



Any reply or subsequent reference to this communication should be addressed to the **Contractor-General** and the following reference quoted:-

No. :

TELEPHONE No.:876-929-8560/6466

FAX No. : 876-929-7335

E-mail: gchristie@ocg.gov.jm

OFFICE OF THE CONTRACTOR-GENERAL
PIOJ Building
16 Oxford Road
P.O. Box 540
KINGSTON 5
JAMAICA, W.I.

November 15, 2010

Mr. Garfield Grandison
Editor-in-Chief
The Gleaner Company Limited
7 North Street
Kingston

Dear Mr. Grandison:

Re: Sunday Gleaner Column- "Calamity At Caymanas Track - OCG lured into unauthorized probe"-
Published Sunday, November 14, 2010

It has become fashionable for certain commentators in the media, inclusive of one or two influential attorneys, to publicly convey forthright but yet intrinsically flawed and uninformed positions about the Investigation Reports of the Office of the Contractor General (OCG).

These persons invariably have not taken the time to read the very Investigation Reports upon which they are commenting and, more often than not, they betray a lack of appreciation for the detailed facts, the legal and technical issues, as well as the laws which lie at the root of the Findings, Referrals and Recommendations which are embodied in the Reports.

The practice is a dangerous and unethical one, particularly since commentators are acutely aware that their audience, who are themselves invariably uninformed, will be influenced by their views and thus will come to a prejudiced and misguided position with respect to the matter which is being discussed.

Inevitably, attacks upon the credibility and the integrity of the OCG institution and its leadership will follow as a matter of course. Sometimes, this very outcome is the intended objective of the mischief maker who feeds the media or the public with mis-information in pursuit of an agenda which has been deliberately orchestrated to discredit the OCG organization.

We have seen overwhelming evidence of such occurrences when, for example, persons who are regarded as 'untouchables' in the Jamaican society are adversely subjected to the investigative scrutiny of the OCG.



The most recent and very suspicious manifestation of this unfortunate and contemptible practice is Mr. Gordon Robinson's column which was published in the November 14 edition of the Sunday Gleaner newspaper.

Regrettably, the column, which is entitled "*Calamity At Caymanas Track - OCG lured into unauthorized probe*", is an excursion by Mr. Robinson into falsehoods and obfuscations which are clearly intended to sanitize Mr. Rousseau, in the eyes of the public, from the Findings of the OCG's Investigation into the Caymanas Track Limited (CTL) matter.

For reasons of which the OCG is well aware and which will soon be publicly revealed, Mr. Robinson's column has come straight out of the blue almost two (2) years after the OCG's Report in the CTL matter was forwarded to the Director of Public Prosecutions (DPP), in January 2009, for her review.

Primary among the several spurious claims which are made in his column, is Mr. Robinson's postulation that the Contractor General exceeded his lawful authority and jurisdiction in the CTL matter by conducting a Statutory Investigation into a Government contract which had not yet been awarded.

As is well known, the matter had at its center, the Hon. Patrick Rousseau, who was, at one and the same time, the Chairman of CTL and two (2) private entities, International Media Content (IMC) and SportsMax Limited, both of which were engaged in actual and/or prospective commercial activities with CTL.

Mr. Robinson, who is an Attorney-at-Law, in a disjointed, inarticulate and circular composition, confidently contends that a Contractor General has no authority whatsoever under the law to investigate a Government contract before it is awarded.

Mr. Robinson is, however, way off his mark and is unequivocally wrong in his interpretation of the law. Had he sought guidance or exercised diligence and scholarship in the matter, he would have discovered his error. But then again, one would question whether it was his intention to 'plant seeds of doubt' in the minds of an unsuspecting public.

In the 1991 case of Lawrence v. Ministry of Construction (Works) and the A.G (1991) 28 J.L.R. 265, the Supreme Court of Jamaica was moved by way of Originating Summons, at the instance of the Contractor General, to rule on the very point which Mr. Robinson has now raised.

Mr. Justice Courtney Orr, in that case, held unequivocally as follows:

"The proper interpretation of the (Contractor General) Act is one which empowers the Contractor General to monitor [and, therefore, by extension, to investigate] the pre-contract stages of government contracts and to obtain information from public bodies prior to the award of such contracts...The ordinary meaning of the words of the statute in light of the context and grammar suggest no other interpretation".



That, however, was not Mr. Robinson's only mischief. After reciting Sections 28 (2) and (4) of the Contractor General Act, which unequivocally enclothes a Contractor General with the statutory authority, at his own discretion, and in the public interest, to publish any of three (3) classes of Reports, but only after the said Reports have been tabled in both Houses of Parliament pursuant to Section 28 (3) of the Act, Mr. Robinson then falls prey to his own un-navigable reasoning and incoherence to come to the incongruous conclusion that the very right which he had conceded was accorded by Section 28 (4) no longer existed.

Mr. Robinson's obfuscatory intentions are laid bare. His objective is clearly to raise doubts about the legal propriety of the publication of Investigation Reports by the Contractor General, notwithstanding the fact that Parliament, itself, would have already, in all such instances, published the Report and, to boot, to publish same on the World Wide Web.

Mr. Robinson, in his quest to 'exonerate' Mr. Rousseau, goes even further, and beyond the pale, to refer his readers to a provision of the Government's Revised Procurement Procedures Handbook which came into force in December 2008 – after the OCG's Investigation into Mr. Rousseau's conduct had been completed.

Despite the fact that the referenced Procedures cannot, therefore, be possibly of any assistance whatsoever to Mr. Rousseau, Mr. Robinson has, notwithstanding, disingenuously directed an unsuspecting and ignorant public to be guided by the Procedures under the false pretext that they were applicable to CTL's contractual arrangements and/or negotiations with SportsMax/IMC during the period of Mr. Rousseau's Chairmanship of the Board of Directors of CTL.

If the truth is to be told, even the then existing Guidelines – the Government Procurement Procedures Handbook of May 2001 – which were applicable up to December 2008, did not contemplate an exemption of the nature which is alluded to in Mr. Robinson's article.

In his rambling discourse concerning the jurisdiction of the OCG, Mr. Robinson also fails to grasp the all important but trite principle that the OCG's jurisdiction is not hinged upon the Government's Procurement Rules but stems, instead, from a Statute which overrides all rules and subsidiary regulations.

The learned Mr. Robinson, in his unrelenting quest to confuse the public into believing that the OCG had embarked upon a 'wild goose chase' with its CTL Investigation, goes one step further to manufacture his own facts. He contends that there was no contract between CTL and IMC/SportsMax. Mr. Rousseau had also attempted a similar sleight of hand, shortly after the Report was tabled in February 2009, in his failed attempt to obfuscate the true facts of the matter in the public domain.

However, and contrary to the assertions of both men, there was indeed a contract subsisting, between CTL and IMC, for the supply of satellite signals, as at June 1, 2008, although the contract, though evidenced in writing, had not yet been formalized.



Indeed, the OCG found that on September 23, 2008, Mr. Oliver McIntosh of SportsMax, by way of letter to CTL, requested that information with regard to CTL's betting revenues be submitted to IMC for the processing of invoices. CTL was obligated to remit, to IMC, four percent (4%) of the monthly wagers for the months of June, July and August 2008.

However, contrary to the foregoing facts, both Mr. Rousseau and Mr. Robinson would have the Jamaican public believe that a contract never existed between CTL and IMC.

In a 28 page OCG letter, dated March 11, 2009, which addressed each and every one of Mr. Rousseau's challenges to the OCG's Report of Investigation, Mr. Rousseau was presented with the said facts regarding SportsMax's claim for payment from CTL. Mr. Rousseau was asked to indicate, to the OCG, whether he was still prepared to contend that there was no contract in existence, in which case his company would have, *prima facie*, committed the criminal act of attempting to fraudulently obtain money by way of false pretences from CTL. Not surprisingly, to date, the OCG has not heard from Mr. Rousseau on this specific matter.

Mr. Robinson also stated in his article, *inter alia*, that "*One of the earliest actions by the board that replaced the Rousseau board was to sign the identical SportsMax/IMC contract without a murmur from a living soul.*"

What Mr. Robinson has, however, failed to recognize is that the subsequent award of the contract, by CTL to IMC, was duly authorized by the National Contracts Commission (NCC), in conformance with the applicable Government Procurement Guidelines. In point of fact, the NCC, on March 25, 2009, endorsed the use of the Sole Source Method of procurement for CTL to negotiate with IMC and Tote Investments Limited for the provision of simulcast racing content on the basis that they were the sole suppliers of the relevant feed.

Consequently, the signing of the referenced contract does not, in any way, negate the OCG's Findings and Conclusions in its Investigation Report. To the contrary, CTL, in seeking the relevant approvals from the NCC, acted in accordance with the OCG's Recommendations in its Investigation Report into the matter.

Finally, Mr. Robinson states falsely as follows: "*The statute is clear that if the OCG finds anyone culpable, it must first send the report to that person. See Section 20*".

However, there is absolutely nothing in the Contractor General Act which substantiates his claim. Indeed, what Section 20 (2) actually states is as follows:

*"If any report of a Contractor- General reflects adversely upon any person the Contractor-General shall, so far as practicable, **inform that person of the substance of the report**"* - a requirement which is diligently satisfied by the OCG in the case of every Investigation that it conducts which adversely implicates someone. (My emphasis).



The OCG's Reports of Investigation, which are highly detailed Reports, which typically run between 100 to over 400 pages in content, are not crafted lightly. Indeed, in most cases they are painstakingly developed over periods which exceed one year.

All OCG Investigation Reports are systematically subjected to a rigorous and comprehensive suite of due diligence tests to ensure their factual accuracy and technical and substantive integrity. The tests are prescribed by written procedures. It is not unheard of for entire OCG Investigation Reports to be completely edited as many as 15 times.

The continuous improvement of OCG operating systems and processes is something which is constantly focused upon by me in my stewardship of the OCG. Despite all of this, however, and as I have said elsewhere, the OCG is not a perfect institution, neither am I.

We must, therefore, be open to constructive criticism and scrutiny from those whom we serve, inclusive of prominent Media commentators such as Mr. Robinson himself. What I will summarily and out-rightly reject, however, is any criticism which is directed against my Commission which is unfounded, unsubstantiated or spurious in nature.

Mr. Robinson's Sunday morning onslaught and attack upon the institutional integrity of the OCG, an organization that I am privileged to lead, falls into the latter category. Consequently, it cannot and will not be ignored by me.

Since space does not permit me to comprehensively respond to Mr. Robinson's unfortunate and unfounded claims, for those of his readers who are interested in reviewing the OCG's considered responses to the challenges which Mr. Rousseau has made to the OCG's Report of Investigation into the CTL matter, you are encouraged to do so by clicking on the following OCG website link: http://www.ocg.gov.jm/ocg/ctl_investigation.php

I would respectfully advise the goodly Mr. Robinson to read the document since several of his misguided positions have already been addressed therein.

A claim that a Contractor General has exceeded his jurisdiction or lawful authority is a very serious one and one for which Mr. Robinson must be cautioned. If Mr. Robinson is truly of that belief then, as an Attorney-at-Law, he should know that the place for casting such assertions should not be a newspaper column or a letter to the Editor, but another and more appropriate forum.

Yours respectfully,

Greg Christie (Signed)

Greg Christie
Contractor General