



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

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MEDIA RELEASE

OCG Questions Legitimacy of and Motive for Gorstew's Sandals Whitehouse Court Challenge

Kingston; September 10, 2012 – The Office of the Contractor General (OCG) has taken note of a story which appeared in yesterday's Jamaica Sunday Observer newspaper which is entitled: '***OCG has no power to probe Sandals Whitehouse***'. The story asserts that Gorstew Limited, which is owned by the Hon. Gordon 'Butch' Stewart, OJ, has filed an Application in the Supreme Court to challenge the powers of the Contractor General to investigate the circumstances which led to the Government's sale of the Sandals Whitehouse Hotel to Gorstew Limited in early 2011.

Gorstew's Court Action, the timing of the Action, the reasons which have been advanced by Gorstew for same, and certain germane facts which are unknown to the public, have raised significant concerns for the OCG and have brought the legitimacy of the Application and the motive for same into question.

- (1) First, the Gorstew Application was filed on September 7, 2012, just one (1) work day before the September 11, 2012 deadline by which Mr. Stewart is required by law to respond in writing, and under oath, to the OCG Statutory Requisition which was directed to him on June 20, 2012.

Further, and what was not revealed to the public, in the Sunday Observer article, is the fact that upon his receipt of the OCG's Requisition, Mr. Stewart, through his attorney, wrote to the OCG on July 4, 2012 to seek a two (2) month extension to the July 11, 2012 deadline date which had been set, **to enable him to respond to the OCG's Requisitions**. The letter, which was signed by Mr. Trevor Patterson of Patterson Mair Hamilton, Attorneys-at-Law, reads verbatim as follows:

"I have been consulted by The Hon. Gordon "Butch" Stewart, O.J. in relation to your letter of June 20, 2012.

The transaction, as you know, occurred some 2 years ago and the process of retrieving files from the archives has started. However, it will be physically impossible to provide proper and meaningful responses to the numerous questions which you have asked by the deadline date of July 11, 2012.

Quite apart from the fact that there are numerous files to be reviewed, Mr. Stewart had programmed a series of overseas trips to various markets in preparation for the upcoming Winter Season. It will mean that he will have to cancel some of his overseas engagements but there are certain critical marketing and promotional activities which cannot be changed at this time without substantial adverse implications.



In light of the foregoing and in order to allow the business of the Company to continue without major disruption, we are respectfully requesting on his behalf an extension of time to September 11, 2012. We are taking the liberty of sending this letter to you by email but a hard copy will follow shortly.”

Curiously, and instructively, there was absolutely nothing in Mr. Stewart’s letter which questioned the Investigative powers of the Contractor General, or which gave any indication that his intent was anything but to fully cooperate with the OCG’s Investigation.

The OCG, relying, upon what it had assumed was a sincere and legitimate request from Mr. Stewart, consequently and without hesitation, by way of letter that was dated the same day - July 4, 2012 - granted him the extension which he had requested, to September 11, 2012. In the interest of public transparency, and should the need arise, the OCG is prepared to utilize its powers, under the Contractor General Act, to release both letters in proof of the facts which have been asserted.

- (2) Second, the Gorstew Application comes more than one and one-half years from the January 19, 2011 date on which the OCG had first publicly announced the commencement of its Investigation into the Government’s controversial sale of the Sandals Whitehouse Hotel to Gorstew. It is instructive to note that at no time throughout this entire 19-month period did Gorstew see it fit to question or to challenge the OCG’s powers of Investigation into the sale.
- (3) Third, Gorstew’s Court Action, against the OCG, stands in direct contradiction of an official public statement that was issued by Gorstew on January 30, 2011.

In the statement, that was published in the Gordon ‘Butch’ Stewart owned Jamaica Observer newspaper, Gorstew expressed its full support for the very OCG Investigation that it is now inexplicably seeking to challenge in the Supreme Court.

The first two (2) paragraphs of an Observer article, entitled: ‘**Gorstew welcomes contractor general’s Whitehouse probe**’, that was also published on January 30, 2011, are instructive of Gorstew’s now exposed insincerity and lack of credibility in this matter. They read as follows:

“GORSTEW Limited has pledged to co-operate with the contractor general’s probe of the negotiations for the sale of the Sandals Whitehouse hotel in Westmoreland and has made public a 24-point statement of facts on the project.

In a statement published in today’s Sunday Observer, Gorstew, Gordon ‘Butch’ Stewart’s holding company, said it “welcomes and will co-operate with any investigation mounted by the contractor general in relation to the sale of Sandals Whitehouse”.”

- (4) Fourth, Gorstew has stated that the OCG’s Investigation was based upon a December 2010 Sunday Herald article which alleged that “secret talks” were in progress between the Government and the Sandals Chain. Gorstew has also expressed great concern “that the OCG could base an investigation of this nature on a spurious news story” that is composed of “lie or sus” (sic).



Gorstew's claims are, however, inaccurate and unfounded, and Gorstew is well aware of the fact that it has grossly distorted the material facts of the matter.

Contrary to what has been stated by Gorstew, the OCG's Investigation was publicly announced and commenced on January 19, 2011, via an official OCG Media Release, *after* the OCG had concluded a comprehensive Preliminary Enquiry into the Sunday Herald allegation.

The OCG's Preliminary Enquiry included its evaluation of several documents which it had requisitioned and received from a number of senior public officials, including the Cabinet Secretary, as well as its evaluation of the Official Statement on the matter which was delivered in Parliament by the then Prime Minister, the Hon. Bruce Golding, on January 11, 2011.

It is also critical to remind the public that the OCG's Preliminary Enquiry did in fact establish that there was indeed merit to the Herald's allegation of "*secret talks*", since information about the proposed divestment of the Hotel was withheld by the Government from the OCG, despite the OCG's written request, directed to the Cabinet Secretary, to provide particulars of *all* such proposed divestments.

Further, the true reasons for the OCG's Investigation, as well as the Findings of its Preliminary Enquiry, contrary to what Gorstew has stated, are comprehensively documented in a twenty-two (22) page letter, dated January 19, 2011, that was directed by the Contractor General to the then Prime Minister and his Permanent Secretary. The OCG's letter to the Prime Minister was made public and was issued as an attachment to the OCG's Media Release of the same date.

Among the reasons that the OCG publicly gave for its decision to commence its Investigation, are "*several issues which it said raised serious questions and concerns of possible irregularity and impropriety in respect of the then proposed deal*".

"These included certain unexplained circumstances regarding the valuation of the Hotel, specified conditions precedent for the consummation of the proposed deal which were not satisfied although they were reported to have been dictated by the Prime Minister, as well as apparent opportunities which were presented to the Government to pursue alternate options for the sale or valuation of the hotel which were not acted upon."

"The OCG also raised a number of issues and questions regarding the justifications which were given by the Prime Minister for the Government's decision to proceed with the sale of the Hotel to Gorstew Limited."

Both the OCG's Media Release, and the Contractor General's 22 page Letter to the then Prime Minister, of January 19, 2011, can be examined and/or downloaded by clicking on this link: http://www.ocg.gov.jm/website_files/media_releases_issued/media174.pdf.

- (5) Fifth, it has been reported that Gorstew, in its Court Application, has stated that the OCG's Investigation, if it is permitted to proceed, "*would be an indictment upon Jamaica*", and would "*undermine the sale and sully the reputation*" and "*integrity*" of those "*who were involved in the negotiations*". Gorstew has also asserted that "*the negotiations were transparent*".



In response, the OCG first wishes to state that it is its belief that the only actions that are likely, at this time, to irreparably damage the reputation of anyone, or the country, are the actions of Gorstew itself in persisting with its questionable Court Action against the OCG, against the background of the circumstances that are outlined herein.

As regards the issue of “*transparency*”, as well as the issue of the “*integrity*” of the persons who were involved in the Hotel ‘sale negotiations’, Gorstew has claimed that “... *it is very important that we take this position (i.e. the Court Action against the OCG) to protect the integrity of a significant number of Jamaican professionals who were involved in the negotiations in good faith and who are respected for their integrity*”.

However, what is perhaps unknown to Gorstew, and to the public, is that the very “*Jamaican professionals who were involved in the negotiations*”, and whose “*integrity*” Gorstew has stated that it wants to “*protect*”, have already received OCG Statutory Requisitions, requiring them to provide extensive sworn written statements to the OCG, and they have all dutifully complied with the said Requisitions in a timely fashion.

Indeed, what is certainly not known to the Jamaican public is that Mr. Stewart is the only person, to date, from among the several Respondents who have been requisitioned in the course of the OCG’s Investigation, who has not only refused to respond to the OCG’s lawful Statutory Requisitions directed to him, but who has decided to challenge, in the Courts, the OCG’s powers to conduct its Investigation, as well as to ask him questions.

All of this has obviously raised deep concerns for the OCG. This is more-so in light of the fact that Gorstew’s sudden and inexplicable 180 degree turn, away from its previously stated position to “*co-operate with any investigation mounted by the contractor general in relation to the sale of Sandals Whitehouse*”, has come only after Mr. Stewart’s receipt of the OCG’s June 20, 2012 Statutory Requisition, and only one (1) work day before the September 11, 2012 extended deadline which he, himself, had requested to facilitate the completion of his responses to the said Requisition.

Although the OCG will not comment upon the substance of its Investigation, in the interest of public transparency, and in light of the claims that have been made by Gorstew, it believes that it is, nevertheless, important to publicly record the fact that included among the many public and private officials who have been formally requisitioned to provide extensive sworn statements to the OCG, and who have complied with the said Statutory Requisitions, are as follows:

(a) *The Hon. Bruce Golding, Prime Minister of Jamaica;* (b) *Mr. Patrick Lynch, Former Director, Gorstew Limited;* (c) *Mr. Wayne Chen, Chairman of the Board, Urban Development Corporation;* (d) *Ms. Joy Douglas, General Manager, Urban Development Corporation;* (e) *Mr. Joseph M. Matalon, Chairman of the Board, Development Bank of Jamaica;* (f) *Mr. Milverton Reynolds, Managing Director, Development Bank of Jamaica;* (g) *Mr. Wentworth Charles, Director, Ackendown Newtown Development Company;* (h) *Mr. Wilfred Baghaloo, Director, Ackendown Newtown Development Company;* (i) *Mr. Courtney Bert, General Manager, Sagicor Property Services Ltd; Property Managers;* (j) *Dr. Ralph Thompson, Managing Director, C.D. Alexander Realty Ltd; Realtors and Valuers;* (k) *Mr. George Gregg, George Gregg and Company; Valuers;* and (l) *the Hon. R.*



Danvers ‘Danny’ Williams, O.J., Facilitator; (NB. Titles indicated are correct as at the dates of the respective Statutory Requisitions).

- (6) Sixth, the OCG is of the respectful and considered view that Gorstew’s Application and Court Action, against the OCG, are frivolous, misguided and are devoid of any legal merit.

One of Gorstew’s stated grounds of contention, against the OCG’s Investigation, is that the OCG has proceeded with its Investigation based upon what Gorstew has characterized as “*a spurious news story*”. However, this is a claim which, itself, has been shown to be un-founded.

Irrespective, however, of the demerits of Gorstew’s claim, what is beyond legal debate is that Sections 15 (1) and 16 of the Contractor General Act en-clothe a Contractor General with unfettered discretionary powers to determine why, if, or when he should commence an Investigation into a specific matter.

Section 15 (1) of the Act is clear that if a Contractor General “*considers it necessary or desirable*” to conduct an Investigation, he is lawfully entitled to do so. Section 16 of the Act, on the other hand, specifically provides that “*An Investigation ... may be undertaken by a Contractor General, on his own initiative or as a result of representations made to him, if in his opinion such investigation is warranted*”.

The other ground of contention, that Gorstew has advanced, is that the OCG has no power under the Contractor General Act to conduct Investigations into the divestment of State-owned assets. Gorstew has argued that a “*contractor general's functions are **limited** to the monitoring and award of: licences, permits, concessions or authorities issued by a public body; and **agreements entered into by a public body for the carrying out of building or other works or for the supply of any goods or services.***” (OCG Emphasis).

Section 2 of the Contractor-General Act, which grants a Contractor General monitoring and investigative jurisdiction over ‘*Government contracts*’, however, states, quite lucidly, that a “*government contract **includes** any... agreement entered into by a public body for the carrying out of building or other works or for the supply of goods and services*” (OCG emphasis).

The word “***includes***”, in the Statute, is the pivotal term and it is, therefore, crystal clear that the term ‘*government contract*’ could not, by any stretch of the imagination, be **limited**, as Gorstew has erroneously claimed, to agreements “*for the carrying out of building or other works or for the supply of any goods or services*”. Indeed, the principle of legislative interpretation that is involved here is a trite principle of the law which is well known to all lawyers.

There is, therefore, in the OCG’s view, no credible, logical, legal or sustainable basis upon which a contention can be properly founded that the term “*government contract*” was intended by the Parliament to exclude Government asset divestment contracts, particularly when there is no other provision, anywhere, in the Contractor General Act, which states so, and particularly when one considers that the clear mischief that the Act was designed to cure was impropriety, irregularity and corruption in the award of all Government contracts, and not just some Government contracts.



It is also worthy of note that it is a documented fact that the OCG has consistently practiced its jurisdiction to monitor and to investigate Government of Jamaica asset divestment contracts. Indeed, hundreds of asset and land divestment contracts have been so scrutinized by the OCG over the past several years, many of which have received the support, tacit or otherwise, of either the Government of the day and/or the sitting Parliamentary Opposition.

The OCG's jurisdiction in question is also one which the Jamaican public should be aware that the OCG has jealously guarded, and will continue to jealously guard and protect, particularly because it is a universally recognized fact that one of the principal circumstances in which corruption in Government contracting is known to thrive is in the divestment of lucrative state assets.

Finally, the OCG wishes to publicly record the fact that it has had in hand, from as long ago as January 2000, or more than 12 years ago, an Expert Legal Opinion which was written by eminent Jamaican Senior Counsel, Dr. the Hon. Lloyd Barnett, OJ. The Opinion holds, in very clear terms, that, upon a proper interpretation of the Contractor General Act, a Contractor General does in fact have lawful jurisdiction to monitor and to investigate the divestment, by the State, of assets that are in reality owned by the people and taxpayers of Jamaica.

Consequently, and as far as the OCG is concerned, Gorstew's positions or claims, beyond the fact that they have been shown to be highly questionable, are also fundamentally misguided and flawed. Indeed, the actions of Gorstew are to be regretted. It is in light of all of the aforementioned circumstances, amongst others, and the very serious public interest considerations that are inherent in this matter, that the OCG will vigorously oppose, in the Supreme Court, the Application which has been filed against it by Gorstew Ltd.

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