

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

Criminal
Case No. 22/1308 SC/CRML

PUBLIC PROSECUTOR

v

PARMOD ACHARY

Dates of Trial: 22-26 May 2023
Before: Justice V.M. Trief
In Attendance: Public Prosecutor – Mr K. Massing
Defendant – Mr M. Hurley
Date of Decision: 16 June 2023

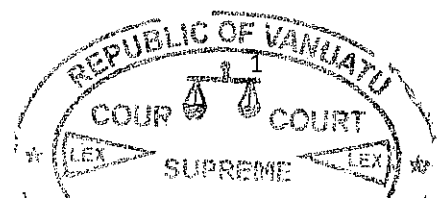
VERDICT

A. Introduction

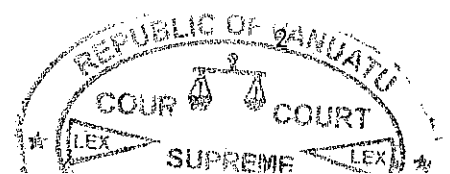
1. The accused Parmod Achary is charged with indecency without consent (Charges 1-5) and breaches of s. 19 and para. 13(1)(a) of the *Leadership Code Act* [CAP. 240] (Charges 6-10).
2. At the conclusion of the evidence, counsel requested to file closing submissions. They have. I now set out the verdicts.

B. Law

3. The charge of act of indecency without consent under para. 98(a) of the *Penal Code* [CAP. 135] has 3 legal ingredients which must be proved for a conviction to be entered, namely that on the occasion alleged:
 - Mr Achary committed an act of indecency upon, or in the presence of the complainant; **and**
 - The act was without the complainant's consent; and
 - That Mr Achary knew there was no consent or did **not** believe on reasonable grounds that the complainant consented.



4. The charge of act of indecency without consent under para. 98(b)(i) of the *Penal Code* has 3 legal ingredients which must be proved for a conviction to be entered, namely that on the occasion alleged:
 - Mr Achary committed an act of indecency upon, or in the presence of the complainant; **and**
 - The act took place by force and was without the complainant's consent; and
 - That Mr Achary knew there was no consent or did **not** believe on reasonable grounds that the complainant consented.
5. Paragraph 13(1)(a), in Part 2, of the *Leadership Code Act* provides as follows:
 13. (1) *A leader must:*
 - (a) *comply with and observe the law;*
6. Section 19 of the *Leadership Code Act* provides as follows:
 19. *A person who does not comply with Part 2, 3 or 4 is guilty of a breach of this Code and is liable to punishment in accordance with Part 6.*
7. The following legal ingredients must be proved in respect of the charges alleging breach of s. 19 and para. 13(1)(a) of the *Leadership Code Act*:
 - Mr Achary is a leader; and
 - Failure to comply with and observe the law in that he breached para. 98(a) or 98(1)(b) of the *Penal Code*.
8. The Prosecution had the onus of proof and was required to establish the allegations beyond reasonable doubt before a finding of guilt could be made.
9. Each charge was to be considered as a distinct exercise.
10. Mr Achary was not required to establish anything.
11. Only admissible relevant evidence should be taken into account in determining the outcome of the trial. The Prosecution and defence witnesses have equal value, and each witness is to be considered on their own merits.
12. As this was a case of alleged sexual offending, I warned myself of the danger of convicting the defendant on the uncorroborated evidence of a complainant.
13. This was also a matter of credibility.
14. I assessed the credibility and accuracy of a witness' evidence not only by how the witness appeared in Court but also by the consistency of accounts. I looked firstly for consistency within a witness' account. Secondly, I looked for consistency when comparing that account with the accounts of other witnesses, and also when comparing witnesses' accounts with

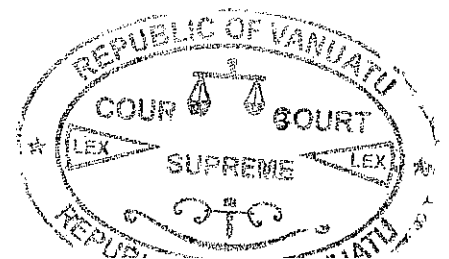


relevant exhibits. I also had regard to the inherent likelihoods of the various situations then prevailing.

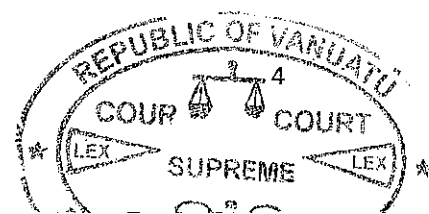
15. I reminded myself that if I were to draw inferences, they could not be guesses or speculation but had to be logical conclusions drawn from other properly established facts. Further, that if more than one inference was available, the inference most favourable to the defence must be drawn.
16. These factors impacted on my findings of facts.

C. The Evidence

17. At the commencement of trial, I allocated the following exhibit numbers to the documents produced by the Vanuatu National Provident Fund ('VNPf') in answer to the Court's summons for production:
 - a. 'Itemised Accounts – Vodafone mobile numbers 773-0181 & 730-5071' [**Exhibit D1**];
 - b. 'Josian Viraliliu – Personal file' (1 spiral bound volume) [**Exhibit D2**];
 - c. 'Nathalie Merick – Personal file' (1 spiral bound volume) [**Exhibit D3**];
 - d. 'Nathalie Merick – Discipline file' (1 spiral bound volume) [**Exhibit D4**];
 - e. 'Cynthia Kammy – Personal file' (1 spiral bound volume) [**Exhibit D5**];
 - f. 'Cynthia Kammy – Discipline file' (1 spiral bound volume) [**Exhibit D6**];
 - g. 'Serah Simeon – Personal file' (1 spiral bound volume) [**Exhibit D7**];
 - h. 'Serah Simeon – Discipline file 1' (1 spiral bound volume) [**Exhibit D8**];
 - i. 'Serah Simeon – Discipline file 2' (1 spiral bound volume) [**Exhibit D9**]; and
 - j. 'Serah Simeon – Discipline file 3' (1 spiral bound volume) [**Exhibit D10**].
18. Mr **David Eggie Merick**'s police statement dated 12 January 2022 [**Exhibit P1**] was tendered by consent. Mr Merick alleged that Mr Achary had committed unethical practices and sexual harassment acts against his wife Josian Merick (Josian Viraliliu) ever since she started working as the VNPf Acting Board Secretary. He had made a formal complaint letter to the Chairman of the VNPf Board but that had not been addressed hence his complaint to the Police. Mr Merick's evidence constituted recent complaint evidence as to his wife's complaint.
19. Mr **Letlet August**'s police statement dated 2 February 2022 [**Exhibit P2**] was also tendered by consent. Mr August confirmed receiving a complaint from Mr Merick on 13 December 2021. He told Mr Merick that he would have the matter dealt with by the VNPf disciplinary process. However, VNPf Board members were already on recess and he too left for holidays, resuming work on 31 January 2022. On 2 February 2022, he was approached by the Police to make this statement.

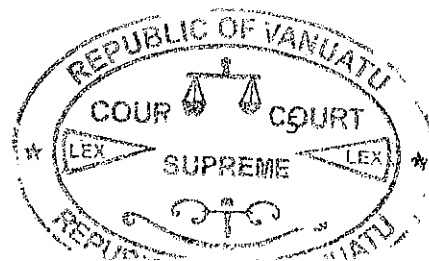


20. Mr Achary's caution statement [**Exhibit P8**] was tendered by consent.
21. I **heard** evidence from **Josian Tangi Viraliliu**. She is 39 years old and married to David Eggie Merick. She has 4 children.
22. Ms Viraliliu stated that she is currently unemployed. Prior to that, she worked at the VNPF from 2019-2022 as Acting Board Secretary. In 2021, she mostly experienced abusive languages from Mr Achary including him calling her "fucken arse", "big hole", "stupid idiot", "you doing things like headless chicken", "fuck you" or if he was angry or upset, he would say, "Go fuck the Board members". He would also say to her, "*Bæ mi fuckem yu ia*" ('I will fuck you') or words to the effect of "Go and the Chairman of the Board will fuck you".
23. Another incident which happened in 2021 that she did not like was that she was standing at a printer machine, trying to fix the paper jam, when Mr Achary approached her from behind and placed his penis against her bottom as she was bending down. She was shocked by that action and scolded him. He said, "*Oh yu late – I go insaed finis*" ('You're too late – it's already inside'). She demonstrated that she was bending down to fix the paper jam when Mr Achary came from behind and put his front part right onto her bottom (indicating her buttocks). She said to him, "*Wanem yu mekem?*" ('What are you doing?'). He responded, "*Mi putum go inside finis*" ('I have inserted it already'). He was referring to his penis.
24. She did not expect him as their big boss to do such an act to her. She still feels down from it. The first person she told was her husband. He was angry. He was not with her so he told her to keep a record of what she experienced at the workplace. She slowly started keeping a record of the incidents that happened at work. Her husband sent a complaint by email to Mr August, the VNPF Board Chairman. Mr August said he would deal with the matter on his return to Vila.
25. Ruby, Mr Achary's secretary, was the other person in the room when this incident happened. Ruby was sitting at her desk. The printer was not behind but to Ruby's side.
26. Ms Viraliliu drew a sketch of the room [**Exhibit P3**] showing Ruby's desk facing the walkway and the printer behind and to the right of Ruby, near the door from the General Manager Mr Achary's office into that room.
27. In cross-examination, Ms Viraliliu agreed that she was appointed Acting Board Secretary on 1 June 2020. She was shown 3 photos. She recognised the first photo as the area she drew in **Exhibit P3**. The second photo is what would be seen from Ruby's desk, with Mr Achary's door on the right-hand side and the printer she described at the bottom right hand corner of the photo. The third photo was of the room Ms Viraliliu occupied as Acting Board Secretary from 1 June 2020 along with Esther James. Ruby's desk is visible through the doorway.
28. As Acting Board Secretary, she travelled to Board meetings on Santo and Tanna. It was suggested that she travelled a total of 10 times to Santo and Tanna. She did not recall. Ruby Mulveras, Mr Achary's Acting Executive Assistant was also there. Ms Viraliliu agreed that sometimes she and Ms Mulveras, or she by herself, went into Mr Achary's hotel room

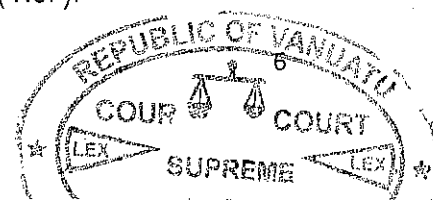


to discuss VNPF business. She agreed that on none of those occasions when she was in Mr Achary's room by herself did he touch her.

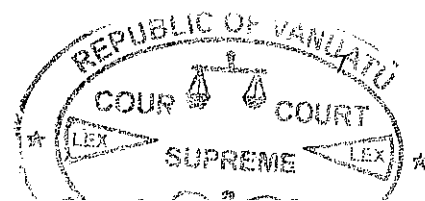
29. She accepted that she did not give a truthful answer when she said she was not working at the moment as she is currently on probation at Au Bon Marche.
30. It was suggested in cross-examination that whilst working at VNPF, she did not tell anyone about the incidents. She said she told former manager Roan Lester and Mr Achary himself. It was put to her that she wrote a letter to Clera Seth, Human Resource person [pp 189-190, **Exhibit D2**], but had never told Mrs Seth her concerns before writing that letter. She said they had discussed sometimes. It was put to her that she did not mention Mrs Seth in her earlier answer about who she told. She said that she could not recall all her statements as it was quite some years back. She repeated that she told Mrs Seth before writing that letter to her.
31. She was asked where the records were that she said she had slowly started keeping after she told her husband. She said all the records are mentioned in her statement. She said yes, she had kept notes of what she said happened. Where were the notes? She said all the information was stated in her statements. She confirmed that the incident near the printer happened in June/July 2021. Did she make a note of it at the time it happened? She said that during that time, she was typing them on computer.
32. She was asked to refresh her memory from her Police statement dated 17 August 2021. That statement starts with the date of 2 June 2021. She agreed that was some 2 and a half months before the Police statement dated 17 August 2021. She was asked where her notes were of what she says happened on 2 June 2021. She answered, "Those are my notes!" It was put to her that she did all this from memory on 17 August 2021. She replied, "Yes, those are my notes." She confirmed there were no other notes. She agreed that the first time she gave the 17 August 2021 statement to the Police was in December 2021 when she made her statement.
33. She agreed that an important part of her job as Acting Board Secretary was to take notes during Board meetings and prepare the Board minutes. She agreed it was important to pass Board resolutions promptly to senior management. She was asked if she was happy to get the role of Acting Board Secretary. She said that she rejected the role because she thought she was not fit for the role. But Mr Achary kept asking her to take up the role. She even asked him, no, to keep to her position in the Research Department. He told her that she must agree otherwise she has no place inside VNPF. He would not allow her any other position inside VNPF so that's why she had no choice but to accept it.
34. She could and did produce Board minutes from when she started in June 2020. She could not recall being late to produce Board minutes in 2021 and Mr Achary complaining about that. She agreed she attended a Board meeting on Santo on 8 December 2021. She conceded that she had not produced a minute for that meeting because she and Mr Achary had an argument at the time. It was put to her that Mr Achary was expressing his frustration to her about the Board minutes. She answered that his frustration was not about the Board minutes but about something that happened on Santo.



35. She did not recall a case of her going missing in 2021 or that when she returned, Mr Achary asked her what took her so long. She could not recall a time when she told Mr Achary that the reason that she was outside of office for so long was that she was waiting for the Chairman and other Board members. Mr Hurley abandoned this line of questioning after she kept asking for specifics and saying that she could not recall that.
36. She agreed that if she was bending over to fix a paper jam at the printer, there was not much space between the wall and her bending down. It was put to her that when Mr Achary came out of his office and she was there fixing the paper jam, he brushed past her as he was trying to get from the wall and past her. She said, "No, *hemi* intentionally putting his front on my bum." She agreed that she had her back to him so she could not see what he was doing.
37. It was again put to her that a part of his body brushed against her. She replied that he did not touch her a little – he intentionally bumped himself into her bum because after that he said, "Oh, *yu late*." It was put to her that it wasn't his penis that touched her. She said, "It's here (pointing to her lap). It's here – where his penis was."
38. She was challenged that he did not actually put his penis against her. She replied, "As I said, he intentionally put his penis like this" (both hands pointing to in front of her waist). She agreed he said, "I finally made it through." It was put to her that Mr Achary he did not say, "I finally made it in." She disagreed, saying, "In Bislama, he said, 'It's already inside'." It was put to her that he said 'I finally made it through' meaning he finally made it past her. She said, "*No! Hemi minim action we hemi mekem lo mi. Hemi no jes pas thru.*" ('No! He meant his action that he did to me. He did not just pass by.')
39. She said that she did mention the incident to Ruby, asking her if she saw what happened to her and Ruby said no. The only other staff member she told was Mr Lester.
40. She was asked when Mr Achary said abusive words to her. She said the abusive words happened every day to her, any time he was frustrated about something in the office. She agreed maybe one reason for his frustration was not preparing Board minutes on time. It was suggested that the words were not actually said towards her. She replied, "*No, hemi direct lo mi.*" ('No, they were directed at me.'). It was put to her that he never said, "Go fuck the Board members". She replied, "*Hemi talem.*" ('He said that.'). And that he never said "Fuck you". She said, "*Hemi talem, oltaem*" ('He said that, always.').
41. She agreed that she did not put a complaint to the Board Chairman. She agreed that she could have used the VNPf disciplinary process. But that she didn't use it against Mr Achary, did she? She said the disciplinary process was used by her husband contacting the Chairman.
42. She confirmed that Nathalie Merick is her husband's sister. She denied asking Nathalie to make a Police statement against Mr Achary. She knows Leah Takaro; they are related. She knows Lorina Tugu; they are not related. She did not ask them to make a Police complaint against Mr Achary. She denied making a complaint against him because she was concerned that she might be facing disciplinary action because of her poor work performance ("No!"). She denied that the reason why she made the complaint against Mr Achary was to avoid the focus on her poor work performance ("No!").

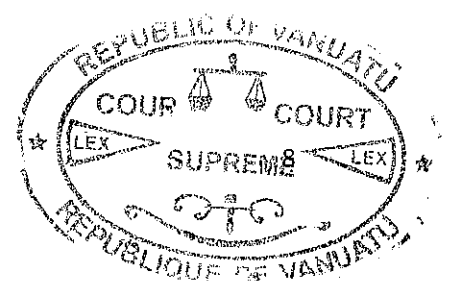


43. In re-examination, Ms Viraliliu explained that she had answered Mr Massing that she was not currently working because she had just started at Bon Marche and was still on probation. So she wasn't sure if she could continue or not so she did not think to mention it.
44. She was asked to explain why she had not followed the VNPF disciplinary process to lodge a complaint against Mr Achary. She said that the process exists and many staff used it but she knew that if she followed the process, it would end up the same where her complaint would never reach the Disciplinary Committee because Mr Achary overrode every decision inside the VNPF. He was the last person to decide if a matter would go to the Disciplinary Committee or not. Another reason she did not use the disciplinary process was because it would affect her working relationship with Mr Achary.
45. She explained that she did not prepare the Board minutes from the Santo meeting because even after they returned to Vila, Mr Achary continued arguing with her and the Human Resource team leader kept calling her to go discuss those arguments that happened on Santo so she did not have enough time to prepare the minutes.
46. She explained that she told her husband what happened because he is the closest person she can share with and also she knew that if she reported, it would not get to the level she expected because Mr Achary overrode every decision by the managers.
47. I accepted Ms Viraliliu as a truthful and accurate witness. She was clear in her evidence. She withstood cross-examination without deviating from her original account; and also made reasonable concessions when appropriate. She explained why she did not use the VNPF internal disciplinary process but that she did tell former manager Roan Lester and Mr Achary himself. She explained where she had taken the notes that her husband advised her to start keeping – she was typing them on a computer, and those notes became her 17 August 2021 statement. That is a relatively contemporaneous note given her evidence that the printer incident happened in June/July 2021. Ms Viraliliu and Mr Achary's accounts dove-tailed as to the argument they had on Santo, and explains why she did not have enough time to prepare the Board minutes on their return to Vila. I accepted her evidence.
48. The **second** Prosecution witness I heard from was **Lorina Pamela Tugu**. She is 38 years old. She is in a *de facto* relationship and has 3 children. She works at VNPF as a Loans Officer. She has worked at VNPF for 13 years now.
49. Sometime in early 2020, she was walking along a corridor on the ground floor to go inside the Member Services Department when she felt someone touch her bottom from behind. She was shocked and turned around saying, "Hey!" She was shocked to see that it was Mr Achary. She felt it was not right and looked at him; he just laughed.
50. She did not say anything but walked to her workstation and he left. She did not feel good. Her colleague Leah Takaro saw her facial expression and asked her what was wrong. She told her, "No, mi no feelim gud, mi no glad from mi wokbaot I kam ia, boss blo mi I tajem mi lo arse blo mi, mi no feelim gud" ('I don't feel good. I am not happy because as I was walking here, the boss touched my bottom. I don't feel good.') She did not tell anyone

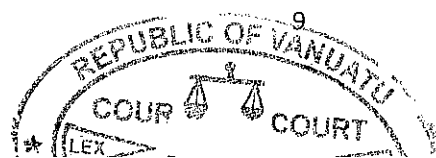


because Mr Achary is her boss and she feared telling anyone. She was frightened to lose her job because she is the sole breadwinner and her children would suffer.

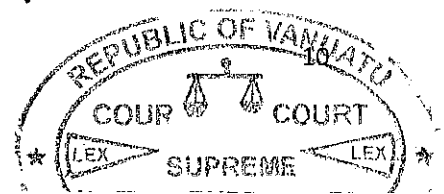
51. She is aware of the VNPF disciplinary process but did not use it as she was scared. She did not know who could take up her case. So she did not tell any of her superiors, only talked about it with Leah and that was it.
52. There was no one else in the corridor besides her and Mr Achary. She had not even known he was there behind her. Two people can walk along that corridor. When he touched her bottom, she was taken aback, turned round and was shocked that it was Mr Achary. She felt ashamed. She did not like what he did. She did not expect an important man like the General Manager of the VNPF to touch her like that, as a woman and as a mother. She did not expect that at all.
53. She did not think to report to the Police because she feared for her job security and thought of her children. She was scared and had no confidence to make a report until others had then she lodged her complaint.
54. Ms Tugu drew a sketch of the area where the incident happened [**Exhibit P3**] showing the customer service area including the Security area, the I.D. room and the corridor where the incident happened. The Member Benefits Section was to the top right-hand side of the drawing, and the Member Services Department to the top left-hand side of the drawing.
55. She also experienced abusive language from Mr Achary including swearing. He would say, "big hole", "fucken idiots", "you good for nothing", "brainless" and other awful words like that that were really hurtful. When he said words like that, she would just feel bad. She did not feel good at all from hearing him say that and especially when he said "big hole" to women when men were present. Many times she would feel hurt on hearing him speak like that but she could not say anything because he is her big boss.
56. She would also see Mr Achary come by and hug girls. She would see him hug Isabel Lawi regularly and to her, it was not professional or appropriate as he is the big boss. He would hug her and put his face to her neck. Isabel would just smile shyly. One time she saw Mr Achary touch Nellie Molu's bottom. She cannot recall in what year. Nellie turned round and laughed. She did not make any report to the Disciplinary Committee about Isabel or Nellie because she feared for her job security and for her children.
57. In cross-examination, Ms Tugu confirmed that she knows Ms Viraliliu. She denied that Ms Viraliliu asked her to make a statement to the Police. She does not know Nathalie Merick though she knows that she used to work at the VNPF. She knows that Nathalie's husband Rodney Taivakalo is a Police officer. He did not ask her to make her Police statement. Roan Lester asked her to make her statement dated 28 January 2022.
58. It was suggested that the abusive words by Mr Achary that she spoke about were not actually said to her. She said some of them were. She was asked when the incident in the corridor happened. She said sometime in 2020. She agreed she did not make any note about this incident.



59. She agreed that from January 2020, the VNPF was processing a Members Education Support Scheme and many members were attending the VNPF every day to access the Scheme. It was suggested that Mr Achary was not using that corridor at that time. She said she does not recall that he was not using that corridor.
60. She agreed that she lodged a complaint with the Police on 28 January 2022 and that she is still employed by the VNPF. It was suggested that she said she did not make a complaint earlier because she was frightened of losing her job but that was not true, she was never at risk of losing her job if she made a complaint. She replied, "I was at risk." She agreed that no one told her that she was at risk if she made a complaint against Mr Achary. It was suggested that the real reason she never told her supervisor Eric Amos or anyone else apart from Leah Takaro about this incident is because it never happened. She answered, "Not true! *Stetmen hemi no tru we counsel I talem.*" ('Not true! Counsel's statement is not true.')
61. She demonstrated how Mr Achary hugged Isabel Lawi. She saw this several times but did not make a note of it. She told Roan Lester, Leah Takaro and Serah Stephens. She did not agree with Mr Hurley's statement that she never saw Mr Achary doing to Ms Lawi what she described. She agreed she did not make a note when she saw Mr Achary touch Nellie Molu's bottom. She agreed she never told anyone about that. She did not agree with Mr Hurley's statement that she never, ever saw Mr Achary touching Miss Molu's bottom.
62. She agreed that Mr Lester told her that others had made allegations against Mr Achary. She was asked what Mr Lester told her. She said that he said that the Police were investigating sexual harassment and abuse. And because she had already approached Mr Lester about Isabel Lawi, Mr Lester said that the Police were asking if it was true. She said yes as she had witnessed it. So she made her statement to the Police and then felt confident to also put in her statement about what had happened to her.
63. In re-examination, she was asked to clarify what were some of the abusive words directed at her by Mr Achary. She answered, "you fucking idiot", "you brainless", "you good for nothing", "just pack up and go home" and some others that she cannot recall. She explained that she did not tell her supervisor Mr Amos because she was scared of losing her job and because there were staff inside the workplace who reported to Mr Achary so she was frightened to tell.
64. I accepted Ms Tugu as a truthful and accurate witness. She withstood cross-examination and did not deviate from her original account. She readily made reasonable concessions when appropriate. She readily conceded that she had not made notes about the incidents she described. She explained why she did not feel confident to make a report until asked to make a report about what she saw of Mr Achary hugging Isabel Lawi and then she felt confident to include in her statement what had happened to her in the corridor. There was strong support for parts of her account in the evidence of Leah Takaro particularly straight after what she described happened to her in the corridor. I accepted her evidence.
65. The **third** Prosecution witness I heard from was **Cynthia Ala**. She is 43 years old. She is married to Gibson Ala and they have 3 children. She is currently in a Human Resource role at Wilco, since the beginning of this year. Previously, she worked at VNPF from 2006-2019. In 2017, she became the Board Secretary and resigned from that position in October 2019.

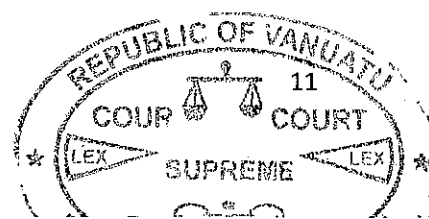


66. In 2019, she went to pick up some papers that she had printed from the printer just beside Mr Achary's door. While she was there, Mr Achary came out through his office door and just pushed his hand and touched her buttock. She did not expect that, especially from the General Manager. She was shocked and said in Bislama, "Kass!" She looked towards him and said, "Stop it!" He walked past and just laughed.
67. Mrs Ala demonstrated that the printer was beside Mr Achary's door, so where she stood beside the printer, he came out and would pass behind her. That's when he pushed his hand and touched her this side (demonstrating a firm grab onto her right buttock). Meresimani Bakeo ('Mrs Markward') was also present. No one else. What did she think when Mr Achary touched her buttock? It was really disrespectful coming from a General Manager and ethically, it was wrong. She had served under five previous general managers and Mr Achary was the sixth and she had never, ever experienced such behaviour from one of the past five general managers. She really disagreed with this type of attitude happening, especially within the executive level.
68. Mrs Markward knew what happened and she (Mrs Ala) also shared this incident with Anna Stephens, Mr Achary's former Executive Assistant.
69. She is aware of VNPF's disciplinary procedures. She did not complain to the Disciplinary Committee because when Mr Achary came to work at the VNPF, the workplace environment completely changed meaning the whistleblowing policy is not effective. Therefore reporting such incident to the Manager concerned would not be that effective so she just shared it with her colleague Anna Stephens.
70. She could not report the incident to the Police knowing Mr Achary's attitude – that if reported, this will not help her keep her job within the VNPF. As a mother, she needed the job to sustain the needs of her family – she has children too.
71. Apart from that, she experienced a lot of abusive and insulting words from Mr Achary to the staff and he swore at her too. Common swears he would use were, "fucken arse", "fuck you", even calling them "Useless!" and to both her and other staff he would say insulting words such as "*sting pussy*" (derogatory term about women's genitals).
72. Mrs Ala recognised and described the area shown in the photo **Exhibit D11**. She stated that after the printer is the door to Mr Achary's office. She stated that the setting in the photo **Exhibit D12** was quite different but the door looked like the General Manager's office door. The incident happened at the printer that is next to that door. Mrs Markward was standing by the door next to the Executive Assistant's desk.
73. In cross-examination, Mrs Ala confirmed that she received a letter of her appointment as Board Secretary but cannot recall the exact date. She remembered that in 2019, the Ombudsman executed a search warrant at the VNPF and that she made a sworn statement in a Supreme Court case started by the Ombudsman [Sworn statement of Cynthia Kammy Ala filed on 12 September 2019 in Civil Case No. 2461 of 2019; **Exhibit D14**].
74. It was suggested that she did not tell the Ombudsman about the complaint she related to the Court today. She answered that she cannot recall correctly but remembers that the



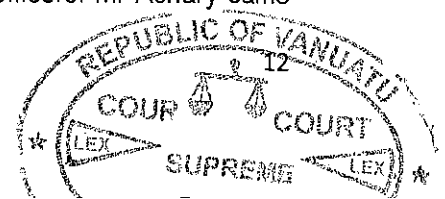
Ombudsman was requesting information specifically about investment issues. She agreed that the truth was she did not tell the Ombudsman about the complaint she related to the Court.

75. Then on 21 September 2019, she made a statement to the Police [**Exhibit D15**]. She agreed that she made no reference in her Police statement to the incident by the printer that she told the Court today.
76. She agreed that after her resignation in October 2019, she and other former staff started a civil case against the VNPF for constructive dismissal. On 3 February 2021, the case was struck out. She agreed that she never said anything in that proceeding about the printer incident she related to the Court today.
77. She made 2 statements to the Police for today's case, on 16 and 17 May 2022 respectively. She denied seeing Mrs Markward's statement before she made her first statement. She knew that Mrs Markward had made a statement but had not seen it. No one had told her what was inside Mrs Markward's statement. It was put to her that in her 16 May 2022 statement, she stated that what Mrs Markward said in her statement was true. She replied that the Police verbally told her what Mrs Markward had said in her statement. The Police told her the complainant was Josian Viraliliu (who she knows as Josian Vira).
78. It was not a former or existing staff or Mr Lester but the Police who asked her to make a statement to them.
79. She recognised her resignation letter [p. 19, **Exhibit D6**]. She does not remember receiving a reply from VNPF [pp 28-33, **Exhibit D6**]. She agreed that her reference to "the unexpected proceedings" in her letter was to her involvement in the Ombudsman case.
80. In 2019, the printer was closer to Mr Achary's door (looking at **Exhibit D12**). She agreed that she was picking up papers from the printer, there would be just a narrow gap between Mr Achary's door and him being able to pass behind her. It was suggested there was really not much space at all. She said, "There's space there." It was suggested that it would be quite narrow with her body in the way. She said, "Yeah, but I stood on the printer side" (pointing to in front of the printer). She would not agree that it was a narrow space with her there as well saying, "Not really narrow".
81. It was suggested that as Mr Achary went past, he brushed past her body. She replied, "He walked behind and pushed his hand and touched my buttock." She knows that Mr Achary has some health condition. Including that he has some problems with his eyes? "Not really." She denied seeing Mr Achary walking, sometimes assisted by security guards. She agreed that she has seen him be a bit unsteady when walking. It was put to her that he never actually pushed his hand towards her. She replied, "No!"
82. She denied that in the lead-up to her resignation, Mr Achary told her that he was upset she did not prepare the Board minutes on time. She agreed that she did not complete all the minutes before she left. She denied that Mr Achary was annoyed or expressed his annoyance to her about that. It was suggested that he never said abusive words to her. She replied, "He did!" It was suggested that any abusive words she heard was because he



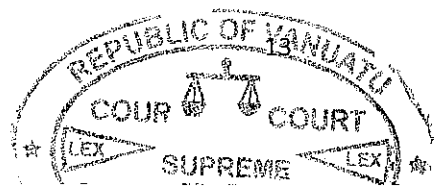
was upset that she had not prepared the Board minutes. She replied, "I got abusive words but not for the Board minutes."

83. In re-examination, Mrs Ala stated that Terry Lapinpal asked her to make statement to the Police. Her reason for not telling the Police in her 21 September 2019 statement about the incident near the printer was because she feared losing her job as she is a mother and worked to sustain her family ("I know who GM Parmod Achary is"). She did not put it in her Ombudsman case sworn statement because they requested information on the investments and the conduct of the Board, and she feared losing her job. She did not mention it in her constructive dismissal case because that matter was brought after they resigned and the VNPF refused to pay their severance and other entitlements.
84. I accepted Mrs Ala as a truthful and accurate witness. She gave her evidence clearly and was consistent in her account, including in cross-examination. She readily stated when she could not recall something and made reasonable concessions when appropriate. Her account as to the incident by the printer was supported by the evidence of Mrs Markward. She explained why she did not include this complaint about Mr Achary in her 2019 Police statement or in her sworn statement in the 2 civil proceedings. I accepted her evidence.
85. The **fourth** Prosecution witness I heard from was **Nathalie Merick**. She is 33 years old. Her *de facto* partner is Police officer Rodney Taivakalo. She has 4 children. She is currently unemployed. Previously, she worked at VNPF from 2018-August 2021 as a Compliance Officer, Informal Sector.
86. When she arrived at work one morning in 2021, Mr Achary passed her in the Customer Service Area, at the door to Compliance. He said "Good morning" and she replied, "Good morning boss". Then he walked towards her, held her hand and pushed it to touch his private part. She demonstrated in Court how she curled her hand into a fist, saying "Eh boss!" and was trying to pull her hand back but he kept coming nearer and pushed her hand until she felt his penis, "*Mi actually feelim*" ('I actually felt it') (through clothing). She did not like him making her feel his penis ('*Mi no laekem.*')
87. When Mr Achary did this, the door was still open. She turned around, came back inside and told Serah Stephens what had happened. Mr Achary too came inside Compliance office and said good morning to the staff.
88. She drew a sketch of the area and marked a star where the incident happened, in the space between the door to the Compliance office and before the main door that goes out to the Member Services area [Exhibit P5]. The counter on the right is where the Compliance officers are. Serah Stephens' desk was just inside the door to Compliance and beyond that, the other compliance officers sit. She walked to Serah and waving her right hand vigorously, said, "*Wow, Sarah, GM I mekem mi tajem cock blo hem!*" ('Wow, Sarah, the GM made me touch his penis!'). Serah was seated on her chair and Ms Merick sat on the carpet. Serah told her to tell her husband. However, she did not tell her husband because she was frightened that he would beat her and stop her coming to work.
89. Otherwise, a main swear word that Mr Achary liked to call her was "big hole". There was one time when she felt extremely offended at the public parking area at the Centrepont Mama Handicraft market. She was standing there with 2 male officers. Mr Achary came



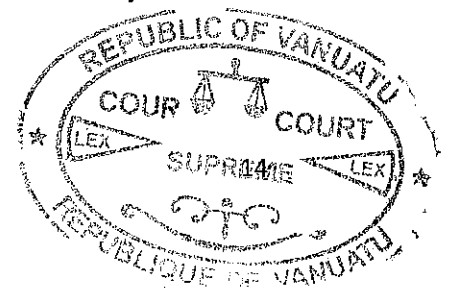
out of his truck, saw her and said, "Big hole, how much did you collect?" as they had just collected contributions from the mothers at the Handicraft market. After he swore at her in that public area, she sat in the truck and cried as there were many people in that public area who heard Mr Achary. The others in the truck were Michel Tamashiro and Zachary Nunbel. She did not report it to the Police because she feared for her job security.

90. Ms Merick stated that she is aware of the VNPF disciplinary process but she was frightened to use it because somebody would tell Mr Achary. She went before the Disciplinary Committee in relation to an employer contribution payment. She had misplaced that monthly contribution payment on her desk – it was still in her file – and not put it into the employer's account at the right time. She was suspended, attended the hearing and then was recalled back to work in August 2021.
91. She came back to work but received much talk from Mr Achary which made her feel bad so she resigned and left. Mr Achary called her and her team leader Reynold Amkori to his office and Mr Achary spoke with her, swore at her and said, "Where did you fucken hide the money?" She just sat and cried. Reynold was sitting beside her. She did not respond, just cried. Mr Achary was talking about that contribution payment.
92. In cross-examination, Ms Merick confirmed that she has a brother David who is married to Josian Viraliliu. She told her partner Rodney about her complaint against Mr Achary after she left the VNPF. She denied that he started a Police investigation against Mr Achary after she told him. She denied that Rodney asked her to make a statement to the Police. Serah Stephens put her name in her statement so the police asked her (Ms Merick) to make a statement.
93. In the disciplinary process against her, she remembered meeting Clera Seth at the Rossi Restaurant in the morning of 9 August 2021. She did not remember Amkori being there as well. She agreed that p. 9 of **Exhibit D4** was a true record of her and Clera's meeting. It was put to her that the third person at that meeting was Reynold. She said no, it was Viviane Laumae. At that stage, she (Ms Merick) was under suspension from the VNPF. She attended the Disciplinary Committee hearing the next day. After that, she returned to work a short time then resigned but she could not recall the exact date in August. When shown her resignation letter [p. 2, **Exhibit D4**], she agreed that the date was 17 August 2021.
94. She denied that in the short time she was back at work, that she became aware there were also other complaints against her that she had collected money from members at the market and not paid it to the VNPF. She agreed that she did not deny it but just could not recall. She stated that she did not remember a man called Reginald Garoleo who withdrew VT42,000 cash from the BSP ATM opposite the VNPF, then gave it to her at the VNPF building then she gave him a blue certificate with his name spelt as "Richard Malili". She said she does not remember that Mr Garoleo kept coming back to the VNPF office about his VT42,000 not being registered and telling him that she was working on it.
95. She was shown another sketch drawing [**Exhibit D21** (previously marked **Exhibit MF11**)]. She agreed it was of the same area as in her drawing **Exhibit P5**. She agreed it showed a counter like in her drawing and that 2 VNPF officers man that counter during the working day. She could not recall the exact time in the morning that she commenced duty. She agreed that the office was already open to the public. It was suggested that any staff could

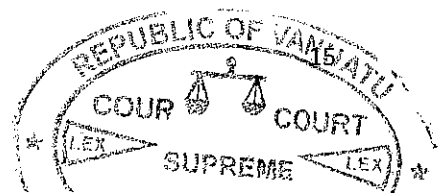


have seen the incident. She said no, there were no staff present. It was suggested there were staff at the counter. She said the counter is high and staff sit behind it and look upwards at the person who approaches them at the counter. So if an officer was seated at the counter, they could not see her. She agreed that she was not looking at what the counter staff were doing. She said that she came out the door from Compliance, the door was still open and Serah heard her say "Good morning" to Mr Achary and the incident happened close to the door to go into the Compliance office.

96. It was suggested that she had mis-located the star that she drew in **Exhibit P5** to show where the incident happened. She denied that, saying the star showing where the incident happened was close to the door that leads in to Serah and the incident could not be seen by the officer sitting behind the counter. She agreed this was in the public area and she is saying that in this public area, Mr Achary pushed her hand to his penis. It was put to her that her evidence was false, that it never happened. She said, "*Hemi hapen*" ('It happened.')
97. It was suggested that if it happened, it is more likely that she would have told more than one person but she only told Serah Stephens. She said yes because Serah heard her speak to Mr Achary. It was suggested she could have told Mr Amkori. She said she was scared to tell Mr Amkori as he had heard Mr Achary swear at them many times.
98. It was put to her that the incident she described of Mr Achary saying words to her at the Centrepoin market never happened. She replied, "*No, hemi tru. I hapen.*" (No, it is true. It happened.)
99. She agreed that she went on maternity leave twice whilst at VNPF. She remembered that after she came back the second time, Mr Achary joked with her, "When will you go on another maternity leave?" She said she does not remember saying in response, "Boss, after this delivery, my hole got so big that my husband will not find it any use". She said that Mr Achary asked her many times when she would go on next maternity leave but she does not remember saying such words back to him. It was suggested that she was smiling when she answered because she said those words to Mr Achary. She said no, she smiled remembering him asking her but she did not say such words to him. It was suggested that she did remember saying those words to which she replied, "No!"
100. I accepted Ms Merick as a truthful witness. She was consistent in her account, including in cross-examination. She conceded matters where appropriate. There were parts of her evidence where she stated that she did not recall the matters being put to her. I considered she did so honestly and that this did not detract from her credibility. It was put to her that she had herself on an occasion answered Mr Achary's question when she would go again on maternity leave with a crude reference to her hole (vagina) now being too big. She denied saying such words to Mr Achary but the fact that this was put to her bolsters her account that Mr Achary frequently swore at her saying "big hole." She readily gave evidence about her matter before the Disciplinary Committee. I accepted her evidence.
101. The **fifth** Prosecution witness I heard from was **Melissa Iopa**. She is 28 years old and in a *de facto* relationship. She has 3 children. She works at the Vanuatu Primary Producers Authority. Previously she worked at the VNPF, from late 2019.

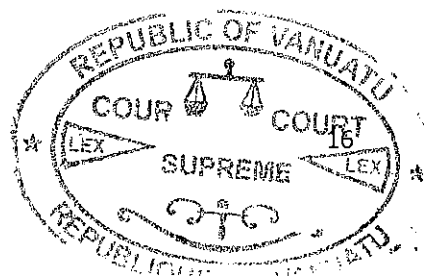


102. In 2020, Mr Achary started using flirtatious languages to her like, "I want to undress you", "Beautiful eyes", "You're my girlfriend" and "Are you over-used?" At the time, she was visiting his office more than 5 times a day. Mrs Markward, the Board Secretary, called her into her office and told her to take care and be careful. She said, "OK" and left.
103. Time went on and she continued visiting Mr Achary's office several times a day. One morning, she was in the Investment Department at her desk and Mr Achary entered. Usually in the mornings, Mr Achary would come by and greet staff "good morning". There were 3 tables on each side in the Investment Department with no partition whatsoever.
104. Mr Achary entered, approached her from behind and began massaging her shoulders but then his hands went lower down. She began to feel uneasy as there was only one other female staff there but the others were all male. She felt ashamed, laughed and started leaning forward and shrugging her shoulders. She felt it was an invasion of her private part as he was holding her towards her breast so she leaned forward and then he walked away. Her team leader Mansen Ahelmalanga told her that if she did not like Mr Achary's action, to tell him that and tell him to stop. But at that time she had just joined the VNPF and Mr Achary was her boss so she did not know how to tell him that she did not like his action and for him to stop.
105. When Mr Achary was massaging her towards her breast, she felt it was not right, she felt scared and ashamed but she did not know how to tell him to stop. She thinks there were 3 other staff present in the room: Mansen, Marie Jimmy and she thinks Kelvin Amos. After he touched her, Mr Achary just laughed, smiled and walked away. She did not tell anyone about the incident because the others present saw what happened and told her that if she did not like what Mr Achary did, she should tell him to stop.
106. Ms Iopa drew a sketch drawing [Exhibit P6] showing the 6 tables in the Investment Department. Her table was nearest the door into the room and along with the three tables nearest to hers, they sat with their backs to the door. The officers seated at the two tables at the bottom of the drawing sat facing the door. So the team leader and the woman who occupied those two tables saw everything. She was sitting with her back to the door, Mr Achary walked in, massaged her and then hugged her. The other staff saw that and turned away.
107. She is aware of the VNPF disciplinary process but at the time, the Disciplinary Committee reported directly to Mr Achary so she did not feel safe to report. So she only told her team leader. She is not sure if he approached Mr Achary. Soon after, the team leader was suspended then terminated. So she was not sure who she could trust to report to. She was also unsure how to approach the Police to make a report.
108. In 2021, she resigned from the VNPF because the situation did not improve. The verbal language Mr Achary used with her, work pressure and mainly swearing like "big hole", "mother fucker", "fucken arse" and "fucken idiot" continued to happen and she did not feel safe to report so she just resigned.
109. In cross-examination, she was asked if her resignation letter of 2 August 2021 [Exhibit D16] addressed to Mr Achary in which she said she had learnt a lot of things and built up her capacity and experience was truthful. She said she wrote the letter like that at

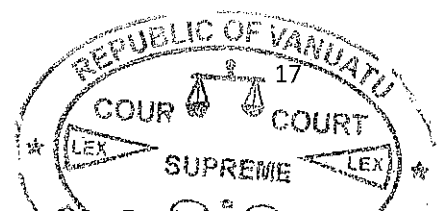


the time because she did not want any questioning or discussions about her resignation so she just put it like that. It was suggested that the personal issues she referred to in the second paragraph were not to do with Mr Achary. She said that she put that in there to avoid any further questioning or discussion. She was asked if she had personal issues outside of the VNPF? She answered, "No."

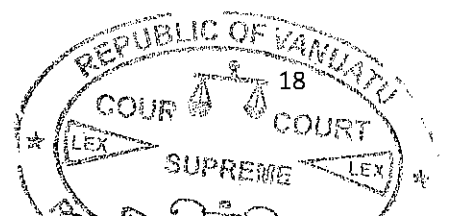
110. She remembered receiving a letter dated 3 August 2021 from the VNPF [Exhibit D17] accepting her resignation.
111. She made a Police statement dated 23 December 2021 [Exhibit D18]. She typed the attached witness statement dated 13 September 2021 [Exhibit D19]. She first gave the Police that statement on 23 December 2021. It was suggested that it took her from September 2021 to 23 December 2021 to sign her Police statement. She said maybe she made a mistake with the date; she does not recall the date in 2021 but remembers it was towards the end of the year and after her resignation. She agreed it made sense for her attached witness statement to be dated close to 23 December 2021. She said she could not recall its date. She answered, "Yes!" when asked if she was sure that she typed that statement.
112. Ms Iopa denied that Mr Lester asked her to make a statement to the Police. She agreed that the Police asked her to come forward. She heard about the case at Court but cannot recall from whom. It was suggested she could do a bit better as there must have been a limited number of people she could have heard from. She said she cannot recall who exactly but she heard that if you're a victim, to come forward. She heard Josian Viraliliu put a case but it was not Josian who told her about Josian's case.
113. In her typed statement [Exhibit D19], she suggested that it be kept confidential. She was asked what changed to make from confidential to the situation of her giving evidence in Court. She said because they were told to be summonsed and to come out and speak out. She agreed that she typed her statement and gave it to the Police. It was suggested that she thought it would no longer be confidential? She replied, "I didn't know the process and everything until I was summonsed." But you must've known it would come out? "I know there's a possibility but I didn't how much chance."
114. She agreed that sometimes Mr Achary would come and see her at her desk in the Investment Department to discuss her work including doing financial analysis of investments that the VNPF was undertaking. She agreed that sometimes she would be sitting down and he would put his hand on her shoulder, lean down and look at her work. She agreed that sometimes he would say "Good work Melissa" and touch her shoulder.
115. She agreed that the incident she described in the Investment section happened on the second floor of the VNPF building. It was put to her showing another sketch drawing [Exhibit D22 (previously marked Exhibit MF12)] that she was mistaken about the door she drew – that the door is actually located at the top. She replied, "I recall it was on the side" and "Am sure it's on the side." It was put to her that she was facing towards the door (towards the top of the drawing). She replied, "No, that's my desk and I was facing my desk."



116. It was put to her that Mr Achary never massaged her but on occasion, he would put a hand on her shoulder and lean over her. She answered, "There is a big difference between a massage and just a tap. And you would feel the difference between your personal space being invaded and just a tap." She agreed she told the Court that Mr Achary was going towards her breast, saying, "Yes, he was massaging towards my breasts and I felt uncomfortable."
117. She agreed that she did not refer to "breast" or "breasts" anywhere in her typed statement **Exhibit P19**. It was suggested that she just thought of that afterwards. She said she was asked to describe the incident so she wanted to be more descriptive. She said it did not ring a bell if she saw the charge against Mr Achary. She confirmed she did not know until Monday this week of the charge referable to her complaint and that was also the first time she met the prosecutor Mr Massing. It was put to her that it is more likely that she could have more accurately described what happened on 13 September 2021 rather than on 22 May 2023. She replied, "I would say the memory is still fresh." She agreed the memory would have been fresher in September 2021. It was suggested that if there was any movement by Mr Achary towards her breast, it was more likely she would have included that in her 2021 statement when her memory was fresher? She answered, "Yes, it's more likely but at that time, I didn't put it."
118. It was suggested that Mr Achary did not actually move his hands towards her breasts. She replied, "He did!" It was suggested this was just some feeling she has now when asked to describe the incident. She said, "Like I said, the moment is still fresh. As the years go by, it's still something that remains with me." She spoke about it with team leader Mansen sometime later. She did not make a note at the time – in 2020. She agreed she did not put in her statement about telling Mansen. She agreed that she could have told Mr Sunghk, the Manager in charge of Investment and Finance but that she did not trust anyone at the time. She agreed that if she'd reported her complaint to Mr Lester, that her complaint would have gone directly to the Board.
119. In re-examination, she explained that she understands the line of reporting but at the time, her team leader was suspended so she felt that she could not trust anyone else to tell. So she stayed quiet and left. She did not want anyone else to be suspended because of this. She explained that she just did not think at the time to take notes – there was no reason, she just did not think to take notes. She put the word "confidential" in her typed statement **Exhibit P19** because she did not want others to know because there would immediately be talk so it was to keep herself safe. She did not have a reason why her Police statement [Exhibit D18] and typed statement [Exhibit D19] had two different dates. She will assume her statement to the Police was made in December. She did not have a reason why she did not refer to "breast(s)" in her typed statement – she just did not include it.
120. I accepted Ms Iopa as a truthful witness and accepted her evidence. She did not deviate from her account in cross-examination. She readily conceded she did not take notes at the time nor include any reference to "breast" or "breasts" in her typed statement but that the memory of what Mr Achary did was still fresh for her. She conceded that her memory would have been fresher in September 2021 than it is now. She was undeterred by the challenge to her description of the room layout. I considered that that did not detract from her evidence about Mr Achary's act to her body that made her feel uncomfortable and like an invasion of her personal space.

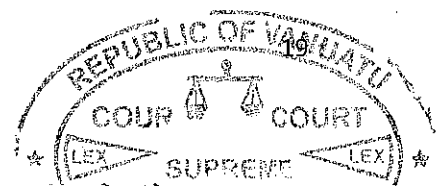


121. The sixth Prosecution witness I heard from was Leah Takaro. She is 40 years old, married and has 5 children. She is a Senior Contributions and Reconciliation Officer at the VNPF. She started working there in July 2009.
122. She and Lorina Tugu worked in the Benefits Section, before she (Mrs Takaro) was promoted out to the Finance Department in late 2020.
123. In early 2020, Lorina came in, she had a bad expression on her face and told her (Mrs Takaro) that Mr Achary touched her bottom. Lorina was her supervisor at the time. She told Lorina to go report it to their supervisor Erick but that she (Mrs Takaro) would not report it because she did not trust anyone at the VNPF. At that time there were 2 groups at the VNPF and she was scared to report it as the information would get to Mr Achary who would discipline her and terminate her employment. Because she is the only one working to support her family. She did not know who was in which group so she did not know who she could report to.
124. She is aware of the VNPF disciplinary process but did not use it. She waited for Lorina to report then she would support her. But Lorina did not so she (Mrs Takaro) stayed quiet. She did not think to report to Police but Lorina mentioned her name and the Police approached her. She met with the Police then decided to make a Police statement.
125. She also saw every morning Mr Achary would come by to say "Good morning" and would hug Elizabeth Garoleo when he passed by her desk (demonstrating with her right arm over and hugging the interpreter Mrs Russet's shoulders). This was in 2021 after she moved to the Finance Department. As a mother, seeing Mr Achary do that, was not right. She did not report it out of fear for her job security. If the information reached Mr Achary, he could terminate her employment.
126. She has worked at the VNPF for 13 years. Before Mr Achary came in, they would use the whistleblowing policy through the Internal Audit Department. But he closed that department so that every matter went through him for decision, so they did not know who to go to internally.
127. In cross-examination, she agreed that Josian Viraliliu is her cousin. She denied that Josian asked her to make a statement to the Police. Police officer Terry asked her to. Lorina told her that Mr Achary touched her bottom in the walkway on the ground floor of the VNPF building. It happened in the walkway, then Lorina came through the door and told her what happened. She did not tell her supervisor Erick Amos or anyone else. She did not write down what Lorina said. She says the incident happened in early 2020, before mid-2020, while she was still on the ground floor because at the end of 2020, she transferred to the Finance department.
128. She saw through the transparent wall to Elizabeth's office Mr Achary hugging her. She denied that it was possible that what she saw was Mr Achary tapping Elizabeth's shoulder. This was in 2021. She agreed she did not make any note or tell anyone. She agreed that the first time she was asked to recall this incident and write it down was when she made her Police statement on 29 January 2022. Her supervisor at Finance was either Stephen



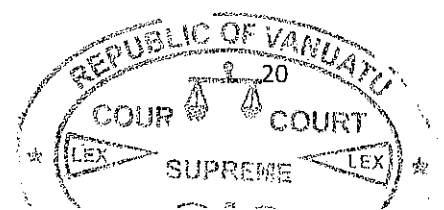
Daniel or Kensley Ham but she did not tell them because she was afraid it would reach Mr Achary and she would lose her job.

129. She denied that she could have complained directly to Clera Seth as Mrs Seth depended on Mr Achary for instructions! It was put to her that Mrs Seth is independent from Mr Achary. She replied that there is a disciplinary process but the decision is made by Mr Achary. She disagreed that the process was independent as Mr Achary does not sit in the Disciplinary Committee but he would make the decisions after consulting directly with staff. She was asked twice more that Mrs Seth looked after a disciplinary process independent of Mr Achary. She denied it both times, saying that every matter went to Mr Achary, that Mrs Seth depended on him for instructions and that is what she saw of the process.
130. There was no re-examination.
131. I accepted Mrs Takaro as a truthful and accurate witness. She was completely undeterred in her account in cross-examination. Her and Ms Tugu's accounts dove-tailed that Ms Tugu told Mrs Takaro in the immediate aftermath of the incident on the ground floor that Mr Achary touched her bottom. She readily agreed she did not make a note. She explained why she did not tell anyone and why she believed that the internal disciplinary process was not independent. I accepted her evidence.
132. The **seventh** Prosecution witness I heard from was Police Inspector **Terry Lapinpal**. He is 34 years old. He is in a *de facto* relationship and has 2 daughters and a son. He is in charge of the Serious Crime Unit. He has been a Police officer for 16 years.
133. He was the team leader of the investigation in Mr Achary's case. Senior Sergeant Jimmy Nimisa worked with him in the investigation. He obtained witness statements from Josian Viraliliu and others that he cannot recall names of but his name is on their statements. He invited Isabel Lawi to attend his office and asked her to give a statement but she said no because she was scared of losing her job. He remembers asking her what if her daughter some day came across the same situation, how would she feel. But Isabel still did not want to make a statement so he let her go.
134. He became aware of Nellie Molu when she came to withdraw her statement. The biggest challenge his team faced was that the victims and witnesses were frightened of losing their jobs. Another challenge was that the women were scared of talking with the Police. They hid to come talk with the Police. The ones who came to give statement made sure that nobody saw them when they came to give statement to the Police.
135. In cross-examination, Mr Lapinpal denied that Rodney Taivakalo was an officer involved in the investigation of Mr Achary; he is not in the Serious Crime Unit, but in the Drugs Unit. He was not aware that Rodney had approached some of the women to give statements. He confirmed that if Rodney approached some of the women to make statements, that was not part of his job. He knows Rodney's *de facto* partner Nathalie Merick.
136. Mr Lapinpal recognised the letter that he received from Miss Molu [**Exhibit D20**]. He stated that that letter mentioned that Rodney served the Police invitation letter to come to the Station. He was not aware that Rodney was involved in speaking with Miss Molu until he got her letter. He told Rodney not to be part of the investigation, as he was not part of the

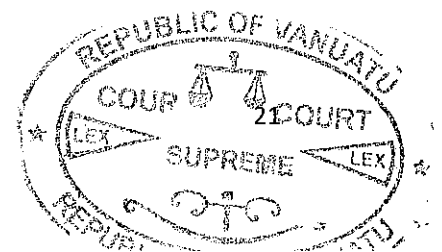


investigation team. He agreed Rodney would have a conflict of interest given his *de facto* partner Nathalie was one of the complainants.

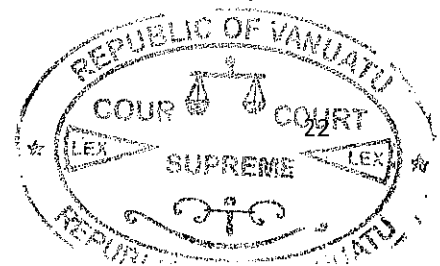
137. He is related to Isabel. He did not actually tell Isabel the name of the person who included her name in a statement; he said others had said her name in their statement. He agreed that he actually told her what that witness said in her statement. He said she did not deny the allegation but said that she did not want to make a statement because she was frightened of losing her job.
138. There was no re-examination.
139. I accepted Mr Lapinpal as a truthful and accurate witness. However, his evidence was of limited assistance in determining the factual disputes.
140. The eighth Prosecution witness I heard from was **Serah Stephens**. She is 46 years old. She is married and has 6 children. She is currently unemployed. She worked at the VNPF from 2001 to 12 May 2022.
141. In 2021, she and Nathalie Merick worked together in the Employer Relations Department. The passageway was through the door close to her (Mrs Stephens') desk. She was facing her computer so she didn't see what Mr Achary did to Nathalie. Natalie came in and said that Mr Achary had forced her hand onto his private part for her to touch it. Nathalie sat down and then Mr Achary said to her, "*Big hole, sut blo mi*" (a very derogatory term in Bislama for women's genitals and a crude reference to sexual intercourse).
142. She told Nathalie that if she felt too bad about it, to tell her husband. Because if she told their team leader, he would not take it up because he was close to Mr Achary. And her job too would be at risk.
143. She is aware of the VNPF disciplinary process. She did not use it because if she did, they would terminate her! She took a stand to report to the Police on 23 December 2021 [**Exhibit P7**]. She had to take the risk to go because as a mother, she was the older person in the department, she felt so bad that she made her statement to stop Mr Achary's bad behaviour.
144. Her employment at VNPF was terminated on 12 May 2022 under section 49 of the *Employment Act*.
145. Another incident she witnessed was Mr Achary saying to Bianca in the Member Services section, "Big hole" and making a vulgar action of his left hand fingers in a circle and the right hand inserted in and out of that circle.
146. She also demonstrated the way that Mr Achary approached Isabel Lawi from the back, held onto her shoulders, leaned forward over her and put his face close to Isabel's face and talking to her. She felt bad seeing how he was holding the young girl Isabel like that. She did not report to her supervisor or team leader because she had previously reported to a Manager and he was terminated. So she kept it to herself until it got too much then she went to the Police. She knew that when the report reached Mr Achary that she had gone to the Police, that he would terminate her but she took the risk.



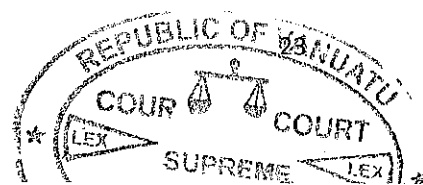
147. In cross-examination, Mrs Stephens confirmed that her first Police statement was made on 23 December 2021. She stated that she came forward herself to make the statement; that no one else was telling her about any investigation of Mr Achary.
148. It was suggested that what she described happened to Bianca never happened. She replied that she did not agree with the statement that it never happened. It was suggested that Mr Achary never said "big hole" and "sut blo mi" to Nathalie. She replied that she did not agree with that statement because she heard Mr Achary say that with her own ears. She also did not agree with the statement that she never saw Mr Achary holding Isabel in a way that she described as not right because she is a mother and saw it with her own eyes.
149. She agreed that when Nathalie told her that Mr Achary forced Nathalie's hand onto his private parts that that was a serious complaint. She agreed that she did not put it into her 23 December 2021 Police statement. It was suggested that the reason it was not in her statement was because Nathalie never told her that in 2021. She replied, "*Nathalie hemi talem lo mi!*" ('Nathalie told me!'). She denied that Nathalie only told her that after Mrs Stephens had made her 23 December 2021 Police statement.
150. She is aware of the VNPF internal disciplinary process. She was subject to it in April 2022 on an allegation that she took a very long time to follow up Digicel Vanuatu Limited's employer contributions. She responded to the allegation [pp 44-45, **Exhibit D9**]. She agreed there was a disciplinary hearing in relation to the allegation. She does not remember being invited to the hearing. She only remembers the truck coming to get her from her house to attend the hearing.
151. The day after she was terminated, she made a Police statement complaining about that termination. She also made a sworn statement that was filed in the Magistrates' Court in support of an application to revoke bail on the ground that Mr Achary was interfering with her, a witness in this case. She knew this application was heard in the Magistrates' Court but she agreed that no one ever told her the Magistrate's ruling or what the Magistrate said. She heard from staff that Mr Achary's bail was not revoked.
152. She challenged her termination with Mr Kent Tari's help. At some later point in time she decided not to pursue any case about her termination. She agreed that she was paid all of her employment entitlements.
153. In re-examination, Mrs Stephens explained that she put in her Police statement what she saw and heard from Mr Achary. But what Nathalie told her she felt she could not include it as it was for Nathalie to say. The reason she did not continue her civil claim against VNPF was because she was paid her employment entitlements.
154. I accepted Mrs Stephens as a truthful and accurate witness, and accepted her evidence. Her account remained unchanged in cross-examination. She readily agreed that she did not put what Ms Merick told her into her Police statement. She and Ms Merick's account dove-tailed as to Ms Merick telling her immediately afterwards that Mr Achary had forced Ms Merick's hand to touch his penis.



155. The ninth Prosecution witness I heard from was **Meresimani Bakeo Markward**. She is 47 years old. She is a lawyer. She is married and has 3 children. Previously, she worked at the VNPF from August 2019-late 2020 when she resigned.
156. When she started working at VNPF, Cynthia Ala was the Board Secretary. In 2019, Mrs Ala was printing Board papers. While she was still bending over the printer to collect the papers, she (Mrs Markward) saw Mr Achary walk past Mrs Ala and touch her bottom. Mrs Ala said, "Kass!" Mr Archary just walked on. Mrs Markward did not say anything but turned round to go back to her room. The other person present was aunty Anna Stephens, the executive secretary, who was typing.
157. When she saw Mr Achary touch Mrs Ala's bottom, she felt bad because they are all mothers – it was not a nice thing to witness as a woman and as a mother. She as a married woman seeing another married woman go through that is not a nice feeling (crying). And she felt really sad at the time that she couldn't speak up and protect this woman who she had just witnessed the boss sexually touching her bottom. She (Mrs Markward) did not say anything and did not talk either with Mrs Ala because she wanted her to come and say that she would make a report and for Mrs Markward to be the witness.
158. She is aware that VNPF has a disciplinary process. She did not raise anything through that process because she could not do that without Mrs Ala's consent because she is married and what would happen if she raised something without their consent and then Mrs Ala's husband hears about it?! So she was waiting for Mrs Ala.
159. After a Board meeting, she approached Letlet August, then Acting VNPF Board Chairman and verbally informed him of her concern about how she saw Mr Achary treating the staff. Mr August instructed her to send him an email. She wrote everything she saw happening in the email sent on 28 or 29 May 2020. She sent the email to the Chairman because the General Manager is an employee of the Board. She resigned in 2021 because she found other employment.
160. In cross-examination, Mrs Markward recognised the areas in the photos **Exhibits D11** and **D12** but the cabinet along the left-hand side of **Exhibit D12** was not there when she was working there. She confirmed the printer was always there just next to the General Manager/Mr Achary's door.
161. In the incident she described involving Mrs Ala, Mrs Ala was bending down towards the printer. So her bottom was facing away from Mr Achary's door and towards the other wall where the cabinet is in **Exhibit D12**. Mrs Markward was standing in the open doorway in **Exhibit D11** (the door into the executive suite area), speaking to aunty Anna. Mrs Markward came in right on time that Mr Achary was touching Mrs Ala's bottom. She does not recall seeing Mr Achary come out of his office. It was suggested that she saw Mr Achary brush past Mrs Ala. She answered, "Yes, I saw him touch her bottom."
162. She agreed that during her time working at the VNPF, she on occasion saw security guards accompanying Mr Achary. She knows of some sickness that Mr Achary has experienced but not with his eyes. She denied observing at times that he was a bit unsteady when walking.

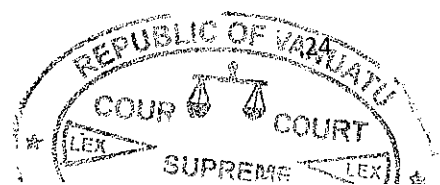


163. She agreed that she did not tell anyone about the incident at the time and did not make a contemporaneous note. She agreed that the very first time she wrote about this incident was in her 29 May 2020 email to Mr August. It was suggested that at that time Mrs Ala had not given her permission to report the matter to Mr August. She replied, "At that time, she was already terminated." She conceded that when she emailed Mr August on 29 May 2020, Mrs Ala had not given her permission to report the matter to Mr August.
164. In re-examination, she explained that she did not ask Mrs Ala's permission to report the matter to Mr August because Mrs Ala no longer worked at the VNPF.
165. I accepted Mrs Markward as a truthful and accurate witness. Her account remained unchanged in cross-examination. She conceded matters as appropriate. I accepted her evidence.
166. The tenth and last Prosecution witness I heard from was **Roan Lester Sunghk**. He is 40 years old. He is married and has 3 sons. He worked at the VNPF from 20 February 2020-28 January 2022.
167. Around June 2020, he started receiving complaints from staff particularly from the Investment Department. Their team leader raised with him concerns about harassment, swearing and the high turnover (resignations) of staff from that particular department. He spoke with Mr Achary about Melissa (a member of the Investment Department) and Mr Achary said that that's basically his style of management and Mr Sunghk should not hold staff's hands or support them in what they were telling him.
168. In September 2021, Josian Viraliliu approached him about her complaint and another staff member told him about Mr Achary's harassment of Isabel Lawi. Lorina too raised these concerns with him. He called Isabel into his office and spoke with her in the presence of a few other staff. He spoke again with Mr Achary about what the staff had told him. Mr Achary's response was these were jokes and those staff were loyal to him.
169. After that, in September and October, he and Mr Achary no longer had a good working relationship. In November and December, their working relationship was very bad. Mr Achary removed work from him and he started to prepare some reports as he knew he would face discipline. He did not receive feedback for those reports and they were referred to the Disciplinary Committee. He worked on the reports through Christmas and New Year. He was suspended for 2 weeks then received an email on 2 February 2022 terminating his employment. In the meantime, he had submitted his resignation letter dated 28 January 2022 based on constructive dismissal and unfair treatment.
170. He is aware the VNPF has an internal disciplinary process but it is not independent as the Human Resource officer Clera Seth discusses every matter with Mr Achary before taking it to the Disciplinary Committee. The Police contacted him and asked for a statement.
171. In cross-examination, Mr Sunghk confirmed that team leader John Namani raised Melissa's name with him. He called Isabel Lawi into his office. He agreed that she did not go into any detail about touching. He knew of a Disciplinary Committee chaired by Board member Olivier Fernandez. He disagreed that he could pass the complaints that he received about Mr Achary directly to the Board as the internal process requires that he speak with his



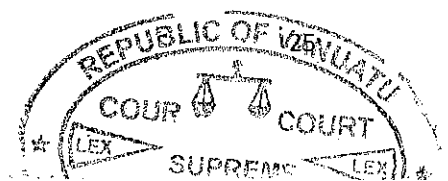
internal superior. So he raised the complaints with Mr Achary and he (Mr Sunghk) has stated what Mr Achary's responses were. There was no independent process where those complaints could be looked at independently because everyone reported to Mr Achary.

172. He disagreed that he could have passed the complaint about Mr Achary directly to Mr Fernandez. He stated, "Through the Disciplinary Unit but not to the Disciplinary Committee." It was suggested that it could have gone through Mrs Seth and she passed it onto the Disciplinary Committee and the Board. He replied, "At the time, it did happen. The report went to Clera and I understand that instead of going to Disciplinary Committee, she took the matter up with Mr Achary." He was challenged if he had evidence of that or someone told him. He referred to an email sent by one of the staff, he thinks Josian, to Clera. He saw the email. He did not see what Mrs Seth did with it.
173. Mr Hurley made a formal call for the email; Mr Massing responded that he did not have it in his possession.
174. There was no re-examination.
175. I accepted Mr Sunghk as a truthful and accurate witness although his evidence was of only a little assistance to determining the factual disputes.
176. That was the evidence for the Prosecution.
177. **Mr Achary** elected to give evidence. He will be 71 years old this year. He is the General Manager and Chief Executive of the VNPF, since 4 September 2017. He has undergraduate and Masters degrees, extensive work experience, and has completed numerous courses and workshops including in corporate governance, HR management, ethics and professionalism.
178. He stated that he has never used the words that Ms Viraliliu said that he used. He knew Ms Viraliliu and her husband from Fiji when he was a lecturer at the University of the South Pacific ('USP') for 10 years. He taught both of them. He saw Josian's application to work at VNPF, had her interviewed and she gave her history of how she moved up to Board Secretary.
179. She had a post-graduate diploma in management and also courses in development studies. He found it appropriate to put her in as trainee Board Secretary because one of the responsibilities is to write minutes. She was never reluctant (to take up the position). The only thing she asked him was will my pay go up?
180. When she started the role in June 2020, he started teaching her how to write minutes and resolutions. She hardly followed his instructions. He had a really difficult task of implementing Board decisions when the minutes were not produced and resolutions not signed by the Board. So the approvals given by the Board remained pending for months and months. At the next Board meeting, he was never able to produce any minutes for previous Board meetings.
181. He tolerated this because she was new but after 6-7 months, there were no improvements and he started getting frustrated. He expressed that frustration by shouting at her on a



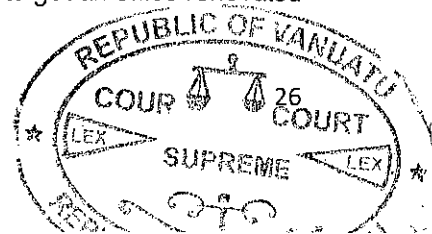
number of occasions. He said, "I don't know what to do now" and even people used to tease him about that expression, "I don't know what to do." He asked her why she hadn't done the Board minutes and resolutions which could be signed straight after the meetings, but she would come up with excuses.

182. He admits he shouts and swears but he does not at any person. When things are not done, he would say, "Fuck this kind of work". The picture that Josian presented in Court that he shout every minute of the day is not correct. He stated that the staff who work with him will know that he spends a lot of time teaching them. He only swears when the things are not done and it goes out in public. Since 2018, from time to time you will see on Facebook about members' expenses, his salary, payments of bills and non-payments too. One thing which really frustrated him was when the Board gave approval for payments of big bills to the hardware and pharmacy but these are not implemented and most of the time, our accounts got closed. It was not his doing that the non-payments happened. He took them to the Board on time but when the Board Secretary did not give him the resolutions, he could not implement.
183. He recognised the area in the photo **Exhibit D11**. The Secretary's desk in that picture was occupied by Anna Stephens then after she finished at the VNPF, by Ruby Mulveras. He recognised the area in the photo **Exhibit D12** including the door to his office which says "General Manager" on the door. That area is the same since 2017. The chairs remain in the same place (along the wall perpendicular to Mr Achary's door). The only thing missing is the printer from the bottom right hand corner of the photo (next to Mr Achary's door). The printer paper tray was facing towards the chairs.
184. He remembers that Josian was bending down, taking out the papers and she was blocking his door. He needed to go to the toilet. He sits in the corner in his office so he cannot see if anyone is in the doorway so he got up and walked straight to the door. Then he saw Josian bending down, blocking more than half of his door. He turned facing towards the chairs and moved cautiously so that he would not touch her. He did not touch her. He was not even facing her when she was bending down. He moved and when he came out past her, he said, "Finally, I'm through." She just looked up and she thought something different. He did not understand what she thought. She never said anything. She stood up and smiled and he did not actually know what she thought.
185. What she was saying, that's not possible that he would touch someone's backside. All his staff here in Vanuatu know that when they play with each other, they would poke each other's back including the ladies but he would never do that. He has never done that. It is really embarrassing for him to listen to. He arrived at VNPF when it was on the verge of collapse. He tried his best for VNPF to recover from all its financial losses. He had to take a leadership style where when a person does well, he rewards them financially. And where they do not and he is subjected to other public criticism, he tells them, he shout and he tells the person, like Josian, to at least give the time to VNPF that they are paid salary for. In his leadership style, he is not always shouting and swearing. Mostly he is very nice to his staff as they are his asset. He looks after them so that they look after the 95,000 members. Josian never understood this.
186. After the Ombudsman's raid or search in August 2019, plus his staff locked him out of the office, he had a terrible shock and as a result, he collapsed in the office in August or



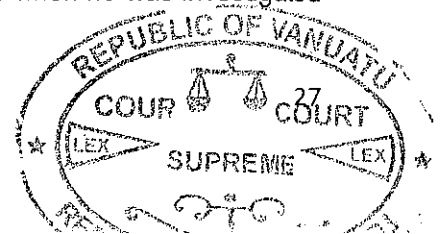
September. He was taken to the hospital here in Vila and then to New Caledonia. He had 3 stent to his heart arteries and severe stress including depression which also affected his eyesight. It affected his left side which is weak and his eyes cannot focus as one looks one way and the other the other way. It is really difficult to find eye glasses to help him focus.

187. He recognised the photo **Exhibit D13** as the Board Secretary's room which Ms Viraliliu occupied along with an assistant Esther James. The desk visible through that door is the Executive Assistant's desk, previously Anna Stephens and now Ruby Mulveras.
188. The final Board meeting of 2021 was at Santo. Josian also attended that meeting. On the day of his return to Vila, he checked out of the Luganvilla hotel but the driver turned up drunk. So he called John Naviti, the Luganville Branch Manager, to collect him and called Josian to wait for the Chairman Mr August and to not let the driver drive the official vehicle. He told her to come with the Chairman in the official vehicle and Mr Naviti would collect it from the airport. But when they reached the airport, Josian was sitting there. He asked her, "Where's the Chairman?" and she answered, "I don't know." He reminded her that he had asked her to wait at the hotel and to not let the drunk driver drive. Next thing, 10-15 minutes later, the drunkard driver drove the car to the airport with the Chairman in the vehicle. This was on a Saturday close to Christmas.
189. The following week, Mr August informed him that he had received a complaint in relation to Josian from her husband David Merick, and that he (Mr August) was going on leave but when he came back, he would ask Mr Achary to go on leave so that the Disciplinary Committee could investigate. Then he saw Police officers particularly Rodney – Nathalie's husband – collecting female staff to go to the Police station. He was told Josian's husband had put a complaint against him but no Police contacted him. In early February 2022, Mr August told him that he was visited by 2 Police officers regarding Josian's husband's complaint.
190. A disciplinary process was just about to take place against Mr Achary when the Police and Ombudsman started investigating so Mr August told him that since the Police are investigating, he would leave it to them to investigate.
191. He confirmed that he drew the sketch drawing [**Exhibit D21**]. On the left side is the main entrance into the VNPF building entering from the Pierre Lamy and Andre Ballande Streets. To its left is a door to the common area of Customer Services where employers/customers wait for service. He cannot understand from Ms Merick's drawing **Exhibit P5** where the door is and where Customer Services is.
192. He would not be doing such kind of thing as grabbing her hand in the common area and pushing it towards his penis. He stated that he is a normal person and has worked as CEO and Acting CEO at 2 major financial institutions in Fiji – the Fiji National Provident Fund and the Fiji Islands Revenue and Customs. Then he taught regional students at USP. He would never do that – pull somebody's hand. He thinks it is insanity to say such thing about his character.
193. He denied going to the Handicraft Centre until 2022 when his bail conditions in this matter stopped him going to his office (at the VNPF building) so he had to get an office renovated



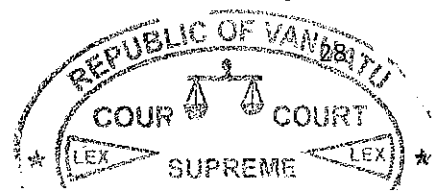
to work from there. That's when he went to Centrepont. The only other time was when he attended the opening of the Police Office there. Ms Merick was not there on that occasion.

194. He remembered Ms Merick giving evidence about him saying to her, "Where did you hide the fucking money?" After the Disciplinary Committee heard her matter involving failing to deposit Amy Beauty's employer contribution payment, it gave her a warning and she came back to work. She was there for a week then they received other members' and employers' complaints. One was from Mr Garoleo who gave her VT42,000 but never got a receipt from her and also from self-employed market vendors. He instructed the Disciplinary Officer to investigate and also wrote 2 letters to the Commissioner of Police with no response whatsoever.
195. He remembered that day that Ms Merick gave evidence of after she returned from maternity leave because he arrived at the office about 9 o'clock and she had just come in to sign attendance. He asked her when she came back and she said, "Today". He said nice to see you back and jokingly, "When are you going on maternity leave?" She said, "Boss, after giving birth to this baby, my hole has become so big that my husband will find it of no use." The security guards were also present.
196. He agreed that Ms Tugu's sketch drawing **Exhibit P4** depicts the Member Services area on the ground floor of the VNPF building in early 2020. In early 2020, the VNPF had just started the Members' Education Support Scheme. There were 1,200 applications received. 800 or 900 applications were for USP Laucala Campus. The students and parents would be crowding that area from 8am to 4.30pm to get service. Also, in November 2019, Parliament approved age-47 50% withdrawal so the influx from January to March was so significant that he stopped using that entrance.
197. He heard Ms Tugu's evidence that someone touched her bottom in that corridor and she turned around and saw it was him. He stated that he was surprised to hear that because members would be lining up there to sign their guarantee forms and they would be rushing. It was a really big crowd and mostly it was only 2 officers serving for this Scheme. He remembers clearly that Vanuatu students arrived in Fiji 3 weeks late because they were still processing their applications for tuition and accommodation.
198. He knows Isabel Lawi. He does not remember any such thing as Ms Tugu stated about him hugging Isabel and putting his face to her neck. As for Mrs Stephens' similar allegation, he stated that she is not stationed there at all. It is not correct that he came from behind Ms Lawi and hugged her and put his face to her neck. The most he would have done is tapped her shoulder and said good morning, which he also does to Dimitri who sits next to her. With Dimitri, because he always jokes with him, he will smack him to surprise him then go to the next employee.
199. Ms Tugu also spoke about Nellie Molu. He knows Nellie very well. It is a complete lie what Ms Tugu said on oath about seeing him touch Miss Molu on the arse on one occasion! He is not sure where Ms Tugu got the understanding or belief that nothing would be done if she reported these incidents because he oversees the VNPF disciplinary process. When a complaint is received, it goes direct to the Disciplinary Committee then the Committee will direct the officer responsible to investigate. An example is when he was investigated



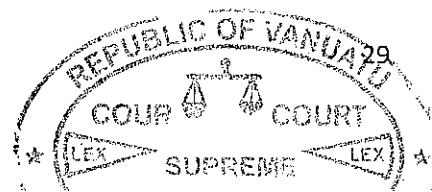
by Internal Audit, at the Disciplinary Committee's direction, when the Ombudsman accused him of stealing VT12 million for the purchase of Conquistador Apartment.

200. He confirmed that he heard Mrs Ala and Mrs Markward's evidence. He does not remember ever touching Mrs Ala's backside and to be honest, Mrs Ala and Mrs Markward were just fighting like cats and dogs. He has no recollection of touching Mrs Ala's backside on any occasion!
201. He heard Ms Iopa's evidence. He stated that she was not sitting alone. Others present were Marie Jimmy and Roggerly Vari. He identified areas of difference between his drawing [**Exhibit D22** (previously marked **Exhibit MF12**)] and Ms Iopa's sketch drawing [**Exhibit P6**]. In 2020, there was no door on the top left hand side like in **Exhibit P6**, but at the top like in his drawing **Exhibit D22**. He remembers another door but not where Ms Iopa placed it but lower down on the left side (pointing to the bottom left hand side of **Exhibit D22**).
202. It is not true that Ms Iopa had her back to the door; she was facing the entrance door. Changes in the layout of that area since 2020 are that the wall (pointing to the left hand side of the drawing) has been removed so the whole place is an open area now.
203. As to Ms Iopa's allegation that he massaged her shoulders and towards her breasts, that is another lie. She is sitting in between other staff; how would a normal person go and do that in the presence of others. They call him "Sir", "boss" and "Mr Achary" so how could he betray that trust.
204. He heard Mrs Takaro's evidence about him putting an arm around Ms Garoleo. He knows Ms Garoleo. She is currently working in the Investigation Department. She is a young mother, a graduate, a good worker and he respects her. He groomed her for senior position, just like what he was trying to do with Melissa. He cannot remember holding Ms Garoleo. The most he must have done is tap her and say "Good work" for what she does.
205. In cross-examination, Mr Achary confirmed that Mr Sunghk was one of the Executive managers and reported directly to him. He stated that it is not correct that in 2021, Mr Sunghk met with him and shared grievances of the complaints with him. He stated that Mr Sunghk told him he was too strict, too tough. He denied telling Mr Sunghk in relation to the employee complaints about harassment that it is one of his management style. He stated that he never met Mr Sunghk about any specific person but in general; that Mr Sunghk never mentioned any names. He stated that he met with him but not about grievances as it was not his department. He denied as incorrect that in that meeting with Mr Sunghk, he told him that what he mentioned was just jokes and staff were loyal to him. He denied as incorrect that after that meeting he had a bad working relationship with Mr Sunghk then found a way to terminate him in early 2022.
206. It was suggested as correct that at the time of the alleged incident concerning Mrs Ala, that Mrs Markward was there. He replied, "She was not supposed to be there." Was she there or not? "I'm not sure! I didn't see them together." He stated that it was not correct that he touched Mrs Ala's arse as she alleged.
207. It was suggested that at the time of the incident, there was only 1 chair there, not 3 chairs as shown in **Exhibit D12**. He stated that he always remembers 3 chairs there. He agreed



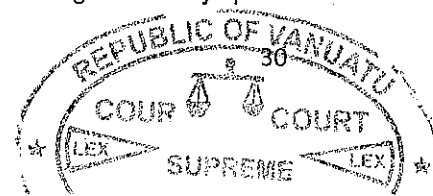
that the setting in **Exhibit D12** was not the same as when the alleged incident occurred, but also he has not been there for almost a year now. He denied that it was possible he changed the setting to suit his case - he would not do that. He stated that there was always a cabinet close to the chairs, it is where they keep the documents. He denied that Mrs Ala said "Kass!" and "Stop it!" after he touched her arse.

208. He agreed he knows Ms Viraliliu and her husband. He stated that he knows them and is friendly but not good friends. He agreed that Mr August told him that he had received a complaint from Ms Viraliliu's husband about abusive words. That was in December 2021, straight after the Santo meeting.
209. He denied as correct that when Ms Viraliliu was bending down to collect printer papers, he put his forefront/penis on her bottom. He denied as correct that after he placed his forefront/penis on her buttock, he said words to the effect, "Oh, it already went inside."
210. He agreed that he had not attended any disciplinary hearing of Ms Viraliliu's complaint.
211. He became aware of Police complaint against him in February 2022 after dropping his son at the airport to go to New Zealand for studies and the Police asked him to attend the Police Station. He agreed that in the month since he met Mr August until Police took him at the airport, he did not attend any disciplinary hearing.
212. He agreed it was his routine to visit everyone before starting work to say "good morning".
213. He denied holding Nathalie's hand in 2021 and forcing her to touch his penis ("No, Sir!"). He denied swearing at Nathalie, calling her "big hole" and "sut blo mi" saying, "No, I never said that! I've never used that word. I never heard that word until today." He stated that it never happened. He denied as correct that Serah was there at the time of the alleged incident. He denied as correct that he said abusive words to Nathalie at the Centrepoint Handicraft.
214. He agreed he had not produced the 2 letters he said he wrote to the Police Commissioner about Ms Merick. He stated that they did not relate to the charges against him so he had not produced them. He had followed up numerous times. He agreed that after Ms Merick faced the Disciplinary Committee, that she was reinstated then she resigned from the VNPF. She was paid all her entitlements.
215. He agreed that Ms Tugu and Mrs Takaro worked together. It was suggested that on the date of the alleged incident, he did walk behind Ms Tugu and touched her buttock. He stated that he never remembered walking behind Ms Tugu at any stage.
216. He denied that he massaged Ms Iopa's shoulders and down towards her breasts. It was suggested that other staff members were present then. He replied, "I have never massaged her." It was suggested that her allegation was true. He replied, "No, it's not correct." He was asked if he was telling lies to the Court. He answered, "No, I'm telling the truth."
217. He agreed he told the Court he also sometimes swears in the VNPF office. He agreed that staff may or may not be present. It was suggested that swearing in the presence of employees was not appropriate behaviour. He answered that he is allowed to think loud



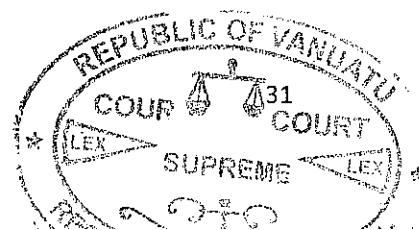
and it is their perception. It was also suggested that shouting in front of employees was also not appropriate behaviour in an organization like VNPF. He replied that it was a perception – their perception.

218. He stated that the whistleblowing policy is a Board policy and still exists. He denied that in 2017, it was under the Audit Department, saying that it was always under the Board but only the investigation is done by Internal Audit. He denied doing a review of that policy and in that review, placing it under the Human Resource Department, saying "No, I haven't done that review!"
219. Mr Achary agreed that he saw Josian bending down to get printer papers numerous times. It was suggested that as a General Manager, it would be more appropriate for him to say, "Excuse me, Ms Josian, I need to pass this way?" He replied, "I always say excuse me." It was suggested he did not say that. He said, "I always say and pass cautiously."
220. He denied that Ms Tugu's allegation that he also touched Nellie's buttock was correct. He also denied that it was correct that Ms Stephens saw him hug Isabel Lawi.
221. In re-examination, he explained that he responded to Mr Sunghk's comment that he was too strict or too tough to say the reports have to be ready for the next Board meeting, that he asked Mr Sunghk to concentrate on his job and to be fair to his members.
222. He stated that in terms of the investigation by Internal Audit, that never changed.
223. For the record, Mr Massing did not make a formal call for Mr Achary's letters to the Police Commissioner but Mr Hurley stated that if a submission would be made as to Mr Achary's credibility on that topic, those letters could be produced. Mr Massing stated that the evidence had been received and they did not require production of those letters.
224. Mr Achary's denials were many, consistent with his Police caution statement [**Exhibit P8**], but there was no witness called in defence to provide independent evidence corroborating his version of events as to the subject of the charges against him.
225. Several of Mr Achary's witnesses had been the subject of allegations by one or other Prosecution witness but none of those allegations were the subject of the charges against him. Accordingly, their evidence was of limited or no relevance to determining the factual disputes arising from the matters the subject of the charges against him.
226. Mr Achary mischaracterized Ms Viraliliu's evidence as that he shouted "every minute of the day". She did not say so in her evidence. In his own evidence, he admitted that he shouts and swears at work. In the face of the credible and reliable evidence from many of the Prosecution witnesses as to the swear words and foul language that he used towards them and other staff, I did not believe his evidence that he does not shout and swear at any person.
227. It was suggested to Mr Achary in cross-examination that it would have been more appropriate to say to Ms Viraliliu, "Excuse me, Ms Josian, I need to pass this way". His answer was, "I always say excuse me" and that he said that and then passed her cautiously. Ms Viraliliu in her evidence did not say anything about hearing Mr Achary speak

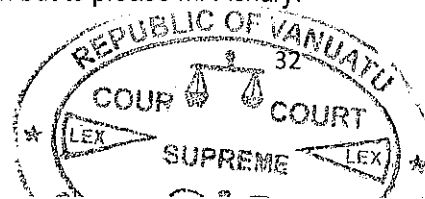


before she felt his forefront/penis on her bottom. In addition, there were no questions put in cross-examination to Ms Viraliliu that he said excuse me to her before he brushed or moved past her. I considered that it was convenient of Mr Achary to say in cross-examination that he said excuse me and that he fabricated this aspect of his evidence.

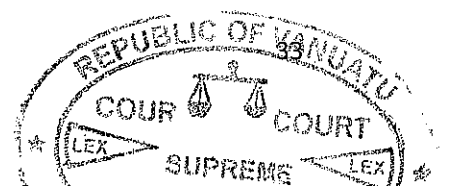
228. In the circumstances and given the credible and reliable evidence to the contrary of what Mr Achary had testified, I determined that his evidence should be accepted only where there was some independent credible support of it.
229. The **second** Defence witness I heard from was **Isabel Lawi**. She is 26 years old. She has worked at VNPF since July 2019 in the Employer Section on the ground floor of the VNPF building. From 2019-2020, as you come in from the main door from Pierre Lamy and Ballande Streets, Employer Services is on the left. Then from 2020, they moved to the left – Customer Services.
230. Police officer Terry asked her to give her statement regarding Mr Achary's case. He showed her Lorina Tugu's statement and said that her name was in that statement so she must give a statement. She told him that she did not want to. He said for her to think about it and come back to him. She has not.
231. She stated that Mr Achary never kissed her cheeks or shoulder as stated in Ms Tugu's statement. His greetings were to hug (demonstrating with translator Mrs Russet) then go – it was nothing.
232. As to what is in Serah Stephens' statement, she replied that Mr Achary never held her inappropriately (*'neva holem nogud mi'*) on any part of her body. He would always tap and say "Hi, Isabel!"
233. She met Mr Sunghk at his office at his request. Mr Sunghk said that Calvin Amos made a statement that Mr Achary massaged her shoulder so Mr Sunghk requested her statement. She told him that she did not want to give any statement because Mr Achary never massaged her and then asked to think it over and come back to him. She did not go back to him.
234. In cross-examination, it was suggested to Ms Lawi that Mr Lapinpal never showed her Lorina's statement. She disagreed. It was suggested that Mr Lapinpal asked her for a statement but she said she was scared for her job security. She disagreed. She denied that she did not make a statement because she was scared they would sack her. She denied that she had come to Court today not to tell the truth but to please Mr Achary. She was asked if she agreed to being hugged by Mr Achary in the way she demonstrated. She replied, *"From mi no tekem se I wan big harassment, be hemi greetings blo hem nomo"* ('Because I don't take it as a big harassment, it is just his greetings').
235. She denied ("No!") that Mansen and Calvin were present at the incidents mentioned by Mrs Stephens and Ms Tugu.
236. She stated that she was not aware that Mansen raised a concern to Mr Sunghk that he saw Mr Achary hold her inappropriately. She was never aware of this – her answer is "No".



237. As to Mr Sunghk's evidence that he received a complaint from the Investment team leader concerning her, she said she was not aware. Mr Sunghk called her to his office and requested her statement but she did not agree. She stated that Mr Achary never swore at her – he hugged her but never swore at her. It was suggested that Mr Achary hugged her many times. She agreed (paused) then stated not hug, just greetings.
238. There was no re-examination.
239. I accepted Ms Lawi as a truthful and accurate witness. Her account remained unchanged in cross-examination. I would observe about Ms Lawi's evidence that she was clear that she did not want to and did not give a statement to the Police or to Mr Sunghk, and that she did not view Mr Achary's actions as a 'big harassment'. Later in her evidence, she characterised his actions to her as 'just greetings', not hugs. However, what she demonstrated in Court was how Mr Achary hugged her across her shoulders. I accept that she may not have perceived this as inappropriate behaviour. In her own evidence, Mr Achary hugged her many times. Having made that observation, I would note that Ms Lawi's evidence was of no assistance to determining the factual matters in dispute arising from the charges against Mr Achary.
240. The **third** Defence witness I heard from was **Nellie Molu**. She has worked at VNPF since 2014.
241. In 2022, Police officer Rodney Taivakalo and another officer forced her to go to the Police station. She went and was asked questions. She told them that she was not the right person to be questioned because if they had told her in the first place, she would never have come to the Station. She signed a statement at the Police Station. They did not give her a copy of it. She returned to work but then decided to go back to the Station. She spoke with Rodney to take back her statement but he did not so she wrote letters to Terry Lapinpal [**Exhibit D20**], to the Police Commissioner [**Exhibit D23**] and to Mr Massing [**Exhibit D24**] withdrawing her statement. None of them responded to her letters.
242. She attended the Ombudsman's Office at their request. She answered questions and signed a statement [**Exhibit D25**]. After that Davol Simon from the Ombudsman's Office told her husband to tell her to put back her Police statement.
243. She knows Ms Tugu. She denied ever seeing Ms Tugu's Police statement made on 28 January 2022. She stated that Ms Tugu's statement about her was not true.
244. In cross-examination, Miss Molu agreed that the Police did not hold a gun or threaten her to force her to go to the Station. It was suggested that what she said about being 'forced' to go to the Station was not true. She said it was true. She agreed the first sentence of her letter **Exhibit D20** noted that she was invited by the Police to make a statement, and that the officers came to see her as part of their investigation. She agreed that her statement was not part of the Prosecution bundle in this case.
245. She denied that someone forced her to remove her Police statement. She denied that she withdrew her statement because she was scared of losing her job at VNPF. She denied being sworn at by Mr Achary. She denied Ms Tugu's allegation that Mr Achary touched her bottom. She denied that she had come to Court not to tell the truth but to please Mr Achary.

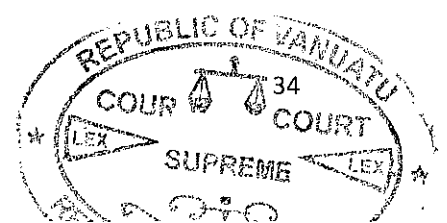


246. There was no re-examination.
247. I accepted Miss Molu as a truthful and accurate witness. Her account remained consistent throughout cross-examination and she conceded matters where appropriate. However, her evidence was of no assistance in determining the factual matters in dispute.
248. The **fourth** Defence witness I heard from was **Elizabeth Garoleo**. She is 27 years old. She started working at the VNPF in February 2021.
249. She stated that Mrs Takaro's statement that Mr Achary was hugging her is not true. They would just shake hands and taps on the shoulder, and most of the time, he would congratulate her for the work she had done.
250. In cross-examination, Ms Garoleo denied that Mr Achary swore at her. She denied that he hugged her as alleged by Mrs Takaro. She denied that she had come to Court not to tell the truth but to please her boss Mr Achary.
251. There was no re-examination.
252. I accepted Ms Garoleo as a truthful witness. However, her evidence was of no assistance to determining the factual disputes.
253. The **fifth** Defence witness I heard from was **Clera Seth**. She is 60 years old. She started work at VNPF in January 2018. Previously, she was a Police officer for 34 years.
254. She stated that there is a VNPF internal disciplinary process. In her role as a Senior Officer, she has not received any written complaint about Mr Achary. She does not remember receiving any letter from Ms Viraliliu. She remembered writing the Witness Statement dated 15 February 2022 [pp 187-188, **Exhibit D2**]. She confirmed that in the second paragraph of her Witness Statement, she referred to a letter from Ms Viraliliu received on 7 January 2022.
255. The letter at pp 189-190 of **Exhibit D2** is Ms Viraliliu's response to a report by Mr Achary. Mr Achary had made a complaint about Ms Viraliliu and that was Ms Viraliliu's response. Mrs Seth's Witness Statement was in response that response by Ms Viraliliu. She (Mrs Seth) had not received any allegation about harassment, written or verbal, prior to that response from Ms Viraliliu.
256. When a complaint is received, the Disciplinary Board must be informed. Then she (being the Senior Discipline Officer) conducts an investigation and the file is forwarded to the Disciplinary Board who conduct a hearing and make decision. The Disciplinary Board is made up of VNPF Board members; Mr Achary does not sit in it.
257. In cross-examination, Mrs Seth agreed that on 7 February 2022, she met with Ms Viraliliu but said for what purpose because they met many times. She agreed that they met then because she was instructed by Mr Achary to discuss with Ms Viraliliu resigning from the VNPF because her case was before the Disciplinary Board. It was suggested that she was aware of a complaint by Ms Viraliliu. She said in Josian's case, there was one report about

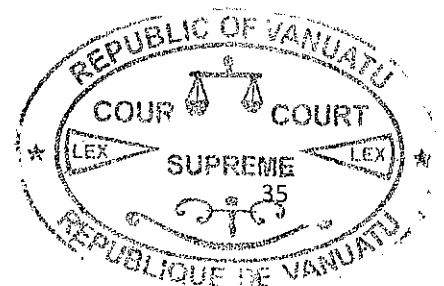


performance which Mr Achary made. She denied receiving any complaint about harassment and abuse. She denied receiving any personal concerns from Ms Viraliliu ("*Mi no risivim*").

258. In the office structure, she reports directly to Mr Achary. She is the only one in the Discipline and Professional Standards Unit. She stated that if Ms Viraliliu had made a written complaint about sexual harassment and unethical behaviour, she would have dealt with it to the Disciplinary Board.
259. In re-examination, Mrs Seth explained that Mr Achary in good faith said to inform Ms Viraliliu to resign so that she has a good record for her future career path and a good reference. That was the main point, because they did not know what decision the Board would make.
260. I consider that Mrs Seth firmly denied ever receiving a prior written complaint or letter from Ms Viraliliu before receiving Ms Viraliliu's response at pp 189-190 of **Exhibit D2**, both when giving evidence and as set out in para. 3 of her Witness Statement [p. 187, **Exhibit D2**]. However, I was left with doubt as to Mrs Seth not having received prior verbal complaints or concerns as she was the only Discipline Unit officer therefore I consider the inherent likelihood of the situation was that Ms Viraliliu did raise prior verbal concerns with Mrs Seth prior to writing her response at pp. 189-190, particularly given Mr Sunghk's evidence that she did raise her concerns with him.
261. I was also left with doubt as to the veracity of Mrs Seth's evidence that all discipline matters went directly to the Disciplinary Board as she then confirmed in cross-examination that she reported directly to Mr Achary. A stark example from her own evidence is that while Ms Viraliliu's case was before the Disciplinary Committee, she (Mrs Seth), on Mr Achary's instruction, met with Ms Viraliliu to convey his request that she resign so as to preserve her good record and obtain a good reference for future employment.
262. Accordingly, I consider that Ms Viraliliu's evidence is more credible that she (Ms Viraliliu) had previously raised her concerns verbally with Mrs Seth and determined that Mrs Seth's evidence should be accepted only where there was some independent credible support of it.
263. The **sixth** Defence witness I heard from was **Ruby Mulveras**. She started working at VNPF in 2018. She is currently Acting Executive Assistant to Mr Achary.
264. She recognised the area in the photo **Exhibit D11** as her office with her L-shaped desk. The **Exhibit D12** photo shows the waiting area before you enter Mr Archary's office. In 2019, there was a printer positioned right next to his door. When collecting papers from that printer, her back would be facing the chairs in that waiting area. The **Exhibit D13** photo shows the Board Secretary's office and desk. Her (Ms Mulveras') desk is visible through the door in that picture.
265. She saw Mrs Ala using the printer when she was Board Secretary. Mrs Ala never told her anything about Mr Achary doing something to her when she was collecting papers from the printer. After Mrs Ala, Mrs Markward was Acting Board Secretary then Ms Viraliliu became Acting Board Secretary.



266. She saw Ms Viraliliu using the printer. Ms Viraliliu never told her about Mr Achary doing something to her when she was using that printer.
267. In her experience, throughout the working day, Mr Achary's door was mostly open. She saw Ms Viraliliu and Mrs Ala go in and out of Mr Achary's office.
268. She saw former staff Melissa Iopa go in and out of Mr Achary's office. Ms Iopa and Mr Achary had a very good working relationship. Many times Melissa came to see Mr Achary in his office. Melissa would greet Mr Achary and always say, "Hello GM, how are you?" in her soft voice, smile and shake hands with him. Many times when they finished meeting, she would stand, say "Thank you GM" in her soft voice and leave.
269. She knows former staff Nathalie Merick. She also came up to the Executive suite area. She loved to joke with Mr Achary and most of the time, just came to see him.
270. When Ms Viraliliu started as Acting Board Secretary in June 2020, she had a good working relationship with Mr Achary. At times they laughed and also at times he would talk with her about her work. Around December 2021, Josian started to go missing from work. She would leave her desk, go outside, and then return some hours later but not say where she'd been, just walk in quietly. Even if they'd called her because Mr Achary wanted to see her about work. Mr Achary was asking them to call her because it was December and he wanted the Board minutes completed before January. Ms Viraliliu would tell Mr Achary that she went to see the Chairman and that's when he would shout at her. That's when their working relationship – yeah.
271. Asked to describe her own working relationship with Mr Achary, Ms Mulveras stated that he is a man who wants work done. When work is done, he is happy with you and talks with you nicely. When work is not done, he shouts at you. He respects her because he has never sexually harassed her at work.
272. In cross-examination, Ms Mulveras confirmed that sitting at her desk, she looks through the glass window that is visible in **Exhibit D11**. Mr Achary's office is behind her back. She agreed that if Nathalie went into Mr Achary's office, she could not see what happened in there. She stated that she could not see but she would hear because the door was open. It was suggested that her observations were heard only, not seen. She agreed that if Nathalie was in Mr Achary's office, she would not see.
273. She moved to the top floor when Mrs Ala was still Board Secretary. She agreed that when Melissa went into Mr Achary's office, she could not see the two of them.
274. In re-examination, Ms Mulveras stated that Ms Merick and Mr Achary joked around in her (Ms Mulveras') office and in Mr Achary's office.
275. I accepted that Ms Mulveras gave evidence to assist the Court with the truth and accept her evidence.



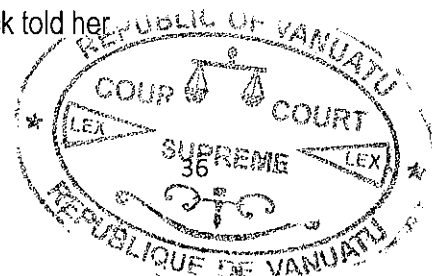
D. Discussion

Charge 1 – Act of indecency without consent

276. For the reasons given above, I consider that Mr Achary's evidence was unreliable and not credible and so Josian Viraliliu's evidence was to be preferred in relation to the allegation concerning her.
277. There is a factual dispute between Ms Viraliliu and Cynthia Ala, on the one hand, and Mr Achary and Ruby Mulveras, on the other hand, as to which way the printer was facing when someone bent down to collect papers from it. I take into account that in the time since the alleged offending, the layout of the room has changed such as the positioning of the printer closer or further away from Mr Achary's door, and that it is easy to change the direction that the printer faces. I did not consider that I needed to decide which way the printer faced. Ms Viraliliu was clear that she was bending down to the printer and that Mr Achary passed behind her. Mr Archary himself stated that he passed behind her. I considered that that was all that needed to be established.
278. Ms Viraliliu established that in 2021, Mr Achary came out of his office, passed behind her as she was bending down to the printer, and placed his front part where his penis is (through clothing) on her buttock. She did not expect that at all. She said to him, 'What are you doing?' He responded, 'I have inserted it already', referring to his penis.
279. It was clearly indecent for Mr Achary to place his forefront/penis on Ms Viraliliu's buttock. He did so without her consent. He could not have been under any illusion from her reaction that she consented to his act. Charge 1 has been established beyond reasonable doubt.

Charge 2 – Act of indecency without consent

280. There is a factual dispute between Nathalie Merick and Mr Achary as to the layout of the public area where the alleged incident occurred: contrast **Exhibit P5** with **Exhibit D21**. I compared the two exhibits and their evidence. I considered that they were describing the same area irrespective of the way that each had drawn the layout of the area. I considered the inherent likelihood of Ms Merick's account was that given that this was such a public area, she would not have alleged such an incident in this area unless it actually happened.
281. In Ms Merick's evidence, in 2021, Mr Achary walked towards her, held her hand and pushed it to touch his penis. She tried to pull her hand back but he kept coming nearer and pushed her hand until she actually felt his penis. She demonstrated in Court how she curled her hand into a fist and was trying to pull her hand back but he forced her hand to touch his penis (through clothing). She did not like him making her feel his penis. She turned around, came back inside and told Serah Stephens that he had made her touch his penis. Mr Achary also came inside the Compliance office and said good morning to the staff.
282. Mrs Stephens gave corroborating evidence that that was what Ms Merick told her



283. Holding Ms Merick's hand and forcing her to touch his penis was clearly indecent. She did not consent to him doing so. He could not have believed from her effort to resist him, and from her immediately turning around and leaving, that she consented to his act. Charge 2 has been established beyond reasonable doubt.

Charge 3 – Act of indecency without consent

284. The main thrust of Mr Achary's evidence against the allegation concerning Lorina Tugu was that many students and parents attended the ground floor of the VNPF in early 2020 to access the Members' Education Support Scheme therefore there were too many people around for him to touch Ms Tugu's buttock there and that he had stopped using the main entrance there. In his own evidence, Vanuatu students arrived in Fiji 3 weeks late due to late processing of their applications. That would have been around March or April at the latest. There was no independent corroborating evidence as to what days the Scheme was open for, and the numbers of people at the ground floor and when. There may well have been quiet days from time to time. I therefore put aside Mr Achary's evidence as to this allegation.

285. Ms Tugu's evidence was supported by Leah Takaro's recent complaint evidence. I considered that their evidence was credible and reliable.

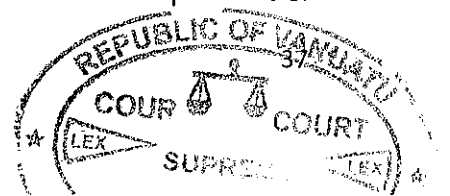
286. Ms Tugu established that in 2020, she was walking along a corridor on the ground floor when she felt someone touch her bottom from behind. She turned around and was shocked to see that it was Mr Achary. She walked to her workstation where Mrs Takaro saw her facial expression and asked what was wrong. She told Mrs Takaro that Mr Achary touched her bottom. Touching Ms Tugu's bottom was indecent. She did not consent to him doing so. He could not have believed from her reaction that she consented to his act. Charge 3 has been established beyond reasonable doubt.

Charge 4 – Act of indecency without consent

287. Melissa Iopa and Mr Achary differed as to the position of the door into her office. I was in no position to decide who was correct on that point but I do not have to decide that. I consider that regardless of the layout of the room, Ms Iopa's account remain unchanged that she was facing her desk and that Mr Achary approached her from behind and massaged her shoulders but then his hands went lower down to her breasts. There were others present in the room. None of those persons were called to rebut Ms Iopa's evidence.

288. Mr Achary's evidence was how would a normal person go and do that in the presence of others. Ms Iopa's issue reached Roan Lester Sunghk whose evidence was that he spoke about it with Mr Achary. Mr Achary denied speaking with Mr Sunghk about staff complaints, saying it was not Mr Sunghk's department. Mr Sunghk's employment was subsequently terminated. I considered Mr Sunghk's evidence as to Ms Iopa's complaint to be recent complaint evidence.

289. I considered that Ms Iopa's evidence was credible and reliable. I considered that the inherent likelihood of her account alleging that her breasts were fondled in the presence of



others, which made her feel ashamed and uncomfortable, was that she would not have made such an allegation unless it actually happened.

290. Ms Iopa established that in 2020, Mr Achary massaged her shoulders then down towards her breasts (through clothing). She felt it was an invasion of her personal space and she felt uncomfortable and ashamed. She did not consent to him doing so. He could not be under any illusion that she consented to his act which was indecent and done in the presence of others. Charge 4 has been established beyond reasonable doubt.

Charge 5 – Act of indecency without consent

291. Mr Achary stated that he does not remember ever touching Cynthia Ala's backside. His response to the suggestion that Meresimani Bakeo Markward was also present was, "She was not supposed to be there"! He said that he did not see them together. Whether or not he saw them together is irrelevant.
292. They were both clear in their evidence that Mr Achary touched Mrs Ala's bottom. Mrs Ala's evidence was supported by Mrs Markward's evidence. I considered that their evidence was credible and preferred it over Mr Achary's evidence as to this allegation.
293. Mrs Ala established that in 2019, Mr Achary walked behind her, pushed his hand and touched her buttock. Mrs Markward's evidence was that she arrived right on time to see Mr Achary touch Mrs Ala's bottom in a sexual manner. Mrs Markward was standing in the doorway that is the entrance into the executive suite area as she was speaking to Anna Stephens, the executive secretary so she was close by. Mrs Ala was shocked and said, "Kass!" She looked at Mr Achary and said, "Stop it!" Mrs Ala and Mrs Markward's accounts were consistent with each other.
294. Mr Achary touching Mrs Ala's buttock was indecent. She did not consent to him doing that. He could not believe from her reaction and words said out loud that she consented to his act. Charge 5 has been established beyond reasonable doubt.

Charge 6 – Failure to comply with and observe the law

295. The VNPF Board is a body corporate established by subs. 2(1) of the *Vanuatu National Provident Fund Act* [CAP. 189]:

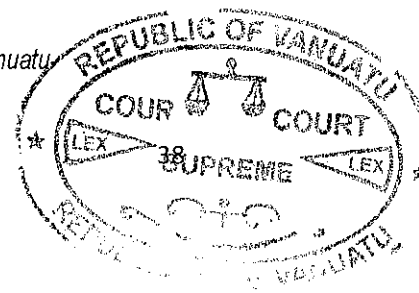
2. *There is hereby established a body corporate to be known as the Vanuatu National Provident Fund Board.*

296. The VNPF Board is a 'statutory body' because it was established by or under a law of Vanuatu, as provided by subs. 4(1) of the *Leadership Code Act* as follows:

4. (1) *In this Code, unless the context otherwise requires:*

...

"statutory body" means a body established by or under a law of Vanuatu



297. Mr Achary, as the chief executive officer of the VNPF, is a leader pursuant to para. 5(f) of the *Leadership Code Act* which provides as follows:

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

...

(f) members and the chief executive officers (however described) of the boards and statutory authorities;

(my emphasis)

298. Having found Charge 1 proved beyond reasonable doubt, I find it proved beyond reasonable doubt that in 2021, Mr Achary as a leader pursuant to para. 5(f) of the *Leadership Code Act* committed the offence of indecency without consent contrary to para. 98(a) of the *Penal Code* [CAP. 135]. Charge 6 has been established beyond reasonable doubt.

Charge 7 – Failure to comply with and observe the law

299. Mr Achary is a leader pursuant to para. 5(f) of the *Leadership Code Act*.

300. Having found Charge 2 proved beyond reasonable doubt, I find it proved beyond reasonable doubt that in 2021, Mr Achary committed the offence of indecency without consent contrary to para. 98(b)(i) of the *Penal Code* [CAP. 135]. Charge 7 has been established beyond reasonable doubt.

Charge 8 – Failure to comply with and observe the law

301. Mr Achary is a leader pursuant to para. 5(f) of the *Leadership Code Act*.

302. Having found Charge 3 proved beyond reasonable doubt, I find it proved beyond reasonable doubt that in 2020, Mr Achary committed the offence of indecency without consent contrary to para. 98(a) of the *Penal Code* [CAP. 135]. Charge 8 has been established beyond reasonable doubt.

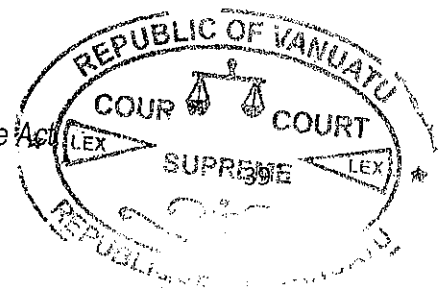
Charge 9 – Failure to comply with and observe the law

303. Mr Achary is a leader pursuant to para. 5(f) of the *Leadership Code Act*.

304. Having found Charge 4 proved beyond reasonable doubt, I find it proved beyond reasonable doubt that in 2020, Mr Achary committed the offence of indecency without consent contrary to para. 98(a) of the *Penal Code* [CAP. 135]. Charge 9 has been established beyond reasonable doubt.

Charge 10 – Failure to comply with and observe the law

305. Mr Achary is a leader pursuant to para. 5(f) of the *Leadership Code Act*



306. Having found Charge 5 proved beyond reasonable doubt, I find it proved beyond reasonable doubt that in 2019, Mr Achary committed the offence of indecency without consent contrary to para. 98(a) of the *Penal Code* [CAP. 135]. Charge 10 has been established beyond reasonable doubt.

E. Result

307. Mr Achary is convicted as charged (Charges 1-10 inclusive).

**DATED at Port Vila this 16th day of June 2023
BY THE COURT**

.....
Justice Viran Molisa Trief

