



**OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA**

**Special Report of Investigation**

**Conducted into Allegations of Impropriety and/or Irregularity in the Award of Certain Contracts to Strathairn Construction Company Limited by the St. Catherine Parish Council, the National Works Agency and the Ministry of Transport & Works.**

**Ministry of Transport & Works  
National Works Agency  
St. Catherine Parish Council**

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## Special Report of Investigation

### Conducted into Allegations of Impropriety and/or Irregularity in the Award of Certain Contracts to Strathairn Construction Company Limited by the St. Catherine Parish Council, the National Works Agency and the Ministry of Transport & Works.

Ministry of Transport & Works  
National Works Agency  
St. Catherine Parish Council

#### EXECUTIVE SUMMARY

On 2010 August 16, the Office of the Contractor General (OCG), acting on behalf of the Contractor General, and pursuant to Sections 15 (1) and 16 of the Contractor General Act, initiated an Investigation into the allegations of impropriety and/or irregularity in the award of certain contracts, by the St. Catherine Parish Council, to Strathairn Construction Company Limited (SCCL).

Section 15 (1) of the Act provides that “... a Contractor-General may, if he considers it necessary or desirable, conduct an investigation into any or all of the following matters –

- (a) the registration of contractors;
- (b) tender procedures relating to contracts awarded by public bodies;
- (c) the award of any government contract;
- (d) the implementation of the terms of any government contract;
- (e) the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence;
- (f) the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences”.

Section 16 of the Contractor General Act expressly provides that “*An investigation pursuant to section 15 may be undertaken by a Contractor-General on his own initiative or as a result of representations made to him, if in his opinion such an investigation is warranted*”.

The OCG’s decision to commence the formal Investigation followed upon certain allegations, which were made, to the OCG, by way of a formal sworn written Statement, which was tape-recorded by the OCG and which was given under the pain of criminal prosecution pursuant to Section 29 (a) of the Contractor General Act.

The sworn statement was given to the OCG, under oath, by a “*Confidential Witness*”, who is a former Director of SCCL. The official records of the Companies Office of Jamaica (COJ) have revealed that the “*Confidential Witness*” was appointed to the post of a Director of SCCL on 1981 October 15 and held the post up until the time of his resignation in late 2008 October.

In the referenced statement it was alleged that the award of certain works contracts which were issued by the St. Catherine Parish Council, for performance in the St. Catherine South Western Constituency, were influenced by a Mr. Clifford Everald Errol Warmington, the Member of Parliament for the St. Catherine South Western Constituency, and were awarded to SCCL – a company in which Mr. Everald Warmington was a Director, up to 2007 September 1.

In the sworn Statement, which was given to the OCG in 2008 December and formally executed in writing in 2009 March, it was also alleged, *inter alia*, that, as at the date of the Statement, SCCL was the beneficiary of the majority of the contracts which had been awarded in the St. Catherine South Western Constituency, along with two (2) or three (3) other companies.

It was further alleged, in the referenced Statement, that although Mr. Clifford Everald Warmington said that he had “*resigned*” from the company, this was not true and, in fact, he, Mr. Clifford Everald Warmington, was, as at the date of the Statement, still actively in control of the company and, as such, SCCL is “*Mr. Warmington’s company.*” The formal Statement, which was given to the OCG, also alleged that Mr. Clifford Everald Warmington was, at the time, in possession and control of the cheque book for SCCL.

The sworn Statement, which was provided to the OCG, also alleged that Mr. Clifford Everald Warmington, subsequent to resigning from his post as a Director in SCCL, added the names of his sister and brother to the particulars of the company’s documents.

Further, the sworn Statement, which was provided to the OCG, also implicated at least one senior Public Officer/Official of the St. Catherine Parish Council as having received ‘kickbacks’ for his role in the improper and/or irregular award of contracts to the said company.

It was further alleged that SCCL was operating from the same address as that of Mr. Warmington’s Member of Parliament Constituency Office, which it was alleged was located at “*40 East Street, Old Harbour, St. Catherine*”.

In the OCG’s considered opinion, the referenced allegations were sufficient to trigger, in 2009 February, an OCG Preliminary Enquiry into the said allegations. The Preliminary Enquiry, which was conducted by the OCG, into the above-referenced allegations corroborated the veracity of some of the said allegations and/or raised serious questions regarding the said allegations. They were as follows:

- (a) By way of a letter, which was dated 2006 May 31, the Parliament of Jamaica, disclosed particulars of eight (8) Exemption Motions, regarding certain Parliamentarians, to the Contractor General. In the referenced letter, it was

disclosed that a Motion for Exemption was approved in favour of Mr. Clifford Everald Warmington, MP, on 2003 April 23.

The disclosure, in respect of Mr. Warmington, confirmed that Mr. Warmington, at the time, was the Chairman and Chief Executive Officer of SCCL, a General Construction, Management Engineering and Quantity Surveying Company, which from time to time entered into contracts with the GOJ and/ or its agents.

- (b) The Exemption Motion did not disclose any further details as to the Public Body/Bodies which had engaged or which would be engaging the services of SCCL, nor did it disclose the details and/or value of any past, current and/or prospective contracts which had been or which were to be awarded to the company.
- (c) Checks by the OCG of the official documents which are available at the COJ confirmed that a Mr. Clifford Warmington ceased to hold office as a Director in the company, SCCL, as at 2007 September 1.
- (d) Further OCG checks with the COJ revealed that on 2007 September 1, the names of three (3) persons, whose surnames in two (2) instances and maiden name in the other, was that of 'Warmington', were added to the company's registration documents, in the capacity of Directors of SCCL.

However, further checks of the records of SCCL, at the COJ, revealed that the said three (3) persons, who are named 'Warmington', ceased to be Directors of SCCL as at 2008 October 31.

Of critical note, however, was that a person who was alleged in the above-referenced sworn Statement to be a Councillor of the "Old Harbour Bay Division", was identified by the OCG as having been appointed as a Director of

SCCL as at 2003 March 26. Checks which were made by the OCG also indicated that, as at 2009 February, when the records were 'last updated', the referenced person was still listed as a Director of the company.

- (e) An examination of the Quarterly Contract Award (QCA) Reports that were filed by the St. Catherine Parish Council with the OCG, in respect of the eight (8) quarters of the period 2008 January 1 to 2009 December 31, revealed that the St. Catherine Parish Council, during the referenced period, awarded a grand total of 39 QCA based contracts, having an aggregated value of \$135.29 Million. Of the referenced amount, as many as eighteen (18) contracts, totalling approx. \$65.36 Million in value, were awarded by the Council to SCCL alone.
- (f) The OCG's examination of the St. Catherine Parish Council's QCA Reports for the 2008 and 2009 calendar years, revealed that during the 3<sup>rd</sup> Quarter of 2008 (2008 July to September), only ten (10) contracts in total were awarded by the St. Catherine Parish Council. Of critical note, however, was that all ten (10) contracts, totalling \$20.61 Million in aggregated value, were awarded to SCCL. Further, all ten (10) contracts were awarded by the St. Catherine Parish Council to SCCL on a single day, 2008 August 28.
- (g) Further, the OCG's Preliminary Enquiry revealed that of the ten (10) contracts which were awarded by the St. Catherine Parish Council on 2008 August 28, as many as eight (8) of those contracts were for the execution of works in Sydenham, St. Catherine.

The locations, descriptions and values of the said works, as reported by the St. Catherine Parish Council, suggested that the eight (8) contracts which were awarded to SCCL were 'splintered'. This would have enabled the said contracts, at a minimum, to escape the scrutiny and oversight of the National Contracts Commission (NCC) which, under the Government's then Procurement Rules, and

having regard to the total value of the contracts, would have had to endorse the said contracts prior to their award.

- (h) Additionally, a review of the QCA Reports for the St. Catherine Parish Council for the 3<sup>rd</sup> Quarter of 2009 revealed that the St. Catherine Parish Council awarded eight (8) contracts during the referenced three (3) month period with an aggregated value of \$61.78 Million. Of the eight (8) reported contracts, as many as five (5) were reportedly awarded to SCCL for the purposes of “Road Rehabilitation”. The five (5) contracts, which had an approximate aggregated value of \$39.19 Million, were all reportedly awarded to SCCL on a single day, 2009 July 28.

The above-referenced QCA Reports were submitted to the OCG, by the Accountable Officers of the St. Catherine Parish Council, in furtherance of the OCG’s lawful Statutory Requisitions that are issued pursuant to Section 4 (2) (a) and 4 (3) of the Contractor General Act. The Reports were submitted under the pain of criminal prosecution under Section 29 (a) of the Contractor General Act which makes it a criminal offence, *inter alia*, for any person to wilfully make a false statement to mislead a Contractor General.

- (i) It is also important to note that the OCG, during the course of its Preliminary Enquiry, was advised, in writing, on 2009 May 1, by the Secretary Manager of the St. Catherine Parish Council, Mr. Christopher Powell, that *“Since the advent of the Constituency Development Fund, the Council has not written approval letters to any contract winner; what we have done is call in the respective winners. This approach we now realize was erroneous and we will now in going forward write to all successful bidders.”*

The foregoing considerations were singularly and collectively grave in their import and raised several public interest issues which, in the OCG’s considered opinion, warranted

the institution of a formal OCG Statutory Investigation into the allegations which were made in this matter. Consequently, on 2010 August 16, the OCG initiated an Investigation into the allegations of impropriety and/or irregularity in the award of certain contracts, by the St. Catherine Parish Council, to SCCL.

The referenced allegations and inferences, amongst others, raised several concerns for the OCG, especially in light of the perceived absence of adherence to the Government contract award principles which are enshrined in Section 4 (1) of the Contractor General Act.

Section 4 (1) of the referenced Act requires, *inter alia*, that GOJ contracts should be awarded “*impartially and on merit*” and that the circumstances of award should “*not involve impropriety or irregularity*”.

It is instructive to note that on 2010 August 18, the OCG expanded the ambit of its Special Investigation to include the scrutiny of contracts which have been performed, by SCCL, for and on behalf of the National Works Agency (NWA) and/or the Ministry of Transport and Works (MTW).

In keeping with the OCG’s stated intent to initiate an Investigation, letters were directed on 2010 August 16, by the Contractor General, to the Permanent Secretary in the Office of the Prime Minister, Ms. Onika Miller, the Director General in the Local Government Department, Major Richard Reese, and the Secretary Manager at the St. Catherine Parish Council, Mr. Christopher Powell, to formally advise them of the commencement of the OCG’s Investigation into the allegations of impropriety and/or irregularity in the award of certain contracts, by the St. Catherine Parish Council, to SCCL.

Subsequently, letters which were dated 2010 August 18, were directed by the Contractor General, to the Chief Executive Officer of the NWA, Mr. Patrick Wong and the Permanent Secretary in the MTW, Dr. Alwin Hales, to formally advise them of the

expansion of the ambit of the OCG's Special Investigation into contracts which had been awarded to SCCL. The Contractor General's referenced letters were also copied to the Prime Minister, the Hon. Bruce Golding, and to the Minister of Transport and Works, the Hon. Mike Henry.

It must be noted that following upon the launch of the OCG's Investigation, on 2010 August 16, at which time the referenced allegations, *inter alia*, were detailed in a formal OCG Media Release, Mr. Warmington wrote to the Contractor General, by way of a letter dated 2010 August 17, and questioned and challenged the bases of the OCG's Investigation whilst positing his response to certain allegations which had implicated him.

The OCG, by way of a letter which was dated 2010 August 18, responded to Mr. Warmington's letter and advised him, *inter alia*, as follows:

*“While you can be assured that your letter and the representations which you have made therein will be placed upon the formal records of the OCG, we must, however, redirect your attention to the OCG's letter of August 16, 2010, in the captioned regard, which was formally copied to you.*

*The third to last paragraph of the referenced letter has clearly communicated that, in due course, you will be formally advised of the OCG's Investigation Process and the Statutory Requisitions which the OCG will be making of you and other persons as it proceeds with its Investigation.”*

It must also be noted that during the course of the Investigation, the OCG was approached by Dr. Raymoth Notice, who provided it with information regarding certain alleged irregularities at the St. Catherine Parish Council.

As such, on 2010 October 27, an OCG Investigation Team met with Dr. Raymoth Notice, former Mayor of Spanish Town and current Councillor at the St. Catherine Parish Council. The transcript of the referenced meeting was subsequently sworn before a Justice of the Peace, on 2010 November 11.

As such, the compendium of allegations and concerns were sufficient to reaffirm the conduct of the OCG's Investigation into, *inter alia*, the alleged associations between Mr. Clifford Warmington, SCCL and certain procuring Public Bodies.

The Terms of Reference of the OCG's Investigation into the circumstances which surrounded the allegations of impropriety and/or irregularity in the award of certain contracts to SCCL by the St. Catherine Parish Council, the NWA and the MTW, were primarily developed in accordance with those of the mandates of the Contractor General as are stipulated in Section 4 (1) and Section 15 (1) (a) to (d) of the Contractor General Act.

The Terms of Reference of the Investigation, and the development of the written Requisitions/Questionnaires that were utilised throughout the course of the Investigation, were guided by the OCG's recognition of the far-reaching responsibilities and requirements that are imposed, *inter alia*, upon Public Officials and Public Officers by applicable Government Procurement Procedures, the Contractor General Act, the Financial Administration and Audit Act, the Public Bodies Management and Accountability Act and the Corruption Prevention Act.

In addition, the OCG was guided by Section 21 of the Contractor General Act which provides that **"If a Contractor-General finds, during the course of his Investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding**

**as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.**” (OCG Emphasis)

The Findings of the OCG’s Investigation into the allegations of irregularity in the award of certain contracts to SCCL, by the St. Catherine Parish Council, the NWA and the MTW, are premised primarily upon an analysis of the sworn statements and the documents which were provided by the Respondents who were requisitioned by the OCG during the course of the Investigation.

### **Summary of Key Findings and Conclusions**

1. The OCG has found and subsequently concluded that certain of the particulars which were made in the sworn statement that was given to the OCG in 2008 December, by the ‘*Confidential Witness*’, regarding the establishment and operations of SCCL, are in fact accurate reflections of SCCL’s operations. In this regard, the OCG has concluded the following:
  - a. Mr. Lloyd Grant, a Councillor at the St. Catherine Parish Council was actively involved in the operations of SCCL and was appointed a Director of the said company on 2003 March 26 ;
  - b. The names of certain relatives of Mr. Clifford Everalld Warmington were added to the company registration particulars of SCCL, as alleged by the “*Confidential Witness*” who came forward to the OCG;
  - c. Mr. Everalld Warmington ceased to be a Director of SCCL on 2007 September 1. On 2007 September 1, several of Mr. Warmington’s relatives were added to the registration particulars of SCCL.
  - d. Mr. Warmington, as alleged by the “*Confidential Witness*”, is now a ‘Consultant’ for SCCL and is remunerated based upon the nature and complexity of the work which is undertaken by him.

- e. SCCL has its registered offices at 40 B East Street, Old Harbour, which is the same as the address for the office of the Member of Parliament, Mr. Clifford Everalld Warmington. According to Mr. Howard Charvis, President, SCCL, *“The office of the Member of Parliament and SCCL are, along with other entities, on the same compound.”*
  - f. It is instructive to note that Mr. Warmington, on his *“Statutory Declaration of Assets, Liabilities and Income”*, which was filed with the Integrity Commission from as early as 2002 October 16 and as late as 2009 December 31, used a given address of *“40 East Street, Old Harbour”*, which is the address on the letter head belonging to the office of the Member of Parliament.
  - g. The records of the COJ have revealed that *“There have been no filed changes in the Registered Office since incorporation.”*
2. The records of the COJ have revealed that SCCL was incorporated on 1981 October 15. Based upon the COJ’s official records, the OCG has also found and concluded that the First Directors of SCCL were Mr. Howard Charvis, Mr. Noel McKenzie, Mr. Evroy Chin and Mr. Leslie Henry.
  3. The records of the COJ have also revealed that the First Shareholders of SCCL were Ms. Donna-Ann Stephens and Ms. Jannett Manning.
  4. The OCG has found and concluded that Mr. Everalld Warmington was appointed as a Director of SCCL on 2003 March 26, by Mr. Howard Charvis. The official records of the COJ, which were provided to the OCG, have revealed that Mr. Everalld Warmington was not listed as a shareholder of SCCL.
  5. The OCG has found and concluded, based upon the official COJ records, that the current shareholders of SCCL are Mr. Howard Charvis, Mr. Lloyd Grant and Mr. Selvyn Foster.

6. Based upon the sworn documentary evidence which has been adduced to the OCG, the OCG has found and concluded that there are three (3) current and known shareholders of SCCL who, despite the fact that none have, by their own admissions, placed equity in the company for the acquisition of their respective share allotments.

Further, in the case of Mr. Lloyd Grant and Mr. Selvyn Foster, both men have advised the OCG in their respective sworn testimonies that they were allotted shares in SCCL based upon their input of sweat equity in the company.

7. Based upon the sworn documentary evidence which has been provided to the OCG, the OCG has found and concluded that none of the known shareholders of SCCL, have held themselves out to be nominated and/or proxy shareholders of SCCL.
8. According to the sworn documentary evidence which was provided to the OCG, by Mr. Howard Charvis, Mr. Selvyn Foster, Mr. Lloyd Grant and Mr. Everalld Warmington, it has been asserted that Mr. Warmington does not have a financial interest in SCCL.
9. The OCG has found and concluded that SCCL, in its application for registration with the NCC, asserted that Mr. Clifford Everalld Warmington was the owner and principal of SCCL. The foregoing was sworn and attested to by Mr. Clifford Everalld Warmington himself, before a Justice of the Peace, to be true and correct on 2007 January 8.
10. The OCG has found and concluded that Mr. Everalld Warmington has denied making any such representation to the NCC, in regard to SCCL, despite the documentary evidence which is on the record.

It is, therefore, the considered opinion of the OCG that Mr. Warmington must now choose whether the sworn representations which were made by him, to the OCG, in his respective responses to the OCG's Requisitions, are now wholly accurate and, as such, otherwise prove that the application which was submitted to the NCC, on behalf of SCCL, pursuant to the Voluntary Declarations Act, was an application that was (a) not submitted by him and was so done without his expressed authorization or knowledge and (b) that the information contained therein was in fact accurate and truthful as he had so declared.

11. Despite the sworn testimony of certain SCCL Directors, the OCG has found and concluded that there were certain material representations which were made to Bank of Nova Scotia (BNS), by representatives of SCCL, which, at a minimum, implicate Mr. Clifford Warmington as being a beneficial owner of SCCL. In this regard, the OCG has found and concluded the following:

- a. On a BNS Form, which was entitled "*Business Customer Details-Addendum*", which was executed on 2007 September 26, with respect to "**Beneficial Shareholders with more than 10% ownership.**",<sup>1</sup> the only person identified was Mr. Clifford Warmington of a 40 East Street, Old Harbour, address.
- b. On an identical BNS Form, which was entitled "*Business Customer Details- Addendum*", and which was executed on 2006 September 27, with respect to "**Beneficial Shareholders with more than 10% ownership.**",<sup>2</sup> the only persons who were identified were Mr. Clifford Warmington of a 40 East Street, Old Harbour address, and a Mr. Lloyd Grant.

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<sup>1</sup> BNS Form- "*Business Customer Details-Addendum*". 2009 September 26

<sup>2</sup> BNS Form- "*Business Customer Details-Addendum*". 2006 September 27

- c. However, in that instance, and under the heading “**PERCENTAGE OF OWNERSHIP**”, the SCCL Representatives indicated that Mr. Clifford Warmington held “**100%**” of the shares in SCCL.(OCG Emphasis)

It must be noted that on 2007 September 26, approximately twenty five (25) days after Mr. Warmington had resigned from his post as a Director of SCCL, he was held out to be the sole Beneficial Shareholder of SCCL.

12. The OCG has found, and subsequently concluded, that there are conflicting and contradictory statements on the record regarding the shareholding status of Mr. Everald Warmington in SCCL. The OCG’s conclusion is premised upon, *inter alia*, the following:

- a. The fact that the current shareholders of SCCL and Mr. Everald Warmington, himself, have denied the allegation that Mr. Warmington has any pecuniary interest in SCCL;
- b. The fact that the official COJ records do not, and have never, detailed Mr. Warmington as being a shareholder of SCCL;
- c. The fact that by way of a letter, which was dated 2006 October 24, several Directors of SCCL, inclusive of Mr. Everald Warmington, advised BNS, as follows: “*This is to confirm that all the shares in Strathairn Construction Company Limited are held by Clifford E. Warmington.*”
- d. The fact that the sworn declarations which have now been provided to the OCG, by Mr. Howard Charvis, *et al*, have now contended that the representations which were made to BNS, by the representatives of SCCL, were materially and patently false.

The OCG’s conclusions and findings in the matter are further compounded by the fact that Mr. Howard Charvis, Mr. Selvyn Foster and Mr. Lloyd Grant, in their respective responses to the OCG’s Requisitions, which were dated 2010

November 22, 2010 November 18 and 2010 November 17, provided the exact responses and indicated that “*Mr. Warmington does not have a financial interest in SCCL.*”<sup>3</sup>

It is the OCG’s considered opinion that there is sufficient conflicting evidence from which to conclude that certain named Directors of SCCL have committed a criminal offence as it relates to (a) the representations/misrepresentations which have been made to BNS, (b) the representations/misrepresentations which have been made by them, to the OCG, in their sworn and documented statements and/or (c) the representations/misrepresentations which have been made to the NCC.

The OCG’s conclusion is premised upon the fact that (a) if materially false representations were made to the BNS, then those Directors of SCCL, who were party to same, would have made fraudulent misrepresentations to the BNS should their sworn representations to the OCG be taken as factual, truthful and accurate and (b) conversely, if the representations of certain Directors of SCCL, to the BNS, is indeed factual and correct, then their representations to the OCG would have been in violation of Section 29 of the Contractor General Act.

Further, and having regard to the fact that Mr. Clifford Warmington, in submitting an application to the NCC, for and on behalf of SCCL, asserted, pursuant to the provisions of the Voluntary Declarations Act, that he was the owner and principal of SCCL, and has now, subsequently denied the veracity of same in his sworn testimony to the OCG, the OCG has been led to conclude that Mr. Warmington has committed an offence under the Perjury Act in relation, either to (a) his representations to the OCG or, (b) his representations to the NCC.

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<sup>3</sup> Responses to the OCG’s Requisition from Selvyn Foster- 2010 November 18, Howard Charvis- 2010 November 22 & Lloyd Grant- 2010 November 17. Question 33.

The OCG is fortified in its view as the two (2) conflicting statements are mutually exclusive and both cannot be true. Therefore, and by default, should both of the statements to the NCC and the OCG now be labelled as inaccurate by Mr. Warmington or anyone else, the offence of misleading and making a false representation to the NCC and/or the OCG would subsist.

13. The OCG has found and concluded that a written letter was submitted to the NCC, on 2010 April 22, regarding the Annual Registration of SCCL, on a letterhead belonging to the Office of the Member of Parliament for South West St. Catherine. The referenced letter was signed by a Mr. Howard Charvis, President, SCCL.

However, the OCG has found that Mr. Howard Charvis, in his sworn response to the OCG's Requisition, sought to explain, *inter alia*, the circumstances which surrounded the use of the referenced letterhead and, in doing so, stated that "*My signing a letter on the Member of Parliament's letterhead was a genuine oversight.*"

14. The OCG has found that Mr. Everald Warmington, in his sworn response to the OCG's Requisition, indicated that SCCL had no authority to use the Member of Parliament's letterhead and was not aware of the occurrence or that same was even '*factual*'.

However, the OCG has taken note of the explanations which have been posited by both Mr. Warmington and Mr. Charvis and must, as a matter of due course, question the sufficiency of such a response having regard to the fact that the letter was in fact signed by Mr. Charvis and same is not similar to the official letterhead which is used by SCCL.

15. The OCG has found and concluded that SCCL has, in at least one instance, made a material misrepresentation on its NCC application forms for the years 2009 and 2010. In this regard, the OCG has concluded that SCCL misrepresented the fact that it had employed a Mr. Donovan Nolan as a member of its technical staff. In point of fact, Mr. Nolan, in his sworn response to the OCG, advised, *inter alia*, that **“I, therefore, state that I had discussions with Mr. Warmington, and I advised him that I was available for a Senior Management position within the Private or Public Sector. Mr. Warmington recommended me to the directors of Strathairn Construction Company Limited for a position in management. I did not however, take up the appointment.”**

16. The OCG has found and concluded that Mr. Nolan has denied having knowledge of the fact that his particulars were being used by SCCL and also indicated that he has never worked with and/or been engaged by SCCL.

17. It is instructive to note that, as it regards the engagement of Mr. Nolan by SCCL, Mr. Howard Charvis, in his sworn response to the OCG’s Requisition, advised the OCG that *“Mr. Nolan was offered the position to begin in May, but he did not take up the appointment. This information was supplied to your office through your Mr. McFarlane on June 17, 2010.”*

However, the OCG has found and concluded that SCCL, for the two (2) consecutive years of 2009 and 2010, had provided the NCC with information regarding Mr. Nolan’s association with the company.

In light of the conflicting information which is available to the OCG, it must be noted that the sworn statement which was given by Mr. Howard Charvis, did not seek to address the misrepresentation of facts as evidenced by the application forms which were submitted to the NCC for two (2) consecutive years, but rather

sought to explain the fact that Mr. Nolan did not take up an appointment with SCCL approximately one (1) year after his particulars were first used by SCCL.

18. The OCG has concluded that Mr. Everald Warmington, in his sworn response to the OCG's Requisition, indicated that he had passed Mr. Nolan's resume to SCCL and other companies, but did not subsequently try to ascertain whether Mr. Nolan was employed by any of these companies.

In his sworn response to the OCG's Requisition, Mr. Nolan indicated that after his initial meeting with Mr. Warmington, he had no further contact with Mr. Warmington regarding the status of his application with SCCL.

19. Mr. Howard Charvis, in his sworn response to the OCG's Requisition, indicated that "**Mr. Nolan was offered the position to begin in May, but he did not take up the appointment.** This information was supplied to your office through your Mr. McFarlane on June 17, 2010." The OCG has found and concluded that such a representation conflicts with the information which was consecutively provided to the NCC, by Mr. Charvis, in 2009 and 2010, regarding the employment of Mr. Donovan Nolan.

20. The OCG has found, and concluded, that a BNS chequing account was opened in the name of SCCL on 2000 June 18. The only signatories to the referenced account were a "Clifford Everald Warmington and Leslie Henry". The records which were provided to the OCG, by the BNS, further revealed that the chequing account was closed on 2006 June 8 and there were no other signatories to the account outside of the two (2) named individuals.

21. The OCG has found and concluded that in 1994, a USD Bank Account was reportedly opened by SCCL, with funds which originated from Mr. Clifford Warmington. In his sworn response to the OCG's Requisition, Mr. Warmington

indicated that the money was obtained from his personal bank account in the United States of America.

However, a perusal of the BNS records, by the OCG, has revealed that the funds which were used to open the referenced Bank Account actually came from the account of a company in New York, United States of America, which was named ‘Strathairn Construction Co. Inc.’.

22. The OCG has found, based upon the particulars of an application form which was submitted to the NCC, by SCCL, on 2007 January 10, that the company ‘Strathairn Construction Co. Inc.’ was incorporated in New York and that ***“In 200 [sic] the Chief Share Holder returned to Jamaica and have since been providing Consulting Services to Contractors and Developers.”***

The foregoing application form, which included the information which is detailed above, regarding ‘Strathairn Construction Co. Inc.’, was completed and sworn to at a 20 Belmont Road, Kingston 5 address, by one Mr. Clifford Warmington.

It is instructive to note that despite the evidence to the contrary, Mr. Clifford Warmington, in his sworn response to the OCG’s Requisition, which was dated 2011 January 4, stated that *“I am not aware of, or can recall any such declaration being made.”*

23. The OCG has found and concluded that despite the foregoing application form which was submitted to the NCC, and which was completed by Mr. Warmington, he (Mr. Warmington), has, in his sworn response to the OCG’s Requisition, which was dated 2010 November 24, indicated to the OCG that:

*“I can not recall the full details on the founding of Strathairn Construction Company Incorporated. **I recall that a group of individuals established that***

*corporation. I was associated with it but I am unable to give detail [sic] on the date on which it was incorporated or whether or not that entity is still in operation. I do not recall being a shareholder. I know that there were [sic] no relationship with the Jamaican entity of Strathairn Construction Company Limited. I was involved in the Construction Management aspect of Strathairn Construction Company Incorporated. I can not recollect any further detail on that corporation.*”<sup>4</sup>

The OCG has, therefore, concluded that there is a gross disconnect and conflict between the sworn statements which were submitted to the OCG by Mr. Clifford Warmington and the previous sworn declarations which have been made by him on the application forms which were submitted to the NCC.

24. The OCG has found, and concluded, that there were associated bank accounts pertaining to Mr. Clifford Warmington and SCCL. In point of fact, the OCG has found that on 2009 November 5, an account which was held in the name of SCCL was closed and the funds were transferred to an account which was held in the names of one Mr. Clifford Everaldo Warmington and a Ms. Nicole Warmington.

25. The OCG has found and concluded that on the BNS Form, which was entitled “OPENING AND OPERATION OF CORPORATE ACCOUNTS PRIVATELY HELD”, which was apparently signed on 2007 September 26, representatives of SCCL identified Mr. Clifford Everaldo Warmington as the person holding one hundred percent (100%) of the shares in SCCL.

The foregoing information which was provided to BNS conflicts with the documentary and official company records which are available from the COJ which has never listed Mr. Warmington as a documented shareholder of SCCL.

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<sup>4</sup> Clifford Warmington. Response to the OCG’s Requisition. 2010 November 24. Question # 49

26. The OCG has found that on 2009 September 28, a SCCL BNS cheque, in the amount of \$4,315,606.00, was drawn on the SCCL account and was issued to Euro Star Motors Ltd. According to Mr. Charvis, *“Payment was part of our loan repayment to Mr. Warmington who requested that the payment be made directly to Euro Star Motors.”*

27. The OCG has found, based upon the sworn statements which were provided to it, that, between the period of 2007 October to 2010 October, Mr. Everald Warmington was paid approximately J\$9 Million by SCCL, reflecting payments which were purportedly made for *“professional fee commensurate with the complexity of the purpose for which he is retained or engaged.”*

However, the OCG’s analysis of the payment schedule, which was provided to it by Mr. Howard and Mr. Lloyd Grant, revealed that the payments which were made to Mr. Warmington were a combination of payments for (a) Consultancy, (b) Loan Repayments, (c) Rent, and (d) “Purchase Motor Vehicle”.

28. The OCG has also found that, as at 2009 March 27, SCCL was reportedly making payments to Mr. Clifford Warmington for the rental of premises. However, and according to Mr. Howard Charvis, President, SCCL, the company does not have a written Rental Agreement.

29. Based upon the documentary evidence which has been provided to it, by Mr. Howard Charvis, Mr. Selvyn Foster and Mr. Lloyd Grant, the OCG has found and concluded the following:

- a. Rental payments are made by SCCL to Mr. Clifford Warmington for the office premises which are occupied by SCCL;
- b. Neither of the three (3) named gentlemen could confirm the name(s) of the owner of the premises; and

- c. All three (3) named gentlemen, despite being unable to confirm whether Mr. Clifford Warmington was in fact the owner of the premises which were occupied by SCCL, indicated that Mr. Clifford Everald Warmington had “*physical possession of the premises.*”

The OCG’s conclusion is further buttressed by the fact that in its Statutory Requisition to Mr. Clifford Warmington, the OCG sought to ascertain from Mr Warmington an explanation regarding, *inter alia*, “...*the particulars of the payments which were made to you, by SCCL, for (i) loan repayment, (ii) purchase of motor vehicle and (iii) rent;*”

In his sworn response to the OCG’s Requisition, Mr. Warmington asserted, *inter alia*, as follows, “*I am unable to provide particulars of the payment. I am certain that the Directors provided those details.* Further in his response, Mr. Warmington indicated, *inter alia*, that “*The company pays me rental for the premises they have rented from me.*”

30. The OCG has found, and concluded, based upon the sworn Declaration of Assets and Liabilities which were submitted to the Integrity Commission, by Mr. Clifford Warmington, that Mr. Clifford Warmington, as at 2009 December 31, declared that he had no property which met the following listed categories:

- a. *Immovable Property (e.g. House, Land and Farm Buildings) Held by Declarant, Spouse and Children;*
- b. *Any Other Property Owned by Declarant, Spouse and Children; and*
- c. *Other Property Owned by Declarant, Spouse and Children, Being Held By a Person Other Than Owner, Whether in Trust or Otherwise.*

In light of the foregoing, the OCG is unable to conclusively determine the particular premises which are being rented by Mr. Warmington and for which he is purportedly receiving rental income.

31. The OCG has found and concluded that as at 2011 January 24, twenty (20) contracts were reportedly awarded to SCCL by the St. Catherine Parish Council with an aggregated value of approximately J\$70 Million.
32. The OCG has found and concluded that the allegations which were made by the “*Confidential Witness*”, and which alleged that SCCL received the majority of the contracts from the St. Catherine Parish Council, was indeed an accurate description of the contract award particulars of the St. Catherine Parish Council. However, the OCG cannot conclusively attribute this occurrence to the existence of corruption or the lack thereof.
33. The OCG has found that the St. Catherine Parish Council has in place a Procurement Committee which composes of several Officers, inclusive of Councillors, in keeping with the Parish Council’s Act. It must be noted that a Mr. Lloyd Grant, Councillor and Director of SCCL, is a member of the St. Catherine Parish Council Procurement Committee.
34. The OCG has found evidence to indicate that the bids which were awarded to SCCL, by the St. Catherine Parish Council, all received the scrutiny and approval of the St. Catherine Parish Council’s Procurement Committee as evidenced by the records of the St. Catherine Parish Council’s Procurement Committee.
35. The OCG has also seen evidence to indicate that in more than one (1) instance the St. Catherine Parish Council offered invitations to tender for distinct projects and SCCL did not tender on all of the said projects nor did it win the bids on all projects for which it had tendered.

36. The OCG has found and confirmed that ten (10) contracts were awarded to SCCL by the St. Catherine Parish Council on 2008 August 28. The records of the St. Catherine Parish Council have revealed that three (3) sets of bids were received for the referenced projects, but one (1) bidder was disqualified. Hence, there were only two (2) responsive bidders for the referenced contracts.
37. The OCG has found and concluded that the bids which were submitted by SCCL, and which were awarded on 2008 August 28, were, in all instances, comparatively closer to the Comparable Estimates which were produced by the St. Catherine Parish Council than the bids which were provided by other bidders.
38. Based upon the documentary evidence which has been provided to it, by the representatives of the St. Catherine Parish Council, the OCG has confirmed that of the ten (10) contracts which were awarded to SCCL on 2008 August 28, eight (8) of those were for works to be undertaken in Sydenham, St. Catherine. However, the OCG is unable to conclusively determine whether or not the referenced contract awards were in fact splintered.
39. The OCG has found and concluded that between the period of 2007 December and 2010 January, the NWA awarded twenty-two (22) contracts to SCCL which had aggregated payments of J\$42,117,624.20
40. The OCG found, and has concluded, that of the twenty-two (22) contracts which were awarded to SCCL, by the NWA, twelve (12) of those contracts were reported to the OCG via the QCA Reports. The twelve (12) referenced contracts had an aggregated value of \$25,377,125.00.
41. The OCG has also found and concluded that the NWA utilized the Force Account methodology in the procurement of the Works for the referenced twenty-two (22) contracts.

42. The OCG has found and concluded that there were nine (9) contracts which fell within the range of the OCG's QCA Reporting Regime which the NWA failed to report to the OCG, on its QCA Reports, which were to be submitted on a quarterly basis.

The unreported contracts which were awarded to SCCL had an approximate value of J\$16.79 million.

Based upon the foregoing, the OCG has concluded, based upon the NWA's non-compliance and failure to report the referenced nine (9) contracts, that the Accounting Officer of the NWA, who would have signed the referenced QCA Reports, breached Section 29 (a) and (b) (ii) of the Contractor General Act.

43. The OCG has found and concluded that the MTW awarded a single contract to SCCL, dated 2008 July, 18, during the period under review. The contract was awarded in the amount of J\$17,349,972.00, and was funded by the Inter-American Development Bank. The referenced contract received the endorsement of the NCC and the Cabinet, prior to it being awarded to SCCL.

44. The OCG has concluded that at the time at which Mr. Clifford Warmington offered his candidacy to become an elected Member of Parliament he was in violation of Section 40 (2) (c) of the Constitution of Jamaica. The OCG's conclusion is premised upon the following compendium of facts:

- a. The fact that the St. Catherine Parish Council reported that a contract was awarded to SCCL on 2007 July 25 and same was not completed until 2008 January 15;
- b. The fact that Mr. Clifford Warmington did not resign from his post as a Director of SCCL until 2007 September 1, two (2) days prior to the 2007 General Elections which were held in Jamaica.

- c. The fact that Section 40 (2) (c) of the Constitution of Jamaica requires that the necessary disclosures be made and published in the Gazette within one (1) month before the day of the election;
- d. The fact that the OCG has seen no evidence to suggest that the foregoing requirement of the Constitution of Jamaica was adhered to by Mr. Clifford Warmington;
- e. The fact that Mr. Clifford Warmington, in his sworn testimony to the OCG, has declared that **“I was never a party directly or a partner of a firm or a director or manager of a company that had contracts with the Government of Jamaica at September 3, 2007. Or any period prior to that date specify by the Constitution of Jamaica, therefore [sic] was no requirement for any action by me to be gazetted.”**<sup>5</sup>
- f. The fact that the documentary evidence which is available to the OCG contradicts the foregoing representations of Mr. Clifford Warmington.

**Special Note – DPP’s Ruling Regarding the Prosecution of Mr. Howard Charvis for a Breach of Section 29 of the Contractor General Act**

The OCG, during the conduct of its Investigation, was faced with certain challenges in obtaining information from Mr. Howard Charvis, President, SCCL, as it regards the particulars of the contracts which were awarded to SCCL by the St. Catherine Parish Council, the NWA and the MTW.

In this regard, the OCG, by way of written Statutory Requisitions, which were dated 2011 January 7 and January 24, required Mr. Howard Charvis to provide, *inter alia*, the following:

- 1. A list of **all** projects on which SCCL was engaged by the St. Catherine Parish Council, the NWA and/or the MTW.

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<sup>5</sup> Clifford Warmington. Response to the OCG’s Follow-up Requisition. 2011 January 4. Question 27

2. A copy of all contracts which were consummated between the St. Catherine Parish Council, the NWA and/or the MTW and SCCL.
3. A copy of any document which was submitted by SCCL, to the St. Catherine Parish Council, the NWA and/or the MTW, as an attestation of the certified work that was done by the company for each project on which the company was engaged.

Mr. Charvis, in his sworn response to the OCG's Requisition, which was dated 2011 January 13, indicated, *inter alia*, that "This information now being requested, is already in the possession of the Contractor General who requested these from the reference agencies and Ministry which acceded to the Contractor General's requests and supplied same to the Contractor General's Office."

Having regard to the foregoing, the OCG, by way of another written Statutory Requisition, which was dated 2011 January 24, again requested the information from Mr. Howard Charvis and advised him that he was required to provide full responses to same.

It must be noted that the OCG received a sworn written response from Mr. Charvis on 2011 February 4 at which time he advised the OCG as follows:

*"I was of the view that your investigation was to ascertain the facts, In this case, the facts surrounding this particular matter is already in your hands as you have made reference to, and have had published same in the Daily News Papers on August 17.2010. You have subsequently again had [sic] published in the daily News Papers, the fact that you have raided with the assistance of the Police, the Offices of the National Works Agency and the Ministry of Transport and Works and obtained all the records relating to the investigation."*

The foregoing are amongst the instances in which Mr. Howard Charvis failed to comply with a lawful requirement of a Contractor General Act, as per the requirements of the Statutory Requisitions which were issued to him.

As such, the OCG found that contrary to the provisions which are contained in Section 29 (b) (ii) of the Contractor General Act, Mr. Howard Charvis, a Director of SCCL, failed, without lawful justification or excuse, to fully comply with a lawful Requisition of the Contractor General as per the requirements of the OCG's letters to Mr. Howard Charvis, which were dated 2011 January 7 and 2011 January 24.

Further, contrary to the provisions which are contained in Section 29 (b) (i) of the Contractor General Act, the OCG found that Mr. Charvis had also, without lawful justification or excuse, obstructed, hindered and/or resisted a Contractor General in the execution of his functions under the Contractor General Act.

As such, by way of a letter which was dated 2011 March 3, the OCG formally referred the matter to the Office of the Director of Public Prosecutions (ODPP) for such action as the DPP saw fit, having regard to the circumstances of the case.

It is instructive to note that by way of a letter which was dated 2011 March 2, which was faxed to the OCG on 2011 March 3, the OCG was advised by the ODPP as follows:

*"I am in receipt of your referral dated the 3<sup>rd</sup> day of March, 2011. Kindly be advised that Mr. Howard Charvis, Director of Strathairn Construction Company Limited is to be charged for the following offences contrary to Section 29 (b)(i) and (ii) of the Contractor General Act.*

- 1. Breach of Section 29 (b) (i), ... that he without lawful justification or excuse obstructs, hinders or resists a Contractor General or any other person in the execution of his functions under this Act.*

2. *Breach of Section 29 (b) (ii), that he failed to comply with a lawful requirement of a Contractor General or any other person under this Act.”*

The foregoing ruling was achieved on the same day that the OCG made its formal Referral to the ODPP requesting that Mr. Charvis be charged for a breach of the Contractor General Act. The aforementioned is a marked occurrence for which the OCG is highly appreciative and one for which it must commend the ODPP, in light of the numerous other Referrals which have been made, by the OCG to the ODPP, and the challenges which have been raised regarding same.

A Court hearing was scheduled for 2011 March 25, at which time both Mr. Charvis and his Attorney-at-Law attended the Half-Way Tree Resident Magistrate’s Court.

Arising out of the Court proceedings on 2011 March 25, it must be noted that the referenced matter was scheduled for Trial in the Half-Way Tree Resident Magistrate’s Court on Monday, 2011 August 15. However, as at the time of the drafting of this Report of Investigation, the Trial had been rescheduled for 2011 October 6.

## **Referrals**

The OCG, in the conduct of its Investigation, is required to be guided by Section 21 of the Contractor-General Act.

**Section 21 of the Contractor-General Act** provides as follows:

**“If a Contractor-General finds, during the course of his Investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as**

**may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.**<sup>6</sup> (OCG Emphasis)

1. The OCG, based upon the sworn documentary evidence which has been presented to it by Mr. Clifford Everald Warmington, Mr. Howard Charvis and other representatives of SCCL, is hereby referring a copy of its Report of Investigation to the Director of Public Prosecutions and the Commissioner of Police for such further Investigations as they both may deem fit, having regard to the apparent conflicts between the sworn responses which have been submitted to the OCG and the contradictory documentary evidence which was previously supplied, *inter alia*, to the NCC, the BNS, the COJ and the Integrity Commission.

The OCG is hereby referring the matter for the determination to be made as to whether Mr. Clifford Warmington and certain Directors of SCCL perjured themselves and/or breached Section 29 of the Contractor General Act, having regard to the numerous conflicts which have been unearthed between the statements which were provided by them to the OCG, on the one hand, and the prior sworn representations which had been made by them, on the other hand, to the NCC, pursuant to the Voluntary Declarations Act, as well as to the BNS, the COJ and/or to the Integrity Commission.

2. The OCG, based upon the sworn documentary evidence which has been adduced by Mr. Clifford Warmington, the Directors and other representatives of SCCL, is also hereby referring a copy of this Report of Investigation to the Director of Public Prosecutions and the Commissioner of Police for the conduct of criminal investigations into the fraud which has been committed against the BNS, and which has, in fact, been conceded to, by certain representatives of SCCL, in their quest to engage the services of the BNS.

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<sup>6</sup> Contractor-General Act. 1983

The OCG's referral in the matter is based upon the sworn documentary evidence which has been produced to it, by representatives of SCCL, who have now, in denying the claims which were made to the BNS that Mr. Warmington held one hundred percent (100%) of the shares in SCCL, have admitted that they knowingly, wilfully, and for the sake of expedience, made materially false misrepresentations to the BNS.

3. The OCG is hereby referring a copy of its Report of Investigation to the Integrity Commission for such further investigations as it may deem fit, having regard to the alleged property which Mr. Clifford Warmington has rented to SCCL and for which he has reportedly been paid rental income since 2009 March 27.

The OCG has deemed the Referral prudent in light of the fact that its perusal of the Statutory Declarations of Assets and Liabilities, which were filed by Mr. Clifford Warmington, between the period of 2002 October and 2009 December, did not reveal that Mr. Clifford Warmington declared that he held property or had same held on his behalf, which could have been the subject of his reported rental income from SCCL.

The OCG's Referral and Recommendation comes against the background of the fact that the President of SCCL, Mr. Howard Charvis, *et al*, have indicated that (a) they are unaware of the owners of the subject property for which SCCL is paying rent, (b) Mr. Clifford Warmington is in physical possession of the property, and (c) there is no lease agreement which could be used to verify the authenticity and legitimacy of the alleged rental payments which are being made to Mr. Clifford Warmington.

Further, and in light of the fact that Section 15 of The Parliament (Integrity of Members) Act makes it a criminal offence to knowingly make a false declaration in the referenced Statutory Declaration, the OCG, in making its Referral, is also

- recommending that the Integrity Commission provide Mr. Warmington with reasonable opportunity to address the seeming discrepancy.
4. The OCG is hereby referring its Report of Investigation to the Director of Public Prosecutions and the Commissioner of Police on the basis that it has found, herein, *prima facie* evidence that the Accounting Officer of the NWA, who signed and submitted the QCA Reports which failed to report nine (9) contracts which were awarded to SCCL, has committed a breach of Section 29 (a) and 29 (b) (ii) of the Contractor General Act and, by doing so, has committed a criminal offence.
  5. In light of the information which has been unearthed, and which provides *prima facie* evidence that Mr. Clifford Warmington, at the time that he was elected to the House of Representatives in 2007 September, breached Section 40 (2) (c) of the Constitution of Jamaica, the OCG is hereby referring the matter to the Attorney General for a determination to be made as to what are the legal ramifications of the referenced circumstances, particularly in light of the involvement of Mr. Clifford Warmington in the proceedings of the Houses of Parliament and other organs of the State whilst he was Constitutionally ineligible to do so.
  6. The OCG is hereby referring a copy of its Report of Investigation to the Director of Public Prosecutions and the Commissioner of Police for such investigations to be conducted, and/or for charges to be brought against Mr. Clifford Everald Warmington for breaches of Section 29 (a) of the Contractor General Act, as may be deemed appropriate, having regard to (a) the Sworn Statement which was adduced by him, in which he unequivocally asserted that “**“I was never a party directly or a partner of a firm or a director or manager of a company that had contracts with the Government of Jamaica at September 3, 2007. Or any period prior to that date specify by the Constitution of Jamaica, therefore [sic] was no**

*requirement for any action by me to be gazetted.”<sup>7</sup>, and (b) the contradictory documentary evidence that is on the record.*

The OCG’s referral of the matter is premised upon the fact that its records and the information which have been otherwise produced to it, during the course of the Investigations, have contradicted the sworn statement of Mr. Clifford Everald Warmington. In point of fact, the OCG has found that at least one (1) contract was subsisting between the GOJ and SCCL, as at the date on which Mr. Clifford Everald Warmington resigned from his post as a Director of SCCL, viz. 2007 September 1.

### **Recommendations**

Section 20 (1) of the Contractor-General Act mandates that *“after conducting an Investigation under this Act, a Contractor-General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefor of the result of that Investigation **and make such Recommendations as he considers necessary in respect of the matter which was investigated.**”* (OCG’s Emphasis)

In light of the foregoing, and having regard to the Findings and Conclusions that are detailed herein, the OCG now makes the following Recommendations:

1. It is recommended that an immediate review of the accounting, procurement and public administration practices at the St. Catherine Parish Council, and the NWA be undertaken by the Public Administration and Appropriations Committee of the House of Representatives, the Auditor General and the Ministry of Finance and the Public Service. The review should be conducted to ensure that adequate procedures, systems, checks and balances are not only implemented, but are aggressively enforced, to secure a radically improved level of compliance on the

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<sup>7</sup> Clifford Warmington. Response to the OCG’s Follow-up Requisition. 2011 January 4. Question 27

part of Public Bodies and Public Officials with relevant Government approved procedures, regulations and laws.

2. The OCG strongly recommends that the Procuring Entities plan their procurement activities in accordance with the procurement cycle, inclusive of the employment and application of an approved Procurement Plan. In this regard, contracts which are to be awarded should be properly packaged, tendered, evaluated and awarded within a specified timeframe.
3. In order to bring more scrutiny to bear over the GOJ's public procurement processes, the OCG recommends that all Public Servants, who are involved in the procurement process, regardless of their pay grade and/or level of involvement, should, if not already done, be required to submit to the Corruption Prevention Commission (CPC) a Statutory Declaration of their assets on an annual basis.
4. It is also recommended that the Corruption Prevention Commission (CPC) and, in the instant case, the Integrity Commission, take a more proactive approach in the review and investigation of the Declaration of Assets which are filed annually by Public Servants, pursuant to the Corruption Prevention Act, 2000.

Whilst the OCG recognises that there may be some resource constraints on the part of both Commissions in carrying out the investigations, if corruption is to be combated in Jamaica, all anti-corruption initiatives must be strengthened.

5. The St. Catherine Parish Council and the NWA must implement effective measures to ensure that they scrupulously adhere to the requirements of the Government of Jamaica Procurement Guidelines and the Contractor General Act, at all times, when procuring goods, works and services.
6. Given the scope of the St. Catherine Parish Council's and NWA's procurement activities, inclusive of the need for emergency procurements, the agencies must

develop, where possible, a schedule of procurement activities in such a manner that will enable timely submissions to the NCC for the consideration of contracts which are to be awarded via the Sole Source Procurement Methodology.

7. The OCG also strongly recommends that an urgent determination be made by the Director of Public Prosecutions and/or by the Commissioner of Police as to whether the safety and security of the “*Confidential Witness*” is in likely jeopardy and, if so, what measures may be deemed appropriate to ensure, *inter alia*, the safety of the “Confidential Witness”.

The OCG’s recommendation is premised upon the fact that the “*Confidential Witness*” has expressed to the OCG, a fear for his life and personal security.

### **Special Recommendation**

The OCG, in the conduct of its Investigation, has unearthed *prima facie* evidence to suggest that SCCL, through its authorized representatives, misrepresented the information which was provided to the NCC, on its contractor re-registration application forms for at least two (2) years.

In this regard, SCCL, through its Mr. Howard Charvis, provided the NCC with its application form, and attendant Affidavit, which were purportedly executed, before a Justice of the Peace, pursuant to the provisions of the Voluntary Declarations Act. It must be noted that the NCC application forms, on which the false and misleading information was presented, cautioned as follows:

**“IF THE INFORMATION PROVIDED BY THE APPLICANT ON WHICH EVALUATION AND AWARD(S) WERE BASED IS FOUND TO BE ERRONEOUS THEN THE CONTRACTOR(S) SHALL NOT BE**

**REGISTERED, OR IF ALREADY REGISTERED, THE REGISTRATION  
WILL BE REVOKED.”<sup>8</sup>**

Having regard to the foregoing, the OCG must respectfully recommend to the NCC that it should revoke the registration of SCCL, if it has not already done so, in light of the false information which was presented. The OCG is fortified in its recommendation given the fact that SCCL has perpetuated a fraud upon the Government of Jamaica by misrepresenting its capacity to undertake works based upon resources which it has neither employed nor can rightfully lay claim to.

**Extra-ordinary Recommendation**

Having regard to the circumstances of the OCG’s Investigation concerning SCCL and the OCG’s ongoing efforts to remove fraud and corruption from the NCC Contractor Registration Process, the OCG must strongly recommend that consideration be given to enacting legislation which will nullify contracts which have been consummated between the Government of Jamaica and any contractor which is found to have perpetuated a fraud to secure such lucrative state funded contracts.

The OCG is of the considered opinion that such legislation would stymie the instances in which contractors would seek to secure benefits illicitly and will, in and of itself, act as a deterrent to instances in which the Government’s contractor registration process is undermined.

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<sup>8</sup> NCC Registration of Public Sector Contractors Application Form

## **TERMS OF REFERENCE**

### ***Primary Objectives***

The primary aim of the OCG's Investigation was to determine, *inter alia*, the following:

1. The particulars of the contract award activities of the St. Catherine Parish Council, the NWA and the MTW, and whether the circumstances which surrounded the award of contracts, by the respective Public Bodies, to SCCL, complied, *inter alia*, with the provisions and/or requirements of:
  - a. The Contractor General Act, 1983, and, in particular, whether the award of the contracts were impartial, based upon merit and were premised upon circumstances which did not involve impropriety and/or irregularity;
  - b. The applicable Government of Jamaica Public Sector Procurement Procedures;
  - c. The Financial Administration and Audit Act;
  - d. The Parish Council Act; and
  - e. The Public Bodies Management and Accountability Act.
2. The merits of the allegations which have been made, to the OCG, with respect to the contracts which have been awarded to SCCL.

### *Specific Objectives*

The Investigation also had the following specific objectives:

1. To identify the procurement process which was employed by the St. Catherine Parish Council, the NWA and the MTW and which led to the recommendations for the award of the referenced contracts to SCCL;
2. To ascertain the extent of the ownership, operations and/or management involvement, if any, of Mr. Everalld Warmington, MP, in SCCL;
3. To ascertain the extent of the involvement, if any, of Mr. Everalld Warmington, MP, in the facilitation, recommendation and/or award of any Government of Jamaica contract which has been awarded to SCCL;
4. To ascertain the extent, if any, of the involvement of officers/officials of the St. Catherine Parish Council in informing and/or influencing the recommendation for the award of contracts to SCCL;
5. To determine whether there is any evidence that Section 14 of the Corruption Prevention Act has been contravened;
6. To determine whether there is any evidence that Section 40 (2) (c) of the Constitution of Jamaica has been contravened by Mr. Everalld Warmington.
7. To determine whether the processes which led to the award of the contracts to SCCL were fair, impartial, transparent and devoid of irregularity or impropriety.

8. To determine whether there was any *prima facie* evidence that would suggest impropriety on the part of any individual or entity which contributed to the award (or non-award) of the contracts to SCCL.

## **METHODOLOGY**

The OCG, in the conduct of its Investigations, has developed standard procedures for evidence gathering. These procedures have been developed and adopted pursuant to the powers which are conferred upon a Contractor General by the Contractor General Act (1983).

It is instructive to note that Section 17 (1) of the Contractor General Act empowers a Contractor General “to adopt whatever procedure he considers appropriate to the circumstances of a particular case and, subject to the provisions of (the) Act, to obtain information from such person and in such manner and make such enquiries as he thinks fit.” (OCG Emphasis)

The Terms of Reference of the OCG’s Investigation into the circumstances which surrounded the allegations of impropriety and/or irregularity in the award of certain contracts to Strathairn Construction Company Limited (SCCL) by the St. Catherine Parish Council, the National Works Agency (NWA) and the Ministry of Transport and Works (MTW), were primarily developed in accordance with those of the mandates of the Contractor General as are stipulated in Section 4 (1) and Section 15 (1) (a) to (d) of the Contractor General Act.

The Terms of Reference of the Investigation, and the development of the written Requisitions/Questionnaires that were utilised throughout the course of the Investigation, were guided by the OCG’s recognition of the far-reaching responsibilities and requirements that are imposed, *inter alia*, upon Public Officials and Public Officers by applicable Government Procurement Procedures, the Contractor General Act, the Financial Administration and Audit Act, the Public Bodies Management and Accountability Act and the Corruption Prevention Act.

In addition, the OCG was guided by Section 21 of the Contractor General Act which provides that **“If a Contractor-General finds, during the course of his Investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.”** (OCG Emphasis)

A preliminary Requisition/Questionnaire, which was dated 2010 September 15, was sent by the Contractor General to Mr. Christopher Powell, the Secretary Manager at the St. Catherine Parish Council.

Further Requisitions/Questionnaires were subsequently directed to other Public Officials, and to other persons and/or entities that were considered material to the Investigation.

Where it was deemed necessary, Follow-up Requisitions were directed to a number of Respondents in an effort to clarify certain issues which were identified in their initial declarations and responses. These Follow-up Requisitions were also designed, *inter alia*, to clarify any discrepancies in the information which was supplied by the Respondents.

The Requisitions/Questions which were utilised by the OCG included specific questions that were designed to elucidate critical information from Respondents on the matters which were being investigated.

However, in an effort to not limit and/or exclude the disclosure of information which was germane to the Investigation but which might not have been specifically requisitioned by the OCG, the OCG asked all Respondents the following question:

*“Are you aware of any additional information which you believe could prove useful to this Investigation or is there any further statement in regard to the Investigation*

*which you are desirous of placing on record? If yes, please provide full particulars of same.”*

**Very importantly, the form of written Requisition, which was utilised by the OCG, also required each Respondent to provide, under the pain of criminal prosecution, complete, accurate and truthful written answers to a specified list of written questions and to make a formal declaration attesting to the veracity of same before a Justice of the Peace.**

The Requisitions were issued pursuant to the powers that are reserved to the Contractor-General under the Contractor General Act and, in particular, under Sections 4, 15, 17, 18 and 29 thereof. The Requisitions were also issued pursuant to Sections 2 and 7 of the Voluntary Declarations Act and Section 8 of the Perjury Act.

It is instructive to note that **Section 18 (2) of the Contractor-General Act** provides that, **“Subject as aforesaid, a Contractor-General may summon before him and examine on oath -**

- a. any person who has made representations to him; or*
- b. any officer, member or employee of a public body or any other person who, in the opinion of the, Contractor-General is able to furnish information relating to the Investigation,*

**and such examination shall be deemed to be a judicial proceeding within the meaning of section 4 of the Perjury Act.**” (OCG Emphasis)

Further, **Section 18 (3) of the Contractor-General Act** provides that, **“For the purposes of an Investigation under this Act, a Contractor-General shall have the same powers as a Judge of the Supreme Court in respect of the attendance and examination of witnesses and the production of documents”.** (OCG Emphasis)

**Section 2 (1) of the Voluntary Declarations Act** provides that, “*In any case when by any statute made or to be made, any oath or affidavit might, but for the passing of this Act, be required to be taken or made by any person or persons on the doing of any act, matter, or thing, or for the purpose of verifying any book, entry, or return, or for any other purpose whatsoever, it shall be lawful to substitute a declaration in lieu thereof before any Justice; and every such Justice is hereby empowered to take and subscribe the same.*” (OCG Emphasis)

**Section 7 of the Voluntary Declarations Act** provides that, “*In all cases when a declaration in lieu of an oath or affidavit shall have been substituted by this Act, or by virtue of any power or authority hereby given, or when a declaration is directed or authorized to be made and subscribed under the authority of this Act, or of any power hereby given, although the same be not substituted in lieu of an oath, heretofore legally taken, such declaration, unless otherwise directed under the powers hereby given, shall be in the form prescribed in the Schedule.*”

**Section 8 of the Perjury Act** provides, *inter alia*, that, “*Every person who knowingly and willfully makes (otherwise than on oath) a statement false in a material particular and the statement is made-*

*(a) in a voluntary declaration; or ....*

*(b) in any oral declaration or oral answer which he is required to make by, under, or in pursuance of any enactment for the time being in force, shall be guilty of a misdemeanour, and liable on conviction on indictment thereof to imprisonment with hard labour for any term not exceeding two years, or to a fine, or to both such imprisonment and fine”.*

The material import of the foregoing, *inter alia*, is that the sworn and written evidence that is provided to a Contractor General, in response to his Statutory Requisitions, during the course of his Investigations, is (a) provided in accordance with certain specified provisions of the Statutory Laws of Jamaica, and (b) provided in such a manner that if

any part thereof is materially false, the person who has provided same would have, *prima facie*, committed the offence of Perjury under Section 8 of the Perjury Act and, as will be seen, would have also, *prima facie*, committed a criminal offence under Section 29 (a) of the Contractor General Act.

The OCG considers the above-referenced evidence-gathering procedures to be necessary in order to secure, *inter alia*, the integrity and evidentiary cogency of the information which is to be elicited from Respondents. The implications of the subject requirements also serve to place significant gravity upon the responses as well as upon the supporting documents which are required to be provided by Respondents.

**It is instructive to note that the OCG, in the conduct of its Investigation, prefers to secure sworn written statements and declarations from Respondents, under the pain of criminal prosecution. This ensures, *inter alia*, that there is no question as to what has been represented to the OCG. Nor will there be any doubt as to the integrity or credibility of the information which is furnished to the OCG and on which its consequential Findings, Conclusions, Referrals and Recommendations will be necessarily based.**

The OCG also went to great lengths to ensure that Respondents were adequately and clearly warned or cautioned that should they mislead, resist, obstruct or hinder a Contractor General in the execution of his functions or fail to provide a complete, accurate and truthful response to any of the Requisitions or questions which were set out in its Requisition, they would become liable, *inter alia*, to criminal prosecution under Section 29 of the Contractor-General Act.

**Section 29 of the Contractor-General Act** provides as follows:

*“Every person who -*

*(a) willfully makes any false statement to mislead or misleads or attempts to mislead a Contractor-General or any other person in the execution of his functions under this Act; or*

*(b) without lawful justification or excuse -*

- i. obstructs, hinders or resists a Contractor-General or any other person in the execution of his functions under this Act; or*
- ii. fails to comply with any lawful requirement of a Contractor General or any other person under this Act; or*

*(c) deals with documents, information or things mentioned in section 24 (1) in a manner inconsistent with his duty under that subsection,*

*shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.”*

Further, in addition to the **sworn** written answers which the Respondents were required to provide, the OCG also requested that in respect of the assertions and/or information which were to be provided, Respondents should submit documentary evidence to substantiate the statements that were made.

Finally, all Respondents were advised, in writing, of their rights under Section 18 (5) of the Contractor General Act. Section 18 (5) of the Act provides that “*No person shall, for the purpose of an investigation, be compelled to give any evidence or produce any document or thing which he could not be compelled to give or produce in proceedings in any court of law.*”

Requisitions/Questionnaires were directed by the OCG to the Public Officers/Officials who are listed below. In addition, comprehensive reviews of certain relevant information

were undertaken by the OCG to assist it in its Investigation. Details of these are also summarized below.

1. The following Public Officials were required to provide sworn written responses to formal Requisitions which were directed to them by the OCG:

- (a) Mr. Clifford Everalld Warmington, M.P;
- (b) Mr. Christopher Powell, Secretary Manager, St. Catherine Parish Council;
- (c) Mr. Winston Kelly, Superintendent of Works, St. Catherine Parish Council;
- (d) Mrs. Rosalie Brown, Commissioner, Inland Revenue Department;
- (e) Mr. Lloyd Grant, Councillor, St. Catherine Parish Council and Director, SCCL;
- (f) Mrs. Elizabeth Stair, Commissioner of Lands, National Land Agency (NLA);
- (g) Mrs. Judith Ramlogan, Chief Executive Officer, Companies Office of Jamaica (COJ);
- (h) Mrs. Heather E. Cooke, Clerk to the Houses of Parliament;
- (i) Mr. Alvin Chung, Secretary Manager, The Integrity Commission;
- (j) Ms. Cecile Manning, Secretary, Ministry of Water and Housing.

2. The following individuals were required to provide a sworn written response to a formal Requisition which was directed to them by the OCG:

- (a) Mr. Howard Charvis, President and Chief Executive Officer, SCCL;
- (b) Mr. Selvyn Foster, Director, SCCL;
- (c) Mr. Donovan Nolan;
- (d) Mr. Roland Barrett;
- (e) Mr. Vernal Burton;
- (f) Mr. Nyron Adiansingh;

- (g) Mr. Vincent Warmington;
- (h) Ms. Nicole Warmington;
- (i) Mr. Desmond Munroe;
- (j) Ms. Joyce Fletcher;
- (k) Mr. Maurice O'Conner;
- (l) Mr. Harold Brady, Private Investment Ltd.;
- (m) Ms. Marcia Wright, Private Investment Ltd.;
- (n) Mrs. Michelle Phillips-Thompson, Private Investment Ltd.
- (o) Mr. Bruce Bowen, President and Chief Executive Officer, BNS.

3. Follow up Requisitions/Questionnaires, requesting clarification on certain issues, were directed by the OCG to the following Public Officials:

- (a) Mr. Clifford Everalld Warmington, M.P.;
- (b) Mr. Lloyd Grant, Councillor, St. Catherine Parish Council and Director, SCCL;
- (c) Mr. Christopher Powell, Secretary Manager, St. Catherine Parish Council.

4. Follow up Requisitions/Questionnaires, requesting clarification on certain issues, were directed by the OCG to the following individuals:

- (a) Mr. Howard Charvis, President and Director, SCCL;
- (b) Mr. Selvyn Foster, Director, SCCL;
- (c) Mr. Donovan Nolan;
- (d) Mr. Vincent Warmington;
- (e) Ms. Naadia Walker, Manager, Compliance, BNS.

5. A detailed review of the **sworn** certified statements, supporting documents and the records which were provided by the Respondents to the OCG's Requisitions was undertaken.

6. It is instructive to note that by way of a letter, which was dated 2010 August 18, Dr. Alwin Hales, Permanent Secretary, Ministry of Transport and Works and Mr. Patrick Wong, Chief Executive Officer, National Works Agency, were advised, *inter alia*, that the OCG's Investigation had been widened to include the two agencies. As such, on the referenced date, an Investigative Team from the OCG conducted a "Document Collection Exercise" to obtain information regarding the award of contracts to SCCL, by the two (2) named agencies.

## **FINDINGS**

### ***Initial Allegations - Formal Disclosures made in a Sworn Statement to the OCG***

It is instructive to note that prior to the launch of the OCG's formal Investigation, in 2010 August, the OCG received a sworn written statement from a knowledgeable and informed source regarding certain alleged activities between the St. Catherine Parish Council and SCCL which implicated, *inter alia*, certain representatives of SCCL, Mr. Clifford Everald Warmington, M.P., and certain officers of the St. Catherine Parish Council.

The referenced statement was provided to the OCG in 2008 December and was formally sworn before a Justice of Peace, by a "*Confidential Witness*" on 2009 March 4. Below is a synopsis of the information and allegations which were detailed in the formal statement that was provided to the OCG, by the "*Confidential Witness*".

1. The "*Confidential Witness*" alleged that in 1993, he became a director of SCCL, when Mr. Warmington was living in the United States. In the referenced statement, the "*Confidential Witness*" also alleged that he would sign cheques, on behalf of SCCL, and would send the money to Mr. Warmington.
2. Since Mr. Warmington became a Member of Parliament, in 2007 September, Mr. Warmington claimed that he had resigned from the company and that he is now a consultant for SCCL. However, according to the "*Confidential Witness*", the foregoing is not true.
3. That all the contracts "*that come*" to the South West St. Catherine Constituency, are approved by Mr. Warmington and that the referenced contracts "*come to Strathairn*".

4. When a contact is advertised, which is always the case, Mr. Warmington ensures that he and two (2) of his associates apply for the work and pay the fee.
5. The “*Confidential Witness*” asserted that he was a signatory to the cheques for SCCL and that Mr. Warmington would ask him to sign blank cheques. The “*Confidential Witness*” further alleged that he has never “*seen a cheque with anything on it*”.
6. It was also alleged by the “*Confidential Witness*” that he would personally go to the “*Parish Council and NWA to sign for work*”.
7. When the contracts are awarded, if they were not awarded to SCCL, then usually the contracts are awarded to either a “*Mr. Sturridge or another man, whose name he could not recall*”. However, the “*Confidential Witness*” noted that this man had done some “*shoddy work in Claremont Housing Scheme*”.
8. The “*Confidential Witness*” stated that there was another man, who he thought was a Councillor, that was a part of it. He, however, could not recall the person’s name, but stated that “*it may be Mr. Hyman, who was a Councillor in Dr. Baugh’s area*”.
9. It was also alleged by the “*Confidential Witness*” that “*Mr. Warmington makes sure that no other person or company gets the work*” and that SCCL has received millions of dollars in contracts.
10. The “*Confidential Witness*” also alleged that Mr. Warmington does not give anyone money, “*no matter how much they work*” and that the Directors of SCCL have not received anything. Further, and according to the “*Confidential Witness*”, the money is lodged into the company’s bank account and “*Mr. Warmington has the cheque book*”.

11. The “*Confidential Witness*” allegedly signed cheques along with “*Councillor Brass, Councillor for the Old Harbour Bay Division, who is also a Director of the company*”. It was also alleged that Mr. Warmington had put his brother down to sign, but, and according to the “*Confidential Witness*”, “*he does not think that his brother has signed a cheque*”.
12. As it regards the SCCL banks accounts and other company particulars, the “*Confidential Witness*” alleged that:
- a. Only one signatory is needed to sign on the cheques.
  - b. “*Mr. Warmington was a signatory, however, when he became Minister he took his name off.*”
  - c. Mr. Warmington added his brother and sister to the company documents.
13. In his sworn statement to the OCG, the “*Confidential Witness*” alleged that SCCL was “*Mr. Warmington’s company.*” The “*Confidential Witness*” also alleged that SCCL “*gets the majority of the constituency work, along with two or three other companies.*”
14. When asked by the OCG Representative for the names of any contacts which Mr. Warmington had at the Public Bodies, the “*Confidential Witness*” stated that “*the Superintendent at the Spanish Town Parish Council would get something.*”
- The “*Confidential Witness*” asserted “*This man is not on the payroll of Strathairn, and could not remember his name... this man spoke as if he was crying ... he thinks that this man and Mr. Warmington are lodge brothers*”.
15. In his sworn statement to the OCG, the “*Confidential Witness*” identified a Mr. Lloyd Grant, as ‘Brass’ who, like himself, is just a ‘figure head’ of SCCL.

16. The “Confidential Witness” also alleged that “Mr. Warmington asked his secretary to get all the things which he [Mr. Henry] had for the company from him.” According to the “Confidential Witness”, he “placed the company stamp and ink in a bag and carried to the Ministry and left it with Ms. Manning.”

17. The “Confidential Witness” also alleged that SCCL “is operating out of the Member of Parliament office at 40 East Street, Old Harbour.”

***Other Allegations which were received by the OCG***

On Tuesday, 2010 August 17, the OCG’s Chief Investigator returned a telephone to an anonymous caller, who agreed to be identified as ‘Mr. Bell’. Below are the details of the File Note, which was prepared by the OCG’s Chief Investigator in this regard:

*“FILE NOTE*

***Re: OCG Investigation into the Award of Contracts to Strathairn Construction company Limited- Mr. Everald Warmington***

*At approximately 10:02 a.m. a telephone called was received at the OCG from an anonymous caller who requested to speak with either the Contractor General or myself. The referenced call was received by the Contractor General’s Administrative Assistant. The Contractor General referred the matter to me for action.*

*At approximately 10:15 a.m., in the presence of ....Senior Special Investigator, I returned the phone call to the anonymous caller, over the speakerphone.*

*It was agreed that for the purposes of the conversation that the caller would be identified by the OCG as one ‘Mr. Bell’.*

*'Mr. Bell' stated that he saw where the OCG had started to do some work/investigation into the Strathairn matter and that we (the OCG) were yet to scratch the surface.*

*He stated that he was a professional private investigator, and that maybe at some point the OCG could use his skills.*

*'Mr. Bell' noted that the contracts which were awarded to Strathairn were not only in relation to the St. Catherine Parish Council but that there were also contracts which were awarded by the NWA in 2008/2009. He stated that this included works which were conducted in Barton Area (building of a retaining wall) and other road works in Mr. Everald Warmington's constituency.*

*'Mr. Bell' also noted that about five months ago Mr. Warmington purchased a Mercedes Benz for \$7 million, a mini bus and a truck. He stated that the mini bus and truck were parked at his office on East Street as we spoke. He stated that a Managers Cheque was used to buy the benz, but a Strathairn cheque may have been used to obtain the Managers Cheque. However, 'Mr. Bell' was unaware of where Mr. Warmington purchased the vehicle. According to 'Mr. Bell' the three vehicles were 'drawn' on the company's account.*

*'Mr. Bell' stated that a Director of the company, Mr. Lloyd Grant ( otherwise known as 'Brass', a Councillor) recently resigned because he was not in agreement with what Mr. Warmington was doing and did not want to go to jail. 'Mr. Bell' stated that Mr. Grant would sign an empty cheque book and that all cheques for the company would be written up by Mr. Warmington.*

*Accordingly to 'Mr. Bell', Mr. Grant owns a company in Old Harbour which is named "Link-Up-Pub".*

*'Mr. Bell' stated that the bank account for Strathairn was at Scotia Bank in Old Harbour.*

*I asked Mr. Bell whether he was willing to come in and give a statement and he stated no.*

*'Mr. Bell' noted that Mr. Warmington seldom likes to pay people.*

*He stated that Mr. Grant would be willing to talk and give the OCG a sworn statement and has often stated that he does not want to go to jail.*

*Also, according to 'Mr. Bell' Strathairn operates from the Member of Parliament Office in Old Harbour, which is located across the Heart Trust Building.*

*The conversation with 'Mr. Bell' ended at approximately 10:24 a.m."*

It is instructive to note that following upon the formal launch of the OCG's Investigation on 2010 August 16, at which time the referenced allegations, *inter alia*, were detailed in a formal OCG Media Release, Mr. Warmington wrote to the Contractor General, by way of a letter which was dated 2010 August 17, regarding the subject Investigation and the allegations which were made thereto.

The referenced letter, in which Mr. Warmington challenged the bases of the OCG's Investigation, stated, *inter alia*, the following:

*"A copy of your letter of August 16, in respect of the captioned matter was delivered to the office of the Minister of State with the Ministry of Water and Housing on August 16, 2010 round about 3:00 p.m. The letter was copied to the Prime Minister, the Minister of State in the Office of the Prime Minister with responsibility for Local Government, and ... senior Special Investigator in the Office of the Contractor General...*

## ***Transparency and Public Office***

*The matter at hand relates not to C.E.E. Warmington in his personal or private capacity, but to Warmington qua, a Member of Parliament and Minister of State - both constitutional positions/offices.*

*Accordingly, I am obliged to respond to the issues in your letter that touch and concern me as M.P. and Minister of State. I do so by stating your position and my response thereto, seriatim:*

### ***OCG's Claim:***

*The OCG's decision to commence the referenced Special Investigation has been prompted by certain considerations which include, inter alia, the following;*

*The fact that the OCG is in receipt of a sworn written statement, which was tape-recorded by the OCG and which was given under the pain of criminal prosecution pursuant to Section 29 (a) of the Contractor General Act, which alleges that the award of certain works contracts which were issued by the St. Catherine Parish Council for performance in the St. Catherine South Western Constituency, were influenced by a Mr. Clifford Everald Errol Warmington, the Member of Parliament for the St. Catherine South Western Constituency, and were awarded to Strathairn Construction Company Limited - a company in which Mr. Everald Warmington was a Director up to September 1, 2007.*

### ***CEEW's Response***

*You have confirmed my resignation as a Director of Strathairn effective September 2007. That date precedes my appointment as Minister of State.*

*To date you have failed and/or refused to supply me with a copy of the sworn statement and in the absence of a full response to the matters raised neither you nor the public can test the veracity of the allegations. Further please as a matter of urgency provide me and the public with answers to the following questions:*

*Provide full Further and Better Particulars of the details of the influence exerted by me as alleged by the written sworn statement, including the following:*

- 1. What was the nature of the influence referred to;*
- 2. What form did it take; oral or in writing*
- 3. Over whom was the influence exerted;*
- 4. What are the dates; of these occurrences*
- 5. Was the influence exerted on individuals and if so name them;*
- 6. Was the influence exerted at a meeting and if so give dates of this meeting and the persons in attendance;*

### ***OCG'S Claim***

*In the sworn Statement which was given to the OCG in December 2008 and formally executed in writing in March 2009, it was also alleged that, as at the date of the Statement, Strathairn Construction Company limited was the beneficiary of the majority of the contracts which had been awarded in the St. Catherine South Western Constituency, along with two (2) or three (3) other companies.*

### ***CEEW'S Response***

*As you are well aware and acknowledge, effective September 2007 I no longer speak for or have any factual information in respect of Strathairn or its relationship with the Parish Council.*

### ***OCG'S Claim***

*It was further alleged that although Mr. Everald Warmington had said that he had "resigned" from the company, this was not true and, in fact, he, Mr. Everald Warmington, was, as at the date of the Statement, still actively in control of the company and, as such, Strathairn Construction Company Limited is "Mr. Warmington's company". The formal Statement, which was given to the OCG, also alleged that Mr. Everald Warmington was, at the time, in possession and control of the cheque book for Strathairn Construction Company Limited.*

### ***CEEW'S Response***

*Please be advised that my resignation as a Director of the company is not an allegation but a statement of fact provable by the provisions relating to appointment and resignation of directors of a company as provided by law.*

*Notwithstanding the facts in your possession, you nevertheless go on to give prominence to and rely on statements from an unnamed person to date that the company is "Mr. Warmington's company". Further to have elevated a statement that I was at the time "in possession and control of the cheque book for Strathairn Construction Company Limited" is another indication of a baseless allegation elevated to finding of fact.*

### ***OCG'S Claim***

*The sworn Statement, which was provided to the OCG, also alleged that Mr. Everald Warmington, subsequent to resigning from his post as a Director in Strathairn Construction Company Limited, added the names of his sister and brother to the particulars of the company's documents.*

### ***CEEW'S Response***

*Please point out if this act is illegal or immoral or is in breach of any rules or regulations on my part. I have no knowledge and cannot respond to matters relating to the public office or officers of the St. Catherine Parish Council.*

### ***OCG'S Claim***

*Further, the sworn statement, which was provided to the OCG, also implicated at least one senior Public Officer/Official of the St Catherine Parish Council as having received 'kickbacks' for his role in the improper and/or irregular award of contracts to the said company.*

### ***CEEW'S Response***

*Please publish immediate confirmation that the "kickbacks" referred to above does not involve me.*

### ***OCG'S Claim***

*It was further alleged that Strathairn Construction Company Limited was operating from the same address as that of Mr. Warmington's Member of Parliament Constituency Office, which it was alleged was located at "40 East Street, Old Harbour, St. Catherine".*

### ***CEEW'S Response***

*It is a fact that the company has operated from premises at 40 East Street from 2001 and it is a fact that I have a constituency office which is operated from the location from 1993.*

### ***OCG'S Claim***

*The Preliminary Enquiry, which was conducted by the OCG, into the above-referenced allegations has so far either corroborated the veracity of some of the said allegations, or has raised serious questions regarding the said allegations. They are as follows:*

*(a) By way of a letter which was dated May 31, 2006, the Parliament of Jamaica disclosed particulars of eight (8) Exemption Motions, regarding certain Parliamentarians, to the Contractor General. In the referenced letter, it was disclosed that a Motion for Exemption was approved in favour of Mr. Clifford Everald Warmington, NIP on April 23, 2003. The disclosure in respect of Mr. Warmington confirmed that Mr. Warmington is the Chairman and Chief Executive Officer of Strathairn Construction Company Ltd., a General Construction, Management Engineering and Quantity Surveying Company, which from time to time enters into contracts with the GOJ or its agents.*

### ***CEEW'S Response***

*The foregoing is correct and established that I was in full compliance with the law prior to my appointment as Minister.*

***OCG's Claim***

*(b) The Exemption Motion did not disclose any further details as to the public body/bodies which had engaged or which would be engaging the services of Strathairn Construction Company Ltd., nor did it disclose the details and/or value of any past, current and/or prospective contracts which had been or which were to be awarded to the company.*

***CEEW'S Response***

*The foregoing is correct and established that I was in full compliance with the law prior to my appointment as Minister.*

***OCG'S Claim***

*(c) Checks by the OCG of the official documents which are available at the Registrar of Companies have confirmed that a Mr. Clifford Warmington did in fact cease to hold office as a Director in the company, Strathairn Construction Company Limited, as at September 1, 2007.*

***CEEW'S Response***

*The foregoing is correct and established that I was in full compliance with the law prior to my appointment as Minister.*

***OCG'S Claim***

*(d) Further OCG checks with the Registrar of Companies have revealed that on September 1, 2007, the names of three (3) persons whose surnames in two (2) instances and maiden name in the other was that of 'Warmington', were added to the company's*

*registration documents, in the capacity of Directors of Strathairn Construction Company Limited.*

*However, further checks of the records of Strathairn Construction Company Limited, at the Registrar of Companies, revealed that the said three persons, who are named 'Warmington', ceased to be Directors of Strathairn Construction Company Limited as at October 31, 2008.*

*Of critical note, however, is that a person who was alleged in the above-referenced sworn statement to be a Councillor of the "Old Harbour Bay Division Pith/on [sic]" was identified by the OCG as having been appointed as a Director of Strathairn Construction Company limited as at March 26, 2003. Recent checks by the OCG have indicated that as at February 2009, when the records were "last updated", the referenced person was still listed as a Director of the company.*

### ***CEEW'S Response***

*The appointment of any relative of mine to a company of which I was a former Director, I am advised is not unlawful or a breach for which I can be held liable.*

*The other matters referred to by you in paragraphs e - i are not matters which refer to me and of which I have any knowledge and accordingly do not require a response from me.*

*It is abundantly clear that based on the foregoing I am not guilty of any impropriety. The only basis for the investigations is the allegation from this unnamed person, further and better particulars of which I expect to receive from you as a matter of urgency.*

*Finally, as you have confirmed I was in full compliance with Sections 40(2)(c) of the Constitution prior to my elevation to Minister. Since that time I have not had any*

*contractual arrangements with the Government which would warrant an investigation under Section 40(2)(c) of the Act.”*

Having regard to the foregoing, the OCG, on 2010 August 18, formally responded to Mr. Warmington’s letter. Detailed overleaf is a verbatim extract of the OCG’s formal response in the matter:

*“August 18, 2010*

*Mr. Everalld Warmington  
Member of Parliament for St. Catherine South Western  
C/o Ministry of Water and Housing  
25 Dominica Drive  
Kingston 5*

*Dear Sir:*

***Re: Notice of Commencement of Investigation – Concerning Allegations of Impropriety and/or Irregularity in the Award of Certain Contracts to Strathairn Construction Company Limited by the St. Catherine Parish Council***

*We write with reference to the captioned matter and to acknowledge the Office of the Contractor General’s (OCG’s) receipt of your letter of the 17<sup>th</sup> instant which was delivered by hand at our offices today, August 18, 2010, at 11:01 AM.*

*While you can be assured that your letter and the representations which you have made therein will be placed upon the formal records of the OCG, we must, however, redirect your attention to the OCG’s letter of August 16, 2010, in the captioned regard, which was formally copied to you.*

*The third to last paragraph of the referenced letter has clearly communicated that, in due course, you will be formally advised of the OCG’s Investigation Process and the Statutory Requisitions which the OCG will be making of you and other persons as it proceeds with its Investigation.*

*The letter has also directed its recipients to certain specific provisions of the Contractor General Act and we would once again recommend that you apprise yourself of same and, in particular, Section 17 (1) of the Act. In light of certain demands, which you have made, we should also direct your attention to the provisions of Section 5 (1) of the said Act.*

*There are, however, a number of glaring inaccuracies which are present in your letter and we are obliged to correct them without any further delay. They are as follows:*

- (1) You have stated that the OCG's letter of August 16, 2010 was delivered to the Office of the Minister of State with the Ministry of Water and Housing "round about 3:00 PM" and released to the public and private Media before you were in receipt of a copy of the letter.*

*Contrary to your assertions, please be advised that the referenced letter, which was stamped "URGENT" in red, was acknowledged, in writing, as having being received at the Offices of the Ministry of Water and Housing at 25 Dominica Drive, by one "A. Clarke", **at 12:57 PM on August 16, 2010.***

*Further, the OCG's Media Release in this matter was computer time-stamped as being issued to the Media at precisely 1:54 PM on August 16, 2010, **approximately one (1) hour after the said letter was received at your office.***

*As you would appreciate, the OCG has no control as to what takes place in your Ministry once documents are delivered to it. In the circumstances, your inferences to the OCG, and to the Media, that the OCG's letter to you was delivered to your Office after it was made public, are therefore false and misleading.*

- (2) You have made numerous erroneous references throughout your letter to the "OCG's Claim". The first four (4) pages of the OCG's letter of August 16, 2010 was deliberately structured into three (3) numbered sections, the first of which alludes exclusively to the specifics of certain allegations which were made by the person who gave the referenced Sworn Statement to the OCG. It is, therefore, wholly misleading and dangerous to classify any of the said assertions or allegations as the "OCG's Claims".*

- (3) You have incorrectly inferred that the statement that Strathairn Construction Company*

*Limited “is Mr. Warmington’s Company” is one which was made by the OCG. Please be advised that the OCG’s letter of August 16, 2010 makes it crystal clear that the referenced statement was one which was attributed to the person who gave the Sworn Statement. This specific allegation was merely being repeated by the OCG as one of the several allegations, concerning you, which were made by the said person. It was not, as you have stated, a conclusion which was drawn by the OCG.*

- (4) The last paragraph of your letter states as follows: “Finally, as you have confirmed I was in full compliance with Section 40 (2) (c) of the Constitution prior to my elevation to Minister. Since that time I have not had any contractual arrangements with the Government which would warrant an investigation under Section 40 (2) (c) of the Act (sic)”.*

*Contrary to your assertions, there is no where in the OCG’s letter that the OCG has stated, either implicitly or expressly, that you have complied with the provisions of Section 40 (2) (c) of the Constitution of Jamaica. We would strongly urge you to seek the professional counsel of an Attorney-at-Law if you are unsure as to the provisions of the Constitution of Jamaica and their implications and, in particular, the import of the specific reference which the OCG has made to Section 40 (2) (c) of the Constitution in its letter of August 16, 2010 in so far as it concerns you.*

- (5) Finally, you have stated that the OCG has relied upon allegations which have been made by an “un-named” person. Please be advised that the identity of the person in question, although publicly unknown, is well known to the OCG.*

*We must also advise you that the identity of the referenced person shall remain undisclosed particularly having regard to the fact that he has expressed, to the OCG, a fear for his life and his personal security and safety.*

*The OCG, it being an Independent Commission of the Parliament of Jamaica of which you are an Elected Member, anticipates your full cooperation in this matter as it discharges its lawful mandate under the duly promulgated Laws of Jamaica – a mandate that, as you are no doubt aware, it is obliged to dispassionately discharge to ensure, among other things, that Government contracts are awarded “impartially and on merit” and in circumstances which “do not involve impropriety or irregularity”.*

*Very respectfully yours,*

*Latoya Harris(Signed)*

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*Latoya Harris*

*Senior Special Investigator*

***For and on behalf of the Contractor General***

*Copy: The Hon. Bruce Golding, MP, Prime Minister of Jamaica*

*The Hon. Robert Montague, MP, Minister of State in the Office of the Prime Minister with responsibility for Local Government”*

Following upon the receipt of Mr. Warmington’s letter and the OCG’s response thereto, another complaint was received by the OCG, on 2010 August 18, from a ‘Concerned Citizen’. The referenced complaint alleged as follows:

*“I have read with interest the report of the Contractor General relating to contracts awarded to Strathairn Construction Company.*

*I was particularly drawn to paragraph (g) of the report which states:*

*(g) “Further, the OCG’s Preliminary Enquiry has revealed that of the ten (10) contracts which were awarded by the St. Catherine Parish Council on August 28, 2008, as many as eight (8) of those contracts were for the execution of works in Sydenham, St. Catherine”.*

*I write to ask that the Office of the Contractor General go further with the investigation to determine the nature of the work done in Sydenham, and specifically where those work were done.*

*This request is made against the background that I am a resident of Sydenham, and I have only seen half of one road repaired in that area over the last seven years. Specifically, I have seen work done on the top half of Worcester Road which runs between Sydenham and Horizon Park. I am not a contractor and therefore cannot properly value the work done, but I cannot imagine why it would require eight (8) separate contracts to do the work I saw done.*

*As a citizen and a tax payer, I look forward to your findings.”*

It must also be noted that during the course of the Investigation, the OCG was approached by Dr. Raymoth Notice, who provided it with information regarding certain alleged irregularities at the St. Catherine Parish Council.

As such, on 2010 October 27, an OCG Investigation Team met with Dr. Raymoth Notice, former Mayor of Spanish Town and current Councillor at the St. Catherine Parish Council. The transcript of the referenced meeting was subsequently sworn before a Justice of the Peace, on 2010 November 11.

Below are verbatim extracts of the information which was relayed, to the OCG, by Dr. Notice in his sworn statement:

1. *“As I stated initially, my coming forward is without prejudice or malice towards any, just a matter of concern about the operations of an institution, which I, in 2003, was made to chair. I was chairman of the St. Catherine Parish Council and on a ceremonial aspect the Mayor of Spanish Town.”*
2. *... and as chairman I became exposed to a lot of things, the misuse or the misappropriation of funds...*

3. *There are persons who are upset because from time to time when you look you see financial statements - money which is said to be used for contracts they are not aware of ...*
4. *... every Councilor wants a contractor who he is associated with to do the works. There is no ifs nor buts about it, and that happens. The contractors are branded too, when a particular party is in power that one gets most of the works and you have others who [sic] financially manageable, they spend their money to get the contract. But there are tenders, again, whosoever the MP wants to give the contract, for example, if a work is to be tendered in ... use my area for example, say I am an M.P., because with the Parish Council you don't get money under a million, what they may do to beat the system is to do it half- half, \$500,000.00 to do part and then you put away the other part. What might happen is that I am a contractor and I know you and I just say listen I will bid as such and I want you to bid above it, simple. Most times it's a little in-house thing through the Councilors. This is why you will find some persons get contracts so often.*
5. *...The formal system, the contracting...yeah, you get an allocation as I said, what should happen is that if a contractor work is to be tendered, of course, if I have a ... say for example in BogWalk, I have a contractor that I prefer to do the work, I would tell them point blank this is the man I want to do the work...*
6. *...I just giving you this now to show of my knowledge, where a Councilor, a colleague of mine is a Director, where contractual arrangements were made, based on what I was told by the Councilor, he has never gotten a dime from that Company. He would just sign cheques and pass it to the other Director ...we're talking about Brass and Warmington...*
7. *... Grant... he told me he was suppose to come here to do something ... but he was pulled back into the system and happily rewarded ... so you not going to see him.*

*As I said, they told me things and he told me that he came and some other man who was very very close to Warmington and made some pronouncements and he was to come back to probably do the final thing and he actually resigned as the Councilor, but I know he was represented at a meeting to continue as Councilor....*

*So there are Businesses being formed and a little clique-ship or dynasty of Lodge... you have some Lodge brothers in there; I am in Lodge too but my gosh .... I think the Chairman and Warmington are Lodge brothers, they have some kind of understandings that way.... Grant has no say over it, the MP comes in and as long as the Chairman and the Supt. agrees its fine...*

8. *...He's just a figure head, he has no control, he's very quiet, very humble, afraid to talk ...*
9. *...Yeah, I know that it is his Company, [Warmington] that's why I said he took a cheque to me in 2003 and I was advised then by Mr. Binns not to do it...*
10. *...I know he operates out of his office, but I don't know if that was an address that he used, but as I said, we all know that Brass usually signs, he doesn't benefit from the earnings as partner, well I don't know of late, because as I said they draft him back and sort of hush him, that much I know...*
11. *...We were talking earlier of Warmington's thing ... as I said Brass is a very quiet man, but Cojack ... he's not in the company but... he's a Councilor ... Frankson, he's a Guy named Frankson, he's a Councilor, Councilor Frankson...he's not in the Company, but I guess if there is to be any channeling of funding, it would be his Division or Brass's Division...*

12. *After this thing came out you pick up some things, but as I said, these are not going to make headline corridor talks, because the culture is that from you can get something, you not suppose to talk, and then again it is so easy again... just flipping away from the larger contracts... well, most times he works on his own, he tends to probably work through associates, cause as I said I tried to find out from Brass, he says he doesn't know who cheques are being written to, he just signs them, I don't know if Warmington signs on the cheques now, but I know that Lloyd Grant does, but he just signs the books, so he is his own master, so if he's not a signatory now he has somebody close to him that signs.*

Having regard to the foregoing allegations, information and documented concerns, the OCG sought to ascertain particulars of the company, SCCL, in order to establish, *inter alia*, the involvement, if any, of Mr. Clifford Everalld Warmington, in the establishment and operations of the referenced company.

*Companies Office of Jamaica (COJ) Information - SCCL*

Having regard to the allegations in relation to the ownership and operation of SCCL, the OCG sought to ascertain further and better particulars with respect to the ownership structure and shareholder status of SCCL.

Consequently, the OCG, by way of a written Statutory Requisition, which was dated 2010 September 2, and which was addressed to Mrs. Judith Ramlogan, Chief Executive Officer, COJ, sought to ascertain the particulars of the ownership structure of SCCL. In this regard, the COJ, in its response to the OCG's Requisition, which was dated 2010 September 18, provided the following information:

Table 1-The shareholders of the company are:

<b>Issued Shares Table - Strathairn Construction Company Limited</b>			
<b>Name of Shareholder</b>	<b>Number of Shares</b>	<b>Date Acquired</b>	<b>Date Forfeited/Transferred</b>
Donna –Ann Stephens	1	<b>First Shareholder</b> Oct. 15, 1981	2 Feb.2009 Transferred to Lloyd Grant
Jannett Manning	1	<b>First Shareholder</b> Oct. 15, 1981	2 Feb.2009 Transferred to Howard Charvis
Howard Charvis	34	Feb. 2, 2009	N/A
Lloyd Grant	33	Feb. 2, 2009	N/A
Selvyn Foster	33	Feb. 2, 2009	N/A
<b>Total Shares Issued</b>	<b>100</b>		

**Table 2** The directors of the company are:

<b>Directors - Strathairn Construction Company Limited</b>			
<b>Name</b>	<b>Address</b>	<b>Date of Appointment</b>	<b>Date of Resignation</b>
Howard Charvis		<b>First Director</b> Oct. 15, 1981	N/A
Noel Mckenzie		<b>First Director</b> April 15, 1981	March 26,2003
Evroy Chin		<b>First Director</b> April 15, 1981	March 26,2003
Leslie Henry		<b>First Director</b> Oct. 15, 1981	Oct. 31, 2008
Maurice O'Connor		July 30, 2002	Sept. 1, 2007
Clifford Warmington		March 26,2003	Sept. 1, 2007
Lloyd Grant		March 26,2003	N/A
Vincent Warmington		Sept. 1, 2007	Oct. 31, 2008
Noel Warmington		Sept. 1, 2007	Oct. 31, 2008
Joyce Fletcher		Sept. 1, 2007	Oct. 31, 2008
Selvyn Foster		Oct. 31, 2008	N/A
Vernal Burton		Feb. 2, 2009	N/A

**NB. Please note the current officers of the company are highlighted in the respective tables.**

The COJ, in its response to the OCG's Requisition, which was dated 2010 September 18, informed the OCG that *"The changes to Directorships were executed by the directors and company secretary. Please see table below with the names of the person who executed the director changes on the respective dates."*<sup>9</sup>

Below is the table which was referred to above by the COJ:

<sup>9</sup> COJ. Response to the OCG's Requisition. 2010 September 18. Question No. 2

**Table 2A** Authorization Details for Director Changes are:

<b>Authorization Details For Directors Changes – Strathairn Construction Company Limited</b>			
<b>Name of Person authorising the change</b>	<b>Date Filed at COJ</b>	<b>Date Signed</b>	<b>Comments</b>
Howard Charvis	Jan 31,2002	Jan 31,2002	<b>Appointing First Directors as at Oct. 15, 1981</b>
Howard Charvis	Aug. 5, 2002	Aug. 5, 2002	<b>Appointing</b> Maurice O'Connor on July 30, 2002
Howard Charvis	Mar.31, 2003	Mar. 26,2003	<b>Appointing</b> Lloyd Grant & Clifford Warmington on March 26,2003
			<b>Resigning</b> Evroy Chin & Noel Mckenzie on March 26,2003
Leslie Henry	Sept. 24,2007	Sept. 24,2007	<b>Appointing</b> Vincent Warmington, Joyce Fletcher & Noel Warmington on Sept. 1, 2007
			<b>Resigning</b> Maurice O'Connor & Clifford Warmington on Sept. 1, 2007
Howard Charvis	Jan. 6, 2009	Oct. 31, 2008	<b>Appointing</b> Selvyn Foster on Oct. 31, 2008
			<b>Resigning</b> Vincent Warmington, Joyce Fletcher, Leslie Henry & Noel Warmington on Oct. 31, 2008
Private Investment Limited	Feb.16,2009	Feb. 16,2009	<b>Appointing</b> Vernal Burton on Feb. 2, 2009

The COJ, also reported that *“The company’s registered office is located at: 40 B East Street Old Harbour, St. Catherine. There have been no filed changes in the Registered Office since incorporation.”*<sup>10</sup>

It is instructive to note that it was alleged that SCCL operates out of the Office of the Member of Parliament at 40 East Street, Old Harbour. In this regard, and quite curiously, the OCG found that the Office of the Member of Parliament for South West St. Catherine, was detailed on an official letterhead as being located at 40 East Street, Old Harbour.

<sup>10</sup> COJ. Response to the OCG’s Requisition. 2010 September 18.

Based upon the official COJ records, the OCG found, *inter alia*, the following:

1. The First Shareholders of SCCL were listed as Ms. Donna-Ann Stephens and Ms. Jannett Manning. However, their shares were transferred on 2009 February 2 to Mr. Lloyd Grant and Mr. Howard Charvis, respectively.
2. Mr. Howard Charvis was appointed as a First Director of SCCL on 1981 October 15.
3. Mr. Leslie Henry was appointed as a First Director of SCCL on 1981 October 15 and resigned from the post on 2008 October 31.
4. Mr. Clifford Warmington, M.P., was appointed as a Director of SCCL on 2003 March 26 and resigned from the post on 2007 September 1.
5. On 2007 September 24, Mr. Leslie Henry authorised a change in the directorship of SCCL. In this regard, a Vincent Warmington, Noel Warmington and Joyce Fletcher were appointed as Directors of SCCL, effective 2007 September 1, the very date on which Mr. Warmington and Mr. Maurice O'Connor resigned from their respective posts as Directors of SCCL.
6. The individuals who are listed as the current shareholders of SCCL are Mr. Howard Charvis, Mr. Lloyd Grant and Mr. Selvyn Foster.

#### Ownership of SCCL

Having regard to the foregoing, and in light of the allegations which were made that SCCL is 'Mr. Warmington's company', the OCG, in its Requisitions which were dated 2010 October 26, asked Mr. Howard Charvis, Mr. Lloyd Grant and Mr. Selvyn Foster the following question:

*“To the best of your knowledge please state the name(s) of the beneficial owners of SCCL? Please provide documentary evidence, where possible, to substantiate your assertions/responses.”<sup>11</sup>*

In their respective responses to the OCG’s Requisitions, which were dated 2010 November 22, 2010 November 17 and 2010 November 18, all three (3) gentlemen stated, *inter alia*, that “Howard Charvis, Selvyn Foster and Lloyd Grant”<sup>12</sup> were the beneficial owners of SCCL.

It must be noted that the OCG, in its Requisitions which were dated 2010 October 26, also asked Mr. Howard Charvis, Mr. Lloyd Grant and Mr. Selvyn Foster the following question:

*“Please provide an Executive Summary detailing your affiliation and/or association history with Strathairn Construction Company Limited (SCCL). The summary should provide answers to the following questions and detail the information which is requested:*

- a. List all substantive post(s) and/or title(s), if any, which you have held at SCCL and the period for which you held such post(s) and title(s);*
- b. Detail your associated responsibilities and duties for each post and/or title identified in (a) above;*
- c. The date(s) on which you held the substantive post(s) and/or title(s) listed in (a) above;*

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<sup>11</sup> OCG Requisitions to Mr. Howard Charvis, Selvyn Foster and Lloyd Grant. 2010 October 26. Question 11

<sup>12</sup> Sworn responses from Messrs. Mr. Howard Charvis, Selvyn Foster and Lloyd Grant. Responses to Question # 11

- d. *The date(s) on which you demitted the said post(s) and/or title(s) listed in (a) above;*
- e. *The level of authorisation which you could grant in regard to the payments which are made by SCCL;*
- f. *State whether you are a signatory to any bank account held in the name of SCCL;*
- g. *State whether you were/are a Shareholder and/or Beneficial Shareholder of SCCL;*
- h. *The date(s) on which you became a Shareholder and/or Beneficial Shareholder of SCCL;*
- i. *The equity which you placed and/or have in SCCL;*
- j. *State whether you, in any way, facilitated the award, implementation, execution and/or variation of any government contract(s) which was/were awarded by (a) the St. Catherine Parish Council, (b) the National Works Agency (NWA) and/or the Ministry of Transport & Works (MTW) to SCCL;*
- k. *Any other particulars that are pertinent to your affiliation and/or association with SCCL.*

*Please provide documentary evidence, where possible, to substantiate your assertions/responses.”<sup>13</sup>*

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<sup>13</sup> OCG Requisitions to Mr. Howard Charvis, Selvyn Foster and Lloyd Grant. 2010 October 26. Question 1

In his response to the OCG's Requisition, which was dated 2010 November 22, Mr. Howard Charvis stated, *inter alia*, as follows:

- (a) *“Director, appointed in 1982 and as Chief Executive Officer, President and CEO since 2007.*
- (b) *To preside over and conduct the management affairs of the organization.*
- (c) *See (a) above.*
- (d) *Currently in the post.*
- (e) *As an individual director, I have none.*
- (f) *Yes.*
- (g) *Yes*
- (h) *To the best of my recollection, I became a shareholder in 1982.*
- (i) *I place no equity, but have been allotted shares.*
- (j) *No.*
- (k) *No.”*<sup>14</sup>

Mr. Lloyd Grant, in his response to the OCG's Requisition, which was dated 2010 November 17, stated, *inter alia*, as follows:

- (a) *“Director, appointed in 2003 and as Chief Operating Officer since 2008.*
- (b) *Ensure that the field projects and operations are conducted in accordance with SCCL contract with the clients.*
- (c) *See (a) above.*
- (d) *Currently in the post.*
- (e) *As an individual director, I have none.*
- (f) *Yes.*
- (g) *Yes*
- (h) *To the best of my recollection, I became a shareholder in 2008.*
- (i) *I place no equity, but have been allotted shares.*

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<sup>14</sup> Howard Charvis. Response to the OCG's Requisition. 2010 November 22. Question 1

- (j) No.
- (k) No.”<sup>15</sup>

Mr. Selvyn Foster, in his response to the OCG’s Requisition, which was dated 2010 November 18, stated, *inter alia*, as follows:

- (a) “Director, appointed in 2008 and as Purchasing and Equipment Officer.
- (b) Ensure that all material, Equipment and incidentals are always available and in good working condition to undertake the effective operation of projects.
- (c) See (a) above.
- (d) Currently in the post.
- (e) As an individual director, I have none.
- (f) Yes.
- (g) Yes
- (h) To the best of my recollection, I became a shareholder in 2008.
- (i) I place no equity, but have been allotted shares.
- (j) No.
- (k) No.”<sup>16</sup>

It is instructive to note that the sworn statements which were provided to the OCG by Mr. Lloyd Grant and Mr. Selvyn Foster, and which purported, respectively, that to the best of their individual knowledge, they had become shareholders of SCCL in 2008, conflicted with the documentary evidence which was available from the COJ. The referenced COJ documentation revealed that both gentlemen became shareholders of SCCL on 2009 February 2.

Having regard to the fact that all three (3) gentlemen, in their respective responses to the OCG’s Requisitions, stated that “*I place no equity, but have been allotted shares*”, the

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<sup>15</sup> Lloyd Grant. Response to the OCG’s Requisition. 2010 November 17. Question 1

<sup>16</sup> Lloyd Grant. Response to the OCG’s Requisition. 2010 November 17. Question 1

OCG, in its Follow-up Requisitions, which were dated 2010 December 10, asked, *inter alia*, the following questions:

- a. *“Who allotted the shares which you hold in Strathairn Construction Company Limited (SCCL);*
- b. *How were the shares allocated?*
- c. *Explain how you were allotted shares without placing equity in SCCL;*
- d. *Why were the shares allocated to you?*
- e. *How many shares have been allocated to you?*
- f. *The name(s) and title(s) of the person(s) who allocated the shares to you;*
- g. *Identify each shareholder and the amount of shares which have been allocated to each of the named shareholders;*
- h. *Any other particulars which are pertinent to your shareholding in SCCL.”<sup>17</sup>*

Mr. Howard Charvis, in his sworn response to the OCG’s Requisition, which was dated 2011 January 3, stated, *inter alia*, as follows:

- (a) *“The Company*
- (b) *By issue*
- (c) *See 1c and 1d above*
- (d) *On the basis of 1c above*
- (e) *34*
- (f) *Shares were allotted*
- (g) *see company records*
- (h) *No”<sup>18</sup>*

It is instructive to note that Mr. Charvis, in his foregoing response referred to his previous response in “...1c and 1d above”. In this regard, it must be noted that Mr. Charvis, in the

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<sup>17</sup> OCG’s Follow-up Requisitions to Mr. Howard Charvis, Selwyn Foster and Lloyd Grant. 2010 December 10. Question 1 & 3

<sup>18</sup> Howard Charvis. Response to the OCG’s Follow-up Requisition. 2011 January 3. Question 3

referenced response which was alluded to in “...1c and 1d above”, stated that “(c) *At the time of inception no one thought about shares. There were no discussions on shares, the concern was to get a company going. Every one pitch in so as to make the company a reality. (d) No.*”<sup>19</sup>

Mr. Lloyd Grant, in his response to the OCG’s Requisition, which was dated 2010 December 30, stated, *inter alia*, as follows:

- (a) *“Shares were allotted by the company*
- (b) *By issue*
- (c) *By sweat equity*
- (d) *In recognition of my contribution to the company*
- (e) *33*
- (f) *Shares were allotted by the company*
- (g) *See company records*
- (h) *None*”<sup>20</sup>

Mr. Selvyn Foster, in his response to the OCG’s Requisition, which was dated 2010 December 30, stated, *inter alia*, as follows:

- (a) *“Shares were allotted by the company*
- (b) *By issue*
- (c) *By sweat equity*
- (d) *In recognition of my contribution to the company*
- (e) *33*
- (f) *Shares were allotted by the company*
- (g) *See company records*
- (h) *None*”<sup>21</sup>

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<sup>19</sup> Howard Charvis. Response to the OCG’s Follow-up Requisition. 2011 January 3. Question 1

<sup>20</sup> Lloyd Grant. Response to the OCG’s Follow-up Requisition. 2010 December 30. Question 1

Further, and in light of the allegation that “SCCL is Mr. Warmington’s company”, the OCG, in its Follow-up Requisitions to Mr. Howard Charvis, Mr. Lloyd Grant and Mr. Selvyn Foster, which were dated 2010 December 10, also asked, *inter alia*, the following question:

*“Are you a nominated and/or proxy shareholder of SCCL? If yes, please provide the circumstances surrounding the same and the name(s) and title(s) of the person(s) for whom you hold the SCCL shares. Please provide documentary evidence, where possible, to substantiate your assertions/responses.”*<sup>22</sup>

In their respective responses to the OCG’s Requisition, which were dated 2010 December 30 and 2011 January 3, all three (3) gentlemen stated “No”.

Further, in light of the allegations regarding Mr. Warmington’s *‘interest’* in SCCL, the OCG, in its Requisitions, which were dated 2010 October 26, asked, *inter alia*, the following question:

*“Are you aware of whether Mr. Clifford Everald Warmington had/has a financial interest in SCCL? If yes, please provide an Executive Summary detailing the following information and answering the respective questions:*

- a. State the nature of Mr. Warmington’s financial interest in SCCL;*
- b. Does/has Mr. Clifford Everald Warmington play an active role in the financial operations of SCCL?*
- c. Can Mr. Clifford Everald Warmington make decisions with regard to the financial operations [sic] SCCL? If yes, please state what aspects of the financial decision making Mr. Warmington is a part of;*

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<sup>21</sup> Selvyn Foster. Response to the OCG’s Follow-up Requisition. 2010 December 30. Question 1

<sup>22</sup> OCG’s Follow-up Requisitions to Mr. Howard Charvis, Mr. Selvyn Foster and Mr. Lloyd Grant. 2010 December 10. Question 4 & 5.

- d. *Does Mr. Warmington have to consult with anyone when making such financial decisions? If yes, please provide the name(s) and title(s) of the person(s) with whom Mr. Warmington consults;*
- e. *Can Mr. Clifford Everald Warmington commit the company to any financial obligations?*
  - i. *If yes, does Mr. Warmington need the approval of the Board of Directors and/or Management of SCCL to do so?*
  - ii. *If yes, how and why is Mr. Warmington allowed and/or able to make financial commitments on behalf of SCCL?*
- f. *Do the Managers and/or Board of Directors consult with Mr. Clifford Everald Warmington before financial decisions are made with respect to SCCL?*
- g. *Can the Board of Directors and/or the Managers commit the SCCL to financial obligations without Mr. Warmington's consent?*
- h. *Can Mr. Clifford Everald Warmington overrule a financial decision of the Board of Directors and/or the Managing Director of SCCL?*
- i. *Has anyone, such as a relative and/or a friend, been appointed to act and/or make financial decisions with respect to SCCL on behalf of Mr. Warmington? If yes, please provide the name(s) and title(s) of the person(s) and detail the reason for same;*
- j. *Any other particulars that are pertinent to Mr. Warmington's financial interest in SCCL.*<sup>23</sup>

Mr. Howard Charvis, Mr. Selvyn Foster and Mr. Lloyd Grant, in their respective responses to the OCG's Requisitions, which were dated 2010 November 22, 2010 November 18 and 2010 November 17, provided the exact responses and indicated that "Mr. Warmington does not have a financial interest in SCCL."<sup>24</sup>

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<sup>23</sup> OCG Requisitions to Mr. Howard Charvis, Mr. Selvyn Foster and Mr. Lloyd Grant. 2010 October 26. Question 33.

<sup>24</sup> Responses to the OCG's Requisition from Selvyn Foster- 2010 November 18, Howard Charvis- 2010 November 22 & Lloyd Grant- 2010 November 17. Question 33.

Having regard to the foregoing allegations, it is instructive to note that the OCG, in its Requisition, which was dated 2010 November 9, also asked Mr. Warmington the following questions:

*“Do/Did you have a financial interest in SCCL? If yes, please provide an Executive Summary detailing the following information and answering the respective questions:*

- a. State the nature of your financial interest in SCCL;*
- b. Do/Did you play an active role in the financial operations of SCCL?*
- c. Can you make decisions with regard to the financial operations of SCCL? If yes, please state what aspects of the financial decision making you are a part of;*
- d. Do you have to consult with anyone when making such financial decisions? If yes, please provide the name(s) and title(s) of the person(s) with whom you consult;*
- e. Can you commit the company to any financial obligations?*
  - i. If yes, do you need the approval of the Board of Directors and/or Management of SCCL to do so?*
  - ii. If yes, how and why are you allowed and/or able to make financial commitments on behalf of SCCL?*
- f. Do the Managers and/or Board of Directors consult with you before financial decisions are made with respect to SCCL?*

- g. Can the Board of Directors and/or the Managers commit the SCCL to financial obligations without your consent?*
- h. Can you overrule a financial decision of the Board of Directors and/or the Managing Director of SCCL?*
- i. Has anyone, such as a relative and/or a friend of yours, been appointed to act and/or make financial decisions with respect to SCCL on your behalf? If yes, please provide the name(s) and title(s) of the person(s) and detail the reasons, rationale and/or justifications for same;*
- j. Any other particulars that are pertinent to your financial interest in SCCL.”<sup>25</sup>*

In his response to the OCG’s Requisition, which was dated 2010 November 24, Mr. Clifford E. Warmington stated “No”.<sup>26</sup>

Having regard to the foregoing, it is instructive to note that in response to a Statutory Requisition, the OCG was provided with several pieces of correspondence and/or documents by the Bank of Nova Scotia Jamaica Ltd. (BNS), with which SCCL holds banking accounts.

In this regard, the OCG was provided with a letter, which was dated 2006 October 24, that was signed by several directors of SCCL, including Mr. Clifford E. Warmington in his capacity as the then Director, President and Chief Executive Officer of SCCL, Mr. Lloyd G. Grant, Director, Mr. Leslie C. Henry, Mr. Howard K. Charvis and Ms. Nicole A. Warmington, the then Company Secretary.

In the referenced letter, all of the named individuals indicated, *inter alia*, as follows:

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<sup>25</sup> OCG Requisition to Mr. Clifford E. Warmington. 2010 November 9. Question 39

<sup>26</sup> Clifford E. Warmington. Response to the OCG’s Requisition. 2010 November 24. Question 24

**“TO WHOM IT MAY CONCERN**

*This is to confirm that all the shares in Strathairn Construction Company Limited are held by Clifford E. Warmington.”<sup>27</sup> (OCG Emphasis)*

It is instructive to note that the OCG, in its Follow-up Requisitions which were addressed to Mr. Howard Charvis and Lloyd Grant, which were dated 2010 December 10, asked, *inter alia*, the following questions:

*“In your response to the OCG’s Requisition ... you stated, inter alia, that “Mr. Warmington does not have financial interest in SCCL.”*

*However, by way of a letter, which was dated October 24, 2006, several Directors of SCCL, including, inter alia, yourself ... wrote and signed a letter in which they asserted that “This is to confirm that all the shares in Strathairn Construction Company Limited are held by Clifford E. Warmington.”*

*Kindly provide a comprehensive statement with regard to the discrepancy in your assertion and that which is detailed in referenced letter, specifically as it relates to the nature of Mr. Warmington’s financial interest and/or affiliation with SCCL.”<sup>28</sup>*

Mr. Howard Charvis, in his sworn response to the OCG’s Requisition, which was dated 2011 January 3, stated, *inter alia*, as follows:

**“...because Mr. Warmington is well known to the bank and had an established relationship with them for over 40 years and at the time Mr. Warmington was associated with the company and an active participate [sic] and because the bank**

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<sup>27</sup> SCCL. Letter provided to BNS. 2006 October 24

<sup>28</sup> OCG Follow-up Requisition to Mr. Howard Charvis and Mr. Lloyd Grant. 2010 December 10. Question 24

*required documentary evidence of the share holders, at the time there were no documents issued of shares and there were [sic] not enough time to obtained [sic] these information to complete the transaction again because of his prestige and relationship with the bank, we supplied this information knowing it would facilitate the transaction.* The statement, however, was incorrect.”<sup>29</sup> (OCG Emphasis)

Mr. Lloyd Grant, in his sworn response to the OCG’s Requisition, which was dated 2010 December 30, stated, *inter alia*, as follows:

*“...because Mr. Warmington is well known to the Bank and had an established relationship with them, and because the bank required documentary evidence of the shareholders, and at the time there were no documentation of the issued shares and there was not enough time to obtained [sic] these documentation to complete our transaction, again because of his prestige and relationship with the bank, we supplied this information knowing it would facilitate the transaction. The statement, however, was incorrect.”*<sup>30</sup>

The OCG, in its Follow-up Requisitions, that were addressed to Mr. Howard Charvis and Mr. Lloyd Grant, which were dated 2010 December 10, also asked the following questions:

*“Having regard to the above referenced letter, which was dated October 24, 2006, and in which it was asserted that “This is to confirm that all the shares in **Strathairn Construction Company Limited** are held by **Clifford E. Warmington**.”, kindly detail the following information and answer the respective questions:*

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<sup>29</sup> Howard Charvis. Response to the OCG’s Requisition. 2011 January 3. Question 24

<sup>30</sup> Lloyd Grant. Response to the OCG’s Requisition. 2011 January 3. Question 24

- a. *State whether all the shares in SCCL are still held by Mr. Warmington;*
- b. *If the shares are no longer held by Mr. Warmington, state the date(s) upon which Mr. Warmington relinquished his shares in SCCL and the basis upon which this was done;*
- c. *The amount of shares which were allocated to Mr. Warmington;*
- d. *The reasons, rationale and/or justification for Mr. Warmington ceasing to be a Shareholder and Beneficial Shareholder of SCCL;*
- e. *The basis upon which the shares were allocated to Mr. Warmington;*
- f. *Did Mr. Warmington pay for the shares which were allocated to him? If yes, how did he pay for the shares and how much did he pay for same?*
- g. *How were the shares which were allocated to Mr. Warmington re-allocated?*
- h. *Were the changes to the share allotment filed with the Office of the Registrar of Companies, Jamaica? If yes, please provide the date(s) on which same was executed;*
- i. *Any other particulars which are pertinent to Mr. Warmington's share allotment in SCCL.*"<sup>31</sup>

Mr. Howard Charvis, in his sworn response to the OCG's Requisition, which was dated 2011 January 3, made reference to his previous response and stated "*See 24 above.*"<sup>32</sup>

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<sup>31</sup> OCG Follow-up Requisition to Mr. Howard Charvis and Mr. Lloyd Grant. 2010 December 10. Question 25

<sup>32</sup> Howard Charvis. Response to the OCG's Requisition. 2011 January 3. Question 25

Mr. Lloyd Grant, in his sworn response to the OCG's Requisition, which was dated 2010 December 30, also made reference to his previous response and stated "*See 24 above.*"<sup>33</sup>

In this regard, the OCG found that both Mr. Charvis and Mr. Grant, in their respective responses to Question No. 24 of the OCG's Requisition, indicated, *inter alia*, that:

- a) "...Mr. Warmington is well known at the bank and had an established relationship with them..."; and
- b) The bank wanted documentation regarding the shareholders of the company (i.e. SCCL), and there was not enough time to acquire the documentation on same and/or there was "...no documentation of issued shares...", and as such they informed the bank that Mr. Warmington held all the shares in SCCL.

In this regard, the OCG found that Mr. Charvis and Mr. Grant, in their respective responses, posited that (a) the information to which they signed, that was detailed in the 2006 October 24 letter to the BNS, was a deliberate misrepresentation of the ownership structure of SCCL, and (b) the information was provided to the bank in order to facilitate a transaction based upon Mr. Warmington's "...prestige and relationship with the bank..."

It is instructive to note that the OCG, in its Follow-up Requisition to Mr. Clifford Warmington, which was dated 2010 December 16, also asked the following questions:

*"By way of a letter, which was dated October 24, 2006, several Directors of SCCL, including, inter alia, Mr. Howard Charvis and Mr. Lloyd Grant, wrote and signed a letter in which they asserted that "This is to confirm that all the shares in Strathairn Construction Company Limited are held by Clifford E. Warmington."*

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<sup>33</sup> Lloyd Grant. Response to the OCG's Requisition. 2011 January 3. Question 25

*Having regard to the above referenced letter, which was dated October 24, 2006, please detail the following information and answer the respective questions:*

- a. State whether the foregoing representation is factual and/or accurate;*
- b. State whether all the shares in SCCL are still held by you;*
- c. If the shares are no longer held by you, state the date(s) upon which you relinquished your shares in SCCL and the basis upon which this was done;*
- d. The amount of shares which were allocated to you;*
- e. The reasons, rationale and/or justification for you ceasing to be a Shareholder and Beneficial Shareholder of SCCL;*
- f. The basis upon which the shares were allocated to you;*
- g. Did you pay for the shares which were allocated to you? If yes, how did you pay for the shares and how much did you pay for same?*
- h. How were the shares which were allocated to you re-allocated?*
- i. Were the changes to the share allotment filed with the Office of the Registrar of Companies, Jamaica? If yes, please provide the date(s) on which same was executed;*
- j. Any other particulars which are pertinent to your share allotment in SCCL.”<sup>34</sup>*

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<sup>34</sup> OCG Follow-up Requisition to Mr. Warmington. 2010 December 16. Question 17

Mr. Clifford Warmington, in his sworn response to the OCG's Requisition, which was dated 2011 January 4, stated, *inter alia*, that "*The statement referred to is incorrect.*"<sup>35</sup>

However, it is instructive to note that the referenced letter which was submitted to BNS was also signed by Mr. Clifford E. Warmington, in his capacity as the then Director, President and C.E.O. of SCCL. Therefore, the OCG has found, based upon the sworn written statement of Mr. Warmington, himself, that he knowingly and deliberately misrepresented material facts to BNS regarding SCCL.

Further, the OCG found that on SCCL's "*APPLICATION FOR BUSINESS SERVICES*", with the BNS, which was dated 2006 October 27, the following was revealed:

1. Mr. Warmington and Mr. Grant appear to have signed the documents on behalf of the SCCL.
2. In response to the request to provide the "*Names and Address of Director/Principal Owner*", the SCCL representative wrote "*Clifford Warmington*".
3. The following was stated with respect to "*Verification –Provides details of how all information was verified:*" - "*Mr. Warmington is a known Member of Parliament. Strathairn Construction Company's A/C was an existing account but was closed by President. Account is now reopened and business operation is the same as stated on CIF. All relevant documentation presented along with identification and TRN for all signing officers and Directors. Source of funds and chqs verified by drawer, Howard Sturridge.*"

Having regard to the foregoing, the OCG found that several of the documents, inclusive of the 2006 October 24 letter to the bank, (a) appears to have been signed by Mr.

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<sup>35</sup> Clifford Warmington. Response to the OCG's Requisition. 2011 January 4. Question 17

Warmington and (b) indicated that several SCCL Representatives have attested that Mr. Warmington is the owner/sole shareholder of SCCL.

However, notwithstanding the documentary evidence regarding same, inclusive of the COJ records, Mr. Howard Charvis, Mr. Selvyn Foster, Mr. Lloyd Grant and Mr. Clifford Everalld Warmington, in their sworn responses to the OCG's Requisitions, have all denied the accuracy of the information.

In point of fact, Mr. Howard Charvis, Mr. Selvyn Foster, and Mr. Lloyd Grant have indicated that they collectively and knowingly provided false information to the BNS with respect to the shareholding of SCCL, in order to expedite a transaction.

However, it is instructive to note that if the current representations of Mr. Howard Charvis, Mr. Lloyd Grant and Mr. Clifford Everalld Warmington are to be taken as true and accurate, then, having admitted to signing some of the referenced documents, which contradicts their sworn representations to the OCG, the gentlemen would have knowingly, deliberately and wilfully provided false information to the BNS. Consequently, the accuracy and truthfulness of their sworn representations which have been made to the OCG have also been brought into dispute.

***Particulars of SCCL's National Contracts Commission (NCC) Contractor Registration***

As part of its Investigation, the OCG examined the NCC Contractor Registration file with respect to SCCL. In this regard, the OCG's review revealed the following:

- A. The NCC Register of Public Sector Contractors (Grades 1-4) Application Form, which was submitted on 2007 January 10, named "*Mr. Clifford E. Warmington*" as the "*Owner/Principal of SCCL*". The foregoing information was provided in direct response to the question "*Who are the Owners/Principals?*"<sup>36</sup> as required on the referenced application form.

Of import is the fact that the Affidavit, which accompanies the application form, and which was executed pursuant to the provisions of the Voluntary Declarations Act, was signed by Mr. Clifford E. Warmington, and executed before a Justice of Peace on 2007 January 8 at a 20 Belmont Road, Kingston 5 address.

On the referenced application form, Mr. Warmington swore to the accuracy of the information and affirmed, *inter alia*, that "*...the facts set forth in the National Contracts Commission Application for inclusion on the Register of Contractors for the Government of Jamaica are based on my/our personal knowledge or information obtained from the files of "Strathairn Construction Co. Ltd" to which I have full access*"

Further, Mr. Warmington, on the said application form also swore and declared that he had carefully read the application and that "*...to the best of my information, knowledge, and belief, **the information provided in the said form is true and correct***".(OCG Emphasis)

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<sup>36</sup> 2007 NCC Registration of Public Sector Contractors Application Form

The OCG also found that, by way of a letter, which was dated 2007 January 11, Mr. Clifford E. Warmington wrote to the NCC and stated, *inter alia*, as follows:

*“With reference to our recent application for registration with the Contracts Secretariat, we wish to amend the documents submitted, by withdrawing **pages 2 and 3** and replacing them with this corrected section....”<sup>37</sup>*

The OCG found that page two (2) of the NCC Contractor Registration Application Form, which was referred to in the above letter, and which was withdrawn and replaced by Mr. Clifford E. Warmington, included the question “*Who are the Owners/Principals?*”<sup>38</sup>

In response to the foregoing question, Mr. Clifford E. Warmington still identified himself as the owner/principal on the amended page two (2) of the NCC Contractor Registration Application Form which was submitted for and on behalf of SCCL.

Having regard to the foregoing, the OCG, in its Follow-up Requisition, that was addressed to Mr. Warmington, which was dated 2010 December 16, asked, *inter alia*, the following questions:

*“On the NCC application form, which was submitted to and received by the NCC on January 10, 2007, you were identified as the ‘owner/principal’ of SCCL? Of note is that the Affidavit, swearing to the accuracy of the information which is contained in the said application, was executed by you on January 8, 2007.*

*Having regard to the foregoing, please indicate if the declaration which was made on that application was factual and correct.*

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<sup>37</sup> SCCL. Letter to the NCC. 2007 January 11

<sup>38</sup> 2007 NCC Registration of Public Sector Contractors Application Form

- a. *If yes, please detail the following information and answer the respective questions:*
- i. *How long have you been the ‘owner/principal’ of SCCL;*
  - ii. *The date(s) on which you became the ‘owner/principal’ of SCCL;*
  - iii. *The circumstances relating to same;*
  - iv. *Are you still the ‘owner/principal’ of SCCL? If no, when did this change occur?*
  - v. *If you are no longer the ‘owner/principal’ of SCCL who is/are the current owner(s)/principal(s) of SCCL;*
- b. *If no, please provide the basis upon which such a representation was made to the NCC and provide the material facts of the false representation which were previously sworn to, by you, on January 8, 2007.”<sup>39</sup>*

In his response to the OCG’s Requisition, which was dated 2011 January 4, Mr. Clifford E. Warmington stated that “*I am not aware of, or can recall any such declaration being made.*”<sup>40</sup>

B. On the NCC Register of Public Sector Contactors (Grades 1-4) Application Form, which was submitted on 2007 January 10, the following particulars, *inter alia*, were detailed:

*“Strathairn Construction Company Ltd. was formed and registered in Jamaica in 1981. It undertook several projects locally until 1985 when the President and*

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<sup>39</sup> OCG Follow-up Requisition to Mr. Clifford Warmington. 2010 December 16. Question 14

<sup>40</sup> Clifford Warmington. Response to the OCG’s Requisition. 2011 January 4. Question 14

**Chief Share Holder migrated to the United States.** In New York Strathairn Construction Co. Inc. was incorporated in the State of New York and did several major project [sic] in New York and New Jersey. It also undertook Construction Management Services to Developers, Homeowners and Contractors. **In 200 [sic] the Chief Share Holder returned to Jamaica and have since been providing Consulting Services to Contractors and Developers.** The Company moved back into Construction, constructing the Company President Residence and the Company's Corporate Offices along with other minor construction...<sup>41</sup> (OCG Emphasis)

It is instructive to note that the foregoing application was submitted, to the NCC, along with an 'AFFIDAVIT UNDER THE VOLUNTARY DECLARATION ACT', which was completed and sworn to at a 20 Belmont Road, Kingston 5 address, by one Mr. Clifford E. Warmington, on 2007 January 8.

Further, it is instructive to note that the OCG received an email on Tuesday, 2010 August 17, at 10:39 a.m., from 'Source Y' [name of source withheld] in which the following was revealed:

**"It may be a coincidence but Mr. Warmington had a construction company in Brooklyn, New York with the [sic] substantially the same name.** He lived in New York during the 1990's. The information below is from the New York State Department of State's website.

***NYS Department of State***

***Division of Corporations***

***Entity Information***

*The information contained in this database is current through August 16, 2010.*

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<sup>41</sup> 2007 NCC Registration of Public Sector Contractors Application Form

*Selected Entity Name: STRATHAIRN CONSTRUCTION COMPANY  
INCORPORATED*

<i>Selected Entity Status Information</i>	
<b>Current Entity Name:</b>	STRATHAIRN CONSTRUCTION COMPANY INCORPORATED
<b>Initial DOS Filing Date:</b>	MARCH 09, 1990
<b>County:</b>	KINGS
<b>Jurisdiction:</b>	NEW YORK
<b>Entity Type:</b>	DOMESTIC BUSINESS CORPORATION
<b>Current Entity Status:</b>	INACTIVE - Dissolution by Proclamation / Annulment of Authority (Sep 28, 1994)

*Information to reinstate a corporation that has been dissolved by proclamation or annulment of authority by proclamation is available on the New York State Department of Taxation and Finance website at [www.tax.state.ny.us](http://www.tax.state.ny.us) keyword TR-194.1 or by writing to NYS Department of Taxation and Finance, Reinstatement Unit/Bldg-8, Rm #958, W.A. Harriman Campus, Albany, NY 12227 or by telephone at 1-800-972-1233*

<i>Selected Entity Address Information</i>
<b>DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)</b>
STRATHAIRN CONSTRUCTION COMPANY INCORPORATED 421 AVENUE C #3D BROOKLYN, NEW YORK, 11218
<b>Registered Agent</b>
NONE

*This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by [viewing the certificate.](#)*

**\*Stock Information**

<b># of Shares</b>	<b>Type of Stock</b>	<b>\$ Value per Share</b>
1000	No Par Value	

\*Stock information is applicable to domestic business corporations.

**Name History**

<b>Filing Date</b>	<b>Name Type</b>	<b>Entity Name</b>
MAR 09, 1990	Actual	STRATHAIRN CONSTRUCTION COMPANY INCORPORATED

*A Fictitious name must be used when the Actual name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.”<sup>42</sup> (OCG Emphasis)*

The OCG found that the foregoing information was corroborated by the information which was provided, to the NCC, by Mr. Warmington in 2007 January, on the application form which was submitted for and on behalf of SCCL, in pursuit of the company’s registration with the NCC.

Having regard to the foregoing, the OCG, in its Requisition, that was addressed to Mr. Warmington, which was dated 2010 November 9, asked, *inter alia*, the following questions:

*“Did/Do you have and/or operate a construction company in the United States of America by the name of Strathairn Construction Company Incorporated? If yes, please detail the following information and answer the respective questions:*

<sup>42</sup> Email from ‘Source Y’. Tuesday, 2010 August 17, at 10:39 a.m.

- a. *Was the company founded and/or established by you? If yes, please indicate the date(s) upon which the company was founded and/or established and the circumstances relating to same;*
- b. *Is this company still in operation and/or trading? If yes, please provide full particulars to support your response. If no, please state the current status of the referenced company;*
- c. *Please state what is/was the core business of the referenced company;*
- d. *Indicate whether you are/were a director, shareholder, beneficial shareholder, beneficial principal and/or partner in the referenced company. If yes, please state the total share capital of the referenced company, inclusive of, the shares, if any, which are/were held by you and/or any other representative of the said company and indicate the date on which the referenced company was established, registered and/or commenced operation;*
- e. *Detail your title(s), role(s) and/or responsibility(ies) in the referenced company;*
- f. *The name(s) and title(s) of the director(s), shareholder(s), beneficial shareholder(s), beneficial principal(s) and/or partner(s) of the referenced company;*
- g. *Did/Does the referenced company have any official and/or commercial relationship with SCCL and/or anyone acting on behalf of SCCL? If yes, please indicate the following:*
  - i. *The nature of the relationship;*

- ii. *The circumstances surrounding same;*
  - iii. *The length of the relationship;*
  - iv. *How such a relationship affected and/or influenced your involvement and/or affiliation, if any, with SCCL.*
- h. *Any other particulars that are pertinent to Strathairn Construction Company Incorporated and your involvement and/or association with same.*<sup>43</sup>

Mr. Clifford Warmington, in his response to the OCG's Requisition, which was dated 2010 November 24, stated, *inter alia*, as follows:

*"I can not recall the full details on the founding of Strathairn Construction Company Incorporated. **I recall that a group of individuals established that corporation. I was associated with it but I am unable to give detail [sic] on the date on which it was incorporated or whether or not that entity is still in operation. I do not recall being a shareholder. I know that there were [sic] no relationship with the Jamaican entity of Strathairn Construction Company Limited.** I was involved in the Construction Management aspect of Strathairn Construction Company Incorporated. I can not recollect any further detail on that corporation."*<sup>44</sup> (OCG Emphasis)

C. On 2010 April 22, a letter was submitted on behalf of SCCL by Mr. Howard Charvis, in his capacity as the President of SCCL, with respect to SCCL's annual registration with the NCC. The referenced letter was submitted on the letterhead of the Office of the Member of Parliament for the South West St. Catherine Constituency, that is, the constituency which is represented by Mr. Clifford Everaldo Warmington, M.P.

<sup>43</sup> OCG Requisition to Mr. Clifford E. Warmington. 2010 November 10. Question 49

<sup>44</sup> Clifford Warmington. Response to the OCG's Requisition. 2010 November 24. Question # 49

Having regard to the foregoing, the OCG, in its Follow-up Requisition, that was addressed to Mr. Charvis, which was dated 2010 December 10, asked, *inter alia*, the following questions:

*“On April 22, 2010, you submitted, to the National Contracts Commission (NCC) with regard to the annual registration for SCCL, a letter on the letterhead of the Office of the Member of Parliament- South West St. Catherine.*

*Having regard to the foregoing, kindly detail the following information and answer the respective questions:*

- a. The reasons, rationale and/or justification for submitting the referenced letter on the letterhead of the Office of the Member of Parliament- South West St. Catherine;*
- b. How did the referenced letterhead come into your and/or SCCL's possession?*
- c. Is it customary for you to use the referenced letterhead? If yes, please provide the circumstances relating to the same;*
- d. Were you and/or SCCL authorized to utilize the referenced letterhead? If yes, please provide the name(s) and title(s) of the person(s) who authorized the use of the referenced letterhead by SCCL;*
- e. Any other particulars which are pertinent to the SCCL's use of the referenced letterhead.”<sup>45</sup>*

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<sup>45</sup> OCG Requisition to Mr. Charvis. 2010 December 10. Question # 10

In his response to the OCG's Requisition, which was dated 2011 January 3, Mr. Howard Charvis stated, *inter alia*, as follows:

*"The office of the Member of Parliament and SCCL are, along with other entities, on the same compound. I enquired of my secretary how this came about. She informed me that she remember [sic] asking the Member of Parliament Secretary to use her printer to print the letter for her, as her printer was out of ink. It seems however that the M.P's Secretary inadvertently printed the letter on the wrong letter head. I did not discover this until it was brought to my attention in your questions. My signing a letter on the Member of Parliament's letterhead was a genuine oversight."*<sup>46</sup>

Further, the OCG, in its Follow-up Requisition, that was addressed to Mr. Warmington, which was dated 2010 December 16, asked, *inter alia*, the following questions:

*"On April 22, 2010, a letter was submitted, on behalf of SCCL, to the National Contracts Commission (NCC) with regard to the annual registration for SCCL, on the letterhead of the Office of the Member of Parliament- South West St. Catherine.*

*Having regard to the foregoing, kindly detail the following information and answer the respective questions:*

- a. *As at April 22, 2010, were you the Member of Parliament for the South West St. Catherine Constituency?*

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<sup>46</sup> Howard Charvis. Response to the OCG's Requisition. 2011 January 3. Question # 10

- b. *Were/are you aware that the SCCL utilized the referenced letterhead? If yes, please provide the following information and answers to the following questions:*
- i. *The date(s) upon which you became aware of this and the circumstances surrounding same;*
  - ii. *Did SCCL have your specific permission to use same and under what circumstances did you grant permission for the use of the referenced letterhead to SCCL?*
- c. *Was SCCL authorized to utilize the referenced letterhead? If yes, please provide the name(s) and title(s) of the person(s) who authorized the use of the referenced letterhead by SCCL;*
- d. *The reasons, rationale and/or justification for SCCL submitting the referenced letter on the letterhead of the Office of the Member of Parliament- South West St. Catherine;*
- e. *How did the referenced letterhead come into the possession of SCCL?*
- f. *Is it customary for SCCL to use the referenced letterhead? If yes, please provide the circumstances relating to the same;*
- g. *Any other particulars which are pertinent to the SCCL's use of the referenced letterhead.*"<sup>47</sup>

In his sworn response to the OCG's Requisition, which was dated 2011 January 4, Mr. Clifford Warmington stated, *inter alia*, as follows:

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<sup>47</sup> OCG Follow-up Requisition to Mr. Clifford Warmington. 2010 December 16. Question 8

- a. *“The Contractor General Office already have [sic] this information. Please see paragraph 1 among others in the Contractor General’s letter to Ms. Onika Miller and others dated 16/8/10 and copied to me.*
- b. *SCCL has no authority to utilize the Member of Parliament letter head. I am being told this by your office now and I am not aware that it is even factual.*
- c. *See (b) above*
- d. *See (b) above*
- e. *See (b) above*
- f. *See (b) above*
- g. *None”<sup>48</sup>*

D. On the NCC Register of Public Sector Contractors (Grades 1-4) Application Form, which was submitted by SCCL on 2010 May 3, Mr. Donovan Nolan was listed as a member of SCCL’s technical staff, in the capacity of Project Manager/Project Coordinator. In point of fact, in response to the question/query about the number of “*Years with Firm*”, SCCL indicated that Mr. Donovan Nolan had been employed with the company for “*2 years*”.<sup>49</sup>

Further, on the NCC Register of Public Sector Contractors (Grades 1-4) Application Form, which was submitted by SCCL, on 2009 April 28, Mr. Donovan Nolan was listed as a member of the company’s technical staff, in the capacity of Project Manager/Project Coordinator, who was reportedly employed with the company for one (1) year.

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<sup>48</sup> Clifford Warmington. Response to the OCG’s Follow-up Requisition. 2011 January 4. Question 8

<sup>49</sup> 2010 NCC Register of Public Sector Contractors (Grades 1-4) Application Form

It is instructive to note that the OCG, during the course of its Investigation, sought to obtain information from several individuals, who were listed as employees of SCCL. This was done in an effort to ascertain information regarding the operations of SCCL.

Having regard to the foregoing, and the fact that Mr. Donovan Nolan was listed as an employee of SCCL, the OCG sent a Requisition to Mr. Nolan, which was dated 2010 November 12.

It is instructive to note that upon receipt of the referenced Requisition, Mr. Donovan Nolan telephoned the OCG and spoke with the OCG's Senior Special Investigator, who had signed the OCG's Requisition which had been directed to him.

Below is an extract of a File Note, which was prepared by the Senior Special Investigator, with respect to the telephone conversation which occurred with Mr. Nolan on Friday, 2010 November 12:

**"File Note**

*Today at approximately 1:40pm I received a call from Mr. Donovan Nolan. Mr. Nolan stated that he was in receipt of the OCG's Requisition and was quite concerned because he was unable to answer a single question in the document.*

**He stated that he was not aware of the company Strathairn and that he had never worked in any capacity for the company. Mr. Nolan stated that the only information he was privy to was that which was in the news.**

*Mr. Nolan asked how the OCG had become aware of him and I stated that his name was provided as an employee of Strathairn on its NCC Registration Form.*

*I asked Mr. Nolan if he was associated with anyone involved with the company. Mr. Nolan informed me that he had a relationship with Mr. Everald Warmington the politician, who he knew for approximately 40 years. He stated that he taught Mr. Warmington at St. Andrew Technical High School.*

***Mr. Nolan stated that he remembered having a conversation with Mr. Warmington about projects he was working on and had given him his resume. However, he had not heard from Mr. Warmington since then.***

***He emphasized that he has never been employed and/or worked as a consultant for Strathairn.***

*Mr. Nolan then stated that he had contacted Mr. Warmington after he received the OCG's Requisition and asked him about it. He said Mr. Warmington informed him that he was going of [sic] the island to Cayman and would be back on Monday and would be able to meet to speak with him then.*

*He however stated that he recognized that his business was with the OCG and as such was seeking our guidance.*

*I informed Mr. Nolan that he should document everything he told me in a letter to the OCG and execute the voluntary declaration and then send it to the OCG.*

*He asked whether he should speak to Mr. Warmington before he wrote the letter and I advised that he should send the letter on Monday and that the information he was to provide in the letter was information which did not require consultation with Mr. Warmington.*

*I again reminded Mr. Nolan to send the letter with the voluntary declaration.*

*The conversation ended at approximately 1:50pm with the usual pleasantries.”<sup>50</sup> (OCG Emphasis)*

Subsequently, on 2010 November 30, Mr. Donovan Nolan submitted, to the OCG, a certified Form of Declaration, which was dated 2010 November 27, in which he stated, *inter alia*, as follows:

*“I am in receipt of, and have reviewed the requisition from the Contractor General’s Office dated November 12, 2010 in relation to the matter of investigation into Strathairn Construction Company Limited. **I, therefore, state that I had discussion with Mr. Warmington, and I advised him that I was available for a Senior Management position within the Private or Public Sector. Mr. Warmington recommended me to the directors of Strathairn Construction Company Limited for a position in management. I did not however, take up the appointment.** I, therefore know nothing of the management or operations of the company, and I am therefore unable to provide any information or answer to any of the questions posed.”<sup>51</sup> (OCG Emphasis)*

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<sup>50</sup> Special Senior Investigator. File Note. November 12, 2010.2:13pm

<sup>51</sup> Donovan Nolan. Form of Declaration. 2010 November 27

Consequently, the OCG, in its Follow-up Requisition, that was addressed to Mr. Donovan Nolan, which was dated 2010 December 10, asked, *inter alia*, the following questions:

*“In your Form of Declaration which was dated November 27, 2010 and which was written in response to the OCG’s Requisition that was dated November 12, 2010, you stated that “...I had discussions with Mr. Warmington, and I advised him that I was available for a Senior Management position within the Private or Public Sector. Mr. Warmington recommended me to the directors of Strathairn Construction Company Limited for a position in management.”*

*Having regard to your foregoing response, kindly detail the following information and answer the respective questions:*

- a. The date(s) on which you had such discussions with Mr. Warmington;*
- b. The circumstances relating to the same;*
- c. The particulars of the discussions which you had with Mr. Warmington;*
- d. The name(s) and title(s) of the person(s) to whom Mr. Warmington recommended you to at SCCL;*
- e. State whether you were actually introduced to a representative of SCCL and, if so, please provide the name(s) and title(s) of the person(s);*
- f. State whether you provided your particulars, for example resume and certificates of qualification to Mr. Warmington and/or any*

*representative of SCCL. If yes, please provide the date(s) on which this was done and the circumstances surrounding the same;*

- g. State your understanding of Mr. Warmington's role and/or association with SCCL;*
- h. Any other particulars which are pertinent to your referenced discussion with Mr. Warmington.”<sup>52</sup>*

In his sworn response to the OCG's Requisition, which was dated 2010 December 20, Mr. Donovan Nolan stated, *inter alia*, as follows:

*“(a) & (b) I met him at a funeral service in March 2008 at which time he invited me to meet with him at his office at a later date*

*(c) Met him at his office about 2 weeks later and had a general discussion about personal and professional matters.*

*It was then that I stated that I was available for engagement*

*(d) **He stated at our meeting that he would recommend me to his team but there was no further contact***

*(e) I was not*

*(f) **I gave him those particulars when we met (See (c) above)***

*(g) I have no direct knowledge of his role.*

*(h) No.”<sup>53</sup> (OCG Emphasis)*

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<sup>52</sup> OCG Follow-up Requisition to Mr. Donovan Nolan. 2010 December 10. Question 2

The OCG, in its Follow-up Requisition to Mr. Donovan Nolan, which was dated 2010 December 10, also asked, *inter alia*, the following questions:

*“On the National Contracts Commission’s (NCC’s) application form, which was submitted for and/or on the behalf of SCCL on May 3, 2010, it was indicated that you were the General Manager/Project Manager at SCCL.*

*However, in your Form of Declaration you stated that “I did not however, take up the appointment. I, therefore know nothing of the management or operations of the company [SCCL]...”*

*Having regard to your foregoing response, kindly detail the following information and answer the respective questions:*

- a. Were you aware that your particulars where [sic] being used by SCCL and that you were held out to be the General Manager/Project Manager at SCCL? If yes, please provide the date(s) upon which you became aware of this and the circumstances surrounding same;*
- b. Did the SCCL have your permission and/or authorization to utilize your particulars on its application for registration with the NCC? If yes, please provide the date(s) upon which this was done and the circumstances relating to the same.*
- c. State how your particulars, for example resume and certificates of qualification, came into the possession of SCCL;*
- d. Have you ever worked with and/or been engaged by SCCL in any form and/or manner?*

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<sup>53</sup> Donovan Nolan. Response to the OCG’s Requisition. 2010 December 20. Question 2

e. *Any other particulars which are pertinent to your interaction with SCCL.*<sup>54</sup>

In his sworn response to the OCG's Requisition, which was dated 2010 December 20, Mr. Donovan Nolan stated, *inter alia*, as follows:

“(a) *No*

(b) *No. As stated above, I gave him my particulars and it would be my understanding that he might choose to use it as he sees fit having regard to the fact that we were discussing employment possibilities*

(c) *Please see response at 2(f) above*

(d) *No*

(e) *No*<sup>55</sup> (OCG Emphasis)

Further, the OCG, in its Follow-up Requisition, that was addressed to Mr. Clifford E. Warmington, which was dated 2010 December 16, asked, *inter alia*, the following questions:

*“Please provide an Executive Summary detailing your affiliation and/or association history with Mr. Donovan Nolan. The summary should provide answers to the following questions and detail the information which is requested:*

a. *A description of the relationship (professional and personal) which you have and/or had with Mr. Donovan Nolan;*

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<sup>54</sup> OCG Follow-up Requisition to Mr. Donovan Nolan. 2010 December 10. Question 3

<sup>55</sup> Donovan Nolan. Response to the OCG's Requisition. 2010 December 20. Question 3

- b. *Detail the nature of your relationship with Mr. Donovan Nolan;*
- c. *The date(s) on which you became familiar with Mr. Donovan Nolan and the circumstances relating to the same;*
- d. *The length of time you have known and/or been associated with Mr. Donovan Nolan;*
- e. *Any other particulars that are pertinent to the nature of your relationship with Mr. Donovan Nolan.”<sup>56</sup>*

In his sworn response to the OCG’s Requisition, which was dated 2011 January 4, Mr. Clifford Warmington stated, *inter alia*, as follows:

- a. *“There is no relationship with Mr. Nolan. Mr. Nolan was one of my teachers in high school.*
- b. *See (a) above*
- c. *In 1969 when he became my teacher.*
- d. ***I did not introduce Mr. Nolan to representative of Strathairn Construction Company Limited. I sent Mr. Nolan’s particular to Strathairn Construction Company among others company in case there was a position for which his services and skills could be utilized.***
- e. *Yes he provided me with his resume, certificate and qualification, and advised me that he was available for a position either in the Public or Private Sector. It is on the basis of this that I sent his particular to*

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<sup>56</sup> OCG Follow-up Requisition to Mr. Clifford Warmington. 2010 December 16. Question 22

*companies seeking assistance for him as I could find no position in the Public Sector. The date on which he provided his particular I can not recall.*

*f. None.”<sup>57</sup> (OCG Emphasis)*

The OCG, in its Follow-up Requisition, that was addressed to Mr. Clifford Warmington, which was dated 2010 December 16, also asked, *inter alia*, the following questions:

*‘The NCC application form, which was submitted for and/or on the behalf of SCCL on May 3, 2010, indicated that Mr. Donovan Nolan was the General Manager/Project Manager at SCCL. Having regard to the foregoing information, kindly detail the following information and answer the respective questions:*

- a. Are you aware of whether Mr. Donovan Nolan was employed to SCCL?*
- b. The date(s) on which Mr. Donovan Nolan held the post(s) and/or title(s) of General Manager/Project Manager at SCCL;*
- c. The date(s) on which Mr. Donovan Nolan demitted the said post(s) and/or title(s) listed in (b) above;*
- d. State the circumstances surrounding Mr. Donovan Nolan’s employment with SCCL;*
- e. The name(s) and title(s) of any person(s) who referred Mr. Donovan Nolan to SCCL;*

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<sup>57</sup> Clifford Warmington. Response to the OCG’s Follow-up Requisition. 2011 January 4. Question 22

*f. Any other particulars which are pertinent to Mr. Donovan Nolan's employment with SCCL.*"<sup>58</sup>

In his sworn response to the OCG's Requisition, which was dated 2011 January 4, Mr. Clifford Warmington stated, *inter alia*, that "I did not do a follow-up with Strathairn or any other as to whether or not Mr. Nolan was employed to them."<sup>59</sup>

The OCG, in its Follow-Up Requisition, that was addressed to Mr. Howard Charvis, which was dated 2010 December 10, also asked the following questions:

*"The NCC application form, which was submitted for and/or on the behalf of SCCL on May 3, 2010, indicated that Mr. Donovan Nolan was the General Manager/Project Manager at SCCL. Of note is that the Affidavit, swearing to the accuracy of information which is contained in the said application, was executed by you on March 30, 2010. Having regard to the foregoing information, kindly detail the following information and answer the respective questions:*

- a. The date(s) on which Mr. Donovan Nolan held the post(s) and/or title(s) of General Manager/Project Manager at SCCL;*
- b. The date(s) on which Mr. Donovan Nolan demitted the said post(s) and/or title(s) listed in (a) above;*
- c. State the circumstances surrounding Mr. Donovan Nolan's employment with SCCL;*
- d. The name(s) and title(s) of any person(s) who referred Mr. Donovan Nolan to SCCL;*

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<sup>58</sup> OCG Follow-up Requisition to Mr. Clifford Warmington. 2010 December 16. Question 24

<sup>59</sup> Mr. Clifford Warmington. Response to the OCG's Follow-up Requisition. 2011 January 4. Question 24

e. *Any other particulars which are pertinent to Mr. Donovan Nolan's employment with SCCL.*"<sup>60</sup>

In his sworn response to the OCG's Requisition, which was dated 2011 January 3, Mr. Howard Charvis stated, *inter alia*, as follows:

**"Mr. Nolan was offered the position to begin in May, but he did not take up the appointment. This information was supplied to your office through your Mr. McFarlane on June 17, 2010."**<sup>61</sup>

However, it is instructive to note that for the two (2) consecutive years of 2009 and 2010, Mr. Howard Charvis provided the NCC with information regarding Mr. Donovan Nolan's alleged association with SCCL.

Further, the Affidavits which were executed under the Voluntary Declarations Act, which were submitted with both applications, to the NCC, on 2009 April 28 and 2010 May 3, respectively, were signed by Mr. Howard Charvis on 2009 April 20 and 2010 March 30, respectively.

Having regard to the foregoing, the OCG found that contrary to the sworn assertions of Mr. Howard Charvis, as evidenced by the NCC Register of Public Sector Contractors (Grades 1-4) Application Form, Mr. Donovan Nolan, was never employed and/or worked for and/or on behalf of SCCL.

Consequently, it is instructive to note that on the NCC Register of Public Sector Contractors (Grades 1-4) Application Form, it is clearly stated that ***"IF THE INFORMATION PROVIDED BY THE APPLICANT ON WHICH EVALUATION AND AWARD(S) WERE BASED IS FOUND TO BE***

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<sup>60</sup> OCG's Follow-up Requisition to Howard Charvis. 2010 December 30. Question 23

<sup>61</sup> Howard Charvis. Response to the OCG's Requisition. 2011 January 3. Question 23

***ERRONEOUS THEN THE CONTRACTOR(S) SHALL NOT BE REGISTERED, OR IF ALREADY REGISTERED, THE REGISTRATION WILL BE REVOKED.”<sup>62</sup>***

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<sup>62</sup> NCC Registration of Public Sector Contractors Application Form

### ***Information gleaned from Bank Records***

In light of the allegations which were made that SCCL was ‘*Mr. Warmington’s company*’ and that he, Mr. Warmington, was in possession of SCCL’s cheque book, the OCG deemed it prudent to ascertain the particulars of SCCL’s Bank Accounts and, in particular, information with respect to (a) the signatories to the referenced accounts and (b) whether there has been any banking activity between any account which was/is held by SCCL and Mr. Warmington.

Consequently, the OCG, in its Statutory Requisition which was dated 2010 August 25, and which was addressed to Mr. Bruce F. Bowen, President & CEO of the BNS, asked the following questions:

*“The OCG has received evidence of account number 320048 being held in the name of Strathairn Construction Company Ltd. (SCCL) with the Bank of Nova Scotia Jamaica Ltd. In this respect, kindly provide the following particulars for account number 320048 (the account is recorded as being held at the Old Harbour Branch):*

*(a) The date on which the account was opened;*

*(b) If closed, the date on which the account was closed;*

*(c) Please confirm the branch at which the account is/was held;*

*(d) The name(s) of the current signatories to the account;*

*(e) The name(s) of any past signatories to the account;*

*(f) The name(s) of the primary account holder(s);*

(g) *The given address of the primary account holder(s).*

*Please provide copy(ies) of the identification(s) which was/were used to open the account and any other documentary evidence with regard to the account.”<sup>63</sup>*

In its response to the OCG’s Requisition, which was dated 2010 October 15, and which was provided by Ms. Naadia Walker, the Manager - Compliance, BNS, the Bank advised the OCG, *inter alia*, as follows:<sup>64</sup>

<b>Requisition / Question # 1</b>	
<b>Strathairn Construction Company Ltd – Account # 320048 (JMD)</b>	
<b>Date on which the account was opened</b>	April 4, 2003 <i>This account was closed June 20, 2006 due to inactivity. The account was subsequently reopen October 27, 2006 with an initial deposit of J\$3,200,000.00</i>
<b>Date on which the account was closed</b>	N/A
<b>Branch at which the account is / was held</b>	Old Harbour (41335)
<b>Name(s) of the current signatories to the account</b>	Howard Charvis, Lloyd Grant, Selvyn Grant
<b>Name(s) of any past signatories to the account</b>	<b>Effective 26/09/2007</b> Vincent Warmington, Nicole Warmington, Lloyd Grant, Leslie Henry
	<b>Effective 27/09/2006</b> Clifford Everald Warmington, Nicole Antionette Warmington, Lloyd George Grant
<b>Name(s) of the primary account holder(s)</b>	Strathairn Construction Company Ltd
<b>The given address of the primary account holder(s)</b>	40 East Street, Old Harbour P.O., St. Catherine

The OCG in its Requisition, which was dated 2010 August 25, also asked Mr. Bruce F. Bowen, President & CEO of the BNS, the following questions:

*“Kindly provide the following particulars for any account(s) which are and/or have been linked to Strathairn Construction Company Ltd. In this respect, kindly provide the following particulars:*

<sup>63</sup> OCG Requisition to BNS. 2010 August 25. Question 1

<sup>64</sup> BNS. Response to the OCG’s Requisition. 2010 October 15. Question 1

- (a) *The respective account(s) number(s);*
- (b) *The date(s) on which the account(s) was/were opened;*
- (c) *If closed, the date(s) on which the account(s) was/were closed;*
- (d) *Please confirm the branch at which each of the account(s) is/was held;*
- (e) *The name(s) of the current signatories to the account(s);*
- (f) *The name(s) of any past signatories to the account(s);*
- (g) *The name(s) of the primary account holder(s);*
- (h) *The given address of the primary account holder(s).”<sup>65</sup>*

In its response to the OCG’s Requisition, which was dated 2010 October 15, that was provided by Ms. Naadia Walker, the Manager - Compliance, BNS, the Bank advised, *inter alia*, as follows:<sup>66</sup>

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<sup>65</sup> OCG Requisition to BNS. 2010 August 25. Question 2

<sup>66</sup> BNS. Response to the OCG’s Requisition. 2010 October 15. Question 2

<b>Requisition / Question # 2- Associated account(s)</b>		
	<b><i>Chequing a/c # 165212 (JMD)- Strathairn Construction Company Ltd</i></b>	<b><i>Savings a/c # 413370098 (USD) - Strathairn Construction</i></b>
<b>Date on which the account was opened</b>	June 18, 2000	May 18, 1994
<b>Date on the account was closed</b>	June 8, 2006	November 5, 2009
<b>Branch at which the account is / was held</b>	Old Harbour (41335)	Old Harbour (41335)
<b>Name(s) of the current signatories to the account</b>	<i>Clifford Everald Warmington &amp; Leslie Henry</i>	<i>Clifford Everald Warmington &amp; Leslie Henry</i>
<b>Name(s) of any past signatories to the account</b>	N/A	N/A
<b>Name(s) of the primary account holder(s)</b>	Strathairn Construction Company Ltd	Strathairn Construction Company Ltd
<b>The given address of the primary account holder(s)</b>	40 East Street, Old Harbour P.O., St. Catherine	40 East Street, Old Harbour P.O., St. Catherine

The OCG, in its Requisition which was dated 2010 August 25, also asked Mr. Bruce F. Bowen, President & CEO, BNS, the following questions:

*“Kindly state whether there has/have been any transaction(s) (i.e. bank transfers etc.) between any accounts, past or present, belonging to Strathairn Construction Company Ltd. and any account belonging to Mr. Clifford Everald Errol Warmington and/or Mr. Everald Warmington. If yes, please provide the following particulars:*

- (a) The date(s) of any transaction(s) which has/have been identified;*
- (b) The nature of the transaction(s) which has/have been identified;*
- (c) The particulars of the account(s) from and to which any transfer was made;*
- (d) The name(s) of the account holder(s) who initiated the transaction(s);*

(e) *The associated amount(s) of the transaction(s);*

(f) *Any other particulars that are pertinent to the transaction(s).*”<sup>67</sup>

In its response to the OCG’s Requisition, which was dated 2010 October 15, that was provided by Ms. Naadia Walker, the Manager - Compliance, BNS, the Bank advised, *inter alia*, as follows:

- **“There were instances wherein, on the same date amounts deposited to Clifford Everald Warmington’s personal account cheques drawn on Strathairn Construction Company Ltd a/c # ( Appendix #1)**
- **On November 5, 2009 USD savings account # 41337098 held in the name of Strathairn Construction Company Ltd was closed and the proceeds of US\$2,533.90 was transferred to a new account opened in the names of Clifford Everald Warmington & Nicole Warmington - Granston (See Appendix #2)”**<sup>68</sup>  
(OCG Emphasis)

The particulars of Appendix 1, which was mentioned above, are detailed below:<sup>69</sup>

Date	Amount
December 21, 2006	\$50,000.00
March 21, 2007	\$100,000.00
April 20, 2007	\$20,000.00
May 1, 2007	\$60,000.00
May 18, 2007	\$10,000.00
May 22, 2007	\$100,000.00
June 8, 2007	\$20,000.00

<sup>67</sup> OCG Requisition to BNS. 2010 August 25. Question 4

<sup>68</sup> BNS. Response to the OCG’s Requisition. 2010 October 15. Question 4

<sup>69</sup> BNS. Response to the OCG’s Requisition. 2010 October 15. Question 4

<b>Date</b>	<b>Amount</b>
July 5, 2007	\$450,000.00
July 11, 2007	\$50,000.00
July 16, 2007	\$60,000.00
August 17, 2007	\$100,000.00
September 13, 2007	\$50,000.00
December 6, 2007	\$1,000,000.00
December 7, 2007	\$1,000,000.00
June 13, 2008	\$60,000.00
September 15, 2008	\$30,000.00
December 22, 2008	\$100,000.00
March 23, 2009	\$460,000.00
March 27, 2009	\$60,000.00
May 1, 2009	\$60,000.00
July 30, 2009	\$565,000.00
August 10, 2009	\$2,100,000.00
September 7, 2009	\$65,000.00
September 11, 2009	\$55,000.00
October 16, 2009	\$75,000.00
November 6, 2009	\$75,000.00
December 4, 2009	\$75,000.00
February 4, 2010	\$1,255,000.00
February 15, 2010	\$149,000.00
March 16, 2010	\$250,000.00
March 18, 2010	\$225,000.00
April 1, 2010	\$75,000.00
April 16, 2010	\$125,000.00
May 3, 2010	\$75,000.00
July 1, 2010	\$75,000.00
September 6, 2010	\$150,000.00

The OCG, in its Follow-up Requisition, which was dated 2010 December 16, asked Ms. Naadia Walker, the Manager - Compliance of BNS, the following questions:

*“Kindly state whether there has/have been any recent transaction(s) (i.e. bank transfers etc.) between any accounts belonging to Strathairn Construction Company Ltd. and any account belonging to Mr. Clifford Everald Errol Warmington and/or Mr. Everald Warmington, during the period of October 2010 and December 15, 2010. If yes, please provide the following particulars:*

- (a) The date(s) of any transaction(s) which has/have been identified;*
- (b) The nature of the transaction(s) which has/have been identified;*
- (c) The particulars of the account(s) from and to which any transfer was made;*
- (d) The name(s) of the account holder(s) who initiated the transaction(s);*
- (e) The associated amount(s) of the transaction(s);*
- (f) Any other particulars that are pertinent to the transaction(s).*

*Please provide documentary evidence, where possible, to substantiate your assertions/responses.”*<sup>70</sup>

In its response to the OCG’s Requisition, which was dated 2011 January 3, which was submitted by Ms. Naadia Walker, the Manager - Compliance, BNS, the Bank advised, *inter alia*, as follows:

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<sup>70</sup> OCG Follow-up Requisition to BNS. 2010 December 16.Question 1

*“Similar transactions between a/cs # 320048 & 320031 (Oct. 2010 - Dec. 15, 2010)”<sup>71</sup>*

(a)	Date of any transaction	October 29, 2010
(b)	Nature of Transaction	Cheque lodgement
(c)	Particulars of account	Cheque# 2304 drawn on a/c # 320048 (Strathairn Construction Company) lodged to a/c# 320031 (Clifford Everalld Warmington & Nicole Warmington-Granston) - <b>See Appendix 1 attached.</b>
(d)	Name of account holder who initiated the transaction	Unable to determine
(e)	Associated amount	\$75,000.00 JMD
(f)	Any other particulars pertinent to the transaction	None

*USD Bank Account*

It is instructive to note that the OCG, in its Follow-up Requisition to Mr. Clifford Warmington, which was dated 2010 December 16, asked, *inter alia*, the following question:

*“Are you aware of a Bank of Nova Scotia US dollar account which is/was held in the name of SCCL?”*

*a. If yes, please detail the following information and answer the respective questions:*

*i. Is the referenced bank account still active?*

*ii. Were/are you a signatory to the referenced SCCL bank account?*

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- iii. *When and how did you become a signatory to the referenced bank account?*
  - iv. *Under whose authority were you made a signatory to the referenced bank account?*
  - v. *Please provide the name(s) and title(s) of the other signatories, past and present, of the referenced SCCL bank account;*
  - vi. *To the best of your knowledge, please provide the name(s) and title(s) of the person(s) who opened the referenced bank account;*
  - vii. *If the account has been closed, please detail (a) how the funds, if any, were transferred and/or disposed of and (b) the name(s) and title(s) of the person(s) and/or entity(ies) to whom such funds were transferred and/or given;*
  - viii. *Any other particulars that are pertinent to the referenced bank account which is/was held in the name of SCCL.*
- b. *If no, please provide the name(s) and title(s) of the person(s) who would have knowledge about the existence of such a bank account.*<sup>72</sup>

In his response to the OCG's Requisition, which was dated 2011 January 4, Mr. Warmington stated, *inter alia*, as follows:

a. *"I am aware of such an account.*

i. *No*

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<sup>72</sup> OCG Follow-up Requisition to Mr. Warmington. 2010 December 16. Question 19

- ii. *Leslie Henry and myself.*
- iii. *Sometime in the 1990s while residing abroad and on one of my visit [sic] to Jamaica, I was approached by Leslie Henry, some one I knew and thought was trustworthy at the time. He asked for my help in opening a business account for the purpose of facilitating an over-sea's operation, of which he offered me a percentage on the returns. We opened the Account with a cheque from my personal account out of the United States. His business however did not materialized [sic].*
- iv. *No authority was sought if I can recall because it was money from my personal Account and Leslie Henry advised me then that he could use the particular Company for his transaction.*
- v. *See (ii) above.*
- vi. *See (ii) above.*
- vii. *The Account was closed and the amount that was left, was part of the amount provided my [sic] me to Leslie Henry and it was claimed by me.*
- viii. *No.”<sup>73</sup> (OCG Emphasis)*

Further, the OCG, in its Follow-up Requisition, that was addressed to Mr. Clifford Warmington, which was dated 2010 December 16, also asked, *inter alia*, the following question:

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<sup>73</sup> Clifford Warmington. Response to the OCG's Requisition. 2011 January 4. Question 19

*“Have the proceeds of a bank account, which was held in the name of SCCL ever been deposited into any personal accounts which were held in your name? If yes, please detail the following information and answer the respective questions:*

- a. The reason(s), rationale and/or justification for the proceeds being deposited into your bank account(s);*
- b. The date(s) on which same was done;*
- c. The circumstances relating to same;*
- d. The amount(s) which was deposited into your account(s);*
- e. The name(s) and title(s) of the SCCL Representative who authorized the deposit of the referenced amount(s);*
- f. Were you a signatory to the SCCL account from which the funds were taken?*
- g. When and how did you become a signatory to the referenced SCCL bank account?*
- h. Under whose authority were you made a signatory to the referenced SCCL bank account?*
- i. Any other particulars that are pertinent to the deposit of funds into your personal bank account(s) from the SCCL bank account.”<sup>74</sup>*

In his sworn response to the OCG’s Requisition, which was dated 2011 January 4, Mr. Warmington stated, *inter alia*, that “*I can not recall how I used my money that came from*

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<sup>74</sup> OCG Follow-up Requisition to Mr. Warmington. 2010 December 16. Question 20

*the account. This money as I stated did not come from any company or individual. **It was my personal funds** used to assist some one who turned out to be a damn thief and a liar.”<sup>75</sup> (OCG Emphasis)*

Based upon the information which was provided by BNS, to the OCG, it was revealed that a USD Savings Account (assigned number – 413370098) was opened on 1994 May 18 and closed on 2009 November 5, in the name of SCCL. The proceeds of the referenced bank account were reportedly transferred to a new account in the name of Mr. Clifford Warmington and Ms. Nicole Warmington.

The OCG found that this was the only USD bank account that was held with the BNS and, which was held in the name of SCCL.

The signatories to the referenced bank account were Mr. Clifford E. Warmington and Mr. Leslie Henry.

It is instructive to note that Mr. Warmington, in his response, to the OCG’s Requisition, which was dated 2011 January 4, stated, *inter alia*, that “*Sometime in the 1990s while residing abroad and on one of my visit to Jamaica, **I was approached by Leslie Henry .... He asked for my help in opening a business account for the purpose of facilitating an over-sea’s operation, of which he offered me a percentage on the returns. We opened the Account with a cheque from my personal account out of the United States. His business however did not materialized [sic].***”<sup>76</sup>

However, it is instructive to note that the form with the “BUSINESS CUSTOMER DETAILS”, which was dated 1994 May 18, which appears to have been signed by Mr. Warmington, for the referenced USD bank account, indicated, *inter alia*, as follows:

**“ACCOUNT ACTIVITY- SOURCE & AMOUNT OF INITIAL DEPOSIT:**

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<sup>75</sup> Clifford Warmington. Response to the OCG’s Requisition. 2011 January 4. Question 20

<sup>76</sup> Clifford Warmington. Response to the OCG’s Requisition. 2011 January 4. Question 19

**\$2000.00...drawn on Chemical Bank of N.Y. Flatbush Ave... C/A operated in New York N/O Strathairn Construction Co. Inc.**<sup>77</sup> (OCG Emphasis)

At this juncture, it must be noted that, in his sworn response to the OCG's Requisition, which was dated 2011 January 4, Mr. Warmington had asserted that the SCCL US Dollar account was opened with money from " *my personal account out of the United States.*"

It is instructive to note that the OCG received an email on Tuesday, 2010 August 17, at 10:39 a.m. from 'Source Y', in which the following was revealed that "**It may be a coincidence but Mr. Warmington had a construction company in Brooklyn, New York with the [sic] substantially the same name...**" In the referenced email, particulars of the company 'STRATHAIRN CONSTRUCTION COMPANY INCORPORATED' were provided to the OCG.

Further, it must be noted that on the NCC Register of Public Sector Contractors (Grades 1-4) Application Form, which was submitted to the NCC on 2007 January 10, by Mr. Clifford Warmington, the following particulars, *inter alia*, were detailed:

*"Strathairn Construction Company Ltd. was formed and registered in Jamaica in 1981. It undertook several projects locally until **1985 when the President and Chief Share Holder migrated to the United States. In New York Strathairn Construction Co. Inc.** was incorporated in the State of New York and did several major project[sic] in New York and New Jersey. It also undertook Construction Management Services to Developers, Homeowners and Contractors..."*<sup>78</sup> (OCG Emphasis)

The OCG must highlight the fact that the foregoing application form was submitted, to the NCC, along with an 'AFFIDAVIT UNDER THE VOLUNTARY DECLARATION

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<sup>77</sup> BNS- BUSINESS CUSTOMER FORM- 1994 May 18

<sup>78</sup> 2007 NCC Registration of Public Sector Contractors Application Form

ACT', which was completed and sworn to at a 20 Belmont Road, Kingston 5 address, by Mr. Clifford Warmington, on 2007 January 8.

It is also instructive to note that when the OCG asked Mr. Warmington about his association with the New York based company, Strathairn Construction Company Inc., Mr. Clifford Warmington, in his response to the OCG's Requisition, which was dated 2010 November 24, stated, *inter alia*, as follows:

*"I can not recall the full details on the founding of Strathairn Construction Company Incorporated. **I recall that a group of individuals established that corporation. I was associated with it but I am unable to give detail on the date on which it was incorporated or whether or not that entity is still in operation. I do not recall being a shareholder. I know that there was no relationship with the Jamaican entity of Strathairn Construction Company Limited.** I was involved in the Construction Management aspect of Strathairn Construction Company Incorporated. I can not recollect any further detail on that corporation."*<sup>79</sup>

However, based upon the compendium of documentary and sworn evidence with which it is siezed, the OCG found that the money which was used to open the SCCL USD bank account originated from an account in the name of Strathairn Construction Company Inc. and not a "**personal account out of the United States**" in the name of Mr. Clifford Everald Warmington, as had been asserted by Mr. Warmington.

Further, it is instructive to note that the OCG also asked Mr. Warmington "*Under whose authority were you made a signatory to the referenced bank account?*"<sup>80</sup>

In response to the foregoing question, Mr. Warmington indicated that "**No authority was sought if I can recall because it was money from my personal Account and Leslie**

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<sup>79</sup> Clifford Warmington. Response to the OCG's Requisition. 2010 November 24. Question 49

<sup>80</sup> OCG Follow-up Requisition to Mr. Warmington. 2010 December 16. Question 19

*Henry advised me then that he could use the particular Company for his transaction.*<sup>81</sup>

The OCG found that the foregoing would suggest that the USD Bank account was opened in the name of SCCL on the behest of Mr. Henry, who had allegedly advised Mr. Warmington that he could use the referenced company for the transaction.

Interestingly, the OCG found that at the time that the referenced USD bank account was opened, documents with the seal of SCCL were utilised. In point of fact, by way of a letter, which was dated 1994 May 18, the Board of Directors of SCCL, wrote to the BNS and indicated, *inter alia*, as follows:

*“We quote hereunder a true excerpt from the Minutes of the Meeting of the BOARD of DIRECTORS of this Company held on the sixteenth day of May 1994 at which meeting a quorum was present.*

*RESOLVED that the Directors hereby confirm the existing liabilities of the Company to The Bank of Nova Scotia Jamaica Limited.*

*AND FURTHER RESOLVED that The Bank of Nova Scotia Jamaica Limited be and is hereby requested and authorised to extend to the Company banking facilities by way of Demand Notes, Overdrafts, Letters of Credit, etc. in such amount as the Directors from time to time see fit to request and as the Bank from time to time may permit and that the Bank do honour such loans or overdrafts on the signatures as advised from time to time.”*<sup>82</sup>

The foregoing letter appears to have been signed by Mr. Warmington.

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<sup>81</sup> Response from Mr. Warmington. 2011 January 4. Question 19(iv)

<sup>82</sup> SCCL. Letter to BNS. 1994 May 18

In another letter, which was dated 1994 May 18, and which appears to have been signed by Mr. Warmington in his capacity as President of SCCL, the following, *inter alia*, was indicated:

*“This LETTER IS TO CERTIFY that the officers of Strathairn Construction Company Ltd. are as follows:*

*C. Everald Warmington – President*

*Leslie C. Henry - Secretary*

*and that the following are the directors of the Company: Strathairn Construction Company Ltd.*

*C. Everald Warmington*

*Leslie C. Henry*

*Carmen Anderson*

*We hereby undertake to notify you of any change in the directorate and/or officers of the Company, and until you receive such written notification, you may assume for the purpose of conducting the bank account that the above named persons are the officers and directors of the Company and in charge of its affairs.”<sup>83</sup>*

The OCG also found that the BNS form which was entitled “BUSINESS CUSTOMER DETAILS”, and which was dated 1994 May 18, listed, *inter alia*, Mr. C. Everald Warmington as the President of SCCL. This form appears to have been signed by Mr. Warmington, and indicated that the business and purpose of the account was for “*General Construction: for settlement of General Expenses*”.

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<sup>83</sup> SCCL. Letter to BNS. 1994 May 18

It is critical to highlight the fact that the first official recorded association between Mr. Clifford Warmington and SCCL, is 2003 March 26, at which time the COJ records revealed that Mr. Clifford Warmington was appointed a Director of SCCL.

Nevertheless, the documentary evidence which was provided to the OCG by the BNS, and which allegedly emanated from representatives of SCCL themselves, speaks to Mr. Warmington being an alleged Director of SCCL from as early as 1994 May 18. The OCG is, therefore, faced with separate and distinct, official documentary evidence, regarding SCCL, which are contradictory in substance.

### Other Banking Details

The OCG, in reviewing the information which was received from BNS, also found the following:

A. On the BNS “*Information Gathering Form- Account for a Private Corporate Entity*”, which appears to have been signed by Mr. Lloyd Grant and Mr. Howard Charvis, on 2009 February 26, the following was revealed:

1. Question # 14B of the referenced form states as follows:

**“Are any of the signatories, officers, shareholders with more than 25% ownership, or their immediate family members; a current or former senior official in the executive, legislative, administrative, military or judiciary of a foreign government or a senior officer of a foreign Political Party, or a senior executive of any entity owned by a foreign government or do they maintain a personal or professional relationship with any such official?”**<sup>84</sup>(OCG Emphasis)

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<sup>84</sup> BNS- “*Information Gathering Form- Account for a Private Corporate Entity*” 2009 February 26. Question # 14B

In response to this question, the SCCL Representatives indicated “No”. However, the SCCL representatives also indicated as follows: “*N.B. Warmington whom information can be given & who verifies cheques is a PEP.*”<sup>85</sup>

2. Question # 15C of the referenced form states as follows:

*“Provide names and applicable instructions for persons **not** authorized to sign on the account, but authorized to obtain the account balance, collect account statements, mail, etc. ID documents are also required as per item #14:”*<sup>86</sup>

In response to this question, the SCCL Representatives indicated that “*C.E. Warmington also to verify cheques*”<sup>87</sup>

3. It is also instructive to note that as per the requirement for identification for Questions 14 and 15C above, a copy of a New York State Driver’s License was provided for Mr. Clifford Warmington and a copy of his Taxpayer Registration Number.

B. On the BNS FORM, which was entitled “*OPENING AND OPERATION OF CORPORATE ACCOUNTS PRIVATELY HELD*”, which appears to have been signed by Mr. Lloyd Grant and another SCCL Representative on 2007 September 26, the following was revealed:

1. Question 8 of the referenced form states as follows:

*“State the name and address of primary company contact.”*<sup>88</sup>

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<sup>85</sup> BNS- “*Information Gathering Form- Account for a Private Corporate Entity*” 2009 February 26 – “PEP” – Politically Exposed Person

<sup>86</sup> BNS- “*Information Gathering Form- Account for a Private Corporate Entity*” 2009 February 26. Question # 15C

<sup>87</sup> BNS- “*Information Gathering Form- Account for a Private Corporate Entity*” 2009 February 26

In response to this question, the SCCL Representatives indicated as follows:  
“Clifford Warmington...”<sup>89</sup>

2. Question 14 of the referenced form states as follows:

**“Please provide personal information for each officer, director, and shareholder with more than 10% ownership of the company and provide two pieces of ID in original form or notarized copy (one of which must be issued by a government body), which bears a photograph and a signature.”**<sup>90</sup>(OCG Emphasis)

In response to this question, the SCCL Representatives indicated, *inter alia*, as follows:

*“Name Clifford Everalld Warmington  
Date of Birth 20.2.1952  
Title President  
ID Number NY D/L # 932103710”*<sup>91</sup>

C. On a BNS Form, which was entitled “*Business Customer Details- Addendum*”, which was executed on 2007 September 26, with respect to “**Beneficial Shareholders with more than 10% ownership.**”<sup>92</sup> the only person identified was Mr. Clifford Warmington of a 40 East Street, Old Harbour, address.

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<sup>88</sup> BNS Form- “*OPENING AND OPERATION OF CORPORATE ACCOUNTS PRIVATELY HELD*”. 2007 September 26. Question 8

<sup>89</sup> BNS Form- “*OPENING AND OPERATION OF CORPORATE ACCOUNTS PRIVATELY HELD*”. 2007 September 26.

<sup>90</sup> BNS Form- “*OPENING AND OPERATION OF CORPORATE ACCOUNTS PRIVATELY HELD*”. 2007 September 26. Question 14.

<sup>91</sup> BNS Form- “*OPENING AND OPERATION OF CORPORATE ACCOUNTS PRIVATELY HELD*”. 2007 September 26. Question 14.

<sup>92</sup> BNS Form- “*Business Customer Details-Addendum*”. 2009 September 26

It is also instructive to note that on an identical BNS Form, which was entitled “*Business Customer Details- Addendum*”, and which was executed on 2006 September 27, with respect to “***Beneficial Shareholders with more than 10% ownership.***”,<sup>93</sup> the only persons who were identified were Mr. Clifford Warmington of a 40 East Street, Old Harbour address, and a Mr. Lloyd Grant.

However, in that instance, and under the heading “***PERCENTAGE OF OWNERSHIP***”, the SCCL Representatives indicated that Mr. Clifford Warmington held “**100%**” of the shares in SCCL.(OCG Emphasis)

D. By way of a letter, which was dated 2009 November 6, under the signatures of Mr. Vernal Burton and Mr. Selvyn Foster, the following, *inter alia*, was communicated to the Manager, BNS, Old Harbour:

*“The level of authority extended to Mr. Warmington in his capacity as a Consultant, as it relates to our account with your Bank, is that he can request information on the account, likewise the Bank can seek information or clarification from him.*

*The fee paid to the Consultant is calculated as a percentage of each project. The fee varies from a low of 1% to a high of 5%, depending on the size of the project and the work involve [sic].”<sup>94</sup>*

E. On 2009 September 28, a SCCL BNS cheque was issued to Euro Star Motors Ltd. in the amount of \$4,315,606.00.

The OCG, in its Requisition that was addressed to Mr. Howard Charvis, which was dated 2011 January 7, asked, *inter alia*, the following question:

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<sup>93</sup> BNS Form- “*Business Customer Details-Addendum*”. 2006 September 27

<sup>94</sup> SCCL. Letter to the BNS. 2009 November 6

*“On September 28, 2009 SCCL paid Euro Star Motors Ltd. a total of \$4,315,606.00. Having regard to the foregoing, kindly detail the following information and answer the respective questions:*

- a. The reasons, rationale and/or justification for such a payment to Euro Star Motors Ltd.;*
- b. If the referenced amount was used to purchase a motor vehicle, kindly provide the vehicle description and the serial number for the referenced motor vehicle;*
- c. Any other particulars which are pertinent to the referenced amount which was paid to Euro Star Motors Ltd. by SCCL.”<sup>95</sup>*

In his response to the OCG’s Requisition, which was dated 2011 January 13, Mr. Charvis indicated, *inter alia*, that *“Payment was part of our loan repayment to Mr. Warmington who requested that the payment be made directly to Euro Star Motors.”<sup>96</sup>*

However, it is instructive to note that the OCG, in its Requisition which was dated 2010 November 9, and which was addressed to Mr. Clifford Warmington, asked, *inter alia*, the following question:

*“Did SCCL, its Agent(s), Employee(s), Officer(s), Official(s), and/or anyone acting on its behalf, at any time, (a) pay for (b) finance the purchase of and/or (c) loan you any money to purchase a motor vehicle? ....”<sup>97</sup>*

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<sup>95</sup> OCG Requisition to Mr. Howard Charvis. 2011 January 7. Question 7

<sup>96</sup> Mr. Howard Charvis. Response to the OCG’s Requisition. 2011 January 13. Question 7

<sup>97</sup> OCG Requisition to Mr. Clifford Warmington. 2010 November 9. Question 46

In his sworn response to the OCG's Requisition, which was dated 2010 November 24, Mr. Warmington indicated "No".

During the conduct of its Investigation, the OCG received the full cooperation and support of BNS in the provision of the information which was requested regarding the banking records of SCCL. Nonetheless, the OCG recognized that there may have been some reservation, on the part of the BNS, to disclose the information which was requisitioned in light of the bank's policy of maintaining the strict confidentiality and secrecy of its clients' information.

As such, the OCG believes that it is extremely important to publicly highlight the fact that the Contractor General Act, by its expressed provisions, imbues to a Contractor General certain over-riding powers, in the public interest, to demand, to receive and to publish such information in the pursuit of its statutory investigations.

In the foregoing regard, Section 18 (4) of the Contractor General Act provides as follows:

*"Any obligation to maintain secrecy or any restriction on the disclosure of information or the production of any document or paper or thing imposed on any person by or under the Official Secrets Act, 1911 to 1939 of the United Kingdom (or any Act of the Parliament of Jamaica replacing the same in its application to Jamaica) or, subject to the provisions of this Act, by any other law (including a rule of law) shall not apply in relation to the disclosure of information or the production of any document or thing by that person to a Contractor-General for the purpose of an investigation ...".*

Further, Section 28 (4) of the Contractor General Act specifically provides that "A Contractor-General may, in the public interest, from time to time, publish in such manner as he thinks fit, reports (of his Investigations) ... but no such report shall be published

*until after it has been laid (in the House of Representatives and the Senate) pursuant to subsection (3)”*

***Payments which were made to Mr. Clifford Warmington by SCCL***

The OCG, in its Requisitions, which were dated 2010 October 26, asked Mr. Selvyn Foster, Mr. Howard Charvis and Mr. Lloyd Grant, *inter alia*, the following questions:

*“Did Mr. Clifford Everald Warmington, at any time, work as a Consultant for and/or on behalf of SCCL?”*

- i. If yes, please provide the following information:*
  - a. The date(s) on which Mr. Warmington worked as Consultant for and/or behalf of SCCL;*
  - b. The circumstances relating to the same;*
  - c. The amount(s) of commission and/or payment(s) which was/were earned by Mr. Warmington;*
  - d. The means by which Mr. Warmington received the said commission and/or payment(s);*
  - e. The manner in which commission and/or payment(s) was/were made to Mr. Warmington;*
  - f. The date(s) on which Mr. Warmington received the said commission and/or payment(s);*
  - g. The project(s) for which Mr. Warmington was responsible and/or associated with;*

- h. Please state whether Mr. Warmington's said relationship and/or association with SCCL involved any project(s) which involved a GOJ contract;*
- i. Please state whether Mr. Warmington received any commission and/or payment(s) with respect to his involvement and/or association with any project(s) which involved a GOJ contract.*
- ii. If no, please provide the following information:*
  - a. Did Mr. Warmington, at any time, receive any form of commission and/or payment(s) from SCCL, its Agent(s), and Official, Officer(s), Employee and/or anyone acting on its behalf?*
  - b. Please detail the nature and/or scope of Mr. Warmington's association and/or interaction with SCCL during the period of January 2007 to October 2010;*
  - c. The date(s) on which Mr. Warmington was engaged in any project(s) with SCCL;*
  - d. Please state whether any of the projects which you have identified involved a GOJ contract, partnership and/or commercial agreement. If so, please provide the particulars of the same.”<sup>98</sup>*

In his response to the OCG's Requisition, which was dated 2010 November 22, Mr. Howard Charvis stated, *inter alia*, as follows:

*“Yes.*

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<sup>98</sup> OCG Requisitions to Mr. Howard Charvis, Selvyn Foster and Lloyd Grant. 2010 October 26. Question 41

(i)(a) Mr. Warmington is consulted for professional advice on construction management issue [sic] as the need arise, and where appropriate.

(b) *In circumstances which do not conflict with his position as a Member of Parliament or a Minister of Government.*

(c) *No commission was paid. Mr. Warmington was paid a professional fee commensurate with the complexity of the purpose for which he is retained or engaged. Total payment made for the period is \$9,008,465.00 (see attached Shedule [sic])*

(d) *See (c) above.*

(e) *Mr. Warmington was paid by cheque.*

(f) *See attached schedule.*

(g) *Mr. Warmington was never responsible for projects.*

(h) *See (g) above.*<sup>99</sup>(OCG Emphasis)

Of note is the fact that all three (3) gentlemen provided substantially the same response to the foregoing question. However, Mr. Selvyn Foster, in his response to the OCG's Requisition, which was dated 2010 November 18, indicated, *inter alia*, that the "*Total payments made for the period is \$7,364,100.00.*"<sup>100</sup>

In this regard, the OCG found that Mr. Lloyd Grant and Mr. Howard Charvis provided a total of the payments, which were made to Mr. Clifford E. Warmington, for the period of 2007 October to 2010 October. Mr. Selvyn Foster, on the other hand, provided a total of

<sup>99</sup> Howard Charvis. Response to the OCG's Requisition. 2010 November 22. Question 22

<sup>100</sup> Selvyn Foster. Response to the OCG's Requisition. 2010 November 18. Question 41

the payments, which were made to Mr. Clifford E. Warmington, for the period of 2008 November to 2010 October.

All three (3) gentlemen also provided a schedule of the payments which they asserted were made to Mr. Clifford E. Warmington. Further, it is instructive to note that they indicated that the detailed amount, which was paid to Mr. Warmington, was for 'professional fees', in relation to services which were provided to SCCL by Mr. Warmington.

The table below reflects the information, which was provided by both Mr. Lloyd Grant and Mr. Howard Charvis in their respective responses to the OCG's Requisitions, which were dated 2010 November 17 and 2010 November 22:

<b>PAYMENTS MADE TO C.E. WARMINGTON PERIOD 2007 OCTOBER TO 2010 OCTOBER</b>		
<b>DATE</b>	<b>AMOUNT</b>	<b>DESCRIPTION</b>
19-May-08	\$110,130.00	Consultancy
13-Jun-08	\$60,000.00	Consultancy
20-Jun-08	\$362,150.00	Loan repay
14-Jul-08	\$50,000.00	Consultancy
21-Jul-08	\$306,810.00	Consultancy
25-Jul-08	\$184,275.00	Loan repay
29-Jul-08	\$ 20,000.00	Consultancy
25-Aug-08	\$75,000.00	Consultancy
1-Sep-08	\$35,000.00	Consultancy
8-Sep-08	\$8,000.00	Consultancy
15-Sep-08	\$30,000.00	Consultancy
19-Sep-08	\$20,000.00	Consultancy
20-Sep-08	\$50,000.00	Consultancy
26-Sep-08	\$220,950.00	Consultancy
26-Sep-08	\$112,050.00	Consultancy
6-Nov-08	\$ 313,000.00	Loan repay
24-Nov-08	\$25,000.00	Consultancy
5-Dec-08	\$317,100.00	Consultancy

<b>PAYMENTS MADE TO C.E. WARMINGTON PERIOD 2007 OCTOBER TO 2010 OCTOBER</b>		
<b>DATE</b>	<b>AMOUNT</b>	<b>DESCRIPTION</b>
22-Dec-08	\$405,000.00	Consultancy
30-Jan-09	\$100,000.00	Consultancy
23-Mar-09	\$460,000.00	Loan repay
27-Mar-09	\$60,000.00	Rent
1-May-09	\$60,000.00	Rent
10-Jul-09	\$65,000.00	Rent
30-Jul-09	\$565,000.00	Purchase Motor Vehicle & Rent
10-Aug-09	\$2,100,000.00	Purchase Motor Vehicle
7-Sep-09	\$65,000.00	Rent
15-Oct-09	\$75,000.00	Rent
6-Nov-09	\$75,000.00	Rent
4-Dec-09	\$75,000.00	Rent
4-Feb-10	\$1,255,000.00	Loan repay
15-Feb-10	\$149,000.00	Loan repay
15-Mar-10	\$250,000.00	Loan repay
18-Mar-10	\$225,000.00	Rent
1-Apr-10	\$75,000.00	Rent
16-Apr-10	\$125,000.00	Loan repay
3-May-10	\$75,000.00	Rent
4-Jun-10	\$75,000.00	Rent
1-Jul-10	\$75,000.00	Rent
6-Sep-10	\$150,000.00	Rent
8-Oct-10	\$75,000.00	Rent
29-Oct-10	\$75,000.00	Rent
<b>TOTAL</b>	<b>\$ 9,008,465.00</b>	

Having regard to the foregoing, Mr. Howard Charvis, Mr. Selvyn Foster and Mr. Lloyd Grant all asserted that the above payments were paid to Mr. Warmington as “professional fee commensurate with the complexity of the purpose for which he is retained or engaged.”

However, the OCG found that the table above also highlighted fees for (a) rent, (b) loan repayment and (c) the purchase of a motor vehicle.

Consequently, the OCG, in its Requisitions which were dated 2010 December 10, and which were addressed to Mr. Howard Charvis, Mr. Lloyd Grant and Mr. Selvyn Foster, asked, *inter alia*, the following question:

*“In your response to the OCG’s Requisition, ...you stated, inter alia, that “No commission was paid. Mr. Warmington was paid a professional fee commensurate with the complexity of the purpose for which he is retained or engaged... (see attached schedule).”*

*However, in the referenced schedule you have included particulars for (i) loan repayment, (ii) purchase of motor vehicle and (iii) rent. Having regard to the foregoing information, kindly detail the following information and answer the respective questions:*

- a. Explain the particulars of the payments which were made to Mr. Warmington, by SCCL, for (i) loan repayment, (ii) purchase of motor vehicle and (iii) rent;*
- b. State the reasons, rationale and/or justification for each payment for (i) loan repayment, (ii) purchase of motor vehicle and (iii) rent by the SCCL to Mr. Warmington;*

c. *Any other particulars which are pertinent to the referenced payments for (i) loan repayment, (ii) purchase of motor vehicle and (iii) rent by the SCCL to Mr. Warmington.*”<sup>101</sup>

Mr. Selvyn Foster, in his response to the OCG’s Requisition, which was dated 2010 December 30, indicated, *inter alia*, as follows:

“a) (i): *I have been informed that during the time when Mr. Warmington served as director and CEO he made loans to the company which the company repays periodically when funds are available.*

(ii) : *The company purchased a 2003 SUV from Mr. Warmington for \$2.6m.*

(iii) : *Please see 6 above.*

(b) *Please see (a) above.*

(c) *None.*”<sup>102</sup>

Mr. Lloyd Grant, in his response to the OCG’s Requisition, which was dated 2010 December 30, indicated, *inter alia*, as follows:

“a. (i) *During the time Mr. Warmington served as director and CEO, he Made [sic] loads [sic] to the company which the company repays periodically when funds are available.*

(ii) *The company purchased a 2003 SUV from Mr. Warmington for \$2.6m.*

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<sup>101</sup> OCG Requisitions to Mr. Howard Charvis, Selvyn Foster and Lloyd Grant. 2010 December 10. Question 20

<sup>102</sup> Mr. Selvyn Foster. Response to the OCG’s Requisition. 2010 December 30. Question 20

(iii) See 5 above.

b. See a(i) above.

c. None.”<sup>103</sup>

Mr. Howard Charvis, in his response to the OCG’s Requisition, which was dated 2010 December 30, indicated, *inter alia*, as follows:

(a) “(i) During the time Mr. Warmington served as director and CEO, he made loans to the company which the company repays periodically when funds become available.

(ii) The company purchased a 2003 SUV from Mr. Warmington for \$2.6m

(iii) See 6(a) above.

(b) See (a) above.

(c) None.”<sup>104</sup>

It should be noted that in Questions # 6 and #5, which were referred to by Mr. Foster, Mr. Howard Charvis and Mr. Lloyd Grant, in their respective responses, the OCG had asked the following question:

“Does SCCL pay rent for its current physical office space?”

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<sup>103</sup> Mr. Lloyd Grant. Response to the OCG’s Requisition. 2010 December 30. Question 20

<sup>104</sup> Mr. Howard Charvis. Response to the OCG’s Requisition. 2011 January 3. Question 20

- a. *If yes, please provide the name(s) and title(s) of the person(s) and/or entity(ies) to whom rent is paid;*
- b. *To the best of your knowledge, is/are the person(s) and/or entity(ies) identified in (a) above the owner of the premises? If no, please provide the name(s) and title(s) of the person(s) and/or entity(ies) who are the owner(s) of the premises.”<sup>105</sup>*

Mr. Foster, Mr. Howard Charvis and Mr. Lloyd Grant, in their respective responses to the foregoing Question stated *“Yes: Mr. Clifford Warmington. (a) I do not know. He has physical possession of the premises.”<sup>106</sup>*

Having regard to the responses which were provided by Mr. Howard Charvis, Mr. Lloyd Grant and Mr. Selvyn Foster, the OCG, in its Requisitions to all three (3) gentlemen, which were dated 2011 January 7, subsequently asked, *inter alia*, the following question:

*“In your response to the OCG’s Requisition, ... you stated that “...during the time Mr. Warmington served as director and CEO, he made loans to the company which the company repays periodically when funds are available.”*

*Having regard to your foregoing response, kindly detail the following information and answer the respective questions:*

- a. *The total amount of money which was loaned to Strathairn Construction Company Limited (SCCL);*
- b. *The total amount which has been repaid by SCCL;*

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<sup>105</sup> OCG Requisition to Mr. Selvyn Foster, Mr. Howard Charvis and Mr. Lloyd Grant. 2010 December 10. Question 6 and 5

<sup>106</sup> Mr. Selvyn Foster. Response to the OCG’s Requisition. 2010 December 30. Question 6

- c. *The total amount which is still owed to Mr. Clifford Warmington;*
- d. *The particulars of the loan(s) which was/were given to SCCL, inclusive of the date(s) of each loan payment;*
- e. *Any other particulars which are pertinent to the money which was loaned to SCCL by Mr. Clifford Warmington.”<sup>107</sup>*

Mr. Howard Charvis and Mr. Lloyd Grant, in their respective responses to the OCG’s Requisitions, which were dated 2011 January 13, indicated, *inter alia*, as follows:

- a. *“ \$16,000,000.00*
- a. *\$7,414,031.00*
- b. *\$8,585,969.00*
- c. *These loans were for operational and other expenses critical to the company’s operation. Please see schedule submitted in response to question 40 of requisition 1, dated 26/10/10 and question 20 of requisition 2, dated 10/12/10 for dates.*
- d. *No.”<sup>108</sup>*

Mr. Selvyn Foster, in his response to the OCG’s Requisition, which was dated 2011 January 13, provided substantially the same response. However, in his response to part “a” of the question, Mr. Foster stated *“I was told \$16,000,000.00”<sup>109</sup>*.

The OCG, in its Requisition which was dated 2010 December 16, had also asked Mr. Warmington about the payments which were allegedly made to him by SCCL. In this regard, the OCG posited the following question:

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<sup>107</sup> OCG Requisition to Mr. Lloyd Grant. Mr. Howard Charvis and Mr. Selvyn Grant. 2011 January 7. Question 4

<sup>108</sup> Mr. Lloyd Grant and Mr. Howard Charvis. Response to the OCG’s Requisition. 2011 January 13. Question 4

<sup>109</sup> Mr. Selvyn Foster. Response to the OCG’s Requisition. 2011 January 13. Question 4

*“It has been reported by several Directors of SCCL, in their sworn statements to the OCG, that a total of “\$9,008,465.00” has been paid to you by SCCL. This includes amounts for (i) loan repayment, (ii) purchase of motor vehicle and (iii) rent.*

*Having regard to the foregoing information, kindly detail the following information and answer the respective questions:*

- a. Explain the particulars of the payments which were made to you, by SCCL, for (i) loan repayment, (ii) purchase of motor vehicle and (iii) rent;*
- b. State the reasons, rationale and/or justification for each payment for (i) loan repayment, (ii) purchase of motor vehicle and (iii) rent by the SCCL to you;*
- c. Any other particulars which are pertinent to the referenced payments for (i) loan repayment, (ii) purchase of motor vehicle and (iii) rent by the SCCL to you.”<sup>110</sup>*

In his response to the OCG’s Requisition, which was dated 2011 January 4, Mr. Warmington indicated, *inter alia*, as follows:

- a. “I am unable to provide particulars of the payment. I am certain that the Directors provided those details.*
- b. While a [sic] serving as President of the Company I provided personal loans to the company which they repay from time to time. I sold a 2003 SUV to the company.*

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<sup>110</sup> OCG Requisition to Mr. Clifford Warmington. 2010 December 16. Question 21

c. *This however is not the first time I have sold a motor vehicle to them. The company pays me rental for the premises they have rented from me.*

d. *None*<sup>111</sup>

It is instructive to note that amongst the payments which were reportedly made by SCCL to Mr. Clifford Warmington, were monies which represented payments for “Rent”. The OCG found that the first such recorded payment allegedly occurred on 2009 March 27 in the amount of \$60,000.00.

Having regard to the foregoing, the OCG, in its Statutory Requisition to Mr. Howard Charvis, which was dated 2011 January 7, required Mr. Charvis to “*Please provide a copy of your rent and/or lease agreement for the premises which is occupied by SCCL.*”

In his sworn response to the OCG’s Requisition, which was dated 2011 January 13, Mr. Charvis advised the OCG, *inter alia*, as follows:

*“We do not have a formal written rent agreement as we do not deem this necessary....”*<sup>112</sup>

Having regard to the responses from Mr. Warmington and Mr. Charvis, it is instructive to note that the OCG assessed the Statutory Declaration of Assets and Liabilities and Income which were filed by Mr. Clifford Warmington, with the Integrity Commission, for the period of 2002 October 16 through to 2009 December 31.

It must be noted that the referenced Statutory Declarations include the following three (3) categories which are to be completed by the declarant, namely:

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<sup>111</sup> Mr. Clifford Warmington. Response to the OCG’s Requisition. 2011 January 4. Question 21

<sup>112</sup> Mr. Howard Charvis, Sworn response to the OCG’s Requisition which was dated 2011 January 13. Question 10

1. *Immovable Property (e.g. House, Land and Farm Buildings) Held by Declarant, Spouse and Children;*
2. *Any Other Property Owned by Declarant, Spouse and Children; and*
3. *Other Property Owned by Declarant, Spouse and Children, Being Held By a Person Other Than Owner, Whether in Trust or Otherwise.*

It must be noted that in the Declaration of Assets and Liabilities, which was submitted to the Integrity Commission, by Mr. Clifford Warmington, for the period ending 2009 December 31, Mr. Warmington declared that there was no such property which fitted either of the three (3) categories which are listed above.

Consequently, the OCG is uncertain of the exact property which Mr. Warmington is reportedly renting to SCCL and from which he is benefiting from the payment of rental income as he has declared that he owns no real property.

Having regard to the seeming contradictions between the sworn statements which were made to the OCG, by Mr. Clifford Warmington, and the Statutory Declarations which were filed by him, with the Integrity Commission, it is instructive to note the provisions of Section 15 of The Parliament (Integrity of Members) Act.

Section 15 of the referenced Act provides as follows:

**15. Offences.**

15. (1) *Any person who -*

*(a) fails, without reasonable cause, to furnish to the Commission a statutory declaration which he is required to furnish in accordance with the provisions of this Act;*

***(b) knowingly makes any false statement in any such statutory declaration;***

*(c) fails, without reasonable cause, to give such information as the Commission may require under section 7;*

*(d) fails, without reasonable cause, to attend an enquiry being conducted by the Commission under section 7; or knowingly gives any false information in such enquiry,*

***shall be guilty of an offence, and shall, on summary conviction thereof in a Resident Magistrate's Court, be liable to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment, and where the offence involves the deliberate non-disclosure of a Parliamentarian's property the Court may, in addition to the imposition of a fine or term of imprisonment or both -***

***(i) if the property involved is situated within the Island, declare that it be forfeited to the Crown;***

*(ii) if the property involved is situated outside the Island, order that an amount equivalent to the value of such property (the value to be assessed as directed by the Court), be paid by the Parliamentarian concerned to the Crown.*

*(2) Payment of all sums due to the Crown pursuant to paragraph (ii) of subsection (1) may be enforced in like manner as a debt due to the Crown and any proceedings thereon on behalf of the Crown may be taken summarily in a Resident Magistrate's Court, without limit of amount.*

*(3) In considering whether an order for forfeiture of a Parliamentarian's property should be made under subsection (1)(i), the Court shall have regard to the right and interests, if any, of third parties in that property.*

*(4) A person who claims an interest in any property referred to in subsection (3) may-*

*(a) during the proceedings for the offence referred to in subsection (1); or*

*(b) within a period of six months after the day on which a forfeiture order is made in respect of that property or such longer period as the Court may, having regard to all the circumstances allow, apply to the Court for an order under subsection (5).*

*(5) Where an application is made under subsection (4) the Court shall take account of the representations made by the applicant in relation to the property and shall make an order declaring the nature and extent of the applicant's interest, if any, in the property.*

*(6) The Court may-*

*(a) where subsection (4) (a) applies, decide that the property or the part thereof which the applicant's interest relates should not be forfeited to the Crown;*

*(b) where subsection (4) (b) applies, order that-*

*(i) the property or the part thereof to which the applicant's interest relates, be returned to the applicant; or*

*(ii) an amount equal to the value of the applicant's interest, as declared in the order under subsection (5), be paid to the applicant. (OCG Emphasis)*

**Award of Contracts to SCCL by the St. Catherine Parish Council**

**Particulars of the Quarterly Contract Award (QCA) Reports**

A review, by the OCG, of its QCA Consolidated Report Data, as at 2011 January 24, revealed that a total of eighteen (18) contracts were reportedly awarded to SCCL, by the St. Catherine Parish Council, between the period of 2008 August 28 and 2009 July 28. The aggregated value of the referenced eighteen (18) contracts was \$65,367,790.00.

The table below is a listing of the referenced eighteen (18) contracts:

<b>Record No.</b>	<b>Contract Award Date</b>	<b>Contract Description</b>	<b>Contract Value (\$)</b>	<b>Principal Site</b>	<b>Procurement Method</b>	<b>Procurement Committee Approval?</b>
1	2008-08-28	Road Rehabilitation	720,440.00	Sydenham (gully bank)	OT	Y
2	2008-08-28	Road Rehabilitation	3,983,400.00	Jones Lane Sydenham	OT	Y
3	2008-08-28	Road Rehabilitation	3,590,200.00	Dagger Bay- Old Harbour Bay	OT	Y
4	2008-08-28	Road Rehabilitation	802,200.00	Entrance to 2nd & 3rd Lane Sydenham	OT	Y
5	2008-08-28	Road Rehabilitation	3,224,700.00	2nd Lane Sydenham	OT	Y
6	2008-08-28	Road Rehabilitation	1,445,400.00	Sygon Lane Sydenham	OT	Y
7	2008-08-28	Road Rehabilitation	843,300.00	3rd Lane Sydenham	OT	Y
8	2008-08-28	Road Rehabilitation	1,445,400.00	Jackie Lane Sydenham	OT	Y
9	2008-08-28	Road Rehabilitation	556,480.00	Spencer Lane Sydenham	OT	Y
10	2008-08-28	Road Rehabilitation	3,999,280.00	East Bay Dr.- Old Harbour Bay	OT	Y
11	2008-11-18	Road Rehabilitation	1,168,150.00	Marle Acres	ST	Y
12	2008-11-18	Road Rehabilitation	2,280,000.00	Old Harbour Villa	ST	Y
13	2008-11-18	Road Rehabilitation	2,109,000.00	Claremont H/s	ST	Y
14	2009-07-28	Road Rehabilitation	9,943,560.00	Burke Road	OT	Y

Record No.	Contract Award Date	Contract Description	Contract Value (\$)	Principal Site	Procurement Method	Procurement Committee Approval?
15	2009-07-28	Road Rehabilitation	8,712,600.00	Narine Lane	OT	Y
16	2009-07-28	Road Rehabilitation	6,157,180.00	High House Rd.	OT	Y
17	2009-07-28	Road Rehabilitation	9,695,100.00	Church Pen Housing Sch. Rd.	OT	Y
18	2009-07-28	Road Rehabilitation	4,691,400.00	Herring Hill Lane	OT	Y
<b>TOTAL</b>			<b>65,367,790.00</b>			
KEY: OT- Open Tender ST- Selective Tender Y- Yes						

It is instructive to note that the St. Catherine Parish Council also reportedly awarded two (2) contracts to SCCL in the period of 2007 April to July. The particulars of the two (2) contracts are detailed in the table below:

Record No.	Contract Award Date	Contract Description	Contract Value (\$)	Principal Site	Procurement Method	Procurement Committee Approval?
	2007-04-10	Road Rehabilitation	3,739,000.00	Hartland Rd	OT	Y
	2007-07-25	Road Rehabilitation	1,529,000.00	Bartons (Bamboo Ridge)	OT	Y
<b>TOTAL</b>			<b>5,268,000.00</b>			
KEY: OT- Open Tender Y- Yes						

The OCG's preliminary examination of the QCA Reports that were filed by the St. Catherine Parish Council, with the OCG, in respect of the eight (8) quarters of the period 2008 January 1 to 2009 December 31, revealed that the St. Catherine Parish Council, during the referenced period, awarded a grand total of thirty nine (39) QCA based contracts, having an aggregated value of \$135.29 Million.

The OCG's examination of the St. Catherine Parish Council's QCA Reports for the 2008 and 2009 calendar years, further revealed that during the 3<sup>rd</sup> Quarter of 2008 (July to September 2008), only ten (10) contracts in total were awarded by the St. Catherine Parish Council.

However, of critical note, is the fact that all ten (10) contracts, totalling \$20.61 Million in aggregated value, were awarded to SCCL. Further, all ten (10) contracts were awarded by the St. Catherine Parish Council to SCCL on a single day, that is 2008 August 28.

Further, the OCG's Preliminary Enquiry revealed that of the ten (10) contracts which were awarded by the St. Catherine Parish Council on 2008 August 28, as many as eight (8) of those contracts were for the execution of works in Sydenham, St. Catherine.

The locations, descriptions and values of the said works, as reported by the St. Catherine Parish Council, would suggest that the eight (8) contracts which were awarded to Strathairn Construction Company Limited were 'splintered'. This would have enabled the said contracts, at a minimum, to escape the scrutiny and oversight of the National Contracts Commission (NCC) which, under the Government's then Procurement Rules, and having regard to the total value of the contracts, would have had to endorse the said contracts prior to their award.

Additionally, a review of the QCA Reports for the St. Catherine Parish Council for the 3<sup>rd</sup> Quarter of 2009 has revealed that the St. Catherine Parish Council awarded eight (8) contracts during the referenced three (3) month period with an aggregated value of \$61.78 Million. Of the eight (8) reported contracts, as many as five (5) were reportedly awarded to SCCL for the purposes of "Road Rehabilitation".

The five (5) contracts, which had an approximate aggregated value of \$39.19 Million, were all reportedly awarded to SCCL on a single day, that is, 2009 July 28.

The above-referenced QCA Reports were submitted to the OCG by the Accountable Officers of the St. Catherine Parish Council in furtherance of the OCG's lawful Statutory Requisitions that are issued pursuant to Section 4 (2) (a) and 4 (3) of the Contractor General Act. The Requisitions are submitted under the pain of criminal prosecution under Section 29 (a) of the Contractor General Act which makes it a criminal offence, *inter alia*, for any person to wilfully make a false statement to mislead a Contractor General

Having regard to the foregoing, the OCG, by way of a written statutory requisition, which was dated 2010 September 15, requested certain particulars of the contracts which were allegedly awarded to SCCL by the St. Catherine Parish Council.

In his sworn response to the OCG's requisition, which was dated 2010 October 28, Mr. Christopher Powell, Secretary Manager of the St. Catherine Parish Council, provided the OCG with contract particulars of approximately twenty (20) contracts which were awarded by the St. Catherine Parish Council, to SCCL, between the period of 2007 April and 2009 July.

*Particulars of the Contracts which were awarded to SCCL by the St. Catherine Parish Council*

It is instructive to note that the OCG, in its written Requisition, which was dated September 15, 2010, requested Mr. Christopher Powell to “...*complete and submit a spreadsheet, in the form which is enclosed herewith as Appendix 1, of the required particulars of all contracts which have been awarded by the St. Catherine Parish Council to SCCL.*”<sup>113</sup>

In his sworn response to the OCG, which was dated 2010 October 28, Mr. Powell provided the OCG with particulars of some twenty (20) contracts which were awarded by the St. Catherine Parish Council. Certain particulars of the referenced contracts, as provided by Mr. Christopher Powell, are detailed in the table overleaf:

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<sup>113</sup> OCG Formal Statutory Requisition which was dated September 15, 2010, which was addressed to Mr. Christopher Powell, Secretary Manager, St. Catherine Parish Council. Question # 11

Record #	Contract Award Date (YYYY-MM-DD)	Contract Type	Contract Description	Name of Contractor	Contract Value	Principal Site of Contract Performance	Procurement Method	Number of Tenders/Quotes Received	Procurement Committee Approval?	Date of Procurement Committee (PC) Approval
1	2009-07-28	W	Road Rehabilitation	Strathairn Construction	\$9,943,560.00	Burke road	OT	3	Y	2009-07-28
2	2009-07-28	W	Road Rehabilitation	Strathairn Construction	\$8,712,600.00	Narine lane	OT	3	Y	2009-07-28
3	2009-07-28	W	Road Rehabilitation	Strathairn Construction	\$6,157,180.00	High House Road	OT	3	Y	2009-07-28
4	2009-07-28	W	Road Rehabilitation	Strathairn Construction	\$9,695,100.00	Church Pen Housing Scheme	OT	3	Y	2009-07-28
5	2009-07-28	W	Road Rehabilitation	Strathairn Construction	\$4,691,400.00	Herring Hill Lane	OT	3	Y	2009-07-28

Record #	Contract Award Date (YYYY-MM-DD)	Contract Type	Contract Description	Name of Contractor	Contract Value	Principal Site of Contract Performance	Procurement Method	Number of Tenders/Quotes Received	Procurement Committee Approval?	Date of Procurement Committee (PC) Approval
6	2008-08-28	W	Road Rehabilitation	Strathairn Construction	\$720,440.00	Sydenham (Gully Bank)	OT	3	Y	2008-08-28
7	2008-08-28	W	Road Rehabilitation	Strathairn Construction	\$3,983,400.00	Sydenham (Jones lane )	OT	3	Y	2008-08-28
8	2008-08-28	W	Road Rehabilitation	Strathairn Construction	\$3,590,200.00	Dagger Bay (Old Harbour Bay)	OT	3	Y	2008-08-28
9	2008-08-28	W	Road Rehabilitation	Strathairn Construction	\$802,200.00	Sydenham(Entrance to 2nd & 3rd lane)	OT	3	Y	2008-08-28
10	2008-08-28	W	Road Rehabilitation	Strathairn Construction	\$3,224,700.00	Sydenham (2nd lane)	OT	3	Y	2008-08-28

<b>Record #</b>	<b>Contract Award Date (YYYY-MM-DD)</b>	<b>Contract Type</b>	<b>Contract Description</b>	<b>Name of Contractor</b>	<b>Contract Value</b>	<b>Principal Site of Contract Performance</b>	<b>Procurement Method</b>	<b>Number of Tenders/Quotes Received</b>	<b>Procurement Committee Approval?</b>	<b>Date of Procurement Committee (PC) Approval</b>
11	2008-08-28	W	Road Rehabilitation	Strathairn Construction	\$1,445,400.00	Sydenham (Sygon Lane)	OT	3	Y	2008-08-28
12	2008-08-28	W	Road Rehabilitation	Strathairn Construction	\$843,300.00	Sydenham (3rd Lane)	OT	3	Y	2008-08-28
13	2008-08-28	W	Road Rehabilitation	Strathairn Construction	\$1,445,400.00	Sydenham (Jackie Lane)	OT	3	Y	2008-08-28
14	2008-08-28	W	Road Rehabilitation	Strathairn Construction	\$556,480.00	Sydenham (Spencer Lane)	OT	3	Y	2008-08-28
15	2008-08-28	W	Road Rehabilitation	Strathairn Construction	\$3,999,280.00	East Bay Dr. (Old Harbour Bay)	OT	3	Y	2008-08-28

Record #	Contract Award Date (YYYY-MM-DD)	Contract Type	Contract Description	Name of Contractor	Contract Value	Principal Site of Contract Performance	Procurement Method	Number of Tenders/Quotes Received	Procurement Committee Approval?	Date of Procurement Committee (PC) Approval
16	2008-11-18	W	Road Rehabilitation	Strathairn Construction	\$1,168,150.00	Marlie Acres Rd.	ST	2	Y	2008-11-18
17	2008-11-18	W	Road Rehabilitation	Strathairn Construction	\$2,280,000.00	Old Harbour Villa	ST	1	Y	2008-11-18
18	2008-11-18	W	Road Rehabilitation	Strathairn Construction	\$2,109,000.00	Claremount H/s	ST	1	Y	2008-11-18
19	2007-04-04	W	Road Rehabilitation	Strathairn Construction	\$3,545,500.00	Hartlands Rd. (Sydenham Division)	ST	3	Y	2007-04-04
20	2007-06-26	W	Road Rehabilitation	Strathairn Construction	\$1,244,000.00	Bamboo Ridge Rd. (Barton's)	ST	2	Y	2007-06-26

Having regard to the twenty (20) contracts which were allegedly awarded to SCCL, the OCG, in its Statutory Requisition which was dated 2010 September 15, that was addressed to Mr. Christopher Powell, Secretary Manager, St. Catherine Parish Council, required Mr. Powell to “...describe the processes and/or circumstances by which SCCL became the beneficiary of contracts which were awarded by the St. Catherine Parish Council. In describing the processes and/or circumstances, please state whether SCCL responded to any invitation to tender or competitive tender advertisement. Please provide documentary evidence, where possible, to substantiate your assertions/responses.”<sup>114</sup>

In his sworn response to the OCG, which was dated 2010 October 28, Mr. Powell advised the OCG as follows:

*“The process is that the tenders were advertised; SCCL tendered and won the contracts. The tenders and notices are prepared by the Roads and Works Department, they are placed in various locations throughout the Parish, namely the Council’s Offices, Post Offices, Community Notice Boards, especially in the areas where the works are going to be done. SCCL responded to the invitation(s) to tender on the various projects.”<sup>115</sup>*

It is also instructive to note that the OCG, by way of a written Statutory Requisition, which was dated 2011 January 11, also required Mr. Winston Kelly, Superintendent of Roads and Works, St. Catherine Parish Council, to provide a sworn response to the aforementioned question.

In his response to the OCG, which was dated 2011 February 9, Mr. Kelly indicated as follows “Tenders are advertised at our Parish Council Office, Post Office, Community

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<sup>114</sup> OCG Requisition to Mr. Christopher Powell, which was dated 2010 September 15. Question # 18

<sup>115</sup> Response from Mr. Christopher Powell which was dated 2010 October 28. Question # 18

*Notice Board, especially in the area where works are to be done. SCCL and other contractors responded to the invitation to tender on the various projects.”<sup>116</sup>*

*Particulars of the Award of the Respective Contracts:*

Road Rehabilitation Contract - Bamboo Ridge Road (Bartons)

The 2<sup>nd</sup> Quarter QCA Report which was submitted to the OCG revealed that the referenced contract was reportedly awarded to SCCL on 2007 June 26, in the sum of J\$1,244,000.00.

However, the report of the Procurement Committee Meeting of the St. Catherine Parish Council, which was held on **2007 July 26**, indicated that the St. Catherine Parish Council had a Comparable Estimate of J\$1,210,000.00 and that bids were received from the following companies:

1. Strathairn Construction Company Limited - \$1,244,000.00;
2. H.S. Haulage & Construction Services - \$1,529,000.00.

The OCG has, therefore, found that there was a discrepancy between the date which was reported on the QCA Report and the date on which the referenced contract was considered for award by the St. Catherine Parish Council.

According to the referenced records of the St. Catherine Parish Council’s Procurement Committee *“The bid from Strathairn Construction Company Limited was selected as their bid was lower than the bid from H.S. Haulage & Construction Services and was*

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<sup>116</sup> Response from Mr. Winston Kelly, Superintendent of Roads and Works, which was dated 2010 February 9. Question #13

*within the 15% margin. All the required documents were submitted and therefore the bid was accepted.”<sup>117</sup>*

It should be noted that at the Procurement Committee Meeting of 2007 July 26, bids were received and evaluated for four (4) distinct projects. These projects were as follows:

1. Waterloo Road – Lauriston Division;
2. Bamboo Ridge Road (Gabion Wall) – Old Harbour North Division;
3. Sandy Hill Road (Gabion Wall) – Above Rocks Division;
4. Barton’s Bamboo Ridge Road – Old Harbour North Division.

It must be noted that SCCL had submitted bids for only two (2) of the referenced projects and was awarded the contract for only one (1) of the referenced projects, that is, the Barton’s Bamboo Ridge Road – Old Harbour North Division.

Road Rehabilitation Contract - Hartlands Road)

The 2<sup>nd</sup> Quarter QCA Report revealed that the referenced contract was reportedly awarded to SCCL on 2007 April 4, in the sum of J\$3,545,500.00.

However, the report of the meeting of the St. Catherine Parish Council’s Procurement Committee, which was held on 2007 April 4, indicated that the St. Catherine Parish Council had a Comparable Estimate of J\$3,545,500.00 and that bids were received from the following companies:

Strathairn Construction Company Limited	– J\$3,739,000.00
Brightons Engineering	–J\$3,910,650.00

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<sup>117</sup> Report of Procurement Committee Meeting which was held on 2007 July 26.

According to the Report of the meeting of the Procurement Committee, which was held on 2007 April 4, “ *Three bids were received for this project, however, one of the bids did not have the required documents (TCC and NCC registration) and was therefore disqualified leaving two(2).*

*The bid from Strathairn was selected although it was above the Council’s estimate it was within the 15% margin and Council will be asking the contractor to do some adjustment, as the Council cannot spend any additional amount on this project.”<sup>118</sup>*

#### Contracts which were awarded on 2008 November 18

According to the Report of the meeting of the Procurement Committee, which was held on 2008 November 18, the St. Catherine Parish Council convened a meeting to open and evaluate Tenders which were invited for works to be undertaken at nine (9) locations. The referenced locations were as follows:

1. Burton Road – Equalization Fund;
2. Gyles Avenue - Constituency Development Fund;
3. Jones Avenue;
4. East Avenue Curb and Sign Channel;
5. East Avenue U –Drain;
6. Marlie Acres Road;
7. Old Harbour Villa;
8. Clarendon Housing Scheme;
9. Gillette Street.

Of the nine (9) listed locations, SCCL offered bids for three (3) of the required areas. The particulars of the three (3) bids are detailed hereunder.

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<sup>118</sup> Report of Procurement Committee Meeting held on Wednesday, 2007 April 4.

## 1. Road Rehabilitation – Claremont Housing Scheme

The referenced contract was reportedly awarded to SCCL on 2008 November 18, in the sum of J\$2,109,000.00. The report of the meeting of the Procurement Committee of the St. Catherine Parish Council, which was held on 2008 November 18, indicated that the St. Catherine Parish Council had a Comparable Estimate of J\$1,998,000.00.

According to the Report of the meeting of the Procurement Committee, which was held on 2008 November 18, *“The bid from Strachairn [sic] Construction was selected. The bid from KAM-HC & Associates was disqualified, as the NCC and TCC documents were not submitted. Strachairn [sic] Construction’s bid was within the Council’s 15% margin of the Council’s estimate.”*<sup>119</sup>

## 2. Road Rehabilitation – Old Harbour Villa

The referenced contract was reportedly awarded to SCCL on 2008 November 18, in the sum of J\$2,280,000.00. The report of the Meeting of the Procurement Committee of the St. Catherine Parish Council, which was held on 2008 November 18, indicated that the St. Catherine Parish Council had a Comparable Estimate of J\$2,160,000.00.

According to the Report of the meeting of the Procurement Committee, which was held on 2008 November 18, *“The bid from Strachairn [sic] Construction was selected. The bid from KAM-HC & Associates was disqualified, as the NCC and TCC documents were not submitted. Strachairn [sic] Construction’s bid was within the Council’s 15% margin of the Council’s estimate.”*<sup>120</sup>

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<sup>119</sup> Report of Procurement Committee Meeting held on Monday, November 18, 2008.

<sup>120</sup> Report of Procurement Committee Meeting held on Monday, November 18, 2008.

### 3. Road Rehabilitation – Marlie Acres Road

The referenced contract was reportedly awarded to SCCL on 2008 November 18, in the sum of J\$1,168,150.00. The report of the Meeting of the Procurement Committee of the St. Catherine Parish Council, which was held on 2008 November 18, indicated that the St. Catherine Parish Council had a Comparable Estimate of J\$1,176,450.00.

According to the Report of the meeting of the Procurement Committee, which was held on 2008 November 18, *“The bid from KAM-HC & Associates did not have the relevant documents and was therefore disqualified. They also submitted bids for Old Harbour Villa and Claremont Housing Scheme. There was only one other bid.”*

The referenced report also indicated that *“The bid from Strachairn [sic] Construction was selected. The bid from KAM-HC & Associates was disqualified, as the NCC and TCC documents were not submitted. Strachairn [sic] Construction’s bid was within the Council’s 15% margin of the Council’s estimate.”*<sup>121</sup>

#### Contracts which were awarded to SCCL on 2008 August 28

According to a Report of the meeting of the St. Catherine Parish Council’s Tender Committee, which was held on Thursday, 2008 September 4, Tenders were invited for the rehabilitation of the following roads under the Constituency Development Fund Programme for South West St. Catherine.

1. Dagger Bay, Old Harbour Bay
2. East Bay Drive, Old Harbour Bay
3. Jones Lane, Sydenham
4. Gully Bank Lane, Sydenham

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<sup>121</sup> Report of Procurement Committee Meeting held on Monday, November 18, 2008.

5. Jackie Lane, Sydenham
6. Third (3<sup>rd</sup>) Lane, Sydenham
7. Spencer Lane, Sydenham
8. Entrance to 2<sup>nd</sup> and 3<sup>rd</sup> Lane Sydenham
9. Sygon Lane, Sydenham
10. Second (2<sup>nd</sup>) Lane Sydenham

The Report of the Tender Committee also revealed that “Three (3) sets of bids were received for these projects; however, one of the bids did not have the required documents (TCC and NCC registration) and was therefore disqualified leaving two (2).”

Detailed below are the particulars of the referenced bids:

<b>Nos.</b>	<b>Location</b>	<b>Council's Estimate (\$)</b>	<b>Brighton Engineers (\$)</b>	<b>Strathairn (\$)</b>
1	Dagger Bay, Old Harbour Bay	3,048,200.00	4,129,600.00	3,590,200.00
2	East Bay Drive, Old Harbour Bay	3,740,640.00	5,008,560.00	3,999,280.00
3	Jones Lane, Sydenham	3,566,600.00	4,795,600.00	3,983,400.00
4	Gully Bank Lane, Sydenham	729,828.00	811,828.00	720,440.00
5	Jackie Lane, Sydenham	1,441,440.00	1,632,400.00	1,445,400.00
6	Third (3 <sup>rd</sup> ) Lane, Sydenham	841,005.00	952,400.00	843,300.00
7	Spencer Lane, Sydenham	554,928.00	628,480.00	556,480.00
8	Entrance to 2 <sup>nd</sup> and 3 <sup>rd</sup> Lane, Sydenham	799,920.00	906,000.00	802,200.00
9	Sygon Lane, Sydenham	1,441,440.00	1,632,400.00	1,445,400.00
10	Second (2 <sup>nd</sup> ) Lane, Sydenham	3,228,470.00	3,655,600.00	3,224,700.00

The table below details the particulars of the variances which were noted between the St. Catherine Parish Council's Comparable Estimate and the bids that were provided by Brighton Engineers and SCCL, respectively, in each instance:

Nos.	Location	Council's Estimate (\$)	Variance Brighton Engineers (\$)	Variance Strathairn (\$)
1	Dagger Bay, Old Harbour Bay	3,048,200.00	1,081,400.00	542,000.00
2	East Bay Drive, Old Harbour Bay	3,740,640.00	1,267,920.00	258,640.00
3	Jones Lane, Sydenham	3,566,600.00	1,229,000.00	416,800.00
4	Gully Bank Lane, Sydenham	729,828.00	82,000.00	(9,388.00)
5	Jackie Lane, Sydenham	1,441,440.00	190,960.00	3,960.00
6	Third (3 <sup>rd</sup> ) Lane, Sydenham	841,005.00	111,395.00	2,295.00
7	Spencer Lane, Sydenham	554,928.00	73,552.00	1,552.00
8	Entrance to 2 <sup>nd</sup> and 3 <sup>rd</sup> Lane, Sydenham	799,920.00	106,080.00	2,280.00
9	Sygon Lane, Sydenham	1,441,440.00	190,960.00	3,960.00
10	Second (2 <sup>nd</sup> ) Lane, Sydenham	3,228,470.00	427,130.00	(3,770.00)

The foregoing table reveals that the bids which were provided by SCCL were, in all instances, comparatively closer to the St. Catherine Parish Council's Comparable Estimate than the bids which were provided by Brighton Engineers.

It is instructive to note that the referenced Procurement Committee Report indicated that *"The bids were examined and those from Strathairn Construction Company Limited were selected. It was noted that where the bids fall above the Council's estimates, but were within the 15% margin Council, would be asking the contractor to do some adjustments, as the Council could not spend any additional amount on these projects."*<sup>122</sup>

It is instructive to also note that the persons in attendance at the referenced meeting included Mrs. Cavell Francis-Rhiney, Project Manager, Office of the Prime Minister (C.D.F.) and Mr. Edson Henry, Project Officer, Office of the Prime Minister (C.D.F.).

Having regard to the fact that of the ten (10) contracts which were awarded to SCCL on the referenced date, eight (8) were reportedly for Works undertaken in Sydenham, the OCG, in its written Statutory Requisition which was addressed to Mr. Christopher Powell, which was dated 2011 January 11, posed the following question:

<sup>122</sup> Report of Tender Committee Meeting held on Thursday, 2008 September 4.

*“Please advise of the reason(s) and/or rationale for which the eight (8) contracts which were reportedly awarded to Strathairn Construction Company Limited on “2008-08-28” for works ‘Sydenham’ were packaged as separate and distinguishable works contracts/procurement opportunities.*

*In providing the reason(s) and/or rationale, please also indicate the name(s) and title(s) of the individual(s), if any, who recommended that the contracts in ‘Sydenham’ be packaged as eight (8) separate contracts.”<sup>123</sup>*

In his sworn written response to the OCG, which was dated 2011 February 14, Mr. Christopher Powell asserted as follows:

*“The Superintendent Roads and Works has stated that the Community Development Fund Unit would request that the estimates be done on a timely basis and sent to them. The funds were then sent in tranches.”<sup>124</sup>*

The foregoing was the only reason which was given by Mr. Christopher Powell for the manner in which the works which were to be undertaken in Sydenham were packaged.

#### Contracts which were awarded to SCCL on July 28, 2009

According to a Report of St. Catherine Parish Council’s Procurement Committee Meeting, which was held on Thursday, 2009 July 28, *“Tenders were invited for the following roads under the Community Development Project (CDF) in the constituency of South West St. Catherine as under:*

##### *1. Burke Road*

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<sup>123</sup> OCG Requisition which was addressed to Mr. Christopher Powell which was dated 2011 January 11. Question # 11

<sup>124</sup> Response from Mr. Christopher Powell which was dated 2011 February 14

2. *Narine Lane*
3. *High House Road*
4. *Church Pen Housing Scheme Road*
5. *Herring Hill Lane*<sup>125</sup>

Detailed below are particulars of the referenced bids.

<b>Nos.</b>	<b>Location</b>	<b>Council's Estimate (\$)</b>	<b>Brighton Engineers (\$)</b>	<b>Kam-H.C. &amp; Associates Company Ltd. (\$)</b>	<b>Strathairn (\$)</b>
1	Burke Road	10,893,630.00	10,985,040.00	11,372,460.00	9,943,560.00
2	Narine Lane	9,545,250.00	9,625,200.00	9,964,500.00	8,712,600.00
3	High House Road	6,745,640.00	6,802,120.00	7,041,880.00	6,157,180.00
4	Church Pen Housing Scheme Road	10,621,600.00	-	11,088,200.00	9,695,100.00
5	Herring Hill Lane	5,139,750.00	5,182,800.00	5,365,500.00	4,691,400.00

According to the referenced Report of the Procurement Committee of the St. Catherine Parish Council, *“All the relevant documents were submitted along with the bids and the expiry dates were checked to ensure that they were valid. All were in order.”*<sup>126</sup>

The Tender Report revealed that *“The bids from Strathairn Construction Company were accepted on the basis that they were the lowest bids and were within the 15% margin below the Council's estimate.”*<sup>127</sup>

It is important to note that the OCG, in its Statutory Requisition to Mr. Winston Kelly, Superintendent of Works, St. Catherine Parish Council, sought to ascertain and verify, *inter alia*, (a) the value of the referenced contracts, (b) the total amounts which were paid,

<sup>125</sup> Report of Procurement Committee Meeting held on Thursday, 2009 July 28

<sup>126</sup> Report of Procurement Committee Meeting held on Thursday, 2009 July 28

<sup>127</sup> Report of Procurement Committee Meeting held on Thursday, 2009 July 28

in each instance, to SCCL, and (c) the Date of Completion of each contract. Detailed below are the particulars of the information which was provided by Mr. Kelly.

<b>Road Name</b>	<b>Contract Value</b>	<b>Amount Paid Out</b>	<b>Number of Bills</b>	<b>Date of Completion</b>
Gully Bank	720,440.00	720,480.00	3 Bills	9/12/2008
Jones Lane	3,983,400.00	3,983,400.00	3 Bills	9/12/2008
Dagger Bay	3,590,200.00	3,590,200.00	3 Bills	9/12/2008
Entrance to 2 <sup>nd</sup> and 3 <sup>rd</sup> Lane	802,200.00	802,200.00	3 Bills	8/12/2008
Second Lane	3,224,700.00	3,236,800.00	3 Bills	9/10/2008
Sygon Lane	1,445,400.00	1,445,400.00	3 Bills	9/12/2008
Third Lane	843,300.00	843,300.00	3 Bills	8/12/2008
Jackie Lane	1,445,400.00	1,407,600.00	3 Bills	9/10/2008
Spence Lane	556,480.00	556,480.00	3 Bills	3/10/2008
East Bay Drive	3,999,280.00	3,709,080.00	2 Bills	8/12/2008
Old Harbour Villa	2,280,000.00	2,280,200.00	2 Bills	6/1/2009
Marlie Acres	1,168,150.00	1,168,150.00	1 Bill	9/12/2008
Barton's Bamboo Ridge	1,244,000.00	1,244,000.00	1 Bill	15/01/2008
Claremount Heights	2,109,000.00	2,109,000.00	2 Bills	15/12/2008
Burke Road	9,943,560.00	7,161,060.00	2 Bills	10/9/2009
Narine Lane	8,712,600.00	6,275,100.00	2 Bills	22/9/2009
High House	6,157,180.00	4,572,480.00	1 Bill	10/9/2009
Church Pen Housing Scheme	9,695,100.00	6,987,600.00	2 Bills	14/10/2010

<b>Road Name</b>	<b>Contract Value</b>	<b>Amount Paid Out</b>	<b>Number of Bills</b>	<b>Date of Completion</b>
Herring Hall Lane	4,691,400.00	3,378,900.00	2 Bills	14/10/2010
<b>TOTAL</b>	<b>66,611,790.00</b>	<b>55,471,430.00</b>		

It is instructive to note that the OCG found eight (8) instances in which there was a disparity between the contract value and the total amount which was paid to the Contractor. The eight (8) identified contracts are as follows:

1. Second Lane;
2. Jackie Lane;
3. East Bay Drive;
4. Burke Road;
5. Narine Lane;
6. High House;
7. Church Pen Housing Scheme;
8. Herring Hall Lane.

As it regards the differences which were identified between the contract values and the amounts which were actually paid to SCCL, the OCG, in its Statutory Requisition to Mr. Christopher Powell, which was dated 2011 January 11, requested that Mr. Powell provide clarifications regarding the particulars of certain contracts.

Detailed below are the explanations which were posited by Mr. Christopher Powell for six (6) of the eight (8) referenced contracts:

No.	Location	Reason
1	East Bay Drive	<i>An incorrect bill was submitted. The bills relating to the contract are attached.</i>
2	Burke Road	<i>When the Council was ready to pave the solution for micro surfacing was not available in Jamaica and so they had to use “chip &amp; spray” to do the paving which is cheaper, hence the savings.</i>
3	Narine Lane	<i>When the Council was ready to pave the solution for microsurfacing was not available in Jamaica and so they had to use “chip &amp; spray” to do the paving which is cheaper, hence the savings.</i>
4	High House	<i>When the Council was ready to pave the solution for micro surfacing was not available in Jamaica and so they had to use “chip &amp; spray” to do the paving which is cheaper, hence the savings.</i>
5	Church Pen Housing Scheme	<i>When the Council was ready to pave the solution for micro surfacing was not available in Jamaica and so they had to use “chip &amp; spray” to do the paving which is cheaper, hence the savings.</i>
6	Herring Hall Lane	<i>When the Council was ready to pave the solution for micro surfacing was not available in Jamaica and so they had to use “chip &amp; spray” to do the paving which is cheaper, hence the savings.</i>

It is also the case that the OCG observed that there were instances in which the St. Catherine Parish Council awarded contracts to SCCL without the requisite documents being duly completed. Accordingly, the OCG, in its Statutory Requisition which was dated 2011 January 11, asked Mr. Christopher Powell the following question:

*“Please advise if it is a practice of the St. Catherine Parish Council to award and/or execute contracts in instances where the “Form of Contract” and/or the “Bid Form and Letter of Acceptance” have not been duly executed by authorised officers/officials at the St. Catherine Parish Council.*

*If your response to foregoing question is “No” please provide responses to the following questions:*

- a. Please indicate the circumstances under which such an occurrence might take place and under whose authority such a contract can be duly consummated;*
- b. Please advise of the internal checks and balances which are in place to ensure that all contracts which are entered into by the St. Catherine Parish Council are legitimate and properly executed.”<sup>128</sup>*

In his sworn response to the OCG, which was dated 2011 February 14, Mr. Christopher Powell advised the OCG as follows:

*“The bid is usually not completed. After the opening of the tender we would proceed to put them on the Council’s contract form. It was brought to our attention by your office that this should be completed. This is now being done.”<sup>129</sup>*

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<sup>128</sup> OCG Requisition to Mr. Christopher Powell which was dated 2001 January 11. Question # 9

<sup>129</sup> Sworn Response to the OCG’s Requisition from Mr. Christopher Powell which was dated 2011 February 14. Question # 9.

**Procurement Committee at the St. Catherine Parish Council**

It is instructive to note that the OCG, in its Statutory Requisition, which was dated September 15, 2010, asked Mr. Christopher Powell to “... indicate whether the St. Catherine Parish Council has established internal policies which are utilized in the award and implementation of government contracts.

- a. *If yes, please provide a copy of the policy(ies).*
- b. *If no, please outline the internal procedures/policies which guide the St. Catherine Parish Council in the award of government contracts.”<sup>130</sup>*

In his sworn response, which was dated 2010 October 28, Mr. Christopher Powell advised the OCG that “*The St. Catherine Parish Council has established a Procurement Committee, which is utilized in the award and implementation of Government contracts.*”<sup>131</sup>

The OCG, in its written Statutory Requisition, which was dated 2010 September 15, further asked Mr. Christopher Powell the following verbatim question:

*“Does the St. Catherine Parish Council utilize a Procurement Committee to oversee the award of government contracts? If yes, please list the names, titles and the date(s) of appointment of the respective members of the Procurement Committee for the period of January 2006 to August 2010.”<sup>132</sup>*

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<sup>130</sup> OCG Formal Statutory Requisition which was dated 2010 September 15, which was addressed to Mr. Christopher Powell, Secretary Manager, St. Catherine Parish Council. Question # 4

<sup>131</sup> Sworn response to the OCG’s Requisition from Mr. Christopher Powell, which was dated 2010 October 28. Response to Question # 4

<sup>132</sup> OCG Formal Statutory Requisition which was dated 2010 September 15, which was addressed to Mr. Christopher Powell, Secretary Manager, St. Catherine Parish Council. Question # 5

In his sworn response, which was dated 2010 October 28, Mr. Christopher Powell advised the OCG that:

*“The St. Catherine Parish Council does utilize a Procurement Committee to oversee the award of Government contracts. The members are:*

*Councillor William Cytall*

*Councillor Alvin Beckford*

*Councillor Lloyd Grant*

*Councillor Ralston Wilson*

*Councillor Norman Scott*

*All were appointed in October 2006.”<sup>133</sup>*

It is instructive to note that the OCG also required Mr. Christopher Powell, Secretary Manager of the St. Catherine Parish Council, to advise of the following:

*“a) The basis and process by which the Procurement Committee Members are appointed, inclusive of the name(s) of the person(s) who authorize such appointments; and*

*b) The role(s) and responsibility(ies) of the Procurement Committee in the award and/or implementation of contracts at the St. Catherine Parish Council.”<sup>134</sup>*

In his sworn response to the OCG’s Requisition, which was dated 2010 October 28, Mr. Powell directed the OCG to, and provided the OCG with, an Addendum to the Minutes of

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<sup>133</sup> Sworn response to the OCG’s Requisition from Mr. Christopher Powell, which was dated October 28, 2010. Response to Question # 5

<sup>134</sup> OCG Formal Statutory Requisition which was dated September 15, 2010, which was addressed to Mr. Christopher Powell, Secretary Manager, St. Catherine Parish Council. Question # 6

the Monthly General Meeting of the St. Catherine Parish Council which was held on Thursday, 2006 October 12.

The referenced Addendum indicated as follows:

*“The Secretary/Manager presented motion, as follows:*

*“**RESOLVED THAT** in accordance with Section 96 Sub-section 1 of the Parish Councils Act the Parish Council of St. Catherine **HEREBY APPOINTS** a **PROCUREMENT COMMITTEE** to comprise five (5) elected members of the Council and **HEREBY DELEGATES** to the said **PROCUREMENT COMMITTEE**, the following duties:*

- i) to examine and make recommendations to the Finance Committee of Council on contracts as per Procurement regulations from time to time;*

*“**BE IT FURTHER RESOLVED THAT** the Chairman of the Committee shall be the Chairman of the Finance Committee, the Vice-Chairman shall be the Chairman of the Infrastructure & Traffic Committee, another member to be nominated by the Chairman of Council and two others by the Minority Leader and the quorum shall be two(2).*

*“The Committee shall continue in office until the next election of committees or until sooner revoked.*

*“The Parish Council reserves the right to deal with any matter before it has been finally dealt with by the Committee and to revoke the appointment of any member.*

*“The Committee will meet as the need arises.*

*“The Committee shall have no authority to:*

- a) *fix rates, borrow money or make regulations;*
- b) *deal with any matter relating to staff;*
- c) *acquire or dispose of any real estate or corporate property;*
- d) *authorize any expenditure not provided for in the Approved Estimates of the Council, or in excess of the sum provided in such Estimates.”*

The foregoing Motion was put to the Council and was carried on 2006 October 12.

It is instructive to note that the Extract of the Minutes of the Monthly General Meeting of the St. Catherine Parish Council, which was held on 2007 February 8, under the caption *‘Requests for Appointments to Contracts Committee’*, indicated, *inter alia*, that “*There is some controversy as it relates to the composition of that committee. The National Contracts Commission (NCC) stipulates that no Councillor should be on that committee while the Bye-Laws say no committee is legal unless a Councillor is on it...*

*...Councillor Cytall said that whether the committee is named Contracts or Procurement it is affecting the financial operation of the Parish Council. We have business to tender and we are still waiting on the Permanent Secretary’s advice as to what is the composition as it relates to the complement of the procurement Committee and whether the Political Directorate is to be placed on it.”*

The referenced Minutes further indicated that “*The Secretary/Manager read letter dated January 29, 2007 from the Permanent Secretary:*

*“In response to your letter, I am forwarding all correspondence that was previously sent to Councils relates to procurement procedures in Councils. In addition, the matter raised in your letter requires formal clarification and as a result I am seeking advice from the Solicitor General.*

*“In particular the opinion will seek to address whether a conflict exist between The Parish Councils Act and The Contractor General Act.*

*“The legal opinion will be provided as soon as it is received....”*

The Extracts of the Minutes of the Monthly General Meeting of the St. Catherine Parish Council, which was held on 2007 March 8, indicated as follows:

*“The Secretary/Manager presented for ratification the following resolution which was passed by the Human Resources Committee at its meeting held on February 19, 2007:*

*“**WHEREAS** the St. Catherine Parish Council at its regular monthly meeting of October 2006 approved a resolution naming the members of its Procurement Committee.*

*“**AND WHEREAS** the Parish Council’s Act at Section 96 sets out certain provisions governing the formation of committees of Council.*

*“**AND WHEREAS** the hand book of public sector procurement procedures provides for certain provisions for setting up a Procurement Committee.*

*“**BE IT RESOLVED THAT** the Secretary/Manager, acting on the provisions set out in the handbook, name the requisite persons to sit along with those persons named in the October resolution of Council to constitute this Council’s Procurement Committee and to carry out the prescribed functions hereinafter...*

*...The Presiding Chairman pointed out that the resolution in October 2006 did not include the administrative and technical staff.*

*On the motion of Councillor Wilson, seconded by Councillor Saunderson, the resolution was adopted.”*

**Evaluation Committee of the St. Catherine Parish Council**

The OCG, in its written Statutory Requisition to Mr. Christopher Powell, which was dated 2010 September 15, also required Mr. Powell to provide responses to the following questions:

*“Please indicate whether or not the St. Catherine Parish Council utilizes an Evaluation Committee to (a) assess bids and (b) make recommendations for the award of contracts. If yes, please indicate:*

- i. The role(s) and responsibility(ies) of the Evaluation Committee in the implementation and award of contracts;*
- ii. The basis upon which members are chosen to sit on the Committee;*
- iii. Whether any of the persons who serve on the Evaluation Committee also serve on the Procurement Committee;*
- iv. Any other particulars that are pertinent to the roles and responsibilities of the Evaluation Committee.”<sup>135</sup>*

In his sworn response to the OCG’s Requisition, which was dated 2010 October 28, Mr. Powell advised the OCG as follows:

**No. 9**

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<sup>135</sup> Requisition to Mr. Christopher Powell: Question # 9.

- i) *This Committee (Procurement Committee) evaluates all bids in accordance with the Government Procurement guidelines*
- ii) *The basis upon which members are chosen to sit on this Committee are based on the fact that they are members of the Procurement Committee*
- iii) *All the persons who sit on the Evaluation Committee are members of the Procurement Committee*
- iv) *Extracts of Monthly General Meetings refer”<sup>136</sup>*

It is instructive to note that the OCG, in its Statutory Requisition which was dated 2010 September 15, required Mr. Christopher Powell to “...describe the processes and/or circumstances by which SSCL [sic] became the beneficiary of contracts which were awarded by the St. Catherine Parish Council. In describing the processes and/or circumstances, please state whether SCCL responded to any invitation to tender or competitive tender advertisement. Please provide documentary evidence, where possible, to substantiate your assertions/responses.”<sup>137</sup>

In his sworn response to the OCG’s Requisition, which was dated 2010 October 28, Mr. Powell provided the following response:

*“The process is that the tenders were advertised; SCCL tendered and won the contracts. The tenders and notices are prepared by the Roads and Works Department, they are placed in various locations throughout the Parish, namely the Council’s Offices, Post Offices, Community Notice Boards, especially in the areas where the works are going to be done. SCCL responded to the invitation(s) to tender on the various projects.”<sup>138</sup>*

It is instructive to note that the OCG also sought to ascertain from Mr. Winston Kelly, Superintendent of Works, St. Catherine Parish Council, the extent of his knowledge, *inter*

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<sup>136</sup> Response from Mr. Christopher Powell which was dated 2010 October 28. Question # 9

<sup>137</sup> OCG Requisition to Mr. Christopher Powell which was dated 2010 September 15. Question # 18

<sup>138</sup> Sworn Response from Mr. Christopher Powell which was dated 2010 October 28. Question # 18

*alia*, of the contracts which were awarded to SCCL. As such, the OCG, in its Statutory Requisition, which was addressed to Mr. Kelly and which was dated 2011 January 11, posed, *inter alia*, the following question:

*“To the best of your knowledge please describe the processes and/or circumstances by which SCCL became the beneficiary of contracts which were awarded by the St. Catherine Parish Council. In describing the processes and/or circumstances, please state whether SCCL responded to any invitation to tender or competitive tender advertisement. Please provide documentary evidence, where possible, to substantiate your assertions/responses.”*<sup>139</sup>

In his sworn response to the OCG’s Requisition, which was dated 2011 February 9, Mr. Kelly advised as follows:

*“Tenders are advertised at our Parish Council Office, Post Office, Community Notice Board, especially in the area where works are to be done. SCCL and other contractors responded to the invitation to tender on the various projects.”*<sup>140</sup>

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<sup>139</sup> OCG Requisition to Mr. Winston Kelly which was dated 2011 January. Question # 13

<sup>140</sup> Response from Mr. Winston Kelly which was dated 2011 February 9. Question # 13

**OCA Contracts which were reportedly awarded to SCCL by the National Works Agency (NWA)**

A review, by the OCG, of its QCA Consolidated Report Data, as at 2010 August 18, revealed that a total of twelve (12) contracts were reportedly awarded to the SCCL, by the NWA, between the period of 2008 May 20 and 2010 January 6. The total monetary value of the referenced twelve (12) contracts was \$25,377,125.00.

The table below details the particulars of the referenced twelve (12) contracts:

<b>Record No.</b>	<b>Contract Award Date</b>	<b>Contract Description</b>	<b>Contract Value (\$)</b>	<b>Principal Site</b>	<b>Procurement Method</b>	<b>Procurement Committee Approval?</b>
1	2008-05-20	Drain Cleaning	1,534,250.00	McVickers Gully	SS	Y
2	2009-06-03	Flood Damage Mitigation Programme 2009/2010	2,000,000.00	Ferron Gully, St. Catherine	SS	Y
3	2009-06-03	Flood Damage Mitigation Programme 2009-2010	1,500,000.00	Old Harbour Bay- Bartons, St. Catherine	SS	Y
4	2009-06-03	Flood Damage Mitigation Programme 2009-2010	2,000,000.00	Old Harbour Bay Gully	SS	Y
5	2009-06-03	Flood Damage Mitigation Programme 2009-2010	2,000,000.00	Free Town Gully, St. Catherine	SS	Y
6	2009-06-03	Flood Damage Mitigation Programme 2009-2010	2,000,000.00	Big Pond, St. Catherine	SS	Y
7	2009-06-03	Flood Damage Mitigation Programme 2009-2010	2,000,000.00	Myton Gully, St. Catherine	SS	Y
8	2009-06-11	Flood Damage Mitigation Programme 2009-2010	2,000,000.00	McVickers Gully, St. Catherine	SS	Y
9	2009-06-11	Flood Damage	5,000,000.00	Nightingale	SS	Y

<b>Record No.</b>	<b>Contract Award Date</b>	<b>Contract Description</b>	<b>Contract Value (\$)</b>	<b>Principal Site</b>	<b>Procurement Method</b>	<b>Procurement Committee Approval?</b>
		Mitigation Programme 2009-2010		Grove Main Drain - St. Catherine		
10	2009-06-11	Flood Damage Mitigation Programme 2009-2010	3,000,000.00	Town Gully, St. Catherine	SS	Y
11	2009-07-14	Flood Damage Mitigation - Drain Cleaning	349,500.00	Worcester Road Drains	SS	Y
12	2010-01-06	Road Patching Works	1,993,375.00	South West St. Catherine (Old Harbour Division)	LT	Y
<b>TOTAL</b>			<b>25,377,125.00</b>			
KEY: OT- Open Tender ST- Selective Tender Y- Yes						

**Particulars of the Contracts which were awarded by the NWA to SCCL during the Period of 2007 December to 2010 January**

Based upon the documentary evidence which was provided to the OCG, by the NWA, the OCG found that twenty two (22) contracts were awarded to SCCL during the period of 2007 December through to 2010 January. The referenced contracts had an aggregated value of J\$42,261,999.20 and the total payments had an aggregated value of J\$42,117,624.20.

The table below details the particulars of the contracts which were reportedly awarded to SCCL, by the NWA.

**Contracts which were awarded by the NWA to SCCL**

<b>Nos.</b>	<b>Contract Date</b>	<b>Procurement Methodology</b>	<b>Contract Description</b>	<b>Contract Value \$</b>	<b>Payments \$</b>
1	2009 December 10	Force Account	The Hireage of a D6 Tractor for the period 2009 December 10 to 2010 January 12 – Fairfield Drain Pond	590,000.00	590,000.00
2	2009 December 10	Force Account	The Hireage of a D7 Tractor for the period 2009 December 10 to 2010 January 13	1,216, 750.00	1,216, 750.00
3	2009 December 16	Force Account	The Hireage of an Excavator for the period 2009 December 16 to 2010 February 6	1,121,000.00	1,121,000.00
4	2009 January 9	Force Account	Rehabilitation Works- Underpin RR Wall and Road Rehabilitation Works - Old Harbour Bay – Bartons, St. Catherine	3,090,634.20	3,090,634.20
5	2009 January 9	Force Account	Rehabilitation Works- Back-fill RR Walls, Old Harbour Bay- Bartons, St. Catherine	1,115,740.00	1,115,740.00
6	2008 September 19	Force Account	Tropical Storm Gustav Flood Damage – Cleaning of Earthen Drain/Gully. St. Catherine – Town Gully from Old Harbour Road to Duncans Pen	3,061, 500.00	3,061, 500.00

<b>Nos.</b>	<b>Contract Date</b>	<b>Procurement Methodology</b>	<b>Contract Description</b>	<b>Contract Value \$</b>	<b>Payments \$</b>
7	2008 September 3	Force Account	Construction of RR Wall and Road Rehabilitation works-Old Harbour Bay – Bartons, St. Catherine	3,884,250.00	3,884,250.00
8	2009 February 18	Force Account	Reno Mattress Works – Old Harbour Bay – Bartons, St. Catherine	1,904,000.00	1,904,000.00
9	2007 December 4	Force Account	Special Maintenance Programme – South West. Old Harbour Division	814,500.00	814,500.00
10	2008 May 20	Force Account	Cleaning of Drain – Flood Damage Mitigation Programme - St. Catherine – McVickers Gully	1,534,250.00	1,534,250.00
11	2010 January 6	Force Account	Road Patching Works - South West St. Catherine, Old Harbour Division	1,993,375.00	1,850,000.00
12	2009 June 11	Force Account	Cleaning of Drain – Flood Damage Mitigation Programme – St. Catherine-Nightingale Grove Main Drain	5,000,000.00	5,000,000.00
13	2009 June 11	Force Account	Cleaning of Drain- Flood Damage Mitigation Programme – St. Catherine – Town Gully	3,000,000.00	3,000,000.00
14	2009 June 11	Force Account	Cleaning of Drain- Flood Damage Mitigation Programme - St. Catherine - McVickers Gully	2,000,000.00	2,000,000.00
15	2009 July 14	Force Account	Cleaning of Drain- Flood Damage Mitigation Programme- Worchester Road Drains	349,500.00	349,500.00
16	2009 June 3	Force Account	St. Catherine Emergency Flood Damage Mitigation Programme- Big Pond Area	2,000,000.00	2,000,000.00
17	2009 June 3	Force Account	St. Catherine Emergency Flood Damage Mitigation Programme- Myton Gully	2,000,000.00	2,000,000.00
18	2009 June 3	Force Account	St. Catherine Emergency Flood Damage Mitigation Programme- Free Town Gully	2,000,000.00	2,000,000.00
19	*2009 June 9	Force Account	St. Catherine Emergency Flood Damage Mitigation Programme- Old Harbour Bay Division	1,500,000.00	1,500,000.00
20	2009 June 3	Force Account	St. Catherine Emergency Flood Damage Mitigation	2,000,000.00	2,000,000.00

Nos.	Contract Date	Procurement Methodology	Contract Description	Contract Value \$	Payments \$
			Programme- Ferron Gully		
21	2009 June 3	Force Account	St. Catherine Emergency Flood Damage Mitigation Programme- Old Harbour Bay Gully	2,000,000.00	2,000,000.00
22	2007 December 4	Force Account	Special Maintenance Programme – Old Harbour Division	86,500.00	85,500.00
<b>TOTAL</b>				<b>42,261,999.20</b>	<b>42,117,624.20</b>

Of the twenty two (22) contracts which were awarded to the referenced company, there were nine (9) contracts which fell within the value range of the OCG's QCA Reporting Regime which were not reported to the OCG by the NWA. The un-reported contracts which were awarded to SCCL had an aggregated value of J\$16,798,374.20

The OCG, via the QCA Reporting Regime, during the period under review, required, *inter alia*, that Public Bodies submit QCA Reports of contracts which were awarded between the value of J\$250,000.00 and J\$3,999,999.99, as at 2006 May 1 through to 2008 September 30.

As at 2008 October 1, the OCG required all procuring Public Bodies to report the full particulars of all contracts which were awarded between the values of J\$275,000.00 and J\$10 million, on a Quarterly basis.

Having regard to the foregoing, the failure of the NWA to report the above referenced contracts amounts to a breach of the contract reporting requirements which are laid out in the Requisition which was issued to all Procuring Public Bodies inclusive of the NWA.

As such, the OCG has found that the NWA's non-compliance and failure to report the nine (9) referenced contracts amounts to a breach of Section 29 (a) and b (ii) of the Contractor General Act.

Further, the OCG also found that eleven (11) of the twelve (12) contracts which were reported to the OCG, by the NWA, were reportedly procured utilizing the Sole Source Procurement Methodology. The Limited Tender Procurement Methodology was utilized for the procurement one (1) contract.

Upon a review of the documents which were provided by the NWA, the OCG found that the Force Account methodology was utilized in the procurement of Works for the referenced twenty two (22) contracts which were identified above.

It is instructive to note that Section 2.1.3.4 of the then applicable GPPH (2001) provided, *inter alia*, that,

*“Sole Source or direct contracting is a form of limited tendering where only one contractor is invited to participate. **Use of this method may be justified when procurement is of a “sensitive” nature, when the procuring entity receives an unsolicited proposal that it considers to be meritorious, in the case of follow-on procurements, when there is unusual and compelling urgency, industrial mobilization, where there is need for highly specialized expert services, pursuant to external agency agreement or treaties, or where it is otherwise in the public interest.**”*

*Procurement effected through the use of sole source or direct contracting methods must contain justification for its use in the record of the procurement...*

*Sole Source or Direct Contracting Procurement method must have prior written approval from Accounting Officers for Contracts less than \$1M... All Sole Source or Direct Contracting greater than \$1M must receive prior written approval from the NCC through the Accounting Officer.” (OCG Emphasis)*

In addition, Circular No.21 File No. 107/166 of the Ministry of Finance and Public Service, which is dated 2007 October 16, provides that *“All contracts and Force Accounts less than \$4 Million must be reviewed by the Procurement Committee and approved by the Accounting Officer.”*

The referenced Circular also provides that for Contract Values above \$4 Million but less than \$15 Million, *“The procuring entity with the Approval of the Accounting Officer, must submit contracts and Force Accounts of these values to the National Contracts Committee for endorsement.”*

The OCG has not seen any evidence to indicate that the above referenced contracts have been subjected to the scrutiny of the NWA’s Procurement Committee nor that the referenced procurements were justified under the specific provisions which are laid out in the GPPH (2001) and/or the Revised Public Procurement Handbook (RPPH - 2008) for the utilization of the Sole Source Procurement Methodology or the Force Account provision.

Further, the OCG has also not seen any evidence to indicate that the applicable contracts received the endorsement of the NCC in instances in which the contract value was \$4 Million and above.

A review of the documents which were provided to the OCG, by the NWA, revealed that several contracts were awarded to SCCL on the same day. As such, the OCG found, *inter alia*, the following:

1. On 2009 June 11, three (3) contracts were awarded to SCCL with a total aggregated value of \$10,000,000.00.

2. On 2009 June 3, five (5) contracts were awarded to SCCL, by the NWA, with an aggregated value of \$10,000,000.00.
3. On 2009 January 9, two (2) contracts were awarded to SCCL, by the NWA, with an aggregated value of \$4,206,374.20.
4. On 2009 December 10, two (2) Equipment Hire Contracts were awarded to SCCL, with an aggregated value of \$1,806,750.00.

It must be noted that the referenced contracts were for works which were reportedly undertaken in various locations in St. Catherine, inclusive of Flood Mitigation Programmes in Old Harbour, St. Catherine.

Upon a review of the Contract Documents, Payment Vouchers and Payment Certificates which were provided by the NWA, it was found that all payments for the referenced contracts were endorsed by (a) the Site Supervisor, (b) the Project Manager, (c) the Approving Officer, (d) the Accountable Officer, and (e) the Certifying and Authorizing Officers.

**Other Contracts which were awarded to SCCL by the NWA**

A review of the NWA procurement records indicates that the NWA's Procurement Committee, at a meeting which was held on 2009 December 7, revealed that a recommendation was made and accepted for the award of a contract to SCCL for the "120M Fuel Cess Patching Programme - South West, St. Catherine."

A review of the referenced Procurement Records revealed, *inter alia*, that:

- "Tender period was November 26, 2009 to November 30, 2009

- *Procurement Method was Limited Tender*
- *Three (3) tenders were received and three (3) were responsive*

*Documents received were Transmittal Form for Contract with the following supporting Appendices:*

- ✓ *TCC and NCC*
- ✓ *Tender Opening Record*
- ✓ *Evaluation Report*
- ✓ *Bill of Quantities*
- ✓ *Invitation Letters...*

### **RECOMMENDATION**

*The Committee having reviewed the report supported the recommendation to award the contract to **Strathairn Construction** for the **120M Fuel Cess Patching Programme in Southwest St. Catherine** in the sum of **\$1,993,375.00** with the following amendments:*

- *Rebar Construction should be removed from the report and transmittal form as they were deemed non-responsive*
- *Arithmetic correction to the 2<sup>nd</sup> Table on Page 3 of the Evaluation Report... ”<sup>141</sup>*

Accordingly, the Committee supported the recommendation for the award of contract to SCCL in the amount of \$1,993,375.00.

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<sup>141</sup> National Works Agency, Minutes of Procurement Committee Meeting held on 2009 December 7.

**Contract which was awarded by the Ministry of Transport & Works to SCCL -  
Emergency Assistance in response to the flood damages during the 2007 Hurricane  
Season IDB Loan # 1959/ OC JA**

It is instructive to note that the OCG's preliminary review of the NCC's Contracts Endorsement Database revealed that on 2008 July 9, the NCC endorsed the recommendation for the award of a contract to SCCL, for 'Emergency Hurricane Restoration 2007 Atlantic. Clean Gully- Construct Retaining Wall at Old Harbour and Bartons'.

The NCC Transmittal Form which was prepared on 2008 July 8, indicated that the captioned contract was endorsed on behalf of the NWA under a programme which was financed by the Inter- American Development Bank (IDB).

A review of the NWA's records revealed that on 2008 June 30, five (5) Letters of Invitation were issued by the NWA requesting quotations from the following five (5) Contractors:

1. Build- Rite Construction Company Ltd.;
2. Brighton Engineers Ltd.;
3. Strathairn Construction Company. Ltd.;
4. KAM-HC & Associates Company Ltd.;
5. Bacchus Engineering Works Ltd.

The referenced contractors were short-listed from the NCC's approved list of Grades 1-3 contractors which were registered in the General Road Works Category.

The eligibility requirements further required that the bidders be in possession of a current and valid Tax Compliance Certificate (TCC) or other instruments from the Revenue Authorities indicating tax compliance. The bidders were also required to provide a Bid

Security in the form of cash, certified Manager's Cheque, security instrument from a financial institution or insurance company or its equivalent in local currency made payable to the Chief Executive Officer of the NWA.

Tender documents were made available on Monday, 2008 June 30, as of 10:00 a.m., from the Office of the Director of Regional Implementation, NWA. The Tender Document contained the Scope of Works which was to include the following:

1. Cleaning of drains (gully);
2. Minor road rehabilitation works; and
3. The construction of RR walls.

The Instructions to Bidders further provided that all contractors were obliged to provide a copy of the NCC Certificate of Registration in the appropriate category and grade, a valid TCC and the requisite Bid Security.

Tenders were received from three (3) of the five (5) contractors from whom a Request for Quotation was sought:

1. Strathairn Construction Company Ltd.;
2. Brighton Engineering Company Ltd.;
3. KAM-HC & Associates Ltd.

The Tender Opening Record revealed that the tender closed on 2008 July 4, at 3:00 p.m., which was consistent with the Instructions to Bidders. The Tender Opening Ceremony, commenced on the same date, at 3:15 p.m. in the Audit Conference Room on the 2<sup>nd</sup> floor of the National Works Agency, 140 Maxfield Avenue, Kingston 10.

The Ceremony was facilitated by Mr. Desrick Litchmore, Tender Officer, NWA. The bids were opened and reviewed in the presence of the following individuals:

1. Mr. Desrick Litchmore – National Works Agency;
2. Mrs. Karen Arscott- Powell – National Works Agency;
3. Mr. Frank Williams – National Works Agency;
4. Mr. Anthony Hughes – National Works Agency;
5. Mr. Alton Fisher – KAM- HC & Associates Ltd.

The information which was gleaned from the Tender Report indicates that SCCL offered a bid in the amount of \$17,349,972.00, and presented a TCC which was valid up to, and including 2008 September 17, as well as the required Bid Security.

The OCG has also seen documentary evidence which indicates that SCCL was registered with the NCC in the following categories and grades:

1. Building Construction - Grade 3;
2. Interior Construction Works - Grade 3;
3. Fencing - Grade 3;
4. Civil Engineering Works - Grade 4;
5. Painting and Decorative Finishes - Grade 3;
6. Building Maintenance - Grade 3;
7. General Road Works - Grade 3;
8. Pipe Laying - Grade 3;
9. Road Maintenance Works - Grade 4;
10. Roofing - Grade 3.

The OCG has seen evidence of a Manager's Cheque which represented the Bid Security which was submitted on 2008 July 4 by SCCL to the CEO of the NWA, in the amount of \$173,500.00, in fulfilment of the Instructions which were issued to the bidders.

The tender, which was received from SCCL, was in the amount of \$17,349,972. Proof of registration with the NCC in the required category was also provided by SCCL. The NCC certificate was determined to be valid with an expiration date of 2009 April 9.

Brighton Engineering Company Ltd. was, however, considered non-responsive since a Bid Security was not submitted in accordance with the stipulations which were detailed in the Instructions to Bidders.

The relevant due diligence was stated to have been performed to verify that the information was void of arithmetic errors and was in accordance with the specifications of the Instructions to Bidders.

The tender which was submitted by Brighton Engineering Company Ltd. was in the amount of \$17,579,781.00. The company submitted proof of registration with the NCC, which was determined to be valid, as it bore an expiration date of 2008 November 12.

Brighton Engineering Company Ltd. also submitted a valid TCC which bore the expiration date of 2008 November 4. The Tender Opening Record suggests that a Tender Security, as requested in the Tender document, was not submitted by Brighton Engineering.

The Tender which was submitted by KAM - HC & Associates company Ltd. was in the amount of \$19,737,513.40. The company was determined to have been duly registered in the appropriate NCC category and the NCC certificate was found to be valid, expiring on 2009 May 20.

The company also had a valid TCC, with an expiration date of 2008 July 28. KAM - HC & Associates Company Ltd. provided a Bid Security in the amount of \$197,376.00.

It is of import to state that as per the Evaluation Report, which was provided by the NWA, the bid which was submitted by SCCL was approximately 26.95% lower than the Engineer's estimate of \$23,750,921.39. The bid submitted by KAM - HC & Associates Company Ltd. was approximately 16.89% lower than the Engineer's Estimate.

Having regard to the Comparative Estimate, which was provided by the NWA's Quantity Surveyors, SCCL was recommended for the award of the contract, in the amount of \$17,349,972.00.

In keeping with the requirements of Circular No. 3, which was issued on 2006 January 10, by the then Ministry of Finance and Planning, five (5) quotations were sought from the previously mentioned contractors, by the Ministry of Transport and Works.

The NCC, by way of letter which was dated 2008 July 14 endorsed the recommendation for the award of the contract to SCCL. The referenced correspondence stated, *inter alia*, that the award should be submitted to "...the Cabinet Infrastructure Committee in keeping with the established guidelines for emergency works."

The OCG has also seen evidence of an approval by the Cabinet, by way of a Memorandum which was dated 2008 April 16, from a Ms. Sandra Reid, Executive Assistant, for the Chief Executive Officer, to a Mr. Desrick Litchmore, Project Manager, NWA, which was entitled "*Emergency Assistance in Response to Flood Damage During the 2007 Atlantic Hurricane Season – Inter-American Development Bank Loan No. 1959/OC-JA*".

The referenced Memorandum stated, *inter alia*, that “*Please be advised that Cabinet by way of Decision No. 12/08 dated 07.04.08 approved the use of the Procedures for Emergency Contracting to carry out works under the Inter - American Development Bank’s US\$10 million Emergency Assistance Programme, in relation to projects emanating from damage that occurred during the August to October 2007 flood events.*”

The sequence of information provided above indicates that the Ministry of Transport and Works applied the general principles of the Government of Jamaica Public Sector Procurement Guidelines, inclusive of the requirement of Circular No.3, in the award of the referenced emergency contract.

**Did Mr. Clifford Everald Warmington contravene Section 40 (2) (c) of the Constitution of Jamaica?**

Having regard to the allegations surrounding Mr. Everald Warmington's level of involvement in SCCL and the fact that he is a sitting Member of Parliament, it is instructive to note that Section 40 (2) (c) of the Constitution of Jamaica provides, *inter alia*, as follows:

***“40. Disqualification for membership of Senate and House of Representatives.***

*(2) No person shall be qualified to be appointed as a Senator or elected as a member of the House of Representatives who-...*

*(c) is a party to, or a partner in a firm or a director or manager of a company which to his knowledge is a party to, any contract with the Government of Jamaica for or on account of the public service, and has not –*

*...(ii) in the case of election as a member of the House of Representatives, by publishing a notice in the Gazette within one month before the day of the election, previously disclosed the nature of such contract and his interest or the interest of such firm or company therein;”<sup>142</sup>*

The OCG found that Section 40 (2) (c) of the Constitution of Jamaica imposes an important disclosure qualification requiring a person who seeks to be elected to the House of Representatives, or who is appointed to the Senate, when such a person is also a party to a Government contract or is a partner in a firm or a director or manager of a company which, to his knowledge, is a party to a Government contract.

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<sup>142</sup> Constitution of Jamaica. 1962 No.1550. Section 40(2)(c)

In substance, the Section provides that, in relation to a person who seeks to be elected to the House of Representatives, no such person shall be qualified to be elected as a member of the House if he has not previously disclosed the nature of such contract and his interest or the interest of such firm or company therein, **by publishing a notice in the Gazette within one month before the day of the election.**

The certified QCA Reports, which were submitted to the OCG, by the St. Catherine Parish Council for the 2<sup>nd</sup> and 3<sup>rd</sup> Quarters of 2007, have disclosed that the following contracts were awarded to SCCL during the referenced periods:

DATE	DESCRIPTION	CONTRACT SUM
2007 April 10	Road Rehabilitation - Hartland Road	\$3.73 Million
2007 July 25	Road Rehabilitation - Bartons (Bamboo Ridge)	\$1.52 Million

Further, Mr. Winston Kelly, Superintendent of Works, St. Catherine Parish Council, in his sworn response to the OCG's Requisition, which was dated 2011 February 9, indicated that the two (2) contracts which were referred to above were actually awarded on 2007 April 4 and 2007 June 26, respectively.

The information which was provided to the OCG, by Mr. Kelly also revealed that the contract to SCCL, which was reported via the QCA, as being awarded on 2007 July 25, was completed on 2008 January 15.

The OCG found that the COJ records indicated that the effective date of resignation for Mr. Clifford E. Warmington, as a Director of SCCL, was 2007 September 1, two (2) days prior to the 2007 General Elections, which held on 2007 September 3.

Therefore, two (2) days prior to the conduct of the 2007 General Elections Mr. Clifford E. Warmington was a Director in a company which was party to a GOJ Contract.

Having regard to the foregoing, the OCG, in its Follow-up Requisition, which was dated 2010 December 16, asked Mr. Clifford Warmington, *inter alia*, the following questions:

*“Did you, pursuant to the provisions of Section 40 (2) (c) of the Constitution of Jamaica disclose, by way of the publication of a notice in the Gazette within one month before September 3, 2007, when the General Elections were held, your interest in and/or association with SCCL, which is/was a party to a government contract.*

- a. *If yes, please provide documentary evidence, where possible, to substantiate your assertions/responses;*
- b. *If no, please provide a comprehensive statement with respect to why the provisions of Section 40 (2) (c) of the Constitution of Jamaica was not adhered to by you.*

*Please provide documentary evidence, where possible, to substantiate your assertions/responses.”<sup>143</sup>*

In his response to the OCG’s Requisition, which was dated 2011 January 4, Mr. Clifford Warmington stated, *inter alia*, as follows:

**“I was never a party directly or a partner of a firm or a director or manager of a company that had contracts with the Government of Jamaica at September 3, 2007. Or any period prior to that date** *specify by the Constitution of Jamaica, therefore [sic] was no requirement for any action by me to be gazetted.”<sup>144</sup> (OCG Emphasis)*

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<sup>143</sup> OCG Follow-up Requisition to Mr. Clifford Warmington. 2010 December 16. Question 27

<sup>144</sup> Clifford Warmington. Response to the OCG’s Follow-up Requisition. 2011 January 4. Question 27

Given the documentary evidence which has been provided to the OCG, the foregoing assertion of Mr. Everald Warmington is wholly inaccurate and false. In particular, the OCG has found that at least one contract was subsisting between the GOJ and SCCL, on the date that Mr. Warmington resigned from his post as a Director of SCCL on 2007 September 1.

Without prejudice to the foregoing, Section 40 (2) (c) is unambiguous in its requirement that a prospective Candidate who is desirous of being elected a Member of Parliament must declare interest in a GOJ contract **by publishing a notice in the Gazette within one month before the day of the election.**

The OCG also deemed it prudent to ascertain whether an Exemption Motion, pursuant to the provisions of the Constitution of Jamaica, was granted by the Parliament on behalf of Mr. Clifford Warmington.

In this regard, by way of a Requisition, which was dated 2010 August 25, the OCG requisitioned Mrs. Heather E. Cooke, Clerk to the Houses of Parliament, and asked her to provide answers to the following questions:

1. *“Please provide an Executive Summary Listing of the date(s) on which Mr. Clifford Everald Errol Warmington was a Member of Parliament.*
2. *Please provide copies of **all** Exemption Motions which have (a) been put before Parliament for its consideration and (b) approved by Parliament for and/or on behalf of Mr. Clifford Everald Errol Warmington.*
3. *Kindly identify the respective Sections of the Constitution of Jamaica under which each of the Exemption Motions was sought and granted for Mr. Clifford Everald*

*Errol Warmington.*”<sup>145</sup>

In her response to the OCG’s Requisition, which was dated 2010 September 23, Mrs. Cooke stated, *inter alia*, as follows:

1. “*Mr. Clifford Everald Errol Warmington was a Member of Parliament for the following Constituencies for the period(s) below:*

*Executive Summary Listing*

- *1980 – 1983 – Saint Catherine South Eastern*
  - *2002 – 2007 – Saint Catherine South Western*
  - *2007 – present – Saint Catherine South Western*
2. (a) *The Hansard Notes for the 17<sup>th</sup> of April, 2003 indicates that on that date, an Exemption Motion was put before the Honourable House of Representatives for its consideration on behalf of Mr. Clifford Everald Errol Warmington...*  
  
(b) *On the 23<sup>rd</sup> of April, 2003 the Motion for Exemption, tabled for consideration on the 17<sup>th</sup> of April, 2003 was approved by the Honourable House of Representatives on behalf of Mr. Clifford Everald Errol Warmington...*
  3. *The Exemption Motion was sought and granted under Section 41(i)(f) of the Constitution of Jamaica.*”<sup>146</sup>

The Hansard Notes for 2003 April 17 revealed, *inter alia*, the following:

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<sup>145</sup> OCG Requisition to Mrs. Heather Cooke. 2010 August 25. Questions 1, 2 and 3

<sup>146</sup> Mrs. Heather Cooke. Response to the OCG’s Requisition. 2010 September 23. Questions 1, 2 and 3

Mr. Speaker, I beg to give notice that at the next meeting of the House I will move:

BE IT RESOLVED that with reference to a disclosure by the Member for St. Catherine South Western, to this House of his being the Chairman and Chief Executive Officer of STRATHAIRN Construction Company Limited, a General Construction Management Engineering and Quantity Surveying Company, which from time to time enters into contracts with the Government of Jamaica or its agents, that this House exempts the Member from vacating his seat, under the provisions of section 41 (1) (f) (1) of the Jamaica Constitution Order in Council, 1962, by reason of the Member becoming a party to any contract aforesaid.

The Hansard Notes for 2003 April 23 revealed, *inter alia*, the following:

**Mr. KELLIER**—Mr. Speaker, BE IT RESOLVED that with reference to a disclosure by the Member of St. Catherine South-Western to this House of his being the Chairman and Chief Executive Officer of Strathairn Constitution Company Limited, a General Construction Management Engineer and Quantity Surveying Company, which from time to time enter into contracts with the Government of Jamaica or its agents that this House exempt the Member from vacating his seat under the provision of section 41 (1) (f) and (i) of the Jamaica Constitution Order in Council 1962 by reason of the Members becoming a party to any contract aforesaid.

Motion put to the House and agreed to.

Having regard to the foregoing, the OCG is of the considered opinion that despite the Exemption Motion which was granted to Mr. Clifford Warmington in 2003 April, same

would not have obviated him from adhering to the processes which are required by Section 40 (2) (c) of the Constitution of Jamaica, prior to the 2007 General Elections.

In the instant matter, the OCG has seen no evidence to indicate that Mr. Everald Warmington did, in fact, publish his interest in SCCL, in the Gazette, prior to the General Elections of 2007 as required by the Constitution of Jamaica.

In light of the foregoing, the OCG has, therefore, found that Mr. Clifford Warmington contested the 2007 General Elections in violation of Section 40 (2) (c) of the Constitution of Jamaica and as such, the OCG must question the validity of Mr. Warmington's tenure as a legitimate Member of the House of Representatives between the period of 2007 September and 2011 March 7, at which time Mr. Warmington tendered his resignation as a Member of Parliament.

**Special Note – DPP’s Ruling Regarding the Prosecution of Mr. Howard Charvis for Breaches of Section 29 of the Contractor General Act**

The OCG, during the conduct of its Investigation was faced with certain challenges in obtaining information from Mr. Howard Charvis, President, SCCL, as it regards the particulars of the contracts which were awarded to SCCL by the St. Catherine Parish Council, the NWA and the MTW.

In this regard, the OCG, by way of written Statutory Requisitions, which were dated 2011 January 7 and January 24, required Mr. Howard Charvis to provide, *inter alia*, the following:

1. A list of **all** projects on which SCCL was engaged by the St. Catherine Parish Council, the NWA and/or the MTW.
2. A copy of all contracts which were consummated between the St. Catherine Parish Council, the NWA and/or the MTW and SCCL.
3. A copy of any document which was submitted by SCCL, to the St. Catherine Parish Council, the NWA and/or the MTW, as an attestation of the certified work that was done by the company for **each** project on which the company was engaged.

Mr. Charvis, in his sworn response to the OCG’s Requisition, which was dated 2011 January 13, indicated, *inter alia*, that “*This information now being requested, is already in the possession of the Contractor General who requested these from the reference agencies and Ministry which acceded to the Contractor General’s requests and supplied same to the Contractor General’s Office.*”

Having regard to the foregoing, the OCG, by way of another written Statutory Requisition, which was dated 2011 January 24, again requested the information from Mr. Howard Charvis and advised him that he was required to provide full responses to same.

It must be noted that the OCG received a sworn written response from Mr. Charvis on 2011 February 4 at which time he advised the OCG as follows:

*“I was of the view that your investigation was to ascertain the facts, In this case, the facts surrounding this particular matter is already in your hands as you have made reference to, and have had published same in the Daily News Papers on August 17.2010. You have subsequently again had [sic] published in the daily News Papers, the fact that you have raided with the assistance of the Police, the Offices of the National Works Agency and the Ministry of Transport and Works and obtained all the records relating to the investigation.”*

The foregoing are amongst the instances in which Mr. Howard Charvis failed to comply with a lawful requirement of a Contractor General Act, as per the requirements of the Statutory Requisitions which were issued to him.

As such, the OCG found that contrary to the provisions which are contained in Section 29 (b) (ii) of the Contractor General Act, Mr. Howard Charvis, a Director of SCCL, failed, without lawful justification or excuse, to fully comply with a lawful Requisition of the Contractor General as per the requirements of the OCG’s letters to Mr. Howard Charvis, which were dated 2011 January 7 and 2011 January 24.

Further, contrary to the provisions which are contained in Section 29 (b) (i) of the Contractor General Act, the OCG found that Mr. Charvis had also, without lawful justification or excuse, obstructed, hindered and/or resisted a Contractor General in the execution of his functions under the Contractor General Act.

As such, by way of a letter which was dated 2011 March 3, the OCG formally referred the matter to the Office of the Director of Public Prosecutions (ODPP) for such action as the DPP saw fit, having regard to the circumstances of the case.

It is instructive to note that by way of a letter which was dated 2011 March 2, which was faxed to the OCG on 2011 March 3, the OCG was advised by the ODPP as follows:

*“I am in receipt of your referral dated the 3<sup>rd</sup> day of March, 2011. Kindly be advised that Mr. Howard Charvis, Director of Strathairn Construction Company Limited is to be charged for the following offences contrary to Section 29 (b)(i) and (ii) of the Contractor General Act.*

- 1. Breach of Section 29 (b) (i), ... that he without lawful justification or excuse obstructs, hinders or resists a Contractor General or any other person in the execution of his functions under this Act.*
- 2. Breach of Section 29 (b) (ii), that he failed to comply with a lawful requirement of a Contractor General or any other person under this Act.”*

The foregoing ruling was achieved on the same day that the OCG made its formal Referral to the ODPP requesting that Mr. Charvis be charged for a breach of the Contractor General Act. The aforementioned is a marked occurrence for which the OCG is highly appreciative and one for which it must commend the ODPP, in light of the numerous other Referrals which have been made, by the OCG to the ODPP, and the challenges which have arisen regarding same.

Consequently, a Court hearing was scheduled for 2011 March 25, at which time both Mr. Charvis and his Attorney-at-Law attended the Half-Way Tree Resident Magistrate’s Court.

Arising out of the Court proceedings on 2011 March 25, it must be noted that the referenced matter was scheduled for Trial in the Half-Way Tree Resident Magistrate's Court on Monday, 2011 August 15. However, as at the time of the drafting of this Report of Investigation, the Trial had been rescheduled for 2011 October 6.

## CONCLUSIONS

Based upon the documents which have been reviewed, as well as the sworn testimony which has been received from the representatives of the St. Catherine Parish Council, other Public Officials and persons of interest, the OCG has arrived at the following considered Conclusions:

1. The OCG has found and subsequently concluded that certain of the particulars which were made in the sworn statement that was given to the OCG in 2008 December, by the ‘*Confidential Witness*’, regarding the establishment and operations of SCCL, are in fact accurate reflections of SCCL’s operations. In this regard, the OCG has concluded the following:
  - a. Mr. Lloyd Grant, a Councillor at the St. Catherine Parish Council was actively involved in the operations of SCCL and was appointed a Director of the said company on 2003 March 26 ;
  - b. The names of certain relatives of Mr. Clifford Everalld Warmington were added to the company registration particulars of SCCL, as alleged by the “*Confidential Witness*” who came forward to the OCG;
  - c. Mr. Everalld Warmington ceased to be a Director of SCCL on 2007 September 1. On 2007 September 1, several of Mr. Warmington’s relatives were added to the registration particulars of SCCL.
  - d. Mr. Warmington, as alleged by the “*Confidential Witness*”, is now a ‘Consultant’ for SCCL and is remunerated based upon the nature and complexity of the work which is undertaken by him.
  - e. SCCL has its registered offices at 40 B East Street, Old Harbour, which is the same as the address for the office of the Member of Parliament, Mr. Clifford Everalld Warmington. According to Mr. Howard Charvis,

President, SCCL, *“The office of the Member of Parliament and SCCL are, along with other entities, on the same compound.”*

- f. It is instructive to note that Mr. Warmington, on his *“Statutory Declaration of Assets, Liabilities and Income”*, which was filed with the Integrity Commission from as early as 2002 October 16 and as late as 2009 December 31, used a given address of *“40 East Street, Old Harbour”*, which is the address on the letter head belonging to the office of the Member of Parliament.
  - g. The records of the COJ have revealed that *“There have been no filed changes in the Registered Office since incorporation.”*
2. The records of the COJ have revealed that SCCL was incorporated on 1981 October 15. Based upon the COJ’s official records, the OCG has also found and concluded that the First Directors of SCCL were Mr. Howard Charvis, Mr. Noel McKenzie, Mr. Evroy Chin and Mr. Leslie Henry.
  3. The records of the COJ have also revealed that the First Shareholders of SCCL were Ms. Donna-Ann Stephens and Ms. Jannett Manning.
  4. The OCG has found and concluded that Mr. Everalld Warmington was appointed as a Director of SCCL on 2003 March 26, by Mr. Howard Charvis. The official records of the COJ, which were provided to the OCG, have revealed that Mr. Everalld Warmington was not listed as a shareholder of SCCL.
  5. The OCG has found and concluded, based upon the official COJ records, that the current shareholders of SCCL are Mr. Howard Charvis, Mr. Lloyd Grant and Mr. Selvyn Foster.

6. Based upon the sworn documentary evidence which has been adduced to the OCG, the OCG has found and concluded that there are three (3) current and known shareholders of SCCL who, despite the fact that none have, by their own admissions, placed equity in the company for the acquisition of their respective share allotments.

Further, in the case of Mr. Lloyd Grant and Mr. Selvyn Foster, both men have advised the OCG in their respective sworn testimonies that they were allotted shares in SCCL based upon their input of sweat equity in the company.

7. Based upon the sworn documentary evidence which has been provided to the OCG, the OCG has found and concluded that none of the known shareholders of SCCL, have held themselves out to be nominated and/or proxy shareholders of SCCL.
8. According to the sworn documentary evidence which was provided to the OCG, by Mr. Howard Charvis, Mr. Selvyn Foster, Mr. Lloyd Grant and Mr. Everalld Warmington, it has been asserted that Mr. Warmington does not have a financial interest in SCCL.
9. The OCG has found and concluded that SCCL, in its application for registration with the NCC, asserted that Mr. Clifford Everalld Warmington was the owner and principal of SCCL. The foregoing was sworn and attested to by Mr. Clifford Everalld Warmington himself, before a Justice of the Peace, to be true and correct on 2007 January 8.
10. The OCG has found and concluded that Mr. Everalld Warmington has denied making any such representation to the NCC, in regard to SCCL, despite the documentary evidence which is on the record.

It is, therefore, the considered opinion of the OCG that Mr. Warmington must now choose whether the sworn representations which were made by him, to the OCG, in his respective responses to the OCG's Requisitions, are now wholly accurate and, as such, otherwise prove that the application which was submitted to the NCC, on behalf of SCCL, pursuant to the Voluntary Declarations Act, was an application that was (a) not submitted by him and was so done without his expressed authorization or knowledge and (b) that the information contained therein was in fact accurate and truthful as he had so declared.

11. Despite the sworn testimony of certain SCCL Directors, the OCG has found and concluded that there were certain material representations which were made to the BNS, by representatives of SCCL, which, at a minimum, implicate Mr. Clifford Warmington as being a beneficial owner of SCCL. In this regard, the OCG has found and concluded the following:

- a. On a BNS Form, which was entitled "*Business Customer Details- Addendum*", which was executed on 2007 September 26, with respect to "**Beneficial Shareholders with more than 10% ownership.**",<sup>147</sup> the only person identified was Mr. Clifford Warmington of a 40 East Street, Old Harbour, address.
- b. On an identical BNS Form, which was entitled "*Business Customer Details- Addendum*", and which was executed on 2006 September 27, with respect to "**Beneficial Shareholders with more than 10% ownership.**",<sup>148</sup> the only persons who were identified were Mr. Clifford Warmington of a 40 East Street, Old Harbour address, and a Mr. Lloyd Grant.

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<sup>147</sup> BNS Form- "*Business Customer Details-Addendum*". 2009 September 26

<sup>148</sup> BNS Form- "*Business Customer Details-Addendum*". 2006 September 27

- c. However, in that instance, and under the heading “**PERCENTAGE OF OWNERSHIP**”, the SCCL Representatives indicated that Mr. Clifford Warmington held “100%” of the shares in SCCL.(OCG Emphasis)

It must be noted that on 2007 September 26, approximately twenty five (25) days after Mr. Warmington had resigned from his post as a Director of SCCL, he was held out to be the sole Beneficial Shareholder of SCCL.

12. The OCG has found, and subsequently concluded, that there are conflicting and contradictory statements on the record regarding the shareholding status of Mr. Everald Warmington in SCCL. The OCG’s conclusion is premised upon, *inter alia*, the following:

- a. The fact that the current shareholders of SCCL and Mr. Everald Warmington, himself, have denied the allegation that Mr. Warmington has any pecuniary interest in SCCL;
- b. The fact that the official COJ records do not, and have never, detailed Mr. Warmington as being a shareholder of SCCL;
- c. The fact that by way of a letter, which was dated 2006 October 24, several Directors of SCCL, inclusive of Mr. Everald Warmington, advised BNS, as follows: “*This is to confirm that all the shares in Strathairn Construction Company Limited are held by Clifford E. Warmington.*”
- d. The fact that the sworn declarations which have now been provided to the OCG, by Mr. Howard Charvis, *et al*, have now contended that the representations which were made to BNS, by the representatives of SCCL, were materially and patently false.

The OCG’s conclusions and findings in the matter are further compounded by the fact that Mr. Howard Charvis, Mr. Selvyn Foster and Mr. Lloyd Grant, in their respective responses to the OCG’s Requisitions, which were dated 2010

November 22, 2010 November 18 and 2010 November 17, provided the exact responses and indicated that “*Mr. Warmington does not have a financial interest in SCCL.*”<sup>149</sup>

It is the OCG’s considered opinion that there is sufficient conflicting evidence from which to conclude that certain named Directors of SCCL have committed a criminal offence as it relates to (a) the representations/misrepresentations which have been made to BNS, (b) the representations/misrepresentations which have been made by them, to the OCG, in their sworn and documented statements and/or (c) the representations/misrepresentations which have been made to the NCC.

The OCG’s conclusion is premised upon the fact that (a) if materially false representations were made to the BNS, then those Directors of SCCL, who were party to same, would have made fraudulent misrepresentations to the BNS should their sworn representations to the OCG be taken as factual, truthful and accurate and (b) conversely, if the representations of certain Directors of SCCL, to the BNS, is indeed factual and correct, then their representations to the OCG would have been in violation of Section 29 of the Contractor General Act.

Further, and having regard to the fact that Mr. Clifford Warmington, in submitting an application to the NCC, for and on behalf of SCCL, asserted, pursuant to the provisions of the Voluntary Declarations Act, that he was the owner and principal of SCCL, and has now, subsequently denied the veracity of same in his sworn testimony to the OCG, the OCG has been led to conclude that Mr. Warmington has committed an offence under the Perjury Act in relation, either to (a) his representations to the OCG or, (b) his representations to the NCC.

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<sup>149</sup> Responses to the OCG’s Requisition from Selvyn Foster- 2010 November 18, Howard Charvis- 2010 November 22 & Lloyd Grant- 2010 November 17. Question 33.

The OCG is fortified in its view as the two (2) conflicting statements are mutually exclusive and both cannot be true. Therefore, and by default, should both of the statements to the NCC and the OCG now be labelled as inaccurate by Mr. Warmington or anyone else, the offence of misleading and making a false representation to the NCC and/or the OCG would subsist.

13. The OCG has found and concluded that a written letter was submitted to the NCC, on 2010 April 22, regarding the Annual Registration of SCCL, on a letterhead belonging to the Office of the Member of Parliament for South West St. Catherine. The referenced letter was signed by a Mr. Howard Charvis, President, SCCL.

However, the OCG has found that Mr. Howard Charvis, in his sworn response to the OCG's Requisition, sought to explain, *inter alia*, the circumstances which surrounded the use of the referenced letterhead and, in doing so, stated that "*My signing a letter on the Member of Parliament's letterhead was a genuine oversight.*"

14. The OCG has found that Mr. Everald Warmington, in his sworn response to the OCG's Requisition, indicated that SCCL had no authority to use the Member of Parliament's letterhead and was not aware of the occurrence or that same was even '*factual*'.

However, the OCG has taken note of the explanations which have been posited by both Mr. Warmington and Mr. Charvis and must, as a matter of due course, question the sufficiency of such a response having regard to the fact that the letter was in fact signed by Mr. Charvis and same is not similar to the official letterhead which is used by SCCL.

15. The OCG has found and concluded that SCCL has, in at least one instance, made a material misrepresentation on its NCC application forms for the years 2009 and 2010. In this regard, the OCG has concluded that SCCL misrepresented the fact that it had employed a Mr. Donovan Nolan as a member of its technical staff. In point of fact, Mr. Nolan, in his sworn response to the OCG, advised, *inter alia*, that **“I, therefore, state that I had discussions with Mr. Warmington, and I advised him that I was available for a Senior Management position within the Private or Public Sector. Mr. Warmington recommended me to the directors of Strathairn Construction Company Limited for a position in management. I did not however, take up the appointment.”**

16. The OCG has found and concluded that Mr. Nolan has denied having knowledge of the fact that his particulars were being used by SCCL and also indicated that he has never worked with and/or been engaged by SCCL.

17. It is instructive to note that, as it regards the engagement of Mr. Nolan by SCCL, Mr. Howard Charvis, in his sworn response to the OCG’s Requisition, advised the OCG that *“Mr. Nolan was offered the position to begin in May, but he did not take up the appointment. This information was supplied to your office through your Mr. McFarlane on June 17, 2010.”*

However, the OCG has found and concluded that SCCL, for the two (2) consecutive years of 2009 and 2010, had provided the NCC with information regarding Mr. Nolan’s association with the company.

In light of the conflicting information which is available to the OCG, it must be noted that the sworn statement which was given by Mr. Howard Charvis, did not seek to address the misrepresentation of facts as evidenced by the application forms which were submitted to the NCC for two (2) consecutive years, but rather

sought to explain the fact that Mr. Nolan did not take up an appointment with SCCL approximately one (1) year after his particulars were first used by SCCL.

18. The OCG has concluded that Mr. Everald Warmington, in his sworn response to the OCG's Requisition, indicated that he had passed Mr. Nolan's resume to SCCL and other companies, but did not subsequently try to ascertain whether Mr. Nolan was employed by any of these companies.

In his sworn response to the OCG's Requisition, Mr. Nolan indicated that after his initial meeting with Mr. Warmington, he had no further contact with Mr. Warmington regarding the status of his application with SCCL.

19. Mr. Howard Charvis, in his sworn response to the OCG's Requisition, indicated that "**Mr. Nolan was offered the position to begin in May, but he did not take up the appointment.** This information was supplied to your office through your Mr. McFarlane on June 17, 2010." The OCG has found and concluded that such a representation conflicts with the information which was consecutively provided to the NCC, by Mr. Charvis, in 2009 and 2010, regarding the employment of Mr. Donovan Nolan.

20. The OCG has found, and concluded, that a BNS chequing account was opened in the name of SCCL on 2000 June 18. The only signatories to the referenced account were a "Clifford Everald Warmington and Leslie Henry". The records which were provided to the OCG, by the BNS, further revealed that the chequing account was closed on 2006 June 8 and there were no other signatories to the account outside of the two (2) named individuals.

21. The OCG has found and concluded that in 1994, a USD Bank Account was reportedly opened by SCCL, with funds which originated from Mr. Clifford

Warmington. In his sworn response to the OCG's Requisition, Mr. Warmington indicated that the money was obtained from his personal bank account in the United States of America.

However, a perusal of the BNS records, by the OCG, has revealed that the funds which were used to open the referenced Bank Account actually came from the account of a company in New York, United States of America, which was named 'Strathairn Construction Co. Inc.'

22. The OCG has found, based upon the particulars of an application form which was submitted to the NCC, by SCCL, on 2007 January 10, that the company 'Strathairn Construction Co. Inc.' was incorporated in New York and that ***"In 200 [sic] the Chief Share Holder returned to Jamaica and have since been providing Consulting Services to Contractors and Developers."***

The foregoing application form, which included the information which is detailed above, regarding 'Strathairn Construction Co. Inc.', was completed and sworn to at a 20 Belmont Road, Kingston 5 address, by one Mr. Clifford Warmington.

It is instructive to note that despite the evidence to the contrary, Mr. Clifford Warmington, in his sworn response to the OCG's Requisition, which was dated 2011 January 4, stated that *"I am not aware of, or can recall any such declaration being made."*

23. The OCG has found and concluded that despite the foregoing application form which was submitted to the NCC, and which was completed by Mr. Warmington, he (Mr. Warmington), has, in his sworn response to the OCG's Requisition, which was dated 2010 November 24, indicated to the OCG that:

*“I can not recall the full details on the founding of Strathairn Construction Company Incorporated. **I recall that a group of individuals established that corporation. I was associated with it but I am unable to give detail [sic] on the date on which it was incorporated or whether or not that entity is still in operation. I do not recall being a shareholder. I know that there were [sic] no relationship with the Jamaican entity of Strathairn Construction Company Limited.** I was involved in the Construction Management aspect of Strathairn Construction Company Incorporated. I can not recollect any further detail on that corporation.”<sup>150</sup>*

The OCG has, therefore, concluded that there is a gross disconnect and conflict between the sworn statements which were submitted to the OCG by Mr. Clifford Warmington and the previous sworn declarations which have been made by him on the application forms which were submitted to the NCC.

24. The OCG has found, and concluded, that there were associated bank accounts pertaining to Mr. Clifford Warmington and SCCL. In point of fact, the OCG has found that on 2009 November 5, an account which was held in the name of SCCL was closed and the funds were transferred to an account which was held in the names of one Mr. Clifford Everald Warmington and a Ms. Nicole Warmington.

25. The OCG has found and concluded that on the BNS Form, which was entitled “OPENING AND OPERATION OF CORPORATE ACCOUNTS PRIVATELY HELD”, which was apparently signed on 2007 September 26, representatives of SCCL identified Mr. Clifford Everald Warmington as the person holding one hundred percent (100%) of the shares in SCCL.

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<sup>150</sup> Clifford Warmington. Response to the OCG’s Requisition. 2010 November 24. Question # 49

The foregoing information which was provided to BNS conflicts with the documentary and official company records which are available from the COJ which has never listed Mr. Warmington as a documented shareholder of SCCL.

26. The OCG has found that on 2009 September 28, a SCCL BNS cheque, in the amount of \$4,315,606.00, was drawn on the SCCL account and was issued to Euro Star Motors Ltd. According to Mr. Charvis, *“Payment was part of our loan repayment to Mr. Warmington who requested that the payment be made directly to Euro Star Motors.”*
27. The OCG has found, based upon the sworn statements which were provided to it, that, between the period of 2007 October to 2010 October, Mr. Everald Warmington was paid approximately J\$9 Million by SCCL, reflecting payments which were purportedly made for *“professional fee commensurate with the complexity of the purpose for which he is retained or engaged.”*

However, the OCG’s analysis of the payment schedule, which was provided to it by Mr. Howard and Mr. Lloyd Grant, revealed that the payments which were made to Mr. Warmington were a combination of payments for (a) Consultancy, (b) Loan Repayments, (c) Rent, and (d) “Purchase Motor Vehicle”.

28. The OCG has also found that, as at 2009 March 27, SCCL was reportedly making payments to Mr. Clifford Warmington for the rental of premises. However, and according to Mr. Howard Charvis, President, SCCL, the company does not have a written Rental Agreement.
29. Based upon the documentary evidence which has been provided to it, by Mr. Howard Charvis, Mr. Selvyn Foster and Mr. Lloyd Grant, the OCG has found and concluded the following:

- a. Rental payments are made by SCCL to Mr. Clifford Warmington for the office premises which are occupied by SCCL;
- b. Neither of the three (3) named gentlemen could confirm the name(s) of the owner of the premises; and
- c. All three (3) named gentlemen, despite being unable to confirm whether Mr. Clifford Warmington was in fact the owner of the premises which were occupied by SCCL, indicated that Mr. Clifford Everalld Warmington had “*physical possession of the premises.*”

The OCG’s conclusion is further buttressed by the fact that in its Statutory Requisition to Mr. Clifford Warmington, the OCG sought to ascertain from Mr Warmington an explanation regarding, *inter alia*, “...*the particulars of the payments which were made to you, by SCCL, for (i) loan repayment, (ii) purchase of motor vehicle and (iii) rent;*”

In his sworn response to the OCG’s Requisition, Mr. Warmington asserted, *inter alia*, as follows, “*I am unable to provide particulars of the payment. I am certain that the Directors provided those details.* Further in his response, Mr. Warmington indicated, *inter alia*, that “*The company pays me rental for the premises they have rented from me.*”

30. The OCG has found, and concluded, based upon the sworn Declaration of Assets and Liabilities which were submitted to the Integrity Commission, by Mr. Clifford Warmington, that Mr. Clifford Warmington, as at 2009 December 31, declared that he had no property which met the following listed categories:

- a. *Immovable Property (e.g. House, Land and Farm Buildings) Held by Declarant, Spouse and Children;*
- b. *Any Other Property Owned by Declarant, Spouse and Children; and*

c. *Other Property Owned by Declarant, Spouse and Children, Being Held By a Person Other Than Owner, Whether in Trust or Otherwise.*

In light of the foregoing, the OCG is unable to conclusively determine the particular premises which are being rented by Mr. Warmington and for which he is purportedly receiving rental income.

31. The OCG has found and concluded that as at 2011 January 24, twenty (20) contracts were reportedly awarded to SCCL by the St. Catherine Parish Council with an aggregated value of approximately J\$70 Million.
32. The OCG has found and concluded that the allegations which were made by the “*Confidential Witness*”, and which alleged that SCCL received the majority of the contracts from the St. Catherine Parish Council, was indeed an accurate description of the contract award particulars of the St. Catherine Parish Council. However, the OCG cannot conclusively attribute this occurrence to the existence of corruption or the lack thereof.
33. The OCG has found that the St. Catherine Parish Council has in place a Procurement Committee which composes of several Officers, inclusive of Councillors, in keeping with the Parish Council’s Act. It must be noted that a Mr. Lloyd Grant, Councillor and Director of SCCL, is a member of the St. Catherine Parish Council Procurement Committee.
34. The OCG has found evidence to indicate that the bids which were awarded to SCCL, by the St. Catherine Parish Council, all received the scrutiny and approval of the St. Catherine Parish Council’s Procurement Committee as evidenced by the records of the St. Catherine Parish Council’s Procurement Committee.

35. The OCG has also seen evidence to indicate that in more than one (1) instance the St. Catherine Parish Council offered invitations to tender for distinct projects and SCCL did not tender on all of the said projects nor did it win the bids on all projects for which it had tendered.
36. The OCG has found and confirmed that ten (10) contracts were awarded to SCCL by the St. Catherine Parish Council on 2008 August 28. The records of the St. Catherine Parish Council have revealed that three (3) sets of bids were received for the referenced projects, but one (1) bidder was disqualified. Hence, there were only two (2) responsive bidders for the referenced contracts.
37. The OCG has found and concluded that the bids which were submitted by SCCL, and which were awarded on 2008 August 28, were, in all instances, comparatively closer to the Comparable Estimates which were produced by the St. Catherine Parish Council than the bids which were provided by other bidders.
38. Based upon the documentary evidence which has been provided to it, by the representatives of the St. Catherine Parish Council, the OCG has confirmed that of the ten (10) contracts which were awarded to SCCL on 2008 August 28, eight (8) of those were for works to be undertaken in Sydenham, St. Catherine. However, the OCG is unable to conclusively determine whether or not the referenced contract awards were in fact splintered.
39. The OCG has found and concluded that between the period of 2007 December and 2010 January, the NWA awarded twenty-two (22) contracts to SCCL which had aggregated payments of J\$42,117,624.20
40. The OCG found, and has concluded, that of the twenty-two (22) contracts which were awarded to SCCL, by the NWA, twelve (12) of those contracts were

reported to the OCG via the QCA Reports. The twelve (12) referenced contracts had an aggregated value of \$25,377,125.00.

41. The OCG has also found and concluded that the NWA utilized the Force Account methodology in the procurement of the Works for the referenced twenty-two (22) contracts.

42. The OCG has found and concluded that there were nine (9) contracts which fell within the range of the OCG's QCA Reporting Regime which the NWA failed to report to the OCG, on its QCA Reports, which were to be submitted on a quarterly basis.

The unreported contracts which were awarded to SCCL had an approximate value of J\$16.79 million.

Based upon the foregoing, the OCG has concluded, based upon the NWA's non-compliance and failure to report the referenced nine (9) contracts, that the Accounting Officer of the NWA, who would have signed the referenced QCA Reports, breached Section 29 (a) and (b) (ii) of the Contractor General Act.

43. The OCG has found and concluded that the MTW awarded a single contract to SCCL, dated 2008 July, 18, during the period under review. The contract was awarded in the amount of J\$17,349,972.00, and was funded by the Inter-American Development Bank. The referenced contract received the endorsement of the NCC and the Cabinet, prior to it being awarded to SCCL.

44. The OCG has concluded that at the time at which Mr. Clifford Warmington offered his candidacy to become an elected Member of Parliament he was in violation of Section 40 (2) (c) of the Constitution of Jamaica. The OCG's conclusion is premised upon the following compendium of facts:

- a. The fact that the St. Catherine Parish Council reported that a contract was awarded to SCCL on 2007 July 25 and same was not completed until 2008 January 15;
- b. The fact that Mr. Clifford Warmington did not resign from his post as a Director of SCCL until 2007 September 1, two (2) days prior to the 2007 General Elections which were held in Jamaica.
- c. The fact that Section 40 (2) (c) of the Constitution of Jamaica requires that the necessary disclosures be made and published in the Gazette within one (1) month before the day of the election;
- d. The fact that the OCG has seen no evidence to suggest that the foregoing requirement of the Constitution of Jamaica was adhered to by Mr. Clifford Warmington;
- e. The fact that Mr. Clifford Warmington, in his sworn testimony to the OCG, has declared that **“I was never a party directly or a partner of a firm or a director or manager of a company that had contracts with the Government of Jamaica at September 3, 2007. Or any period prior to that date specify by the Constitution of Jamaica, therefore [sic] was no requirement for any action by me to be gazetted.”**<sup>151</sup>
- f. The fact that the documentary evidence which is available to the OCG contradicts the foregoing representations of Mr. Clifford Warmington.

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<sup>151</sup> Clifford Warmington. Response to the OCG’s Follow-up Requisition. 2011 January 4. Question 27

## **REFERRALS**

The OCG, in the conduct of its Investigation, is required to be guided by Section 21 of the Contractor-General Act.

**Section 21 of the Contractor-General Act** provides as follows:

**“If a Contractor-General finds, during the course of his Investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.”**<sup>152</sup> (OCG Emphasis)

1. The OCG, based upon the sworn documentary evidence which has been presented to it by Mr. Clifford Everald Warmington, Mr. Howard Charvis and other representatives of SCCL, is hereby referring a copy of its Report of Investigation to the Director of Public Prosecutions and the Commissioner of Police for such further Investigations as they both may deem fit, having regard to the apparent conflicts between the sworn responses which have been submitted to the OCG and the contradictory documentary evidence which was previously supplied, *inter alia*, to the NCC, the BNS, the COJ and the Integrity Commission.

The OCG is hereby referring the matter for the determination to be made as to whether Mr. Clifford Warmington and certain Directors of SCCL perjured themselves and/or breached Section 29 of the Contractor General Act, having regard to the numerous conflicts which have been unearthed between the statements which were provided by them to the OCG, on the one hand, and the

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<sup>152</sup> Contractor-General Act. 1983

prior sworn representations which had been made by them, on the other hand, to the NCC, pursuant to the Voluntary Declarations Act, as well as to the BNS, the COJ and/or to the Integrity Commission.

2. The OCG, based upon the sworn documentary evidence which has been adduced by Mr. Clifford Warmington, the Directors and other representatives of SCCL, is hereby referring a copy of this Report of Investigation to the Director of Public Prosecutions and the Commissioner of Police for the conduct of criminal investigations into the fraud which has been committed against the BNS, and which has, in fact, been conceded to, by certain representatives of SCCL, in their quest to engage the services of the BNS.

The OCG's referral in the matter is based upon the sworn documentary evidence which has been produced to it, by representatives of SCCL, who have now, in denying the claims which were made to the BNS that Mr. Warmington held one hundred percent (100%) of the shares in SCCL, have admitted that they knowingly, wilfully, and for the sake of expedience, made materially false misrepresentations to the BNS.

3. The OCG is hereby referring a copy of its Report of Investigation to the Integrity Commission for such further investigations as it may deem fit, having regard to the alleged property which Mr. Clifford Warmington has rented to SCCL and for which he has reportedly been paid rental income since 2009 March 27.

The OCG has deemed the Referral prudent in light of the fact that its perusal of the Statutory Declarations of Assets and Liabilities, which were filed by Mr. Clifford Warmington between the period of 2002 October and 2009 December, did not reveal that Mr. Clifford Warmington declared that he held property or had

same held on his behalf, which could have been the subject of his reported rental income from SCCL.

The OCG's Referral and Recommendation comes against the background of the fact that the President of SCCL, Mr. Howard Charvis, *et al*, have indicated that (a) they are unaware of the owners of the subject property for which SCCL is paying rent, (b) Mr. Clifford Warmington is in physical possession of the property, and (c) there is no lease agreement which could be used to verify the authenticity and legitimacy of the alleged rental payments which are being made to Mr. Clifford Warmington.

Further, and in light of the fact that Section 15 of The Parliament (Integrity of Members) Act makes it a criminal offence to knowingly make a false declaration in the referenced Statutory Declaration, the OCG, in making its Referral, is also recommending that the Integrity Commission provide Mr. Warmington with reasonable opportunity to address the seeming discrepancy.

4. The OCG is hereby referring its Report of Investigation to the Director of Public Prosecutions and the Commissioner of Police on the basis that it has found, herein, *prima facie* evidence that the Accounting Officer of the NWA, who signed and submitted the QCA Reports which failed to report nine (9) contracts which were awarded to SCCL, has committed a breach of Section 29 (a) and 29 (b) (ii) of the Contractor General Act and, by doing so, has committed a criminal offence.
5. In light of the information which has been unearthed, and which provides *prima facie* evidence that Mr. Clifford Warmington, at the time that he was elected to the House of Representatives in 2007 September, breached Section 40 (2) (c) of the Constitution of Jamaica, the OCG is hereby referring the matter to the Attorney General for a determination to be made as to what are the legal

ramifications of the referenced circumstances, particularly in light of the involvement of Mr. Clifford Warmington in the proceedings of the Houses of Parliament and other organs of the State whilst he was Constitutionally ineligible to do so.

6. The OCG is hereby referring a copy of its Report of Investigation to the Director of Public Prosecutions and the Commissioner of Police for such investigations to be conducted, and/or for charges to be brought against Mr. Clifford Everald Warmington for breaches of Section 29 (a) of the Contractor General Act, as may be deemed appropriate, having regard to (a) the Sworn Statement which was adduced by him, in which he unequivocally asserted that “**“I was never a party directly or a partner of a firm or a director or manager of a company that had contracts with the Government of Jamaica at September 3, 2007. Or any period prior to that date specify by the Constitution of Jamaica, therefore [sic] was no requirement for any action by me to be gazetted.”**<sup>153</sup>, and (b) the contradictory documentary evidence that is on the record.

The OCG’s referral of the matter is premised upon the fact that its records and the information which have been otherwise produced to it, during the course of the Investigations, have contradicted the sworn statement of Mr. Clifford Everald Warmington. In point of fact, the OCG has found that at least one (1) contract was subsisting between the GOJ and SCCL, as at the date on which Mr. Clifford Everald Warmington resigned from his post as a Director of SCCL, viz. 2007 September 1.

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<sup>153</sup> Clifford Warmington. Response to the OCG’s Follow-up Requisition. 2011 January 4. Question 27

## **RECOMMENDATIONS**

Section 20 (1) of the Contractor-General Act mandates that “*after conducting an Investigation under this Act, a Contractor-General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefor of the result of that Investigation **and make such Recommendations as he considers necessary in respect of the matter which was investigated.**” (OCG’s Emphasis)*

In light of the foregoing, and having regard to the Findings and Conclusions that are detailed herein, the OCG now makes the following Recommendations:

1. It is recommended that an immediate review of the accounting, procurement and public administration practices at the St. Catherine Parish Council, and the NWA, be undertaken by the Public Administration and Appropriations Committee of the House of Representatives, the Auditor General and the Ministry of Finance and the Public Service. The review should be conducted to ensure that adequate procedures, systems, checks and balances are not only implemented, but are aggressively enforced, to secure a radically improved level of compliance on the part of Public Bodies and Public Officials with relevant Government approved procedures, regulations and laws.
2. The OCG strongly recommends that the Procuring Entities plan their procurement activities in accordance with the procurement cycle, inclusive of the employment and application of an approved Procurement Plan. In this regard, contracts which are to be awarded should be properly packaged, tendered, evaluated and awarded within a specified timeframe.
3. In order to bring more scrutiny to bear over the GOJ’s public procurement processes, the OCG recommends that all Public Servants, who are involved in the procurement process, regardless of their pay grade and/or level of involvement,

should, if not already done, be required to submit to the Corruption Prevention Commission (CPC) a Statutory Declaration of their assets on an annual basis.

4. It is also recommended that the Corruption Prevention Commission (CPC) and, in the instant case, the Integrity Commission, take a more proactive approach in the review and investigation of the Declaration of Assets which are filed annually by Public Servants, pursuant to the Corruption Prevention Act, 2000.

Whilst the OCG recognises that there may be some resource constraints on the part of both Commissions in carrying out the investigations, if corruption is to be combated in Jamaica, all anti-corruption initiatives must be strengthened.

5. The St. Catherine Parish Council and the NWA must implement effective measures to ensure that they scrupulously adhere to the requirements of the Government of Jamaica Procurement Guidelines and the Contractor General Act, at all times, when procuring goods, works and services.
6. Given the scope of the St. Catherine Parish Council's and the NWA's procurement activities, inclusive of the need for emergency procurements, the agencies must develop, where possible, a schedule of procurement activities in such a manner that will enable timely submissions to the NCC for the consideration of contracts which are to be awarded via the Sole Source Procurement Methodology.
7. The OCG also strongly recommends that an urgent determination be made by the Director of Public Prosecutions and/or by the Commissioner of Police as to whether the safety and security of the "*Confidential Witness*" is in likely jeopardy and, if so, what measures may be deemed appropriate to ensure, *inter alia*, the safety of the "*Confidential Witness*".

The OCG's recommendation is premised upon the fact that the "*Confidential Witness*" has expressed to the OCG, a fear for his life and personal security.

### **Special Recommendation**

The OCG, in the conduct of its Investigation, has unearthed *prima facie* evidence to suggest that SCCL, through its authorized representatives, misrepresented the information which was provided to the NCC, on its contractor re-registration application forms for at least two (2) years.

In this regard, SCCL, through its Mr. Howard Charvis, provided the NCC with its application form, and attendant Affidavit, which were purportedly executed, before a Justice of the Peace, pursuant to the provisions of the Voluntary Declarations Act. It must be noted that the NCC application forms, on which the false and misleading information was presented, cautioned as follows:

**“IF THE INFORMATION PROVIDED BY THE APPLICANT ON WHICH EVALUATION AND AWARD(S) WERE BASED IS FOUND TO BE ERRONEOUS THEN THE CONTRACTOR(S) SHALL NOT BE REGISTERED, OR IF ALREADY REGISTERED, THE REGISTRATION WILL BE REVOKED.”<sup>154</sup>**

Having regard to the foregoing, the OCG must respectfully recommend to the NCC that it should revoke the registration of SCCL, if it has not already done so, in light of the false information which was presented. The OCG is fortified in its recommendation given the fact that SCCL has perpetuated a fraud upon the Government of Jamaica by misrepresenting its capacity to undertake works based upon resources which it has neither employed nor can rightfully lay claim to.

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<sup>154</sup> NCC Registration of Public Sector Contractors Application Form

### **Extra-ordinary Recommendation**

Having regard to the circumstances of the OCG's Investigation concerning SCCL and the OCG's ongoing efforts to remove fraud and corruption from the NCC Contractor Registration Process, the OCG must strongly recommend that consideration be given to enacting legislation which will nullify contracts which have been consummated between the Government of Jamaica and any contractor which is found to have perpetuated a fraud to secure such lucrative state funded contracts.

The OCG is of the considered opinion that such legislation would stymie the instances in which contractors would seek to secure benefits illicitly and will, in and of itself, act as a deterrent to instances in which the Government's contractor registration process is undermined.