

CASE STUDY

DEALING WITH BREACHES OF THE LEADERSHIP CODE IN PAPUA NEW GUINEA

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CASE STUDY¹

LEADERSHIP CODE – DEALING WITH BREACHES

By George W Sullimann²

Background/Perspective

When the *Constitution* of the Independent State of Papua New Guinea (PNG) was adopted in 1975 it included a Leadership Code³ (the Code) for the leaders of PNG. This Code covered politicians and senior officers of political parties and senior public servants and officials.

The Constitution established certain responsibilities of office for the leaders. These responsibilities extend to:

- Their conduct in both public or official life as well as private life;
- use of office for personnel gain;
- conviction of an offence in respect of the office or position or in relation to the performance of functions or duties; and
- disclosure of personnel and business income and financial affairs by the leaders to who the Code applies and of their families and associates, especially conflicts of interest related to their position.

The *Constitution* is specific as to whom the Code applies:

- The Prime Minister, the Deputy Prime Minister and the other Ministers
- The Leader and Deputy Leader of the Opposition
- All other members of the Parliament

¹ Sub-Regional Information and Experience Sharing Seminar on Public Ethics and Accountability held on 26-30 August in Suva, Fiji

² George W Sulliman has been the Auditor-General of Papua New Guinea from March 2005

³ Division III 2 Leadership Code of the *Constitution of the Independent State of Papua New Guinea*.

- All members of Provincial Assemblies and Local-level Governments
- All constitutional office-holders within the meaning of *Section 221 of the Constitution*
- All heads of Departments of the National Public Service
- All heads of or members of the boards or other controlling bodies of statutory authorities
- The Commissioner of Police
- The Commander of the Defence Force
- All ambassadors and other senior diplomatic and consular officials prescribed by an Organic Law or an Act of the Parliament
- The Public Trustee
- The personal staff of the Governor-General, the Ministers and the Leader and Deputy Leader of the Opposition
- Executive officers of registered political parties as defined by Section 128 ("registered political party")
- Persons holding such public offices as are declared under an Organic Law or an Act of Parliament to be subject to the Code.

The Code provides for an Organic Law to give to the Ombudsman Commission, or any other authority the powers that are necessary for attaining the objects of the Code. The Organic Law on the duties and responsibilities of Leadership therefore:

- Includes provisions for disclosure of personal, financial and business information;
- Including powers to dispose of or place under the control of the Public Trustee any assets or income deemed desirable;
- prescribe specific acts that constitute misconduct in office;
- create offences
- provide for investigations;

- establish independent tribunals to refer breaches of the code and to actions if a person is found guilty; and
- other provisions deemed necessary for attaining the objects of the Code.

The Code is found in 3 Constitutional Laws:

- the *Constitution*;
- the *Organic Law on the Duties and Responsibilities of Leadership*; and
- the *Organic Law on the Integrity of Political Parties and Candidates*.

These Laws provide for a range of penalties for breaching the Code, including dismissal from Office and fines.

The requirements of *Leadership Code (Division III 2 of the Constitution)* are referenced in a large number of Organic Laws and Acts of the Parliament.

The *Part II of the Organic Law on the Duties and Responsibilities of Leadership* sets out the requirement for the Leader to provide a Statement of Income within 3 months of assuming office for the previous 12 month period, and each 12 months after, a statement providing separately for the Leader, their spouse and children:

- total assets;
- total income;
- business connections;
- directorships;
- all business transactions;
- all gifts;
- all assets acquired during the period; and
- all liabilities incurred during the period.

The *Organic Law* also clearly sets out the responsibilities of a Leader including responsibilities relating to:

- Inappropriate use of Office for personal benefit;
- Personal interest (Conflict of interest);
- Inappropriate Company Directorships;
- Shareholding where there is a conflict of interest;
- Engaging in paid employment;
- Inappropriate interests in contracts;
- Acceptance or receipt of bribes;
- Acceptance or receipt of loans
- Misappropriation of funds
- Personal advantage gained for official information;
- Requirement to disclose interest prior to debating or voting; and
- Engagement of agents to act improperly on the Leader's behalf.

The *Organic Law* provides guidance regarding the Leaders responsibilities in regard to each of these areas and advises the Leader to seek direction or approval from the Ombudsman Commission if uncertain as to the application of the *Organic Law*.

The Process

Any person may make a complaint to the Ombudsman Commission regarding alleged or suspected misconduct in office against a Leader to whom this *Organic Law on the Duties and Responsibilities of Leadership* applies. Where there is a complaint made against a Leader the Ombudsman Commission is obliged to consider every complaint that it receives, but it has at all time discretion whether or not to investigate and whether to continue to investigate a complaint. Of

significance in PNG is that the Ombudsman Commission can investigate matters on its own initiative.

Where the Ombudsman Commission considers it appropriate it will undertake investigations into the complaint. Where the Ombudsman Commission cannot for any reason undertake the investigation itself, it may appoint one or more constitutional officer holders to undertake the investigation. The Ombudsman Commission:

- must advise the individual under investigation that the investigation is to proceed;
- must conduct hearings in private;
- obtain information or hear any person that the Ombudsman Commission considers can assist;
- other than the individual being investigated, no other person has the right to be heard by the Ombudsman Commission unless the Commission chooses;
- may require any person, who in its opinion is able to provide information relating to any alleged or suspected misconduct, to furnish that information; and
- may summons any individual to appear before the Ombudsman Commission.

Evidence provided in sworn testimony is not admissible in evidence against any person in any court, or any inquiry or any other proceedings.

If, after an investigation, the Ombudsman Commission is of the opinion that there is evidence of misconduct in office it may refer the matter to the Public Prosecutor for prosecution before the appropriate tribunal. If the Public Prosecutor fails to refer the matter to a tribunal or the Ombudsman Commission considers that the matter has not been properly referred, the Ombudsman

Commission may itself refer the matter to the tribunal. The appropriate tribunal depends on the (status of the) Leader being referred.

Tribunal Proceedings⁴

A leadership tribunal will investigate and determine any case of alleged or suspected misconduct in office referred to it. It will make due inquiry into the matter referred to it without regard to legal formalities or the rules of evidence. It may inform itself in such matter as it thinks proper, subject to compliance with the rules of natural justice. Its proceedings are not judicial proceedings. It has the same powers of investigation as the Ombudsman Commission. The purpose of its inquiry is to determine whether a leader is guilty of misconduct in office; and if the leader is guilty, to recommend as appropriate, that that person be dismissed from office or position or that some other penalty provided by law be imposed.

Implementation⁵

Where the tribunal makes a recommendation to the appropriate authority (the Governor-General or the appropriate appointing authority) the appropriate authority must act in accordance with the recommendation. (*Section 28(2)&(3) of the Constitution*).

Dismissal

⁴ Page 26 Ombudsman Commission of PNG ANNUAL REPORT 2002.

⁵ Page 27

Where a tribunal finds a Leader is guilty of misconduct the tribunal must recommend dismissal from office or position, unless it finds that there was no serious culpability on the part of the Leader and the public policy and the public good do not require dismissal.

Further, the *Constitution* requires that a Leader who is dismissed for misconduct in office is not eligible for 3 years:

- to election to any elective public office; or
- for appointment as Head of State or as a nominated member of the Parliament; or
- for appointment to a provincial legislature or provincial executive or local-level government body.

How has it worked since Independence (16 September 1975)

Up until 31 December 2005 a total 77 leaders had been referred for prosecution by the Ombudsman Commission. Of these:

- 34 were found guilty
 - 21 dismissed from office
 - 8 fined
 - 4 resigned prior to dismissal
 - 1 criminal conviction;
- 13 resigned
 - 11 after appointment of tribunal
 - 2 after tribunal commenced;
- 6 lost office in an election during the process;
- 5 had their appointment revoked or their appointment expired;

- 1 not referred by the Public Prosecutor;
- 6 found not guilty; and
- 12 cases are still pending.

The Code only relates to Leaders who currently hold Office or other public appointments. Therefore once a Leaders term expires, they lose office in an election, or their appointment is revoked, the jurisdiction of the Code, the Ombudsman Commission or the tribunal is no longer valid. Although on return to Office or reappointment the process can continue. Taking this into account the success of referrals by the Ombudsman Commission is impressive.

Even more significant is the range of Leaders that have been referred by the Commission. This includes:

- 43 elected Members of the Parliament;
- 13 Ministers of the Crown;
- 4 Departmental Secretaries;
- 6 Provincial Governors;
- 6 Managing Directors or Chairman;
- 2 Deputy Prime Ministers; and
- 2 Deputy Leaders of the Opposition.

Those referred include the High Commissioner to London, the Commander of the Defence Force, the Commissioner of Police, the Electoral Commissioner, the Auditor-General, an Ombudsman and a Judge of the National Court and Supreme Court.

Sample of cases for discussion

Attached are 3 cases illustrating how the leadership code has been applied:

- Anderson Agiru – Governor, Southern Highlands Province and elected member of the National Parliament for Southern Highlands Provincial.
- Yauwe Riyong – Elected member for the National Parliament for Chuave Open (Simbu).
- Peti Lafanama – Elected member for the Eastern Highland Provincial.

These provide a range of cases for background reading. Two of these cases have been finalised and there are no appeals outstanding and the members were dismissed. Another case did not proceed as the member lost his seat at the election.

The cases cover a range of issues ranging from:

- a member's failure to disclose financial position;
- to improper/illegal conduct;
- to improper handling of public monies;
- misappropriation;
- accepting benefits; and
- to improper use of public monies.

Anderson Agiru was found guilty on 12 charges of misconduct, was dismissed from office and thus ineligible to hold public office for a period of 3 years.

Yauwe Riyong was referred to the Public Prosecutor on 9 charges including: financial conflict of interest, inappropriate behaviour, making false statement to the Ombudsman, benefiting from Office and inappropriate use of public monies.

Peti Lafanama was found guilty on 3 charges of misconduct including receiving and using public monies unlawfully and inappropriately receiving benefit from

Office. Mr Lafanama was fined K4,800 (approximately US\$1440), a result that the Ombudsman Commission, in his Annual Report, stated to be absurd considering the gravity of the referral.

No criminal charges were laid against any of the members.

Discussion issues

These cases highlight some of the best and worst attributes of the enforcement of the leadership code.

Traditional Justice

As part of this discussion it is necessary to put the concept of the leadership code and its enforcement into perspective. Papua New Guinea, like many of the Pacific Nations found themselves with a legal and judicial system based on the British system and introduced during colonial days. The British system is very different from the traditional systems of justice and punishment that have served these communities for possibly thousands of years and in some cases in Papua New Guinea still do – for example the Village Court. Like the Village Court of old, the Leadership Tribunal represents the leaders, or big men, of the village hearing allegations against a Villager and passing judgement. There are no rules of evidence and the process relies on the leaders ‘doing the right thing and fair play’ in forming their judgement. The old system continues to work well and is supported by a process of appeals to the contemporary justice system if appropriate. The sanctions applied are also very traditional. There was

significant loss of face in being found guilty, and while fines may only be token, they had a big public impact. It is significant that Sir Kubulan Los, Judge of the National Court, in reducing the penalty for Peti Lafanama from dismissal to a fine, drew a distinction between criminal liability and liability under the Leadership Code.

The manner in which the Ombudsman Commission conducts hearings is currently under review by a Special Parliamentary Select Committee. One issue of debate is the ability of the Commission and Tribunal hearings not to be governed by the 'laws of evidence' but to ensure compliance with the rules of natural justice. This needs to be balanced against the fact that it is not a criminal court but a Leadership Tribunal considering the behaviour of Leaders.

Criminal Liability

It is significant that of the 77 cases referred to the Public Prosecutor none have been referred for criminal prosecution on completion. There have been incidents where no further action has been taken after referral as the leader has been convicted of a criminal offence and no longer holds office and is therefore no longer subject to the Leadership Code.

Penalties

The penalties that can be applied by the Tribunal include small fines and dismissal from Office which results in the Leader not being able to hold public Office for three years. There has been a deal of public debate both ways on this. Mostly there are those that require greater sanctions, including forfeiture of the right to hold public office indefinitely. Significantly a proposal for a private

members bill to only apply a fine and no option of dismissal was met with strong protests from the public, the press and institutions such as Transparency International. The proposal went no further. The Ombudsman Commission in its submission to the Special Parliamentary Select Committee, referred to below, has indicated that the amount of fines that can be applied for breaches of the leadership code were set some 30 years ago and has recommended that the legislation be changed to be expressed as '*finer not exceeding K100,000*' (approximately US\$30,000). The Commission is also seeking the power to recover monies or assets lost as a result of breaches of the code.

Leadership Code relevance in 2006-08-15

This is a reasonable question to ask – should we still be persevering with this process in this day and age? Is the process seen as inhibiting more formal and possibly stronger investigations and penalties?

Other Nations

Is there a similar process in other Nations that we could learn from, especially in other Pacific States? How do other Nations deal with similar issues regarding the behaviours of elected member and senior officials?

Attachment A

Table of leaders referred for prosecution by the Ombudsman Commission Under the Leadership Code as at 31 December 2005.

LEADERS REFERRED FOR PROSECUTION BY THE OMBUDSMAN COMMISSION UNDER THE LEADERSHIP CODE AS AT 31 DECEMBER 2005				
No	LEADER	OFFICE	YEAR	RESULT
1	MOSES SASAKILA	MP, Minister for Culture	1976	Guilty – dismissed – later set aside by Supreme Court
2	BRIAN GREY	General Manager, National Airline Commission	1978	Guilty – reprimanded
3	AKO TOUA	Commissioner, Electricity Commission	1978	Guilty – suspended
4	KEI NIRGAB	Acting Secretary, Department of Works & Supply	1978	Guilty – dismissed
5	JAMES MOPIO	MP	1981	Guilty – dismissed
6	OPAI KUNANGEL	MP; Minister for Commerce	1982	Resigned after appointment of tribunal
7	PIOUS KEREPIA	Secretary, Department of Works & Supply	1983	Guilty
8	ILINOME TARUA	PNG High Commissioner to London	1983	Guilty
9	MICHEAL PONDROS	MP	1983	Guilty – dismissed
10	LENNIE APARIMA	MP	1985	Not guilty
11	EZEKIEL BROWN	Managing Director, National Provident Fund	1985	Guilty – fined
12	JULIUS CHAN	MP; Deputy Prime Minister for Finance	1988	Not Guilty
13	JOHN KAPUTIN	MP	1988	Guilty – fined
14	OBUM MAKARAI	Chairman, Papua New Guinea Banking Corporation	1988	Guilty – fined
15	KEDEA URU	Chairman, National Broadcasting Commission	1988	Not guilty
16	GERALD SIGULOGO	MP	1989	Guilty – dismissed – judicial review by leader unsuccessful
17	SUSVEL LAUMAEA	Chief of Staff, Office of the Prime Minister	1990	Public Prosecutor failed to refer matter to tribunal – no further action
18	GABRIEL RAMOI	MP	1990	Resigned after appointment of tribunal
19	ESEROM BUREGE	MP	1990	Resigned after tribunal commenced hearing
20	TED DIRO	MP; Deputy Prime Minister, Minister for Forests	1991	Guilty – recommended for dismissal – resigned before dismissal effected
21	TOM AMAIU	MP	1992	Resigned after appointment of tribunal

**LEADERS REFERRED FOR PROSECUTION BY THE
OMBUDSMAN COMMISSION UNDER THE LEADERSHIP
CODE AS AT 31 DECEMBER 2005**

No	LEADER	OFFICE	YEAR	RESULT
22	TONY ILA	MP	1992	Guilty – resigned before decision on penalty
23	TIMOTHY BONGA	MP	1992	Resigned – later guilty – dismissed
24	PETER GARONG	MP	1992	Resigned – later guilty – dismissed
25	GALEN LANG	MP	1992	Resigned – later died in office
26	MELCHIOR PEP	MP	1992	Resigned – later guilty – dismissed
27	PHILIP LAKI	MP	1993	Guilty – recommended for dismissal – resigned before dismissal effected
28	ABDREW POSAI	MP; Minister for Forests	1995	Guilty – dismissed - judicial review unsuccessful
29	JOHN NILKARE	MP; Minister for Village Services and Provincial Affairs	1995	Guilty – dismissed – later reviewed by Supreme Court – penalty altered to fine
30	PAUL PORA	MP; Minister for Civil Aviation	1995	Guilty – fined – judicial review by Public Prosecutor unsuccessful
31	JEFFREY BALAKAU	MP; Governor, Enga Province	1996	Guilty – dismissed – judicial review unsuccessful
32	GABRIEL DUSAVA	Secretary, Department of Foreign Affairs	1996	Guilty – dismissed – judicial review unsuccessful
33	YAIP AVINI	MP; Minister for Health	1996	Lost office through criminal conviction
34	JOSEPH ONGUGLO	MP; Minister for Education	1996	Resigned after tribunal commenced hearing
35	ALBERT KARO	MP	1997	Lost office in election
36	PETER YAMA	MP; Minister for Transport and Works	1997	Lost office in election – later re-elected Dismissed from office on 01.12.04. On 04.02.05 National Court quashed the penalty of dismissal, dismissed 2 guilty findings and imposed a fine of K1000. Leader is reinstated as member of Parliament for Ussino - Bundi. Appeal by the Public Prosecutor is pending.
37	AMOS YAMANDI	MP	1997	Lost office in election
38	JERRY SINGIROK	Commander of the Defence Force	1999	Guilty – dismissed – judicial review unsuccessful
39	MICHAEL GENE	Secretary, Department of Attorney-General; Attorney-General	2000	Appointment revoked prior to appointment of tribunal
40	JIM KAS	MP; Governor, Madang Province	2000	Guilty – dismissed – judicial review unsuccessful
41	PETER PEIPUI	MP; Deputy Leader of the Opposition	2000	Guilty – dismissed – later reviewed by Supreme Court – decision on guilt affirmed but penalty altered to fine – slip rule application by Public Prosecutor rejected

**LEADERS REFERRED FOR PROSECUTION BY THE
OMBUDSMAN COMMISSION UNDER THE LEADERSHIP
CODE AS AT 31 DECEMBER 2005**

No	LEADER	OFFICE	YEAR	RESULT
42	ANDERSON AGIRU	MP; Governor, Southern Highlands Province	2000	Guilty – dismissed – judicial reviews unsuccessful
43	JOHN WAKON	Commissioner of Police	2000	Appointment revoked – judicial review of referral unsuccessful
44	KUK KULI	MP	2001	Resigned after appointment of tribunal
45	BERNARD MOLLOK	MP	2001	Resigned after appointment of tribunal
46	JACOB WAMA	MP	2001	Resigned after appointment of tribunal
47	JOHN KAMB	MP; Minister for Communications and High Technology	2001	Not guilty
48	BEVAN TAMBI	MP	2001	Resigned after appointment of tribunal
49	PETI LAFANAMA	MP; Governor, Eastern Highlands Province	2001	Guilty – dismissed – later reviewed by National Court-decision on guilt affirmed but penalty altered to fine
50	PETER WAOEMG	MP	2001	Resigned after appointment of tribunal
51	ANDERSON AGIRU	MP; Governor, Southern Highlands Province	2001	Guilty – dismissed – judicial
52	VINCENT AUALI	MP; Minister for Corporatisation and Privatization	2001	Resigned after appointment of tribunal
53	BERNARD HAGORIA	MP	2002	Resigned after appointment of tribunal
54	MAO ZEMING	MP	2002	Guilty – dismissed – decision on judicial -review to be delivered on 03.02.06
56	IAIRO LASARO	MP	2002	Lost office in election
57	YAUWE RIYONG	MP	2002	Lost office in election
58	JOHN TEKWIE	MP	2002	Lost office in election
59	THOMAS PELIKA	MP; Deputy Leader of the Opposition	2002	Lost office in election
60	ANDREW KUMBAKOR	MP; Minister for Finance, Planning and Implementation and Rural Development	2002	Not guilty
61	MICHEAL NALI	MP	2002	Guilty – fined
62	ALFRED DANIEL	Chairman, National Gaming Control Board	2002	Appointment expired after request for tribunal
63	REUBEN KAIULO	Electoral Commissioner	2002	Appointment expired after matter referred to tribunal
64	CES IEWAGO	Managing Director, Public Officers Superannuation Fund	2003	Appointment revoked prior to request for tribunal
65	MICHAEL NALI	MP	2003	Guilty – dismissed. Judicial Review pending
66	DANIEL KAKARAYA	Managing Director, Mineral Resources Development Corporation Ltd	2003	Pending – application for judicial review in National Court pending
67	MARK WANI	Auditor-General	2003	Guilty – dismissed. Judicial Review

**LEADERS REFERRED FOR PROSECUTION BY THE
OMBUDSMAN COMMISSION UNDER THE LEADERSHIP
CODE AS AT 31 DECEMBER 2005**

No	LEADER	OFFICE	YEAR	RESULT
				pending
68	RAHO HITOLO	Ombudsman	2004	Tribunal disbanded due to lack of jurisdiction. Matter pending
69	MARK SEVUA	Judge of the National Court and Supreme Court	2004	Pending
70	PETER IPATAS	MP Governor of Enga Province	2004	Pending. Application for leave to seek Judicial Review pending
71	GALLUS YUMBUI	MP	2004	Pending
72	CHARLIE BENJAMIN	MP	2005	Pending
73	GABRIEL KAPRIS	MP, Minister for Works	2005	Pending
74	ANO PALA	Clerk of the National Parliament	2005	Pending
75	PUKA TEMU	MP, Minister for Lands & Physical Planning	2005	Pending
76	JAMES YALI	MP, Governor Madang Province	2005	Pending
77	ANDREW BAING	MP, Deputy Leader of the Opposition	2005	Pending

Attachment B

NOTES ON THE CASE STUDY ON LEADERSHIP CODE – DEALING WITH BREACHES

The responsibilities imposed on leaders extend to:

- Their conduct in both public or official life as well as private life and their association with other persons so as not –
 - *To place himself in a position in which he has or could have a conflict of interests or might be compromised in discharging his public or official duties,*
 - *To demean his office or position,*
 - *To allow his public or official integrity, or his personal integrity, to be called into question, and*
 - *To endanger or diminish respect for and confidence in the integrity of government; and*
- Use of Office for personal gain, enter into any transaction or engage into any enterprise or activity that might be expected to give rise to doubt in the public mind.

The responsibilities of leaders also require that:

- A leader who is convicted of an offence in respect of his Office or position or in relation to the performance of his functions or duties; or
- Who fails to comply with the Ombudsman Commission's directions and the responsibilities imposed on him through the Leadership Code is guilty of misconduct in Office.

The Organic Law on the Duties and Responsibilities of Leadership:

- Include provisions for disclosure of the personal or business incomes and financial affairs, and in particular of interests in governmental contracts bodies and of directorship and similar Offices held;
- Empowers disposal of a placement under the control of the Public Trustee, any assets or income whose this seems to be desirable for attaining the objectives of the Code;
- Prescribe specific acts that constitute misconduct in Office;
- Create offences;
- Provide for investigations by the Ombudsman Commission;
- Establish independent tribunal –
 - *To investigate and determine cases of alleged or suspected misconduct in Office, and*
 - *To make recommendations for dismissal if found guilty, or other penalty; and*
- Provides for the suspension from Office of a person pending the investigation of alleged or suspected misconduct.

Proceedings by the tribunal are not adjudicated proceedings but are subject to the principles of natural justice in that;

- No such proceedings are a bar to any other proceedings provided for by law, and
- No other proceedings provided for by law are a bar to proceedings by the tribunal.

Attachment C

PETI LAFANAMA

OVERVIEW

Offices	Member for Eastern Highlands Provincial; Member, Eastern Highlands Provincial Assembly, Members of the personal staff of the Prime Minister offices subject to the Leadership Code by virtue of Sections 26(1) (c) 26 (1) (d) and 26 (1) (l) of the <i>Constitution</i>).
Dates of referral to Public Prosecutor	21 September, 2001
Date of request for appointment of tribunal	29 January, 2002
Date of appointment of tribunal	19 April, 2002
Composition of tribunal	Mr Justice Robert Woods (Chairman) and Senior Magistrates Mr Allan Kopi and Mr Mekeo Gauli.
Date of referral to tribunal	10 May, 2002
Legal representation	Mr C Manek, Public Prosecutor; Mr P Paraka, of Paula Paraka Lawyers, for the leader
Hearing dates	10, 14, 15, 16, 17, 20, May 2002
Decision and recommendation	Guilty of all three allegations of misconduct in office – tribunal recommended dismissal from office
Date recommendation given	20 May 2002
Implementation	Not effected
Judicial review	On 21 May, 2002 Mr Lafanama field an application in the National Court for leave to seek judicial review of the tribunal decision. On 24 May 2002 Amet CJ heard that application and granted leave for judicial review. On 4 June 2002 the National Court (LOS J) heard the application for review which decision was delivered on 6 June 2002 dismissing all grounds except the ground on penalties which was upheld and the penalty of dismissal substituted with a fine of K1,6000.00 on each count.
Result	Mr Lafanama is guilty of three allegations of misconduct in Office and is to pay a fine of K4,800.00. He was an unsuccessful candidate in the 2002 general election.

Details

On 16 July 1997 Mr Lafanama assumed office as member for Eastern Highlands Provincial in the National Parliament and became a member of the Eastern Highlands Provincial Assembly. He became the Governor of the Eastern Highlands province.

On 28 August 1998, the Supreme Court held that there was undue influence involved in Mr. Lafanama's election. It declared his election void and ordered that a new election be conducted for the electorate. On 28 September 1998 the then Prime Minister, Mr Bill Skate, appointed Mr Lafanama as a First Secretary on his official personal staff under the *Official Personal Staff Act*. As a consequence, Mr Lafanama again became a leader, by virtue of Section 26 (i)(l) of the *Constitution* and Section 1 of the *Organic Law on the Duties and Responsibilities of Leadership*.

On 14 July 1999 Mr Lafanama again took office as the member for Eastern Highlands Provincial, after a by-election.

In January, 2002 the Ombudsman Commission obtained information concerning apparent irregularities in the distribution and application of funds of the National Gaming Control Board (the Gaming Board).

From the information obtained, it appeared the substantial amounts of money held in accounts controlled by the Gaming Board had been distributed to various leaders, including Mr Lafanama.

The Commission on its own initiative commenced an investigation into suspected misconduct in office by the leaders concerned.

On the 17 November, 2000 a right to be heard notice was served on him. On 6 December, 2000 he responded in writing. The ombudsman Commission deliberated on Mr. Lafanama's response and concluded there was a prima facie case he had been guilty of misconduct in office. On 21 September 2001, the matter was referred to the Public Prosecutor.

The Ombudsman Commission's statement of reasons provided to the Public Prosecutor puts the allegations of misconduct in office into four categories. The first three arise out of regularities in receipt and application by Mr Lafanama of funds of the Gaming Board and the last category concerns the leader's failure to comply with his constitutional duty to give true and complete annual statements to the Ombudsman Commission. While the leader did provide annual statements, it is alleged they were misleading and incomplete in material particulars. The Commission concluded that Mr Lafanama appeared to have:

- Received public money from the Gaming Board in the form of a cheque for K10,000.00 without lawful authority;
- Converted all of the proceeds of the cheque, being public money, to his personal use and the use of his associates;
- Dishonestly misappropriate public money, thereby committing offences under the *Criminal Code*; and
- Failed to disclose to the Ombudsman Commission the assets (including money and personal property) that had come into his possession and control as a result of receiving cheques from the Gaming Board.

In the statement of reasons the Ombudsman Commission noted that it was unacceptable for Mr Lafanama to suggest that he received public money as a "private citizen" and to say that he is not accountable for how he spent that money.

A leadership tribunal chaired by Sir Robert Woods inquired into three allegations of misconduct in office referred to it by the Public Prosecutor. The tribunal found the leader guilty of all three allegations of misconduct in Office.

The tribunal found that Mr Lafanama through his position:

- Sought and received public monies without lawful authority;
- Received that benefit by reason of his position as an officer on the personal staff of the Prime Minister without lawful authority; and
- Obtained monies from a fund under the control of Papua New Guinea and intentionally applied it to purposes to which it could not lawfully be applied by depositing it into his personal account.

Mr Lafanama was found guilty of all allegations presented by the Public Prosecutor. The tribunal said it was satisfied that each could involve a similar abuse of the privilege and authority and responsibility of leadership and that each count warranted dismissal. Therefore, the tribunal recommended that Mr Lafanama be dismissed from Office as a member of parliament, on each could found guilty.

On 21 May 2002, Mr Lafanama filed an application in the National Court for leave to seek judicial review of the tribunal's decision. On 24 May 2002, Amet CJ heard that application and granted leave. On 4 June 2002, the National Court (Los J) heard the application for review. The decision was delivered on 6 June 2002. Los J dismissed all grounds except the one on penalty, which was upheld. The penalty of dismissal was substituted with a fine of K1,600.00 on each count.

The result was that the Court imposed a fine of K4,800.00 on a leader who had misapplied K10,000.00 of public money, by putting it to his own use. On the face of it, this was, in the opinion of the Ombudsman Commission, an absurd result.

For further details of the court proceedings, see chapter 8.

Attachment D

ANDERSON AGIRU

Mr Agiru was referred to the Public Prosecutor twice. The first time was on 9 November 2000. That referral concerned alleged misconduct arising from outstanding annual statements and an incident at Mendi airport. The second time was on 6 November 2001. That referral concerned an incident at the Port Moresby Golf Club.

Overview

Offices	Member for Southern Highlands Province; Governor, Southern Highlands Province; Member, Southern Highlands Provincial Assembly (offices subject to the Leadership Code by virtue of sections 26 (1) (c) and 26 (1) (d) of the <i>Constitution</i>).
Dates of referral to Public Prosecutor	9 November 2000; 6 November 2001.
Date of request for appointment of tribunal	15 October 2001.
Date of appointment of tribunal	7 November 2001.
Composition of tribunal	Mr Justice Don Sawong (Chairman) and Senior Magistrates Mr Patrick Baiwan and Mr Peter Toliken.
Date of referral to tribunal	16 November 2001.
Legal representation	Mr J Pambel for the Public Prosecutor; Mr G Sheppard and Mr B Andrew of Maladinas Lawyers, for the leader.
Hearing dates	16, 28, 29, 30 November, 11, 13, 17, 18, 19, 21 December 2001, 16, 17, 18, 20 January 2002.
Decision and recommendation	Guilty of 12 allegations; not guilty of 3. Tribunal recommended dismissal on 5 allegations and a fine of K1,000.00 each on 7 allegations.
Date recommendation given	18 January 2002.
Implementation	20 January 2002
Judicial review	<p>On 22 January 2002, the leader applied for leave for judicial review before the National Court. On 15 March 2002, the National Court declined the application.</p> <p>On 25 March 2002, Mr Agiru filed an application in the Supreme Court for a review of the decision of the National Court. On 2 May 2002, the Supreme Court heard Mr Agiru's application. On 24 May 2002, the Supreme Court refused the application.</p> <p>On 29 May 2002, Mr Agiru filed a new application in the National Court. On 11 June 2002, the National Court heard the application. On 12 June 2002, the Court dismissed the application.</p> <p>On 13 June 2002, Mr Agiru filed an appeal in the Supreme Court against the decision of the National Court. On 24 June</p>

	2002, the Supreme Court dismissed the application.
Result	Mr Agiru is dismissed and disqualified from holding public office under Section 31 of the <i>Constitution</i> until 21 January 2005.

Details

On 16 July 1997, Mr Agiru took office as the member for Southern Highlands Provincial. He became the Provincial Governor and a member of the Provincial Assembly. He had previously held leadership positions as a member of the official personal staff of a number of different Ministers, over a period of nine years.

Various allegations of misconduct in office had been put to Mr Agiru in four separate right to be heard notices, given to him in the period from December 1997 to September 2000.

In December 1997, Mr Agiru was given notice of his right to be heard on his alleged failure to give annual statements to the Ombudsman Commission for 1993/94, 1994/95 and 1995/96.

In January 1998, Mr Agiru was given a right to be heard on his alleged failure to give an annual statement to the Ombudsman Commission for 1996/97.

In August 2000, Mr Agiru was given a right to be heard on his alleged unlawful possession of a high-powered firearm. This matter came to light when an article headed "Only God will remove us..." was published on page 3 of the 31 July 2000 edition of the *Post-Courier* newspaper. A photograph showing Mr Agiru at Mendi airport shaking hands with the Minister for Provincial and Local-level Government Affairs, Mr Iairo Lasaro, accompanied it. In his left hand Mr Agiru was carrying what appeared to be an AR-15 semi-automatic high-powered firearm. Three other members of the Parliament also appeared in the photograph.

In September 2000, Mr Agiru was given notice of his right to be heard on his alleged failure to give annual statements to the Ombudsman Commission for 1997/98 and 1998/99.

Mr Agiru did not respond to any of the above right to be heard notices.

The Ombudsman Commission deliberated on the matter and concluded there was a prima facie case that Mr Agiru was guilty of misconduct in office. Accordingly, the Commission was obliged by Section 29 (1) of the *Constitution* and Sections 17 (d), 20(4) and 27 (1) of the *Organic Law on the Duties and Responsibilities of Leadership* to refer the matter to the Public Prosecutor, which it did on 9 November 2000.

Second incident

On Monday 24 September 2001, an article appeared in "the drum" column of the *Post-Courier* newspaper, which referred to a "well-known politician". He was said to have held "his pistol to the head of a player" while playing a game of golf at "a local sporting club". The Ombudsman Commission received information that the politician referred to was Mr Agiru. While the article referred to above states that the incident occurred on the

“weekend”, it in fact occurred on the afternoon of Monday 17 September 2001 (the Independence Day public holiday, following the weekend of 15 and 16 September).

The Ombudsman Commission's investigation revealed that at about 4.00 pm on Monday 17 September 2001 Mr Agiru went to the Port Moresby Golf Club, of which he was a member, to play a game of golf. Soon after teeing off, Mr Agiru had an altercation with another golfer who had hit a golf ball in his direction.

He allegedly assaulted the other golfer by poking him in the chest with his finger while simultaneously producing a pistol and using threatening languages.

The Commission took into account the statements of witnesses and the leader's written statements concerning the incident.

Inquiries made by the Ombudsman Commission established that, at the time of the incident, Mr Agiru was not the holder of a current firearm license.

The Commission deliberated on Mr Agiru's written response. It was not satisfied that any of the matters raised by him justified the brandishing of a pistol in a recreational sport setting.

The Commission was satisfied that there was a prima facie case that Mr Agiru was guilty of misconduct in office and referred the matter to the Public Prosecutor.

On 15 October 2001 the Public Prosecutor, Mr Chronox Manek, exercised his discretion under Section 177 of the *Constitution* to bring proceedings against Mr Agiru for misconduct in office. He did so by requesting the Chief Justice, Sir Arnold Amet, to appoint an independent tribunal to investigate, inquire into and determine the alleged misconduct. On 7 November 2001 the Chief Justice appointed the tribunal.

On 16 November 2001 the matter was formally referred to the tribunal. The tribunal ran to 18 January 2002 when it announced its decision in public.

There were three categories of allegations. First, concerning the leader's failure to comply with his constitutional duty to give annual statements to the Ombudsman Commission. Secondly, concerning the leader's illegal possession of a high-powered firearm at Mendi Airport. Thirdly, concerning the incident at the Port Moresby Golf Club.

Mr Agiru was found guilty of 12 allegations of misconduct in office.

Annual statements (guilty of allegation Nos 1, 2, 4, 5, 6, 7)

The tribunal found the leader guilty of failing without reasonable excuse to submit five annual statements to the Ombudsman Commission.

In respect of each finding, the tribunal recommended a fine of K1, 000.00. As to allegation No 7, which was framed as an integrity charge under Section 27 of the *Constitution*, the tribunal said the leader's consistent failures, despite numerous reminders, was an act amounting to serious culpability, contrary to his serious obligations required by the Constitutional Laws. The tribunal recommended dismissal on allegation No.7

Mendi Incident (guilty of allegations Nos 8, 10, 11, 12).

No 8 involved unlawful possession of a high-powered firearm. No 10 was displaying that firearm in a public place in public view. No 11 was allowing himself to be photographed by the *Post-Courier*. No 12 was misleading the public in an interview with a *Post-Courier* journalist.

As to No 12, there was no serious culpability and a fine of K1,000.00 was recommended. As to the other three the tribunal said there was serious culpability and that each instance of misconduct was contrary to the concepts of public good and public policy. "We consider a breach of any criminal law by a leader to be very serious. " Dismissal was thus recommended for each of Nos 8, 10 and 11.

Port Moresby Golf Club incident (guilty of allegation Nos 13 and 15

No 13 was another finding of misconduct in office for being in unlawful possession of a firearm. The tribunal noted that the leader had clearly breached the provisions of a criminal law. "The members of the public expect their leaders to have integrity and comply with all the laws of the country to the best of their abilities. " Mr Agiru was seriously culpable and therefore No. 13 warranted dismissal.

No. 15 concerned the assault of a fellow golfer. Here the tribunal said that, given its findings on the evidence available, the most serious penalty of dismissal should not be imposed. Instead a fine of K1,000.00 was recommended.

Penalty

The tribunal cited the relevant law. It says that, having found a leader guilty of misconduct in office, the tribunal *must* recommend dismissal unless it is satisfied that there was no serious culpability and that public policy and the public good do not require dismissal.

The tribunal said it had thought at length about the leader's great work, his achievements for his country and the Southern Highlands Province:

We agree he has been a fine example who has done a lot for his province. In this, he has much in common with many other leaders and it is of great sadness to the tribunal that he has been brought to this situation.

In summing up the tribunal quoted from the Final Report of the Constitutional Planning Committee.

No one can do more to set the tone and style of the nation than the leaders. Contrariwise, no one in the nation can do more to lower the standards than the leaders.

On 20 January 2002 the tribunal transmitted its recommendation to Government House. The Acting Governor-General, Mr Bernard Narokobi, pursuant to Section 28 (2) of the *Constitution*, implemented the recommendation by executing an instrument of dismissal and fine. Mr Agiru was dismissed from office as the member for Southern Highlands. By operation of law he also lost office as Governor of the Province.

He is ineligible for public office under Section 31 of the *Constitution* for a period of three years after the date of his dismissal.

Attachment E

YAUWE RIYONG

Offices	Member for Chuave Open; Member, Simbu Provincial Assembly (offices subject to the Leadership Code by virtue of Sections 26(1) (c) 26 (1) (d) of the <i>Constitution</i>).
Date of referral to Public Prosecutor	14 June 2002.
Date of request for appointment of tribunal	No request by Public Prosecutor.
Result	The leader was an unsuccessful candidate in the 2002 general election. He has not held any offices since then subject to the Leadership Code, so no further action could be taken by the Public Prosecutor. If he becomes a leader again the matter may be reactivated.

Details

On 16 July 1992 Mr Riyong took office as the member for Chuave Open in the National Parliament.

On 8 March 2001, he was served with a right to be heard notice. He did not exercise his right to be heard.

The Ombudsman Commission deliberated on Mr Riyong's matter and concluded that there was a prima facie case he had been guilty of misconduct in office. On 14 June 2002, the matter was referred to the Public Prosecutor.

The Ombudsman Commission provided the Public Prosecutor with a statement of reasons that placed the allegations of misconduct in office into three categories. These related to the leader's alleged inequitable distribution of Rural Transport Development Programme funds in 1999, his alleged misapplication of K55, 000.00 of public money forming part of a fund under the control of the National Gaming Control Board in 1999 and his alleged misapplication of K12, 491.60 of District Support Grant funds to complete the purchase of a motor vehicle registered in his name.

It appeared that Mr Riyong:

- Received public money from the Gaming Board in the form of two cheques totaling K55,000.00 without lawful authority;

- Received public money from the District Support Grant discretionary component of the Rural Action Program funds for the Chuave Electorate in the form of a cheque for K12,491.60 without lawful authority;
- Dishonestly misappropriated public money, thereby committing offences under the *Criminal Code*; and
- Failed to disclose to the Ombudsman Commission the assets (including money and personal property) that had come into his possession and control as a result of receiving money from the Gaming Board and the District Support Grant.

The Ombudsman Commission concluded that there was a prima facie case that Mr Riyong had omitted misconduct in office in that he:

- Place himself in a position in which he could have a conflict of interest or might be compromised when discharging his public and official duties contrary to Section 27 (1) (a) of the *Constitution*;
- Demeaned the leadership offices that he held contrary to Section 27 (1) (b) of the *Constitution*.
- Allowed his official and personal integrity to be called into question contrary to Section 27 (1) (c) of the *Constitution*;
- Endangered respect for and confidence in the integrity of government in Papua New Guinea contrary to Section 27 (1) (d) of the *Constitution*;
- Engaged in an activity that might be expected to give rise to doubt in the public mind as to whether he was carrying out his duty as a leader contrary to Section 27 (2) of the *Constitution*;
- Knowingly gave a statement to the Ombudsman Commission that was false, misleading and incomplete in a material particular contrary to Section 4(6) of the *Organic Law on the Duties and Responsibilities of Leadership*;
- Directly accepted benefits by reason of his official position which had not been specifically authorized by law contrary to Section 5(1) of the *Organic Law on the Duties and Responsibilities of Leadership*;
- Accepted benefits from a person (the Gaming Board) without exemption from liability by the Ombudsman Commission contrary to Section 12 (1) of the *Organic Law on the Duties and Responsibilities of Leadership*; and
- Intentionally applied money forming part of a fund under the control of Papua New Guinea to purposes to which it could not lawfully be applied

contrary to Section 13 (a) of the *Organic Law on the Duties and Responsibilities of Leadership*

Attachment F

***EDITORIAL FROM THE NATIONAL NEWSPAPER PNG 15
AUGUST 2006***

OPINION

The National

THE Engan Governor has returned home after narrowly avoiding dismissal from office under the Leadership Code.

Peter Ipatas was found guilty of a number of the charges he faced, and was fined.

We have noted a number of recent incidents in which members of the public facing our courts have been found guilty of criminal charges, but have avoided prison or other severe sentences, often because of lack of prosecution, or through legal technicalities.

Some of those cases have involved leaders.

And it has become customary for their smiling faces to appear on the front pages of our newspapers, or be seen leading the news on our television station.

Surrounded by their supporters, these people give every evidence of having won a major victory, despite at best having the charges against them dropped because the court is unable to proceed further.

Last Friday, Governor Ipatas returned triumphantly to Enga from Port Moresby on a chartered aircraft, in company with invited guests including former prime minister Paias Wingi.

Hundreds of his supporters turned up at Wapenamanda airport, as expected, to greet their returning Governor, who addressed them after leaving the plane.

While so occupied, some 50 of his audience decided that the Airlines PNG aircraft, which was readying to return to Port Moresby, should not go back empty.

They forced themselves onto the aircraft, abusing the airline crew, the hostess and other offi-

cialists in their fight to get a free trip.

Riot police were called and forcefully removed the would-be travellers from the aircraft.

Some 40 of the men were arrested and appeared in court yesterday.

Reports indicated that "the plane and its crew were subjected to grave danger in the melee".

Under these circumstances, it would have been reasonable to expect Governor Ipatas, as a responsible leader, to express his anger over the incident and in the accepted custom of his own people, at least offer some form of compensation to the airline and its crew.

That does not appear to have happened.

On the contrary, Mr Ipatas

Not just a trivial matter

was last night reported to have played down the matter.

The people were just excited at the prospect of a free trip, he told the media, they were just simple village people.

It seems to us that the whole incident underlines the skewed approach to many leaders now take towards their responsibilities.

Governor Ipatas is of course free to travel on chartered planes whenever and wherever he likes, and to be accompanied by friends and supporters as he sees fit.

But on this occasion, having just been found guilty of a substantial number of charges, and been fined as a result, it might have sent a more tactful and moderate message if he had chosen to travel quietly

That was almost 31 years ago. Had the people of Wapenamanda and surrounding villages acted then as they acted last week, little notice would have been taken of the incident.

Governor Ipatas wants the nation to dismiss the incident as "saming nating", an outburst of enthusiasm and excitement brought about by his return.

At the risk of being thought humourless, we do not see it as such, but rather as symbolic of a disrespect for authority, for law and order and for the rights and safety of others and their possessions.

In our opinion, the action of the Engan Provincial Police Commander in having instant arrests made deserves commendation.

It sends a loud and clear message to the people of Enga, and to the rest of the nation, that such behaviour is unacceptable, and will not be tolerated.

on a public flight. As it was, his arrival at Wapenamanda gave the appearance of a conquering hero returning triumphant to his people.

Governor Ipatas knows his own people well; having such knowledge is one of the essential ingredients needed to win elections.

We would imagine that he was fully expecting a rousing welcome on his return, and his willingness to address his people suggests that indeed that was so.

But it says little for their respect for him or for the provincial government that his people could seek to hijack free rides on his chartered aircraft.

PNG is not standing at the threshold of independence,