



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

No. :

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**OFFICE OF THE CONTRACTOR-GENERAL**

**PIOJ Building**

**16 Oxford Road**

**P.O. BOX 540**

**KINGSTON 5**

**JAMAICA, W.I**

**MEDIA RELEASE**

**OCG Expresses Alarm at DPP's Responses to its Media Release and Produces Documentary Proof of the Veracity of its Assertions**

**Kingston; November 25, 2011** – The Office of the Contractor General (OCG) is alarmed at Media Reports in which the Director of Public Prosecutions (DPP), Miss Paula Llewellyn, has challenged the veracity of certain statements that were made in the OCG's Media Release of yesterday, November 24, 2011, regarding certain matters that were associated with the prosecution of the former Chief Executive Officer (CEO) of the National Works Agency, Mr. Patrick Wong.

While the OCG does not intend to enter into a 'tit for tat' with the Learned DPP, the OCG believes that the integrity of its office compels it to publicly correct the false, misleading and damaging statements that have been attributed to Ms. Llewellyn regarding the OCG.

Among the OCG statements that the DPP has reportedly challenged are the following:

"In the instant matter regarding Mr. Wong, the DPP, in a written communication to the OCG, that was dated **November 4, 2011**, had also expressed her reservations about proceeding with the prosecution. Additionally, the DPP had intimated that the OCG should either revert to the Clerk of Courts to have the matter prosecuted or retain private counsel of the OCG's choice to prosecute the matter."

"In resisting the DPP's postures, the OCG, by way of letter, that was dated **November 8, 2011**, argued not only why it believed that the matter should proceed to prosecution, but also expressed its considered opinion that Mr. Dirk Harrison, the very person who the DPP had previously designated to handle matters that were referred to the DPP by the OCG, should prosecute the matter."

The OCG has appended, herewith, scanned electronic copies of the two (2) referenced letters of November 4 and 8, 2011, as proof of the veracity of its contentions. In particular, the referenced documents will prove the following beyond a shadow of a doubt:

- (1) That, contrary to what the DPP has reportedly stated, the matters which were the subject of the OCG's complaint against Mr. Wong were not matters that were confined to information that pre-dated his employment at the NWA but, in point of fact, were matters which extended to



the period of May 1, 2009 to March 31, 2010 – a time period which coincided with Mr. Wong’s tenure at the NWA as its CEO and Principal Accountable Officer.

- (2) That the DPP, although she conceded that the matter was a “strict liability” one, she expressed reservations about proceeding with the prosecution of the case. She explicitly stated that the Crown, should it proceed to prosecute, “may have difficulty in satisfying the Court’s concerns”. The OCG, in its response to the DPP, sought to clarify that the referenced reservations were, in the OCG’s view, unfounded and, also, that the DPP apparently did not have a full appreciation of the facts of the matter.

In light of the Court’s Ruling of yesterday, it is now abundantly clear that the OCG’s positions have been vindicated and that the DPP’s expressed reservations were, as a matter of law and fact, wholly without merit.

- (3) That the statement which has been attributed by the Gleaner Newspaper (internet edition) to the DPP that “it was the Office of the DPP which presented the Contractor general with the choice of a prosecutor from the Office, or a private lawyer”, is one which is entirely false.

The DPP’s letter of November 4, 2011, to the OCG, will establish that the OCG was, in point of fact, directed by the DPP “to the Clerk of Courts for the Corporate Area” or to “retain Counsel of your choice to prosecute this matter”.

Contrary to the DPP’s reported assertions, the OCG was in no way offered the assistance of the Office of the DPP in the prosecution of the matter. Indeed, the DPP’s letter to the OCG was not copied or otherwise brought to the attention of Mr. Dirk Harrison – the ODPP Officer who had been previously assigned by the DPP to handle OCG matters and who, it should be noted, had been actively working with the OCG on the Patrick Wong matter.

Mr. Harrison first learnt about the DPP’s decision when the OCG, by way of its letter of November 8, responded to the DPP, copying Mr. Harrison, and requested that “due consideration could be given to allowing Mr. Dirk Harrison, the designated Officer for OCG related matters, and who is also familiar with the Referral, to lead the prosecution of the matter on behalf of the ODPP”.

As regards the comments that the DPP has reportedly made in respect of the Trafigura matter, the OCG’s positions regarding same are articulated in detail at pages 26-28 of its 2010 Annual Report to the Parliament of Jamaica. The Report is freely available for enquiry on the OCG’s website at [www.ocg.gov.jm](http://www.ocg.gov.jm). In the circumstances, the OCG sees no need to comment any further on the matter.

-END-

Contact: The Communications Department, Office of the Contractor General of Jamaica  
C/o Craig Beresford, Senior Director of Monitoring Operations, Corporate Communications and Special Projects  
E-mail: [communications@ocg.gov.jm](mailto:communications@ocg.gov.jm). Tel: 876-929-8560; Direct: 876-926-0034; Mobile: 876-564-1806



## OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

P.O. BOX 633,  
KINGSTON,  
JAMAICA

ANY REPLY OR SUBSEQUENT REFERENCE TO THIS  
COMMUNICATION SHOULD BE ADDRESSED TO THE  
DIRECTOR OF PUBLIC PROSECUTIONS AND **NOT TO ANY  
OFFICER BY NAME** AND THE FOLLOWING REFERENCE  
QUOTED:-

TELEPHONE: 922-6321-5  
TEL. FAX: (876) 922-4318

NO \_\_\_\_\_

November 4, 2011

Mr. Greg Christie  
Contractor-General  
Office of the Contractor-General  
PIOJ Building  
16 Oxford Road  
Kingston 5

Dear Sir,

**RE: Formal Referral to the Director of Public Prosecutions – Failure of Mr. Patrick Wong, Chief Executive Officer of the National Works Agency, to comply with a lawful Requisition of the Contractor General – Breach of Section 29 (b) (ii) of the Contractor General Act**

Upon perusing the referred matter at caption, it would appear that Mr. Patrick Wong in his capacity as the Chief Executive Officer of the National Works Agency, had contravened section 29(b) (ii) of the Contractor General Act by his failure to comply with the lawful requisitions in the prescribed form, as this section creates what in law would be regarded as a strict liability offence.

I have noted that according to the matter presented, Mr. Patrick Wong became Chief Executive Officer of the National Works Agency on May 1, 2009. Your office requested that he provide information dating from May 1, 2006 to March 31, 2010, which predates the commencement of his tenure as C.E.O.

This prescribed format as requested by your offices requires that the information provided be contained in a prescribed format with an attached Statutory Declaration. In effect a person in Mr. Wong's position would be swearing to the truth of the information requested.

Without prejudice to your authority to request information in any prescribed form I must mention a particular concern that has arisen with respect to the issue of fairness which may preoccupy the tribunal adjudicating on this matter.

I have advised myself in respect of the Authorities of **R v. Hines and King (1971) 17 W.I.R. 326** and **R v. Leroy Lowe R.M.C.A. No. 02/2005 (unreported) delivered 25<sup>th</sup> May 2005**, where the Court of Appeal opined that the nature of an oath is such that it is binding on the conscience of the person taking the oath.

In light of this I must issue a caveat that the Crown in seeking to press forward in the prosecution of the this matter may have a difficulty in satisfying the Court's concerns about the fairness in requiring Mr. Wong to bind his conscience in the form of the Statutory Declaration in the circumstances where the information requested predates his tenure as C.E.O.



It is trite law that the Courts in adjudicating on any criminal matter require fairness to be at the heart of the prosecution of the matter where the crown has the enormous burden of proving the case against the accused beyond a reasonable doubt.

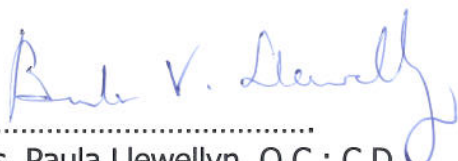
Having issued this caveat and given the fact that you referred this matter to this office, I have written to the Commissioner of Police to advise that at the instant of your complaint criminal proceedings are to be instituted against Mr. Patrick Wong on what is prima facie a failure to comply with a lawful request of your office, that is, setting out the required information in the prescribed form.

To that end, the Commissioner of Police has been directed that two (2) Informations are to be prepared charging Mr. Patrick Wong for the following offences;

1. Mr. Patrick Wong, being the Chief Executive Officer of the National Works Agency, an executive government agency, on September 24, 2010 in the parish of St. Andrew failed to comply with the lawful requirement of a Contractor General or any other person contrary to section 29 (b) (ii) of the Contractor General Act.
2. Mr. Patrick Wong, being the Chief Executive Officer of the National Works Agency, an executive government agency, on August 19, 2011 in the parish of St. Andrew failed to comply with the lawful requirement of a Contractor General or any other person contrary to section 29 (b) (ii) of the Contractor General Act.

May I remind you that the Clerk of Courts for the Corporate Area by virtue of their jurisdiction would have conduct of this matter. However, should you, as the complainant wish to retain Counsel of your choice to prosecute this matter, please feel free to write to me indicating this fact and I will immediately grant my Fiat to Counsel of your choice to handle this matter.

Yours Sincerely,



.....  
Ms. Paula Llewellyn, Q.C.; C.D.  
Director of Public Prosecutions

Cc Mr. Mike Henry  
Minister of Transport and Works

Cc Mr. Delroy Chuck,  
Minister of Justice

Cc Mr. Ransford Braham  
Attorney General



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**P.O. Box 540**

**KINGSTON 5**

**JAMAICA, W.I.**

**URGENT**

November 8, 2011

**COPY**

Ms. Paula Llewelyn, Q.C., C.D.  
Director of Public Prosecutions  
Office of the Director of Public Prosecutions  
King Street  
Kingston

Dear Director:

**Re: Formal Referral to the Director of Public Prosecutions- Failure of Mr. Patrick Wong, Chief Executive Officer, National Works Agency, to Comply with a Lawful Requisition of the Contractor General – Breach of Section 29 (b) (ii) of the Contractor General Act**

We write with reference to your Ruling of the 4<sup>th</sup> instant, in regard to the captioned matter.

Reference is also made to the Office of the Contractor General's (OCG's) letter, which was addressed to Mr. Dirk Harrison, Deputy Director of Public Prosecution, Office of the Director of Public Prosecution (ODPP), and which was dated September 2, 2011. In the referenced letter, the OCG formally referred Mr. Patrick Wong, Chief Executive Officer (CEO) of the National Works Agency (NWA), to the ODPP, pursuant to, *inter alia*, the provisions of Section 29 (b) (ii) of the Contractor General Act, for a failure, without lawful justification or excuse, to fully comply with a lawful Requisition of the Contractor General as per the requirements of the OCG's Statutory Requisition, which is dated July 20, 2011.

In your letter of November 4, 2011, you have ruled, *inter alia*, that based upon the OCG's Referral of September 2, 2011, Mr. Patrick Wong "...had contravened section 29 (b) (ii) of the Contractor Act by his failure to comply with the lawful requisitions in the prescribed form, as this section creates what in law would be regarded as a strict liability offence."

The OCG has further noted the ODPP's caveat that "...the Crown in seeking to press forward in the prosecution of the [sic] this matter may have a difficulty in satisfying the Court's concerns about the fairness in requiring Mr. Wong to bind his conscience in the form of the Statutory Declaration in the circumstances where the information requested predates his tenure as C.E.O." The OCG had, in making its Referral, duly considered the circumstances surrounding its Statutory Requisition to Mr. Patrick Wong inclusive of the genesis of his tenure as the Accountable Officer in the NWA.





The OCG had expressly indicated such considerations at the meeting which was convened with the Deputy Director of Public Prosecution, Mr. Dirk Harrison and Mr. Greg Walcom, Crown Counsel, at the ODPP, on September 2, 2011.

At the referenced meeting, it was discussed and considered that despite the fact that certain of the information preceded Mr. Patrick Wong's tenure, as the CEO of the NWA, same would not obviate him from the responsibility to ascertain and provide the OCG with complete records as available from the NWA's Official Records.

The OCG notes that your Ruling has made clear the commencement of Mr. Patrick Wong's tenure of May 1, 2009. In this regard, the OCG would like to place upon the record the fact that there were two (2) time periods which were taken into consideration at the referenced meeting, in keeping with the OCG's Requisition to Mr. Patrick Wong on July 20, 2011. These were as follows:

1. The period prior to Mr. Wong's tenure at the NWA; and
2. The period between May 1, 2009 and March 31, 2010 (as the scope of the OCG Investigation is between May 1, 2006 to March 31, 2010); a time period which coincides with Mr. Wong's tenure.

Having regard to the foregoing, and as was duly communicated in the referenced meeting of September 2, 2011, the OCG referred Mr. Patrick Wong for his failure to sign the required Statutory Declarations in fulfillment of his response to the OCG's Statutory Requisition of July 20, 2011, in light of the following considerations:

1. The fact that Mr. Patrick Wong, in his capacity as the CEO of the NWA and, therefore, the lawful Accountable Officer for the NWA, was being asked to clarify certain information which was previously submitted by him, in his response to the OCG Statutory Requisition of September 24, 2010. The OCG's considered opinion on the matter was communicated to Mr. Patrick Wong, under the cover of letter which was dated July 28, 2011, and which was marked Exhibit 5 in the OCG's Referral to you;
2. The fact that Mr. Patrick Wong, as the CEO of the NWA, would have had a duty to provide the information prior to his tenure and as such would have had to, at a minimum, attest to the completeness of the information provided. Further, it is the OCG's contention that its request for Mr. Patrick Wong to provide documentation and/or clarification based upon the official records of the NWA is neither unreasonable nor unfair to him in his capacity as a lawful Accountable Officer.

Whilst we are acutely aware that Mr. Wong might not be in a position to ascertain and/or to provide certain explanations, we are of the opinion that in the circumstances in which he is able to provide responses, there cannot be a *carte blanche* fetter to his attestation to the accuracy and truthfulness of those responses which are premised upon the official records of the NWA.; and

3. The fact that Mr. Patrick Wong, as the CEO of the NWA, would have to be held accountable for the completeness, accuracy and truth of any information provided during his tenure which commenced on May 1, 2009.



Without prejudice to any of the foregoing considerations, and having regard to the suggestions which were made by you regarding the prosecution of this matter, we would be most grateful if due consideration could be given to allowing Mr. Dirk Harrison, the designated Officer for OCG related matters, and who is also familiar with the Referral, to lead the prosecution of the matter on behalf of the ODPP.

Please note, that we have not copied the Hon. Michael Henry, Minister of Transport and Works, as we do not deem it appropriate for him to be so advised of the deliberations of these matters.

Very respectfully yours,

A handwritten signature in black ink, appearing to read 'M. Barrett', with a long horizontal flourish extending to the right.

Maurice Barrett  
Chief Investigator  
**for and on behalf of the Contractor General**

Copy: Mr. Owen Ellington, C.D., Commissioner of Police  
Mr. Delroy Chuck, M.P., Minister, Minister of Justice  
Mr. Ransford Brahm, Attorney General of Jamaica  
Mr. Dirk Harrison, Deputy Director of Public Prosecutions, Office of the Director of Public Prosecutions  
Mr. Greg Walcolm, Crown Counsel, Office of the Director of Public Prosecutions