

19/06/08
**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

Civil Case No. 205 of 2005

BETWEEN: TELECOM VANUATU LIMITED
Claimant

**AND: THE MINISTER FOR
INFRASTRUCTURE AND PUBLIC
UTILITIES**
First Defendant

**AND: HAM LINI VANUAROROA, MOANA
CARCASSES KALOSIL, WILLY
JIMMY TAPAGARARUA, BARAK
TAME SOPE, EDWARD NATAPEI,
JOSHUA KALSAKAU, ISABELLE
DONALD, ARNOLD PRASAD,
MORKING STEVEN IATIKA,
GEORGE WILLS, JOE NATUMAN &
JAMES BULE**
Second Defendants

AND: THE ATTORNEY GENERAL
Third Defendant

**AND: PACIFIC DATA SOLUTIONS
LIMITED**
Interested Party

Coram: Justice C. N. Tuohy

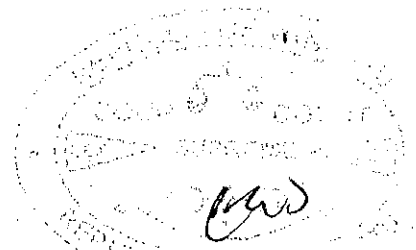
Mr. Rosewarne & Mr. Kalmet for Claimant

Mr. Botleng & Mr. Stevens for 1st, 2nd & 3rd Defendants

Mr. Malcolm for Interested Party

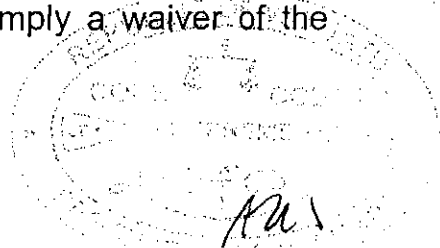
Dates of Hearing: 16 August 2006

Date of Decision: 16 August 2006



INTERLOCUTORY RULING (NO.2) AND REASONS

1. After delivery of Interlocutory Ruling (No. 1), Mr. Rosewarne sought a further ruling in respect of the Claimant's applications for disclosure of specific documents but only in respect of Item 2 in the application dated 25 July 2006 a legal opinion prepared by the Crown Solicitor's Office of New South Wales in 2003 for the Government of Vanuatu relating to the telecommunications legislation, and the items in the application dated 28 July 2006, Pacific Data Solutions' business plans.
2. After hearing argument, I declined the application relating to the legal opinion orally with reasons. However, those reasons were not recorded contemporarily. I summarise them now.
3. The opinions are set out in the "Castalia Report" which apparently was made available by the Government to participants in a seminar in April 2005. The Castalia Report was also annexed to the sworn statements of the Minister dated 11 August 2006, which was produced as a result of the Claimant's application to add a new ground to its claim.
4. There seems little doubt that the nature of the legal opinion is such that in normal circumstances it would be legally privileged as Mr. Rosewarne accepted. However he argued that by allowing a summary of its key points to be made available at a seminar and/or by annexing the Report containing that summary to a sworn statement filed in this proceeding, the Government had waived any legal privilege.
5. I rejected that submission. The seminar was entirely unrelated to this proceeding and indeed predated it. No general right of access to the opinion itself can arise simply because the Government has chosen to make a summary available to some persons.
6. As to annexure of the opinion to the sworn statement, that statement was made only in relation to the proposed amendment and in my decision on that point, I held that it was not to be read as the proposed amendment was not allowed. In any event annexure of the Castalia report does not imply a waiver of the



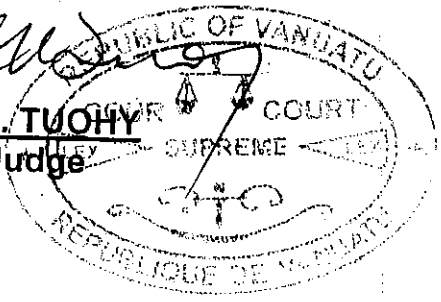
privilege attaching to the opinion. It is only an incidental aspect of the sworn statement.

- 7. No argument was addressed to the Court regarding the business plans and I adjourned that application in case Mr. Rosewarne wished to raise the issue again during the hearing. It was not raised again.

DATED at Port Vila on 16 August 2006

BY THE COURT

C. N. Tuohy
C. N. TUOHY
Judge

The seal of the Supreme Court of the Republic of Vanuatu is circular. It features a central emblem with a scale of justice and a sword. The text "REPUBLIC OF VANUATU" is written along the top inner edge, and "REPUBLICQUE DE VANUATU" along the bottom inner edge. The words "SUPREME COURT" are written across the center of the seal.