



Report of Investigation

**Concerning Allegations of Impropriety, Irregularities
and Conflict of Interest at the Factories Corporation
of Jamaica Limited (FCJ)**

**Integrity Commission
May 2023**



This Publication until tabled in Parliament shall be confidential.

Sections 55 (4) and (5) of the Integrity Commission Act states:

“(4) Anything said or information supplied or any document or thing produced by any person for the purpose or in the course of any investigation by or proceedings before the Commission under this Act, shall be absolutely privileged in the same manner as if the investigation or proceedings were proceedings in a court of law.

(5) For the purposes of the Defamation Act, any report made by the Commission under this Act and any fair and accurate comment thereon shall be deemed to be privileged.”

Section 56 of the Integrity Commission Act states:

“Subject to section 42(3)(b), every person having an official duty under this Act, or being employed or otherwise concerned in the administration of this Act (hereinafter called a concerned person) shall regard and deal with as secret and confidential, all information, statutory declarations, government contracts, prescribed licences and all other matters relating to any matter before the Commission, except that no disclosure made by the Commission or other concerned person in the proceedings for an offence under this Act or under the Perjury Act, by virtue of section 17(2) of that Act, shall be deemed inconsistent with any duty imposed by this subsection.

(2) The obligation as to secrecy and confidentiality imposed by this section, in relation to any documents, or information obtained under this Act continues to apply to a person despite the person having ceased to have an official duty, be employed or otherwise concerned in the administration of this Act.

(3) Every concerned person who is required under subsection (1) to deal with matters specified therein as secret and confidential who at any time communicates or attempts to communicate any such information, declaration, letter and other document or thing referred to in subsection (1) disclosed to him in the execution of any of the provisions of this Act to any person —

- (a) other than a person to whom he is authorized under this Act to communicate it; or
- (b) otherwise than for the purpose of this Act,

commits an offence and shall be liable on summary conviction in a Parish Court to a fine not exceeding one million dollars or to a term of imprisonment not exceeding one year.

Integrity Commission
1st Floor, PIOJ Building
16 Oxford Road
P.O. BOX 540
Kingston 5
Telephone: 876-929-6460/876-929-8560/876-929-6466
Fax: 876-929-7335

INTEGRITY COMMISSION Concerning Allegations of Impropriety, Irregularities and Conflict of Interest at the Factories Corporation of Jamaica Limited (FCJ)



Table of Contents

Chapter 1 – Introduction	4
Chapter 2 – Background	5
<i>Jurisdiction</i>	<i>5</i>
<i>Allegations</i>	<i>6</i>
<i>Individuals Pertinent to the Investigation</i>	<i>6</i>
Chapter 3 – Terms of Reference	8
Chapter 4 – The Investigation	9
Chapter 5 – Law/Policies, Evidence and Discussion of the Findings	11
The Circumstances Surrounding the Acquisition of Two Hundred (200) Acres of Land by the Factories Corporation of Jamaica Limited (FCJ) from the Urban Development Corporation (UDC).....	11
The Circumstances Surrounding the Appointment of Board Members Messrs. Zavia Mayne and Robert Ramsey as Attorneys, for the CEZ project.....	13
The Implementation of the Contract Awarded to Messrs. Zavia Mayne and Robert Ramsey	19
Payments made to Messrs. Zavia Mayne and Robert Ramsey by the Factories Corporation of Jamaica Limited (FCJ) for work done as Attorneys in the acquisition of the two hundred (200) acres of land at the Caymanas Estate from the Urban Development Corporation (UDC) under the Caymanas Economic Zone Project	28
The Circumstances which Led to the Engagement of Linton Walters and Co. Attorneys – at – Law by the Factories Corporation of Jamaica Limited (FCJ)	32
Role Played by the Managing Director of the FCJ	35
Chapter 6 – Conclusions	43
Chapter 7 – Recommendations	47
Appendices.....	50



Chapter 1 – Introduction

1.0 Executive Summary

- 1.1 This Investigation Report concerns allegations of conflict of interest in the award of a contract for the acquisition of two hundred (200) acres of land at the Caymanas Estate, by the Factories Corporation of Jamaica Limited (FCJ), under the Caymanas Economic Zone (CEZ) Project.

- 1.2 The Report outlines conflict of interest issues in the engagement of serving FCJ Board members, to provide private legal services, on behalf of the FCJ for the CEZ project. During the course of the investigation, the Director of Investigation (DI) uncovered issues of Conflict of Interest and breaches of the Public Bodies Management and Accountability Act. The necessary recommendations towards mitigating a reoccurrence of the breaches identified are outlined herein.



Chapter 2 – Background

2.0 This chapter sets out the background information concerning the investigation, jurisdiction, allegations and a profile of the individuals pertinent to the investigation.

Initiation of Investigation

2.1 In the year 2016, the Office of the Contractor General (OCG) initiated an investigation, concerning allegations of conflict of interest and/or impropriety in the award of contract for legal services in relation to the acquisition of two hundred (200) acres of land at the Caymanas Estate, by the Factories Corporation of Jamaica Limited (FCJ).

Jurisdiction

2.2 Sections 4(1) and 15(1) of the Contractor General Act empowered the Contractor General to monitor and investigate the award and/or implementation of any government contract with a view to ensuring that such contracts were awarded impartially, on merit and devoid of impropriety or irregularity.

2.2.0 Additionally, and pursuant to Section 63 of the Integrity Commission Act, the DI continued the investigation into the instant matter. The referenced sections are outlined in greater detail in Appendix 1.



Allegations

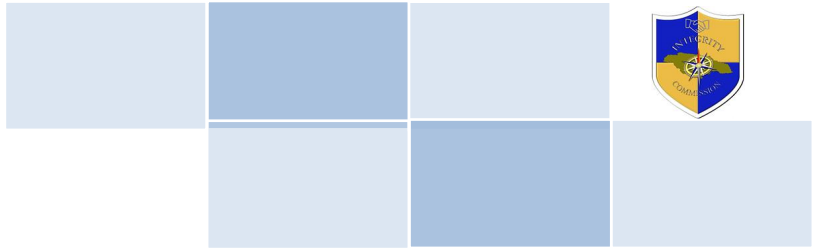
2.3 In the year 2010, the Office of the OCG began monitoring the Consultancy Services for the development of the Caymanas Economic Zone.

2.3.0 The findings of the OCG's monitoring exercise uncovered certain issues of conflict of interest and impropriety concerning the circumstances surrounding the engagement of serving Board Members of the FCJ as Attorneys in their private capacity. The referenced Board members were contracted to provide Conveyancing Services, relating to the FCJ's acquisition of two hundred (200) acres of land at the Caymanas Estate, from the Urban Development Corporation (UDC), under the Caymanas Economic Zone Project.

Individuals Pertinent to the Investigation

2.4 The following persons were considered pertinent to the investigation:

1. Mr. Derrick Webb – Acting Managing Director (Former), FCJ;
2. Mr. Kenneth Delano Rowe – Acting Managing Director (Former), FCJ;
3. Mr. Paul East – Former Board Director, FCJ;
4. Mrs. Tanikie M^cCarthy Allen – Former Board Director, FCJ;
5. Dr. Donald Farquharson – Managing Director, FCJ;
6. Mr. L. Robert. Honeyghan – General Manager, UDC;
7. Mr. Derek Cross – Former Board Member, FCJ;
8. Mr. Newlyn 'Neil' Seaton – Former Board Chairman – FCJ;



9. Mr. Zavia T. Mayne, Former Board Director, FCJ; and
10. Mr. Robert Ramsey, Former Board Director, FCJ.



Chapter 3 – Terms of Reference

- 3.0 This chapter outlines the scope of the investigation and the issues that were explored. In the conduct of this investigation, the DI sought to establish the following:
- 3.1 The details surrounding the acquisition of Two Hundred (200) Acres of Land at the Caymanas Estate, by the FCJ, from the UDC, under the Caymanas Economic Zone (CEZ) Project;
- 3.2 The details of the appointment of Board members Zavia Mayne and Robert Ramsey as Attorneys, on behalf of the FCJ, for the Caymanas Economic Zone Project (CEZ);
- 3.3 The terms and conditions of the retainer agreement between the FCJ and Board members Zavia Mayne and Robert Ramsey, regarding the acquisition of lands under the CEZ Project;
- 3.4 Whether the FCJ's engagement of the referenced Board members as Attorneys for the CEZ Project was irregular, improper and/or resulted in a conflict of interest; and
- 3.5 Whether recommendations ought to be made in respect of the subject matter.

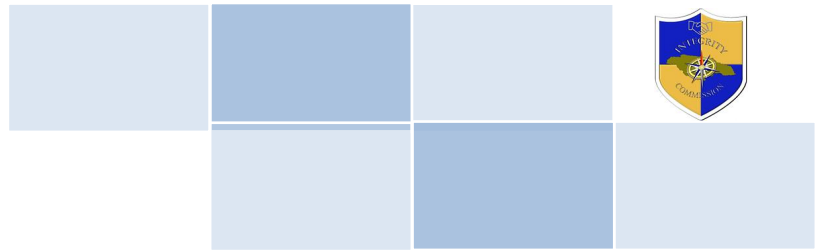


Chapter 4 – The Investigation

4.0 This chapter outlines the investigative actions that were undertaken throughout the investigation.

4.1 The following actions were taken during the course of the investigation:

- a) On December 21, 2012 and December 30, 2015, two (2) Requisitions were dispatched to individuals, who were deemed pertinent to the investigation;
- b) During the period March 1, 2022 to January 13, 2023, seven (8) Notices were served on individuals, who were deemed to be pertinent to the investigation, to provide written statements;
- c) On October 11, 2022 and October 26, 2022, two (2) Judicial Hearings were conducted;
- d) A review of documentation and responses pertaining to the acquisition of lands by FCJ and the appointment of Board members to provide legal services to the entity; and
- e) A review of the Integrity Commission Act, Land Acquisition Act, Government of Jamaica Staff Orders, the Public Bodies Management and Accountability Act, National Land Agency's



Guidelines for MDA Lease Acquisition and other relevant legislation and policies was undertaken.

- 4.2 A review and cross-referencing of the responses, and supporting documentation was conducted in order to inform the DI's conclusions and recommendations.



Chapter 5 – Law/Policies, Evidence and Discussion of the Findings

5.0 This chapter sets out the applicable law/policies, evidence, findings and discussion in respect of the investigation.

The Circumstances Surrounding the Acquisition of Two Hundred (200) Acres of Land by the Factories Corporation of Jamaica Limited (FCJ) from the Urban Development Corporation (UDC).

5.1 As it relates to the FCJ's acquisition of two hundred (200) acres of land from the Urban Development Corporation (UDC), under the Caymanas Economic Zone Project (CEZ), the FCJ provided Minutes of a Board Meeting dated April 3, 2012, which outlined the following background details regarding the project:

“The Caymanas Economic Zone (CEZ) project forms part of the multi-faceted development entitled the Caymanas Land Development Project at Caymanas. It consists of 10,000 acres of land for development. Of the 10,000 acres for land development, the Caymanas Economic Zone (CEZ) would occupy approximately 200 acres located on the Northern side and 1,200 acres on the southern side of the Mandela Highway respectively. The project sought to implement, develop and sell to prospective investors”.¹

¹ Factories Corporation of Jamaica Limited Board Meeting Minutes held on April 3, 2012
INTEGRITY COMMISSION Concerning Allegations of Impropriety, Irregularities and Conflict of Interest at the Factories Corporation of Jamaica Limited (FCJ)



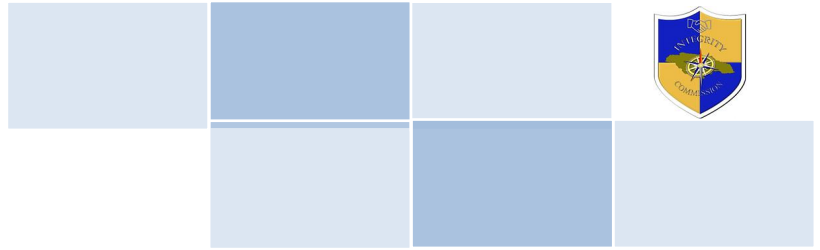
5.1.0 Having regard to the foregoing, the DI sought to ascertain the circumstances surrounding the FCJ's acquisition of the referenced lands. The DI is in possession of a letter dated January 31, 2011 from Mr. Reginald Budhan, Former Permanent Secretary, Ministry of Industry, Investment and Commerce and addressed to Mr. Horace Sutherland, Former Managing Director, FCJ, captioned "*Cabinet Submission: Caymanas Economic Zone - Land Acquisition*", the referenced letter sets out the following:

"The Cabinet, via Cabinet Decision 03/11 has:

- 1. Accorded the development of the 200 acres of Caymanas lands 'National Priority' status and required that all the relevant state agencies facilitate its implementation with urgency;*
- 2. Authorized the immediate assignment of possession of the 200 acres of Caymanas lands to Factories Corporation of Jamaica pending transfer of title at a later date; and*
- 3. Approved the payment of a 10% deposit of the purchase price to the Urban Development Corporation for the 200 acres of Caymanas lands and the payment of the balance on the transfer of splinter titles to the final investors."*²

5.1.1 As a result of the referenced decision, of June 02, 2011, the UDC entered into an Agreement for Sale with the FCJ to sell approximately 200 acres of

²Statement dated May 04, 2022 of Dr. Donald Farquharson
INTEGRITY COMMISSION Concerning Allegations of Impropriety, Irregularities and Conflict of Interest at the Factories Corporation of Jamaica Limited (FCJ)



land, part of Caymanas Estates in St. Catherine and St. Andrew for nine hundred million Jamaican dollars (\$900,000,000).³

5.1.2 The relevant portion of the referenced Agreement for Sale is as follows:

“ON THE EXECUTION HEREOF a deposit of ten percent (10%) being the sum of Ninety Million Dollars (\$90,000,000.00).

A further payment of twenty percent (20%) being the sum of One Hundred and Eighty Million Dollars (\$180,000,000.00) on account of the purchase price within three hundred and sixty-five (365) days from the execution of the Agreement.

*Balance purchase price to be paid on completion”.*⁴

The Circumstances Surrounding the Appointment of Board Members Messrs. Zavia Mayne and Robert Ramsey as Attorneys, for the CEZ project.

5.1.3 On February 08, 2010, Messrs. Zavia Mayne and Robert Ramsey were appointed as members of the FCJ's Board of Directors. Mr. Mayne served as a member of the Board until February 27, 2012 and Mr. Ramsey served until September 1, 2011.⁵

³ Statement of L. Robert Honeyghan dated June 23, 2022 – Exhibit LRH3 Sales Agreement dated June 2, 2011

⁴ Ibid.

⁵ Statement dated May 04, 2022 of Dr. Donald Farquharson, Managing Director, FCJ.

INTEGRITY COMMISSION Concerning Allegations of Impropriety, Irregularities and Conflict of Interest at the Factories Corporation of Jamaica Limited (FCJ)



5.1.4 In their capacity as Board Directors, Messrs. Mayne and Ramsey served as members of the Caymanas Economic Zone (CEZ) sub-committee and were integral in the negotiations between the FCJ and the UDC.⁶

5.1.5 Subsequent to a CEZ sub-committee meeting held on February 21, 2011, it was noted that a recommendation was made for Director Robert Ramsey to be appointed as Attorney, on behalf of the FCJ, in relation to the referenced project, subject to Board approval.⁷

5.1.6 The DI highlights that at the time of the sub-committee's recommendation for the appointment of Director Ramsey, there was no documented intention to also appoint Director Mayne in a similar capacity.⁸

5.1.7 A review of the FCJ's Board Meeting Minutes of April 1, 2011, indicates that, the FCJ's Board of Directors approved the appointment of Directors Ramsey and Mayne, jointly, as FCJ's Attorneys for the CEZ project. The following justification was provided for their appointment:

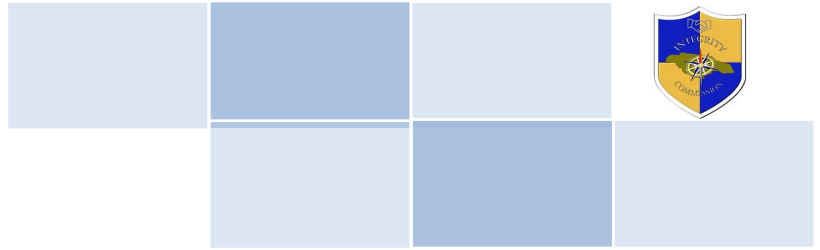
"It was proposed that since Messrs. Zavia Mayne and Robert Ramsey have been leading the legal charge in these negotiations on behalf of FCJ, they should be named jointly as FCJ's attorneys for this project."⁹

⁶ Statement of Dr. Donald Farquharson dated June 17, 2022

⁷ Statement of Dr. Donald Farquharson dated June 17, 2022 – Appendix 6 - Minutes of Meeting held on February 21, 2011

⁸ Ibid.

⁹ Statement of Dr. Donald Farquharson dated June 17, 2022 – Appendix 6 - Minutes of FCJ Board of Directors Meeting held on April 1, 2011



FCJ's Board of Directors at the Material Time

5.1.8 The DI Highlights here, the sitting members of the FCJ's Board of Directors at the time of Messrs. Mayne and Ramsey appointment as Attorneys for the referenced project. They are as follows:

- 1) Newlyn Seaton – Chairman;
- 2) Horace Sutherland – Managing Director;
- 3) Beverley Williamson – Director;
- 4) Derek Cross – Director;
- 5) Ian Forbes – Director;
- 6) Paul East – Director;
- 7) Donald Smith – Director;
- 8) Mark Hall – Director;
- 9) Robert Ramsey – Director;
- 10) Tanike M^cClarthy – Director;
- 11) Nola Elvey – Director;
- 12) Pauline Reid – Director;
- 13) Cleveland Stewart – Director;
- 14) Zavia Mayne – Director; and
- 15) Beverley Rose-Forbes - Director¹⁰

¹⁰ Statement of Dr. Donald Farquharson dated June 17, 2022



Members Present at the FCJ's Board Meeting, Appointing Messrs. Mayne and Ramsey as Attorneys for the Referenced Project

5.1.9 The DI further highlights here, the members of the FCJ's Board of Directors who were present at the referenced board meeting of April 1, 2011, during the course of which Messrs. Mayne and Ramsey were appointed Attorneys for the referenced project. They are as follows:

- 1) Mr. Newlyn (Neil) Seaton – Chairman;
- 2) Mr. Derek Cross – Director;
- 3) Mr. Mark Hall – Director;
- 4) Miss Tanikie M^cClarthy;
- 5) Mr. Robert Ramsey – Director;
- 6) Mrs. Beverly Rose-Forbes – Director;
- 7) Mr. Don Smith – Director;
- 8) Mr. Horace Sutherland – Managing Director; and
- 9) Mrs. Beverley Williamson – Director¹¹

Conflict of Interest

5.1.10 In assessing the conflict of interest implications, the following definition of a conflict of interest, as outlined in the Organisation for Economic Cooperation and Development (OECD) toolkit, "*Managing Conflict of Interest in the Public Sector*" is highlighted:

¹¹ Statement of Dr. Donald Farquharson dated June 17, 2022, Appendix 6
INTEGRITY COMMISSION Concerning Allegations of Impropriety, Irregularities and Conflict of Interest at the Factories Corporation of Jamaica Limited (FCJ)



“A conflict of interest involves a conflict between the public duty and the private interest of a public official, in which the official’s private-capacity interest could improperly influence the performance of their official duties and responsibilities”¹²

5.1.11 Additionally, a conflict of interest as defined by the law dictionary, is a situation in which a person has a duty to more than one person or organization, but cannot do justice to the actual or potentially adverse interests of both parties. Instructively, this includes circumstances where an individual’s personal interests or concerns are inconsistent with the best for a customer, or when a public official’s personal interests are contrary to his/her loyalty to public business.¹³

5.1.12 Further to the foregoing, the Government of Jamaica Staff Orders for the Public Service states, *inter alia*, that:

4.2.9 Conflict of Interest

- i) A conflict of interest may be deemed to exist under any of the following circumstances:
 - a) Engagement in private activity similar to official functions;
 - b) Using information and/or any material gained from official position for private gain;
 - c) Exploiting the status and privilege of one’s position for private gain;

¹² Managing Conflict of Interest in the Public Sector A Toolkit, Organisation for Economic Co-operation and Development, 2005

¹³ Conflict of Interest retrieved from <https://dictionary.law.com/Default.aspx?selected=292> on April 24, 2023
INTEGRITY COMMISSION Concerning Allegations of Impropriety, Irregularities and Conflict of Interest at the Factories Corporation of Jamaica Limited (FCJ)



d) *Soliciting and/or accepting payment and/or any other consideration relating to the performance of or neglect of official duties;*¹⁴

5.1.13 A further perusal of the referenced sub-committee minutes, indicated that both Messrs. Mayne and Ramsey were present at the meeting as members of the CEZ sub-committee. In addition, there was no indication in the Minutes that Directors Ramsey or Mayne recused themselves from the deliberations.

5.1.14 The DI highlights here, Section 17(2) of the Public Bodies Management and Accountability Act, which provides, *inter alia*, that:

“A director who is directly or indirectly interested in any matter which is being dealt with by the board-

(a) shall disclose the nature of his interest at a board meeting;

*(b) shall not take part in any deliberation of the board with respect to that matter.”*¹⁵

5.1.15 Based on the foregoing, the DI highlights the existence of an Actual Conflict of Interest in relation to the appointment of Messrs Mayne and Ramsey as Attorneys on behalf of the FCJ while simultaneously serving as Board Members of the referenced entity.

¹⁴ Government of Jamaica Staff Orders for the Public Service 2004

¹⁵ Section 17(2) of the Public Bodies Management and Accountability Act, 2001



5.1.16 The DI highlights here a distinction between the conflict of interest created in the present circumstances and conflicts of interest which may be mitigated and/or effectively managed by a disclosure of interest. In the present circumstances a disclosure to which reference is made under Section 17(2) would not have mitigated and/or resolved the conflict of interest inherent in the appointment of Messrs. Mayne and Ramsey by the FCJ.

5.1.17 The DI notes representations made by Dr. Donald Farquharson, Managing Director, FCJ, which indicated that, “*there is no FCJ Conflict of Interest policy that exists within FCJ.*”¹⁶. Notwithstanding the aforementioned, reference is made to the writings of Derrick V. McKoy 2009 on the Commonwealth Caribbean Anticorruption Strategies: New Institutional Framework, which states, *inter alia*, that:

*“whatever their basis, public service codes of ethics must provide clear and unequivocal prohibitions against conflict of interest...”*¹⁷

The Implementation of the Contract Awarded to Messrs. Zavia Mayne and Robert Ramsey

5.1.18 The DI sought to ascertain whether a contract was awarded by the FCJ to Messrs Zavia Mayne and Robert Ramsey for the provision of legal services

¹⁶ Statement of Dr. Donald Farquharson dated June 17, 2022

¹⁷ Commonwealth Caribbean Anticorruption Strategies: New Institutional Framework

INTEGRITY COMMISSION Concerning Allegations of Impropriety, Irregularities and Conflict of Interest at the Factories Corporation of Jamaica Limited (FCJ)



pertaining to the referenced land acquisition, the specific services that were provided by the Attorneys with respect to the terms of the agreement and whether these services were provided.

5.1.19 By way of statement dated May 4, 2022, Dr. Donald Farquharson, Managing Director, FCJ advised that *“the records did not reflect any contract, however the letter dated September 4th, 2012...ratified their engagement as the Attorneys”*¹⁸.

5.1.20 The DI highlights here, the legal Doctrine of Part Performance which is defined as *“a doctrine which provides an exception to the ... requirement that a contract be in writing by treating partial performance and the acceptance of same by the other party as evidence of an enforceable contract”*¹⁹

5.1.21 The aforementioned definition confirms the existence of an enforceable contract between Messrs Mayne and Ramsey and the FCJ in the present circumstances. This is further supported by the referenced September 04, 2012 letter which states, *inter alia*, that:

“It has been noted that legal fees for your representation have been paid in their entirety, although the transaction is far from complete. Having regard to the foregoing, the Board has further instructed that you will be required to make a refund of a portion of fees already

¹⁸ Statement of Dr. Donald Farquharson dated May 04, 2022

¹⁹ “Part performance” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/performance> Accessed on January 06, 2023



paid to you, retaining only that portion representative of the work which has brought the purchase to this stage.”²⁰

5.1.22 The DI highlights hereunder, an excerpt from the judgement of Laing, J, in the matter of **Equilibrio Solutions (Jamaica) Limited v Peter Jervis and Associates Limited [2021] JMCC COMM.26** :

“The law of contract provides that for there to be a valid contract there needs to be an intention to create legal relations, an offer, and by the acceptance of that offer an agreement and consideration. Contracts may be formed by the parties signing a written document which embodies all its terms. However, a contract can also be entirely oral or it may be partly oral and partly in writing.”²¹

5.1.23 The referenced letter further terminated the services of Messrs. Mayne and Ramsey, as Attorneys representing the FCJ, which further substantiates the existence of an enforceable contract. The letter indicated, *inter alia*, that:

...

“The Board of Directors has taken certain decisions for the continued participation of the Factories Corporation of Jamaica (FCJ) as a purchaser in the captioned property. As a result of these decisions your legal representation of the FCJ is being determined as we will no longer require

²⁰ Statement of Dr. Donald Farquharson dated May 04, 2022

²¹ Equilibrio Solutions (Jamaica) Limited v Peter Jervis and Associates Limited [2021] JMCC COMM.26, paragraph 9, page 4



your services and the FCJ would like to bring your involvement in this matter, to an end.”²²

5.1.24 In the absence of a written agreement, the DI sought to determine the contract terms germane to the provision of legal services for the CEZ project. Dr. Farquharson indicated in his statement that “*After searching the records, no documentation of a Terms of Reference was found.*”²³

5.1.25 Additionally, the DI perused Minutes of a FCJ Board Meeting held on April 26, 2012 which stated, *inter alia*, that:

“... ”

*(c) **Terms of Reference for Lawyers** – The Managing Director indicated that he was unable to find the Terms of Reference for the Lawyers acting on behalf of FCJ in respect of the purchase of 200 acres of land at Caymanas from the UDC.”²⁴*

5.1.26 The DI further requested a description of the services rendered and copy of any reports generated by the Attorneys, in relation to the legal services provided. Dr. Farquharson indicated, *inter alia*, that:

“... no documentation was found reflecting any detailed description and evidence of works provided by the Attorneys.

²² Statement of Dr. Donald Farquharson dated May 04, 2022 – Appendix V

²³ Statement of Dr. Donald Farquharson dated May 04, 2022

²⁴ Response of Mr. Derrick Webb, Former Acting, Managing Director, FCJ – Extract of Minutes of Board Meeting



k. *The records do not reflect a final report that was presented by any of the Attorneys*".²⁵

5.1.27 The DI highlights here, Section 17(1) of the Public Bodies Management and Accountability Act which states unequivocally that:

17. – (1) Every director and officer of a public body shall, in the exercise of his powers and the performance of his duties –

(a) Act honestly and in good faith in the best interests of the public body; and

(b) Exercise the care, diligence and skill that a responsibly prudent person would exercise in comparable circumstances including, but not limited to the general knowledge, skill and experience of the director or officer." ²⁶

Based on the foregoing extract of the Public Bodies Management and Accountability Act and the absence of documented Terms of Reference and/or agreement, the Directors of the FCJ, at the material time, failed to exercise due care, diligence and skill that a responsibly prudent person would exercise in comparable circumstances.

5.1.28 In addition to the absence of a written agreement or a clear terms of reference outlining services to be provided, the DI highlights a description of services which were allegedly rendered by the referenced Attorneys. The

²⁵ Statement of Dr. Donald Farquharson dated May 04, 2022

²⁶ Section 17(1) of the Public Bodies Management and Accountability Act (2001)



aforementioned details were contained in a Statement of Account, provided by Dr. Farquharson, and which stated, *inter alia*, that:

“... ”

- *Zavia Mayne - 2 letters sent @ \$10,000.00 per hour*
- *Robert L. Ramsey - 7 letters sent @ \$30,000.00 per hour*
- *Receiving, perusing and amending Draft, and Second Draft of Agreement for Sale - 6 hours @40,000.00 per hour*
- *To Receiving and perusing copy Stamped Agreement for Sale - one hour - @\$40,000.00 per hour*
- *To Receiving and perusing copy of Company Development Plan of Land to be Sold – 2 hours - @20,000.00 per hours”²⁷*

5.1.29 The DI highlights here, Section 21(1) of the Legal Profession Act which speaks to written agreements regarding legal fees which states, *inter alia*, that:

“... An attorney may, subject to any regulations made by the Council under subsection (7), in writing agree with a client as to the amount and manner of payment of fees for the whole or part of any legal business done or to be done by the attorney, either by a gross sum or percentage or otherwise; so, however, that the attorney making the agreement shall not in relation to the same matters make any further charges than those provided in the agreement...”²⁸

²⁷ Statement of Dr. Donald Farquharson dated June 17, 2022 – Appendix 2 - Statement of Account

²⁸ The Legal Profession Act, 1972, Section 21(1)



The DI notes here, that Section 21 does not impose a mandatory obligation on an attorney to create a written agreement regarding the payment of legal fees or to have the agreement in place prior to the execution of services.

5.1.30 In relation to whether the referenced Attorneys performed their services to completion, the DI further examined the September 4, 2012 letter from Mr. Derrick Webb, Former Acting Managing Director, FCJ addressed to Messrs. Robert Ramsey and Zavia Mayne, which outlined, *inter alia*, that:

“ ...

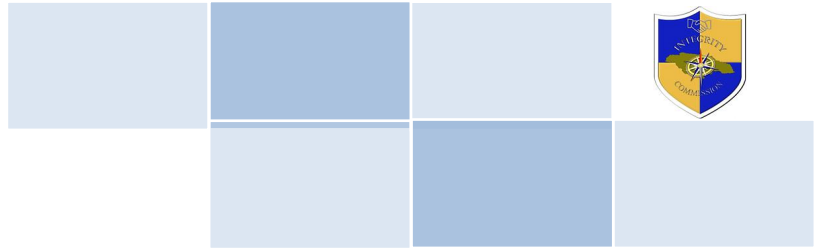
*It has been noted that legal fees for your representation have been paid in their entirety, although the transaction **is far from complete**. Having regard to the foregoing, the Board has further instructed that you will be required to make a refund of a portion of fees already paid to you, retaining only that portion representative of the work which has brought the purchase to this stage.*

The FCJ will communicate with you further in respect of its assessment of the extent of work done by you.”²⁹

5.1.31 The DI highlights here, *J.H. Milner & Son v. Percy Bilton Limited*, 1966. Fenton Atkinson J. in his judgement indicated, *inter alia*, that:

“on the sale of a house the client does not get any benefit (normally) until the sale is completed and the completion of the sale is a

²⁹ Statement of Dr. Donald Farquharson dated May 04, 2022



condition precedent to the solicitor becoming entitled to the scale fee on the purchase price.”³⁰

5.1.32 Additionally, the DI perused Minutes of FCJ Board meeting held on November 15, 2012, which indicated, *inter alia*, as follows:

“... ”

A lengthy discussion ensued around the percentage of the work completed by the Attorneys.

Director Potopsingh opined that no more than half of the work has been done and if a refund were to be requested he would be guided by that.”³¹

5.1.33 The DI highlights the following completion clause in the referenced Agreement for Sale, which states, *inter alia*, that:

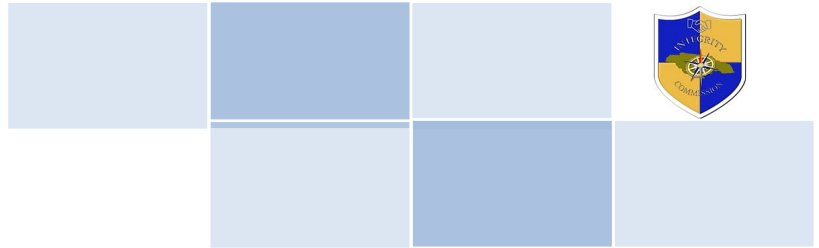
“Completion shall be on payment of the balance purchase price and all other sums payable hereunder by the Purchaser, in exchange for Duplicate Certificate of Titles for the said land registered in the name of the Purchaser within twenty-four (24) months from the date hereof”³²

5.1.34 Mr. L. Robert Honeyghan, General Manager, UDC, indicated that *“The subject sale has not been completed... “the UDC, therefore, remains an*

³⁰ J.H. Milner & Son v. Percy Bilton Limited, 1966

³¹ Response dated November 30, 2015 from Mr. Kenneth D. Rowe, Acting Former Director, FCJ.

³² Statement of L. Robert Honeyghan dated June 23, 2022 – LRH3 - Agreement for Sale



unpaid vendor regarding the balance purchase price. The actual sum owing to the UDC on the Sale Agreement is \$829,605,575.00..."³³.

5.1.35 Notwithstanding the fact that the referenced sale was not completed, Mr. Honeyghan further stated that *"The referenced title was officially transferred from the UDC to the FCJ in January 2016 based on an undertaking provided by the FCJ."*³⁴

5.1.36 Further to the foregoing, Dr. Farquharson indicated, *inter alia*, that *"the property was transferred to FCJ on January 28, 2016."*³⁵

5.1.37 By way of Cabinet Decision No. 42/16 dated December 19, 2016, obtained by the FCJ, Cabinet approved the deferral of outstanding payment, *"until the Caymanas Special Economic Zone Enterprise Team finalized the decision concerning the modality for the development of the Caymanas Special Economic Zone."*³⁶

³³ Statement of L. Robert Honeyghan dated June 23, 2022.

³⁴ Ibid

³⁵ Statement of Dr. Donald Farquharson dated March 20, 2023

³⁶ Letter dated January 3, 2017 to Mr. Donald Hamilton, Former General Manager, UDC

INTEGRITY COMMISSION Concerning Allegations of Impropriety, Irregularities and Conflict of Interest at the Factories Corporation of Jamaica Limited (FCJ)



Payments made to Messrs. Zavia Mayne and Robert Ramsey by the Factories Corporation of Jamaica Limited (FCJ) for work done as Attorneys in the acquisition of the two hundred (200) acres of land at the Caymanas Estate from the Urban Development Corporation (UDC) under the Caymanas Economic Zone Project

5.2 As it relates to payments made to Messrs Zavia Mayne and Robert Ramsey by the FCJ, in relation to the CEZ project, the DI perused Minutes of FCJ Board Meeting held on May 31, 2012, which indicated, *inter alia*, that:

“The Managing Director reported that payments totalling \$26,437,500.00 were made to Attorneys-at-Law Zavia Mayne and Robert Ramsey, for services rendered in relation to negotiations with UDC for sale of the project designated lands at Caymanas Estate. Attorneys Mayne and Ramsey were both members of the Board of Directors at the time and were also members of the CEZ Subcommittee.

...

At the outset, there were no discussions or agreement pertaining to any level of compensation for the Attorneys. However, on nearing completion of the negotiations, the matter was placed on the table for discussion. The Committee aired the matter and took the decision that both Attorneys should be compensated.

By letter dated May 3, 2011, the Managing Director received correspondence from Attorney Mayne proposing a level of compensation. That letter was tabled at the following Committee



meeting on May 9, 2011 and after some discussion, the Committee signed off on the proposal”³⁷.

5.2.0 In the aforementioned regard, the DI is in possession of a letter dated May 03, 2011, on the letterhead of Zavia T. Mayne, addressed to the Managing Director, FCJ and captioned “Re: Agreement for the Purchase of Two Hundred (200) Acres from Urban Development Corporation (UDC)”. The letter stated, *inter alia*, as follows:

“...

we attach herewith our interim invoice for payment.

*As you are well aware, the industry standard in relation to Attorneys-at-Law fees for conveyance transactions range from 3-5% of the transaction cost. Due to the size of this transaction we have agreed to reduce our fees to 2.5% of the transaction cost plus General Consumption Tax. In view of our total fees, we hereby request a deposit of 70% of the total amount*³⁸.

5.2.1 Based on the aforementioned agreed payment rates, the DI notes that 2.5% of the value of the overall transaction would be \$26,437,500.00, inclusive of general consumption tax (at the then rate of 17.5%).

Land Value	Attorney Fee (2.5%)	GCT (17.5%)	Total
\$900,000,000.00	\$22,500,000.00	\$3,937,500.00	\$26,437,500

³⁷ Response of Mr. Derrick Webb, Former Acting, Managing Director, FCJ

³⁸ Ibid



5.2.2 The DI examined a Cheque Requisition Voucher prepared by the FCJ, dated May 06, 2011 which requested a cheque payable to Zavia T. Mayne in the amount of \$18,506,250.00 for “70% pymt on Legal fees re Purchase of Lands - UDC³⁹”. Further to this, the DI perused a cheque dated May 6, 2011 generated by the FCJ, paid to the order of Zavia T. Mayne, in the amount of \$18,506,250.00.

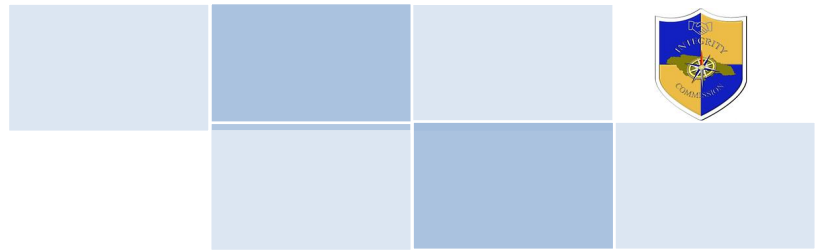
5.2.3 Subsequently, the DI perused another Cheque Requisition Voucher generated by the FCJ, dated August 08, 2011 which requested a cheque payable to Zavia T. Mayne & Co. in the amount of \$7,931,250.00 for “Legal Fees for land purchased re C.E.Z. Project⁴⁰”. The DI also examined a cheque dated August 8, 2011 generated by the FCJ, paid to the order of Zavia T. Mayne & Co., in the amount of \$7,931,250.00.

5.2.4 The DI highlights here, the FCJ's Minutes of Board Meeting held on June 28, 2012 wherein Director(s) expressed concerns regarding the payments made to Messrs. Mayne and Ramsey. The minutes stated, *inter alia*, that:

“The Chairman questioned the probability of a cheque for \$18M being drawn in the Director of Finance's department and he knows nothing of it; and signed elsewhere and he does nothing about it... Director Webb indicated that it can be clearly seen that due process did not take place;

³⁹ Response of Mr. Derrick Webb – Former Acting, Managing Director, FCJ

⁴⁰Response of Mr. Derrick Webb – Former Acting, Managing Director, FCJ - Letter dated May 3, 2011 to Mr. Horace Sutherland, Former Managing Director, FCJ



*there were breaches and Management fell down. Further, it can be seen that the executive arm of the company did not exercise its executive prerogative while the Chairman of the organization exercised executive powers whereby the Chairman signs the requisition, approves the invoice and signs the cheque and the Managing Director endorses the action of the Chairman."*⁴¹

⁴¹ Response of Mr. Kenneth Delano Rowe dated November 30, 2015
INTEGRITY COMMISSION Concerning Allegations of Impropriety, Irregularities and Conflict of Interest at the Factories Corporation of Jamaica Limited (FCJ)



The Circumstances which Led to the Engagement of Linton Walters and Co. Attorneys – at – Law by the Factories Corporation of Jamaica Limited (FCJ)

5.3 Further to the September 4, 2012 letter, in which the FCJ terminated the services of Attorneys Mayne and Ramsey, the DI sought to ascertain information regarding the engagement of Linton Walters and Co. Attorneys-at-Law. Dr. Farquharson, by way of Statement dated May 4, 2022, indicated, *inter alia*, the following:

“Mr. Linton Walters was contracted by FCJ on December 19, 2014 to provide legal services for the Caymanas Economic Zone Land Acquisition, to urgently take charge of the matter and bring it to a favourable conclusion.

Mr. Linton Walters was engaged by FCJ to recover amounts that were paid to Attorneys Zavia Mayne and Robert Ramsey due to the fact that the acquisition of the Caymanas Lands was not concluded. Mr. Walters was instructed to file a Suit against Messrs Zavia Mayne and Robert Ramsey and to recover fees in excess of work done.”⁴²

5.3.0 In light of the foregoing, the DI perused a letter dated December 19, 2014 from Mr. Clive Grayson, Former Managing Director, FCJ addressed to Mr. Linton Walters. The letter stated, *inter alia*, as follows:

⁴² Statement of Dr. Donald Farquharson dated May 04, 2022



*"We acknowledge receipt of your letter of even date accepting our offer to act on behalf of the Factories Corporation in the matter at caption. In that regard, please find enclosed BNS Cheque... in the amount of Five Million Dollars (\$5,000,000.00) representing a Retainer to enter upon the task required of your firm."*⁴³

5.3.1 Additionally, the DI requested documents relevant to the investigation from Mr. Zavia Mayne. However, by way of a letter dated June 2, 2022, Mr. Mayne advised the DI, *inter alia*, that, *"The matter is sub-judicate as there is currently a claim before the Supreme Court 2015HCV 05860-Zavia Mayne et al v. Factories Corporation of Jamaica."*⁴⁴ On that basis he declined to provide the DI with the information that was requested.

5.3.2 The DI then enquired of the FCJ whether payments made to Messrs. Mayne and Ramsey had been recovered. Dr. Farquharson in his statement to the Commission stated, *inter alia*, as follows:
"The payments made to Messrs. Mayne and Ramsey were not recovered. The Board resolved that it would not proceed any further with the case"

Additionally, Dr. Farquharson further stated that:

*"A Notice of discontinuance was filed on 10th December 2016 by Messrs. Mayne and Ramsey. At its meeting on April 27, 2017, the Board resolved that it would not proceed any further with the case."*⁴⁵

⁴³ Statement of Dr. Donald Farquharson dated February 02, 2023

⁴⁴ Letter dated June 2, 2022 from Zavia Mayne, Attorney-at-Law.

⁴⁵ Statement of Dr. Donald Farquharson dated February 02, 2023



5.3.3 The DI highlights here, that effective July 1, 2016, a new FCJ Board under the chairmanship of Mr. Littleton Shirley was appointed for a period of two years. The Directors of the referenced Board were as follows:

- 1) Mr. Littleton Shirley – Chairman;
- 2) Mr. Michael Stern;
- 3) Mr. Kirk Benjamin;
- 4) Ms. Rochelle Cameron;
- 5) Mr. Greg Christie;
- 6) Mr. Paul East;
- 7) Dr. Kofi Nkrumah-Young;
- 8) Mr. Jordan Samuda;
- 9) Ms. Grace Burnett;
- 10) Mrs. Polly Ho;
- 11) Mr. Fabian Brown; and
- 12) Mr. Julian Muir

5.3.4 The referenced Board in its April 27, 2017 meeting, considered the issue of whether to continue or end proceedings against Messrs Mayne and Ramsay. In the foregoing regard, the DI perused FCJ' Minutes of the referenced Board of Directors' Meeting, which outlined the justification provided by the Board for its decision to discontinue proceedings. The referenced minutes stated, *inter alia*, the following:

“On a motion by Director Rochelle Cameron and seconded by Director Fabian Brown, it was resolved that the Board would not proceed any further with both cases... It should be noted that “Director Cameron opined that based on the Legal Opinion received from the Attorney General’s (AG) Department regarding the Attorneys who were contracted to carry out the



sale of lands at Caymanas on behalf of the FCJ, the Board may not be successful with either matter”.

5.3.5 The DI highlights here, the dissenting opinion of Director Christie who, *“indicated that he was of a different opinion as the AG’s office has not taken a direct position but throughout the document, the Attorney kept qualifying her advice indicating there is no breach, however, she was not instructed on various matters. As a result, he has some discomfort with the recommendation. Director Christie supported the motion, subject to the reservations he expressed.”*⁴⁶

5.3.6 The foregoing representation in the Minutes was corroborated by former Director Christie by way of his witness statement submitted to the DI.

5.3.7 The DI notes here, that Director Christie was not a member of the FCJ’s Board of Directors at the time when the decision was made to appoint Messrs. Mayne and Ramsey as Attorneys for the referenced project.

Role Played by the Managing Director of the FCJ

5.4 The DI sought to ascertain the role(s) if any played by Mr. Horace Sutherland, Former Managing Director, FCJ in relation to the referenced acquisition.

⁴⁶ Statement of Dr. Donald Farquharson dated February 02, 2023



5.4.0 The DI highlights here, Section 2 of the Financial Administration and Audit Act (FAAA) which outlines the role of an Accountable Officer of public bodies:

““accountable officer” means any public officer, including an accounting officer, concerned in or responsible for the collection, receipt, custody, issue or payment of public moneys or other public property;”⁴⁷

5.4.1 In light of the foregoing definition, it is noted that Mr. Horace Sutherland was an Accountable Officer of the FCJ, in his capacity as Managing Director.

5.4.2 In keeping with the above, reference is made to Section 16(2) of the referenced Act, which further specifies the duties of an Accounting Officer.

“An accounting officer shall be responsible for the financial administration of the department specified in a designation under subsection (1) and shall be accountable to the Minister for –

(a) the assessment and collection of, and accounting for, all moneys lawfully receivable by his department;

...

(d) the custody and proper use of all materials, equipment or other public property administered by him;

...

⁴⁷ Section 2 of the Financial Administration and Audit Act, 1959
INTEGRITY COMMISSION Concerning Allegations of Impropriety, Irregularities and Conflict of Interest at the Factories Corporation of Jamaica Limited (FCJ)



(f) *the discharge of any other financial responsibility assigned to him under this or any other enactment.*"⁴⁸

5.4.3 The aforementioned section imposes certain duties on the Accounting Officer, in relation to the financial administration of the entity. The DI has seen no evidence to indicate that the Accounting Officer provided any advice, information or other guidance to the Board of Directors in relation to the property acquisition in question and the proper handling of entrusted funds.

5.4.4 The Accounting Officer, at the material time, Mr. Sutherland, failed to provide documentary evidence of actions taken by him in respect of any advice given to the Board throughout the process which led to the retention and payment of Messrs. Mayne and Ramsay in relation to the acquisition of the referenced property.

5.4.5 On February 27, 2012, a new FCJ Board of Directors, chaired by Mr. Clive Fagan, was appointed by Mr. George Anthony Hylton, former Minister of Industry, Investment and Commerce. The Directors of the referenced Board were:

- 1) Mr. Clive Fagan – Chairman;
- 2) Mr. Dennis Gordon;
- 3) Mr. Deanall Barnes;
- 4) Mr. William Potopsingh;

⁴⁸ Section 2 of the Financial Administration and Audit Act, 1959
INTEGRITY COMMISSION Concerning Allegations of Impropriety, Irregularities and Conflict of Interest at the Factories Corporation of Jamaica Limited (FCJ)



- 5) Dr. Norman Marshall;
- 6) Ms. Leanne Phillips;
- 7) Mrs. Dian Carlene Fenton-Thompson;
- 8) Mr. Jack Shirley;
- 9) Ms. Beverley Rose-Forbes;
- 10) Mr. Junior Rose;
- 11) Mr. Derrick Webb;
- 12) Mr. Byron Clarke;
- 13) Mr. James Thomas;
- 14) Mr. Hopeton McCatty;
- 15) Mr. Gary Scott;
- 16) Reverend Robert Louis McIntosh; and
- 17) Mr. Horace Sutherland

5.4.6 The Board having been appointed, it considered the decision making and actions taken in respect of the appointment of Messrs. Mayne and Ramsay as Attorneys in the impugned land transaction in its June 28, 2012 meeting.

5.4.7 The DI highlights here, the considerations made by members of the Board at the referenced meeting which was held on June 28, 2012. The minutes stated, *inter alia*, as follows:

“Director Potopsingh referred to the Managing Director’s report on payments to Attorneys and the request for him to prepare a detailed brief for circulation to Board Members and FCJ’s Portfolio Minister. He indicated that [the] draft was ready for the Director’s review. He however pointed to



the second paragraph, third sentence of the Managing Director's report which stated, "However, on nearing completion of the negotiations, the matter was placed on the table for discussion. The Committee aired the matter and took the decision that both Attorneys should be compensated" and advised that he scanned the Minutes and found nothing to suggest that there was any discussion about compensation. However, the Minutes did indicate that after the Attorneys had been paid, a member of the Board expressed concern regarding payment of 70% of the invoice submitted, which amounted to approximately \$18M. The chairman requested that some dates be inserted in the report as it could be interpreted as a Committee of the existing Board.

Copies of the Report are to be circulated to members of the Board.

Director Webb opined that the Report gives the impression that a decision was taken by a sub-committee of the Board and the Management of the Corporation had no part to play except to draw the cheques. He further stated he does not think the executive arm of the company can absolve itself from what has taken place by saying that they were given specific instructions to pay against their better judgment. Furthermore, whereas a director stood up and resisted, there is nothing to indicate that Management offered any resistance.

Director Rose interjected that while he can understand that Management was instructed to make the payment, he cannot understand that Management would not cover itself by requesting the instruction in writing.



The Managing Director stated it was obvious what had happened. The Sale Agreement was actually signed on May 2, 2011 and it was after that meeting that the matter of compensation was addressed. At that meeting, it was obvious that there was some discussion prior to that meeting because when the matter came up, it was a foregone conclusion that everybody except for Management knew of the proposal. The proposal was actually approved by the Board Chairman. The Board Chairman and Chairman of the Committee approved the invoice.

...

Director Webb indicated that it can be clearly seen that due process did not take place; there were breaches and Management fell down. Further, it can be seen that the executive arm of the company did not exercise its executive prerogative while the Chairman of the organization exercised executive powers whereby the Chairman signs the requisition, approves the invoice and signs the cheque and the Managing Director endorses the action of the Chairman.

...

The Managing Director indicated that there are certain things with corporate governance. The board was acting with executive power and management was beaten over the head. He hoped that this Board fully understands the requirement of proper corporate governance, where the different levels of responsibility is demarcated and allow them to remain where they should remain and give Management the space to operate.



In response to the Chairman's question as to whether he made those requests to the former Board, the Managing Director responded that he did, albeit not in writing. He had private discussions with the former Chairman regarding his concern with certain decisions. Short of tendering his resignation and leaving the company, which would not solve the problem, they would merely engage someone else and probably make the situation worse. He then asked the Chairman what could he have done under those circumstances. The Chairman responded that if he had documented those things, today this Board would not be having this discussion.

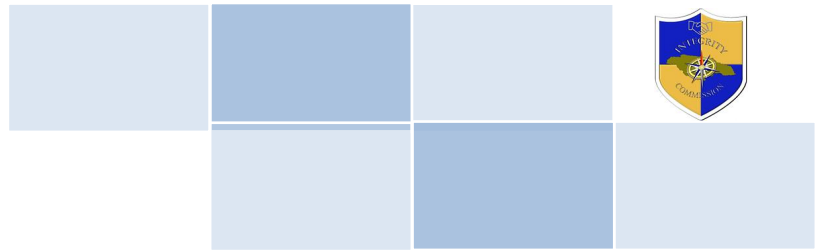
...

The Director of Finance indicated that he reports to the Managing Director; and once the Managing Director instructs him to do something, as long as it is not illegal or unethical, even if he disagrees with him he has a responsibility to carry out his instructions. He then stated that he did communicate to the Managing Director, albeit not in writing, and raised certain questions. In his view they were not adequately addressed and therefore he did not support the transaction. Nonetheless, the transaction went through without his support. He admitted that he could have raised it again and did not."⁴⁹

5.4.8 The DI highlights here, the names of the attendees at the aforementioned meeting. They are as follows:

- 1) Mr. Clive Fagan – Chairman;

⁴⁹ Extract from the Minutes of the Board of Directors of the Factories Corporation of Jamaica (FCJ), dated June 28, 2012.



- 2) Mr. Deanall Barnes – Director;
- 3) Mr. Byron Clarke – Director;
- 4) Mr. Dennis Gordon – Director;
- 5) Dr. Norman Marshall – Director;
- 6) Ms. Leanne Phillips – Director;
- 7) Mr. William Potopsingh – Director;
- 8) Mr. Junior Rose – Director;
- 9) Mr. Gary Scott – Director;
- 10) Mr. Andral 'Jack' Shirley – Director;
- 11) Mr. Horace Sutherland – Managing Director;
- 12) Mr. Derrick Webb – Director;
- 13) Mr. Everton Hanson – Director of Finance;
- 14) Mrs. Carol Peterkin – Corporate Officer; and
- 15) Mrs. Dirkette Cooper – Executive Assistant.

5.4.9 Notwithstanding representations outlined above, the DI reiterates the role of the Accounting Officer, under Section 16 of the Financial Administration and Audit Act (FAAA) in relation to the financial administration of the entity.



Chapter 6 – Conclusions

- 6.0 This chapter outlines the conclusions drawn by the DI.
- 6.1 The DI concludes that on June 02, 2011, the Factories Corporation of Jamaica (FCJ) entered into an Agreement for Sale with the Urban Development Corporation (UDC), to acquire approximately two hundred (200) acres of lands, part of Caymanas Estates in St. Catherine/St. Andrew registered at Volume 1335 Folio 855 of the Register Book of Titles for Nine Hundred Million Jamaican dollars (\$900,000,000).
- The decision to enter into the referenced Agreement was as a result of Cabinet Decision 03/11, which accorded the development of the 200 acres of Caymanas lands 'National Priority' status and required that all the relevant state agencies facilitate its implementation with urgency.
- 6.2 On April 1, 2011, the Board of Directors of the FCJ approved the appointment of Mr. Zavia Mayne and Mr. Robert Ramsey, both serving members of the FCJ's Board of Directors and members of the Caymanas Economic Zone (CEZ) Sub Committee, as Attorneys-at-Law in the FCJ's acquisition of two hundred (200) acres of land from the Urban Development Corporation (UDC), under the CEZ Project.
- 6.3 The DI concludes that there is no evidence of any written contract or any other document detailing the terms of the agreement between FCJ and Attorneys Zavia Mayne and Robert Ramsey, regarding their engagement



under the CEZ project. Notwithstanding the foregoing, the DI concludes that an enforceable contract was formed between the parties based on the content of the letter dated September 4, 2012, the doctrine of Part Performance as well as payments made to Messrs. Mayne and Ramsey by the FCJ for services rendered.

6.4 The DI concludes that the FCJ Board Directors who were present at the meeting in which the decision was taken to appoint Messrs. Mayne and Ramsay as Attorneys in the instant matter, namely:- Mr. Newlyn (Neil) Seaton, Mr. Derek Cross, Mr. Mark Hall, Miss. Tanikie McClarthy, Mr. Robert Ramsey, Mrs. Beverly Rose-Forbes, Mr. Donald Smith, Mr. Horace Sutherland and Mrs. Beverley Williamson, contravened Section 17(1) of the Public Bodies Management and Accountability Act in their failure to exercise due care, diligence and skill that a responsible and prudent person would exercise in comparable circumstances. The DI's conclusion is based on the failure of the referenced Directors and the wider FCJ Board, at the material time, to develop and/or enforce:

- a) A written retainer agreement in respect of the legal services provided by Messrs. Mayne and Ramsey;
- b) Terms of Reference for the attorneys; and
- c) A monitoring mechanism to ensure that the contract was performed as agreed.

6.5 The DI concludes that the FCJ paid Attorneys-at-Law Zavia Mayne and Robert Ramsey, a sum of \$26,437,500.00, for private legal services rendered



in relation to the FCJ's acquisition of the 200 acres of land at Caymanas Estate.

- 6.6 The DI concludes that the FCJ terminated the legal services of Mr. Zavia Mayne and Robert Ramsey, on September 04, 2012, prior to the completion of the acquisition of the referenced land. Notwithstanding full payment of the fees was made.

Having regard to the foregoing, the DI further concludes that on December 19, 2014, the FCJ contracted the services of Linton Walters and Company to complete legal services for the Caymanas Economic Zone land acquisition, and to recover funds that were paid to Attorneys Zavia Mayne and Robert Ramsey.

- 6.7 The DI concludes that up to February 2, 2023, the FCJ's acquisition of land under the Caymanas Economic Zone Project remains incomplete. The property was transferred to the FCJ on January, 28 2016, however the UDC remains an unpaid vendor as the sum of \$829,605,575.00 remains outstanding.

- 6.8 The DI concludes that the appointment of Zavia Mayne and Robert Ramsey, by the Newlyn 'Neil' Seaton led FCJ Board was irregular, improper and constituted a conflict of interest. The DI's conclusion is based on evidence which indicates that at the time of their appointment as private Attorneys for the referenced project, Messrs. Mayne and Ramsey were both serving FCJ Board members. The DI further concludes that the Board ought to be guided by Section 17(2) of the Public Bodies Management and

INTEGRITY COMMISSION Concerning Allegations of Impropriety, Irregularities and Conflict of Interest at the Factories Corporation of Jamaica Limited (FCJ)



Accountability Act, notwithstanding the absence of an internal Conflict of Interest Policy, at the material time. Furthermore, the DI concludes that the decisions taken by the FCJ's Board of Directors in the instant matter, were ill-advised, palpably wrong and antithetical to the principles of good governance and the proper use of public funds.

- 6.9 The DI concludes that the Managing Director Mr. Horace Sutherland failed to provide the Board with proper advice regarding the administration of public funds in accordance with his legal responsibilities under the Financial Administration and Audit Act in his capacity as Accounting and/or Accountable Officers of the FCJ.

The DI further concludes that the Accounting Officer in question failed to discharge the obligations imposed upon him by Section 16(2) of the Financial Administration and Audit Act in relation to the assessment and collection of, and accounting for, all moneys lawfully receivable by his department and the administration of any fund for which he has been assigned responsibility, within the meaning of the relevant section.



Chapter 7 – Recommendations

7.0 This chapter outlines the DI's recommendations.

Recommendations to the Factories Corporation of Jamaica Limited (FCJ)

7.1 The DI recommends that, if not yet done, the FCJ implements a policy which addresses conflict of interest, specifically at the Board level in keeping with the Public Bodies Management and Accountability Act. Additionally, the FCJ should ensure that the policy provides clear and unequivocal prohibitions against conflict(s) of interest including formal disclosures and documentary evidence of recusals from deliberations, regarding any conflict of interest situation which may arise.⁵⁰

The DI's recommendation is premised on the fact that, in the instant matter, there was no internal policy documents within the FCJ speaking to the treatment of conflict(s) of interest. Notwithstanding the foregoing, the lapse which facilitated the erroneous appointment and subsequent compensation of serving board members in their private capacity as Attorneys for the referenced Caymanas Economic Zone Project constituted an actual conflict of interest.

7.2 Further to the foregoing, the DI recommends that in the procurement of services, which are excluded from the GOJ procurement guidelines, the

⁵⁰ Commonwealth Caribbean Anticorruption Strategies: New Institutional Framework



FCJ ensures that clear terms of reference and contract terms and conditions are outlined by way of a written document, in an effort to ensure the responsible allocation of public resources, accountability and transparency at all levels.

- 7.3 The DI strongly recommends that the FCJ desists from awarding contracts to serving Board Members, in an effort to avoid creating actual or perceived Conflicts of Interest.

Recommendations to the Permanent Secretary, Ministry of Economic Growth and Job Creation (MEGJC)

- 7.4 By virtue of the fact that the FCJ is now under the leadership of the MEGJC, the DI recommends that the MEGJC implements a clear guideline/framework which governs the treatment of the acquisition of government lands, terms and conditions in respect of the engagement and conveyance fees for Attorneys, to which entities such as the FCJ and other public bodies, must give keen adherence.

The DI's recommendation is premised on the need for clarity and transparency in the acquisition and disposition of government-owned lands.

- 7.5 Despite the limitation period imposed under Section 20(2) of the Financial Administration and Audit Act, in relation to the institution of Surcharge Proceedings (not more than three years from date of occurrence), the DI



recommends that the Permanent Secretary implement mechanisms to prevent the misuse of public resources and to immediately commission an audit into the financial affairs and governance arrangements of the FCJ.

Recommendations to the Most Honourable Prime Minister

- 7.6 Given the prevalence of conflicts of interests in Jamaica, and the detrimental impact they have on public confidence in government and good governance, it is recommended that the Most Honourable Prime Minister commission a general review of this issue with a view to introducing legislation and/or regulations to clarify how these should be managed.

The DI further recommends, that consideration be given to the creation of a regime to facilitate the application/institution of pecuniary sanctions and/or forfeiture proceedings against officials who benefit from knowingly engaging in the practice.

Kevon A. Stephenson, J.P.
Director of Investigation

May 12, 2023.



Appendices

Appendix 1

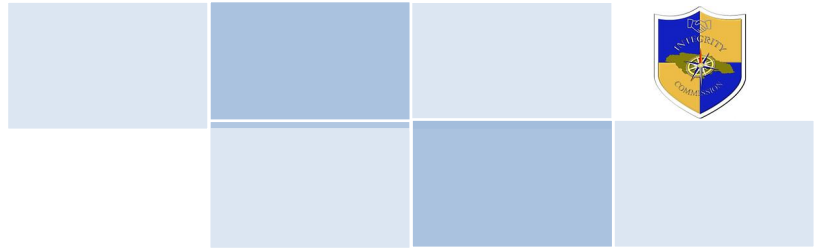
Section 4(1) of the Contractor General Act

“4.—(1) Subject to the provisions of this Act, it shall be the function of a Contractor-General, on behalf of Parliament--

(a) to monitor the award and the implementation of government contracts with a view to ensuring that—

- (i) such contracts are awarded impartially and on merit;
- (ii) the circumstances in which each contract is awarded or, as the case may be, terminated, do not involve impropriety or irregularity;
- (iii) without prejudice to the functions of any public body in relation to any contract, the implementation of each such contract conforms to the terms thereof; and

(b) to monitor the grant, issue, suspension or revocation of any prescribed licence, with a view to ensuring that the circumstances of such grant, issue, suspension or revocation do not involve impropriety or irregularity and, where appropriate, to examine whether such licence is used in accordance with the terms and conditions thereof.”



Section 15(1) of the Contractor General Act

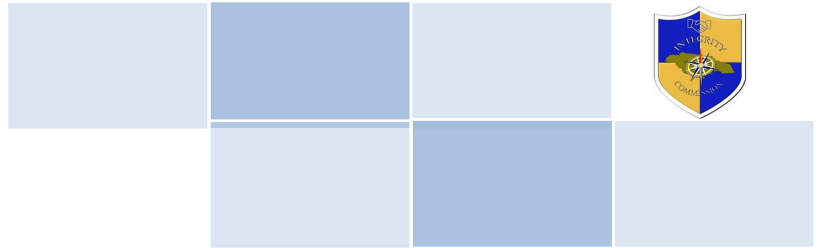
“15.—(1) Subject to subsection (2), a Contractor-General may, if he considers it necessary or desirable, conduct an investigation into any or all of the following matters—

- (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 63 of the Integrity Commission Act

“63.—(1) Notwithstanding the amendment or repeal of an Act under this Part, as from the appointed day any legal proceedings or claims pending immediately before the appointed day, which, before the appointed day, were brought, continued or enforced by or against the Commission in the same manner as they would have been brought, continued or enforced before the appointed day.

(2) The Commission established under this Act may—



(a) commence or assume any investigation, swear any information or commence or conduct any prosecution in respect of an offence committed, or alleged to be committed before the appointed day under a provision of either of the amended Acts that has been amended or repealed by this Act, or under the repealed Act, and each such amended or repealed provision and the repealed Act shall be deemed to remain in full force and effect, for the purposes of any such investigation, information and prosecution as it had been immediately before the appointed day; or

(b) continue to do any act, thing or investigation which was pending before the appointed day.

(3) The Court shall, in respect of any proceedings instituted following any investigation under subsection (2), have all powers that it could exercise pursuant to the amended Acts and the repealed Act as if they remain in full force and effect."