isolated incident. The patterns of injuries sustained by other recaptured escapees at or about the time of the recapture of John Bule showed a consistent form of beatings. A number of recaptured detainees were beaten in such a way as to sustain similar injuries to those which caused the death of John Bule (particularly, broken legs, broken kneecaps, broken arms, wrists and hands).*

*There can be no excuse for this behaviour and those who appear guilty of crimes against the laws of this country should be investigated, where appropriate charged, and required to answer for their alleged actions before the Courts. No-one is above the law, and this principle applies to members of the police as much as it does to any other person in this country, regardless of their occupation or station in life.*

*However, the evidence of **VMF** members before the Inquest revealed an alarming lack of training to enable them to carry out police functions in accordance with the law. They either did not know or had forgotten many police procedures, many of which they had only received training in once upon their admission to the force, which in many cases was 15 to 20 years ago. It is a matter of deep concern that VMF officers were sent out to arrest the Deceased and others who interrogated him, who did not know or remember:*

- *a)* *The procedure to be followed before firing a pistol (which was fired 3 times in a residential area during the arrest of the Deceased);*
- *b)* *The Deceased's right to silence;*
- *c)* *The Deceased's right of access to a lawyer;*
- *d)* *The obligation to advise the Deceased of his rights on his arrest;*
- *e)* *The need to keep a proper record of the interview;*
- *f)* *The non-use of force or threats during the interview with the Deceased;*
- *g)* *The breach of law by them in administering corporal punishment upon the Deceased. (Appallingly, the Inquest heard evidence from **VMF** officers that the Deceased was more compliant once he had been beaten).*
- *h)* *The proper procedures to be followed when interviewing persons of interest.*

*Those persons who have broken the law cannot be excused for doing so. However, it strongly recommended that the **VMF** and the **VPF** review its*



*training processes to eliminate law breaking by its own officers and to ensure best police practices are followed by its officers.*

*It is recommended that there be regular training updates for officers of the VMF and VPF to keep them up to date as to best police practice*".

46. **Recommendation 10**: "***Disfunctional group culture in the VMF***"

"*Much has already been said in this report about the errant behaviour of the VMF in particular, their willingness to use illegal force during interrogation, to administer corporal punishment and their attempts to limit the effectiveness of the Inquest through non-cooperation and dissembling.*

*Regrettably, the behaviour of some personnel in the **VMF** went beyond passive resistance to the Inquest and actions were taken that can only be regarded as an attempt to intimidate the Coroner and those persons involved in the Inquest.*

*These actions included:*

*a) A senior officer in the **VMF**, prior to the commencement of the Inquest, loudly and aggressively saying words to the effect that "we will kill the Coroner". This was said in the presence of other VMF officers and other persons.*

*b) During the course of the Inquest, **VMF** officers being driven through the streets of downtown Port Vila within 50 metres of the Inquest on the back of utility vehicles clearly displaying their new FAMAS automatic weapons.*

*c) **Lt Seule** and other **VMF** officers marching into the Inquest uninvited to loudly and aggressively announce that they were all too busy training in the use of their newly equipped **FAMAS** rifles to appear before the Inquest to give evidence, notwithstanding that they had been summoned to appear.*

*d) The presence of an unsecured **FAMAS** rifle propped up on the floor of an unlocked room off the interrogation room at **Cooks Barracks** when the Coroner and other persons associated with the Inquest inspected that interrogation room (see Exhibit 33).*

*e) On at least one occasion, two **VMF** officers placing themselves in a position where they could watch over the Coroner near his residence during his non-working hours and making it quite obvious that is what they were doing.*

*Not all of these actions may necessarily have been made with the intention of intimidating those persons involved in the Inquest, but some certainly were. They also illustrate the poor judgment of officers and members of the **VMF**, and the lack of proper oversight and control of their activities.*

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*In addition, and there is no evidence that any **VMF** or **VPF** personnel were involved, some person or persons attempted to use "black magic" to influence the outcome of the Inquest by laying a "magic stone" outside the Inquest, apparently with the intention of making the Coroner forget the evidence he heard during the Inquest.*

*The Inquest heard evidence that highlighted concerning attitudes and misconceptions of **VMF** officers. These included:-*

a) *That they are part of the police force in name only. They regard themselves as an elite force and are an army and have no interest in police duties.*

b) *That their first loyalty and duty is to the **VMF** and their superior officers, not to their country or their obligations to legally enforce the law of the country.*

c) *They should do anything ordered of them by their superior officers, including breaking the law if so ordered.*

d) *That if they follow orders and break the law, then the superior officers who gave the orders will be responsible for the breach of law, not them.*

e) *If they fail to follow orders that break the law, they will be punished. They are in greater fear of that punishment and being in breach of the **VMF** group culture than they are of breaking the law.*

*<u>There is also a significant lack of cooperation and sense of working together to achieve the same aims between the VMF and VPF</u>. The VMF have weapons that the VPF do not have and this appears to have lead to a bullying culture between the two branches of the police, with many members of the VPF being in fear of the VMF. Some members of the VPF begged that they should not be summonsed to give evidence before the Inquest because of their fear of the VMF and the repercussions that would follow to their physical wellbeing if they gave evidence that reflected badly on the VMF. Ultimately, they were not summonsed as their evidence was not relevant to the central issues of the Inquest.*

*<u>There is no legislative basis for the VMF, other than the Police Act</u> [CAP. 105] <u>which makes no reference to the VMF, its role, or its structure</u>. Notwithstanding that lack of direction, the VMF seem to spend the majority of their time and resources conducting military training, and engaging in army exercises. They are not undertaking ongoing training for police duties. What was extraordinary is that the Inquest heard evidence that when the VMF were required to commence Operation Klinap, they did not commence until they had negotiated further payments for themselves. In other words, they required additional payments to do the job that they are already employed to do. This attitude is yet another indication of the VMF having its first loyalty to itself rather than serving the people and government that pays them to uphold the law as policemen.*

> *The VMF commanders and officers seem to be shaping the role of the VMF in the direction of it being an army and not an arm of the police. That is not a decision that they should be making. The role of the VMF needs to be set by the people of this country through its parliament. Whether the VMF should remain as policemen, or become an army, or be trained in disaster relief, or any other role, is a decision only Parliament can make.*
>
> *The growth of a paramilitary force that has its first loyalty to that force, that regards itself as above the law, and is armed with modern weaponry without proper statutory authorization and government oversight is a recipe for political instability in the future.*
>
> *It is therefore recommenced that the government consider what role the VMF should be fulfilling, and to pass the appropriate legislation through Parliament so that proper political control of the VMF is maintained*".

47. The above extracts are replete with expressions that clearly indicates the formation of an adverse opinion or criticism on the part of the Coroner generally about the police evidence and, more particularly, about the claimant in respect of whom the Coroner uses such expressions as:

- *"repeatedly justified his lack of personal knowledge ..."*;
- "*despite repeated warnings ... he continued to be uncooperative*";
- *"(his) attitude ... indicated an indifference he had to the investigation into the cause of death of the Deceased and the surrounding circumstances*";
- "*... concerning how unconcerned he appeared about how inadequately he says he had been briefed ...*";
- "*if Sgt. Mathias is correct, then the Commissioner of Police* (the claimant) *has deliberately produced a manufactured, unreliable document to the Inquest and he has concealed the original documentation ...*";
- "*... extraordinary obstructive behaviour to a judicial body by the country's leading law enforcement officer if found to be correct*";
- "*The Commissioner of Police presented documentary evidence ....* (that) *... has the appearance of being concocted evidence*"

48. I can deal briefly with the criticism of "*concocted evidence*". This concerned a Duty Roster prepared by **Sgt David Mathias** at the direction of the claimant a week prior to the Inquest. On the face of it the claimant's request appears innocuous enough and the fact that the officer requested to prepare the Duty Roster did so from memory about events that occurred 8 months earlier **and** of a day that he was not at work, is more a reflection of the officer who prepared the

Duty Roster than the claimant who requested it. Whatsmore the existence of both circumstances is no sure indication of the inaccuracy of the Duty Roster.

49. In either or both circumstances, if the Duty Roster was incomplete or inaccurate then that was surely the responsibility of the author of the document who could have referred to other official police records or even spoken to the officers concerned, if he was interested in verifying his memory and in furnishing to the claimant (his superior) as accurate a Duty Roster as possible of the day in question.

50. The matter can be tested by inserting the two (2) so-called "*defects*" identified in the Coroner's Report into the particular criticism so that it reads as follows:

> "*If Sgt Mathias* (did prepare the Duty Roster from memory 8 months after the event and about a day that he was not at work), *then the Commissioner of Police has deliberately produced a manufactured unreliable document to the inquest and he has concealed the original documentation .....*"
>
> (defects in brackets)

51. The failure of the preparer of the Duty Roster to undertake the necessary verification steps is **not** the fault of the claimant who plainly would have relied on his subordinate officer to prepare an accurate Duty Roster and the Coroner's reasoning and criticism of the claimant with regards the "*concocted*" Duty Roster is, with respect, "*logically self-contradictory*" and does not withstand close scrutiny.

52. Needless to say the Coroner was unmoved and unsympathetic to the undisputed fact that the claimant had only been appointed Commissioner of Police barely 7 weeks before the Inquest commenced and had not been properly briefed (if at all) by his predecessor. Furthermore at the time of the death of John Bule, the claimant was suspended from official police duties and was therefore personally unaware of the circumstances surrounding his death and the identities of the police officers who might have been involved.

53. Against the **VPF** and **VMF** over which the claimant has "*... command, superintendence and direction*" the Coroner said:

- "*... an unacceptable culture of violence has developed within the **VMF** (and possibly also the **VPF**)...*";
- "*... use of unlawful excessive force and brutally ritualized corporal punishment at the time of recapture*";
- "*the evidence of **VMF** members before the Inquest revealed an alarming lack of training to enable them to carry out police functions in accordance with the law...*";

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- "*... the errant behaviour of the* ***VMF*** *in particular, their willingness to use illegal force during interrogation, to administer corporal punishment* (read assault)*, and their attempts to limit the effectiveness of the Inquest through non-cooperation and dissembling ...*";

- "*... behaviour of some personnel in the* ***VMF*** *went beyond passive resistance to the Inquest and actions were taken that can only be regarded as an attempt to intimidate the Coroner ...*";

- "*... concerning attitudes and misconceptions of* ***VMF*** *officers ... included:*

  *(a) they are part of the police force in name only;*
  *(b) their first loyalty is ... not to their country or their obligation to legally enforce the law of the country;*
  *(c) they should do anything ordered of them ... including breaking the law if so ordered;* _and_
  *(d) they are in greater fear of punishment and being in breach of the VMF group culture than they are of breaking the law*";

- "*There is a significant lack of cooperation and sense of working together to achieve the same aims between the* ***VMF*** *and* ***VPF*** *...*";

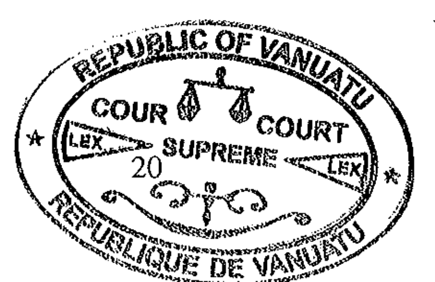
- "*There is no legislative basis for the* ***VMF****, other than the Police Act [CAP. 105] which makes no reference to the* ***VMF****, its role, or its structure ...*";

- "*The* ***VMF*** *commanders and officers seem to be shaping the role of the* ***VMF*** *in the direction of it being an army and not an arm of the police ...*";

- "*The growth of a paramilitary force that has its first loyalty to that force and regards itself as above the law and armed with modern weaponry without proper statutory authorization and government oversight is a recipe for political instability in the future*".

54. Some of the expressions are, if I may say so, reminiscent of those used by **Mahon J** in his report into the **Mount Erebus** air disaster when he famously criticized the actions of the senior management of **Air New Zealand** in the following terms:

> "*... the palpably false sections of evidence which I heard could not have been the result of mistake, or faulty recollection. They originated, I am compelled to say, in a pre-determined plan of deception. They were very clearly part of an attempt to conceal a series of disastrous administrative blunders and so, in regard to the particular items of evidence to which I have referred, I am forced reluctantly to say that I have had to listen to an orchestrated litany of lies.*"



55. I accept that some of the Coroner's criticisms are couched in conditional language such as "*if* (this) *then* (that)" especially those relating to the recommended perjury inquiries about "*... concocted evidence*", but there can be little dispute about the nature and tenor of the Coroner's criticisms not only of the claimant's evidence at the Inquest but, additionally, about his professionalism, attitude, competence, and behaviour as "*the leading law enforcement officer*" responsible for the direction and control of the **VPF** and **VMF**. Such criticisms, in my opinion, falls foul of the statutory prohibition contained in **Section 226** of the **Criminal Procedure Code** and, in the circumstances, was in clear breach of the applicable rules of natural justice.

56. The coronial inquiry and Report was conducted and widely disseminated in excess of jurisdiction and with a view to achieving the widest possible publicity both locally and internationally, and doubtless would have had a demoralizing and devastating effect on the claimant who had just taken over as Commissioner of Police.

57. In light of the foregoing I am satisfied that the answer to matters **(a)** and **(b)** above is "*yes*" the claimant is "*affected*" by the Coroner's Report and further, that the claimant has established that there were errors of law, on the Coroner's part as well as a breach, of the rules of natural justice in the conduct of the inquest and in writing his Report.

58. The last and final matter of which the Court is required to be satisfied is: **(d)** **<u>WHETHER THERE ARE OTHER REMEDIES THAT WOULD RESOLVE THE MATTER FULLY AND DIRECTLY</u>**.

59. This is a matter upon which the respondents might be expected to have provided the Court with greater practical assistance but, unfortunately, did not, other than to refer to the decision of **Treston J**. in **Vanuatu Maritime Authority v. Simeon Athy** (op. cit) which concerned a claim for judicial review by the **VMA** against a senior public servant and which was summarily refused on the basis that:

> "*the application for judicial review was misconceived because <u>it effectively amounted to an arm of the government issuing civil proceedings against an officer of the government</u> in another government department or in effect asking the government to review itself*".

(my underlining)

60. The judge also discussed and accepted that

> "*... where the issue is an internal matter of government and should be dealt with in another way without recourse to the Courts. The issue is essentially political. Thus I was satisfied that there was another remedy to resolve the matter fully and directly within government itself. <u>Here, the defendant is also not exercising a public power but an internal function of government which should not be subject to judicial review</u>*".

(my underlining)

61. As to whether the VMA is "*an arm of* government", I can do no better than to refer to the more recent judgment of the Court of Appeal in **Benard v. Government of the Republic of Vanuatu** [2009] VUCA 42 where, in answering the question of whether the government is liable for the debts of the **VMA**, the court said (at **paras 31 and 32**):

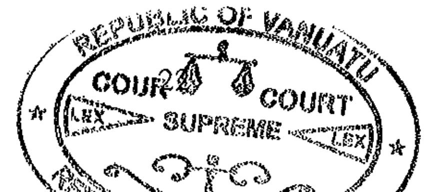
> "*31. If it were not for that broad definition of "Government agency" in the PFEM Act (prior to the 2009 amendment), we would not have been inclined to conclude that the VMA was within the concept of "State" on normal principles.*
>
> *32. There is a good deal of jurisprudence on the method of determining whether a statutory corporation is part of the State of Crown or independent from the State. The position is carefully summarized in the leading text by Professor W. Hogg, "Liability of the Crown" [3rd Ed. 2000]. Professor Hogg points out that the Courts traditionally determined the question by asking whether the functions of the public corporation are such that they properly belong within the "province of Government". But this has now given way to a control test, where the question whether a public corporation as an agent of the Crown depends upon "the nature and degree of control which the Crown exercises over it" (see page 334). The fact that a board is appointed by Ministers (as is the case in relation to the VMA), is not, however, decisive: see Metropolitan Mean Industry Board v. Sheedy [1927] AC 899. In the present case, we would not have considered the degree of ministerial control (exemplified by Section 9) as sufficient for that purpose.*"
>
> (my underlining)

62. On the basis of the above dictum, the decision whether the **VMA** is, in law, to be considered "*an arm of the government*" remains moot.

63. As for the existence of "*another remedy to resolve the matter fully and directly.*" The political nature of the claim before **Treston J.** was self-evident in that it concerned the allocation, control, and dispersal of monies allocated to the **VMA** by means of an appropriation by Act of Parliament out of the consolidated revenue and which was under the immediate control of the defendant.

64. The same cannot be said of the present case where the Coroner a sitting Supreme Court judge, who cannot by any measure, be identified as "*an officer of the government*", was specially appointed under the **Criminal Procedure Code** and was exercising statutory powers to conduct a public inquest to determine the cause of death of a recaptured escaped prisoner who died whilst in police custody.

65. Furthermore the Coroner has in his Report, roundly criticized the claimant who was summoned as a witness at the inquest and as well as the **VPF** and **VMF** of which he was the head. There is also a general recommendation of the Coroner



"*... that the Public Prosecutor examines all available evidence with a view to assessing whether there are reasonable prospects of securing perjury convictions*".

66. In my view neither the Coroner's findings and recommendations nor the claimants complaints are merely political or "*internal matters of government*" that can or should be remedied without recourse to the Courts. Furthermore assuming that such other remedy exists, I do not accept that it would "*fully and directly*" resolve the claimant's complaints given its very personal nature and the wide national and international publicity that the Report has already received and, in light of the Government's publicly expressed determination "*to ensure the full implementation of the Report*".

**WHAT RELIEF IF ANY SHOULD BE GRANTED?**

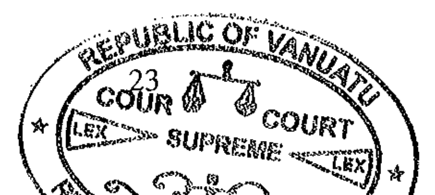
67. The claimant seeks an order quashing the entire Report for errors of law and failures to accord the claimant natural justice. The respondents on the other hand, submits that such an order should only be made on a finding of "*Wednesbury*" unreasonableness. Neither party addressed the possibility of the Court upholding part of the Report and quashing or excising any impugned parts.

68. Be that as it may I am satisfied that the Court has power to do both ie. quash and excise parts of the Report and uphold other parts that it sustains. In this regard I am fortified by the observations of **Lord Nicholls of Birkenhead** who delivered the judgment of the **Privy Council** in **Phipps v. Royal Australian College of Surgeons** (2000) 2 NZLR 513 (looseleaf volumes) where his lordship said at **para 21**:

> "*Their Lordships accept that some of the matters set out in para 26.4 probably went beyond the scope of the reviewers' terms of reference. Mr. Wilson QC, appearing for the college, described them as akin to obiter dicta in a judgment. But whether that is so or not is immaterial when considering the requirements of fairness in the present case. The fact is that para 26.4 was included in the report. This paragraph would be read, as it was intended to be read, as part of a report produced under the auspices of the college. It would command respect accordingly. The college was as much under an obligation to act fairly in respect of this part of the report as every other part of the report. The extent to which this part of the report stands apart from issues directly relating to Mr. Phipp's assessment, judgment and management of the 22 cases is a matter relevant to the question of severance. That is a difference question, which arises in the context of what is the appropriate remedy. But, so far as the issue of fairness is concerned, the Judge was right to regard this item as a procedural shortcoming in the preparation of the report.*"

And later at **paras 23 and 24**:

> "*A typical case of judicial review is an application to set aside a decision of a person or body exercising statutory powers. Broadly stated, the effect of setting aside the decision is that the decision has no legal effect. It cannot lawfully be acted upon. Similarly with a report where an issue is being determined to another person's prejudice: when the report is set aside, the document cannot be regarded as a report*



*of the reporting person or body. Although the report may not of itself have any legal effect, in practice it may have serious adverse consequences to reputation or future employment prospects or the like. If the report is undermined by a legal flaw, an order setting aside the report may be, if nothing more, a convenient way of making plain the status of the report. A prime instance would be where the person or body was acting beyond his or its powers in making the report. Then the whole report would lack validity.*

*In the present case the matter stands differently. In sections 3 to 25 of the report the reviewers made many specific findings. Only a small number of these findings were attended by procedural unfairness. Clearly, the findings which were arrived at unfairly must be expunged from the report. The Court should grant relief which makes plain that those findings cannot be regarded as findings which were properly included in the college's report. Whether that limited form of relief is sufficient to achieve a fair result depends primarily upon the extent to which the vitiated findings can fairly be separated from the other findings in the report. If the Court is satisfied that the impugned findings are "severable", to use familiar legal terminology, so that the good can be separated from the bad, the good should be allowed to stand. Fairness does not require otherwise. In such a case, there is in principle no reason why the whole report should be regarded as vitiated by the taint of procedural unfairness which, ex hypothesi, affected only a severable part or parts of the report. If, however, the good cannot fairly be separated from the bad, the whole report must be regarded as vitiated."*

And finally, in dealing with the various "*recommendations*" made in the challenged Report, his lordship said:

"*The position regarding the recommendations (paras 26.1 to 26.3) is different. The recommendations were overall recommendations, based on the totality of the preceding findings. Their Lordships suspect that even if the impugned findings had been omitted from the report the reviewers' recommendations would have been the same but that is not a satisfactory basis on which to proceed, especially when one of the impugned findings is of a serious nature. Furthermore, Their Lordships have in mind that the recommendations were never acted upon. That also is not a sufficient reason for letting them stand. Mr. Phipps' reputation was adversely affected by the report, part of which was the reviewer's recommendations on the need for a further assessment of Mr. Phipps' rectal cancer surgery after a period of supervision. Given that a material part of the factual basis for the recommendations was unsound, Mr. Phipps is entitled to have the recommendations set aside.*"

69. In light of the foregoing and mindful of the terms of **Rule 17.9** of the **CPR**, I declare that the Coroner's findings, criticisms and recommendations concerning the claimant as highlighted in this judgment were ultra vires and in breach of natural justice and are accordingly quashed. I further order that the following excerpts in the Coroner's Report be regarded as wholly expunged from the Report:

    (a) **para 5** of **Clause 5.3.1** entitled: The evidence of the VMF/VPF Commanders;

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(b) The whole of **Recommendation 2**;

(c) **Para 2** of **Recommendation 3**;

(d) The heading and all paragraphs other than the last paragraph in **Recommendation 9**;

(e) The heading and all paragraphs other than the last paragraph in **Recommendation 10**;

70. The claimant having substantially succeeded in this claim is awarded standard costs to be taxed if not agreed.

**DATED at Port Vila, at 18th day of May, 2012.**

**BY THE COURT**

**D. V. FATIAKI**
**Judge.**

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