



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

**OFFICE OF THE CONTRACTOR-GENERAL
PIOJ BUILDING, 16 OXFORD ROAD**

No. :

TELEPHONE No.:876-929-8560/6466
FAX No. : 876-929-2476
E-mail: gchristie@ocg.gov.jm

**P.O. Box 540
KINGSTON 5
JAMAICA, W.I.**

September 12, 2012

The Most Hon. Portia Simpson-Miller, MP, ON
Prime Minister of Jamaica
Office of the Prime Minister
1 Devon Road
Kingston 10

The Hon. Andrew Holness, MP
Leader of the Opposition
Office of the Leader of the Opposition
1 West Kings House Road
Kingston 6

Dear Madame Prime Minister and Leader of the Opposition:

I am privileged to write this open letter to you, in my capacity as the Independent Parliamentary Commission of the Contractor General of Jamaica, regarding an urgent matter which I believe is of fundamental importance to the issues of good governance and political leadership in our beloved country, Jamaica.

It is my considered but respectful belief, Madame Prime Minister and Leader, that the time has come for the Executive and Legislative arms of the Jamaican State to publicly clarify precisely what role, if any at all, the Office of the Contractor General (OCG) should play, within a national system of institutionalized and independent checks and balances, to ensure that Government commercial transactions will withstand the highest levels of scrutiny and probity, and that the Jamaican taxpayer can be guaranteed value for money whenever State assets are divested, whenever State licences are issued, or whenever Government contracts are to be awarded by the State's public bodies.

As you are aware, during the past seven (7) years in which I have been privileged to have held my commission as Jamaica's fourth Contractor General, I have laid before your respective Administrations, as well as before your predecessor Administrations, and the country's Parliament, innumerable remedial Recommendations.

These considered Recommendations were specifically and carefully crafted by the OCG (a) to significantly enhance transparency, competition, accountability and probity in public contracting and licensing in Jamaica, (b) to ensure compliance with the Government's Procurement Procedures and Guidelines, (c) to eliminate waste and inefficiency in the award and implementation of Government



contracts, (d) to prevent fraud and corruption in Government contracting, (e) to strengthen the independence of the OCG, and (f) to generally win the battle against corruption in Jamaica.

Regrettably, however, most of the referenced Recommendations have not been effectively acted upon, nor have the overwhelming majority of them been materially implemented. In the interim, and while, as a country, we appear to remain apathetic or unwilling to proceed in a decisive, deliberate and expeditious manner with the requisite reforms to the country's good governance structures, and its anti-corruption institutional framework, Jamaica continues to be perceived, by the international commercial community, as well as by its bilateral and multi-lateral partners, as one of the most corrupt countries in the world.

But while these concerns remain, I regret that I must also respectfully call your attention to another area of great concern which has recently arisen for the OCG. The matter is so grave in import, and fundamental in its current and potential impact upon the OCG, that if it is not immediately addressed, it could literally render the OCG, as a national institution, redundant and herald its very demise.

The matter that I have cause to respectfully bring to your attention is that within the past six (6) months, two (2) different court actions have been instituted against the OCG to challenge two (2) major elements of the Commission's long practiced jurisdictional powers under the Contractor General Act.

The first of the referenced Judicial Review court actions was instituted, against the OCG, by a sitting Minister of Government, the Minister of Transport, Works and Housing, Dr. the Hon. Omar Davies. As you are aware, Dr. Davies has challenged, among other things, the powers of a Contractor General to monitor the pre-contract phases of the award of Government contracts.

The second matter, in respect of which I am writing to you, was recently instituted by a private sector entity which has challenged the authority of a Contractor General, under the Contractor General Act, to monitor and/or to investigate the divestment of State assets.

While, there may be differences of opinion as to whether the OCG, does in fact possess the lawful authority, under the Contractor General Act, to exercise a lawful monitoring or investigative jurisdiction, in respect of any of the above-referenced two (2) areas, there are, however, certain very important associated matters that should nevertheless be immediately brought to the fore for your urgent consideration. They are as follows:

- (1) In both of the aforementioned instances, the OCG has consistently exercised a practiced jurisdiction, over the past 28 years, with the full knowledge and/or outward support of successive Parliaments and Government Administrations. This is a documented fact, which is evidenced, among other things, by the Annual Reports of the OCG, which are required, by law, to be filed each year in both Houses of Parliament.
- (2) In respect of the first of the above-referenced areas, namely the OCG's monitoring of the pre-contract phases of the award of Government contracts, I am also obliged to advise that this is an activity of the OCG which, year over year, for the past 28 years, has accounted for



the overwhelming majority of the OCG's current JA\$180 million operating budget, the overwhelming majority of its operating staff, and the overwhelming majority of the OCG's work.

Indeed, the OCG, over the years, has never resiled from the faithful discharge of its mandate in the aforementioned regard, particularly because the Supreme Court of Jamaica, from as long ago as 1991, during the tenure of the country's first Contractor General, had ruled in very clear and unambiguous terms that the OCG, upon a proper interpretation of the Contractor General Act, did in fact possess the referenced jurisdiction.

- (3) With respect to the other challenge that was recently brought against the OCG in the courts, namely on the question of whether or not a Contractor General, upon a proper interpretation of the Contractor General Act, has the power to monitor and/or to investigate the divestment of State assets, the attendant issues are exactly the same.

The monitoring and investigation of the State's divestment of assets has been an extremely critical area of the OCG's work for the past several years, and has been certainly so prior to my own appointment, in December 2005, as the incumbent Contractor General. Indeed, it was during the currency of a previous Contractor General, that the OCG had, in January 2000, secured a written Legal Opinion from one of Jamaica's most respected Attorneys, Dr. the Hon. Lloyd Barnett, which held that the OCG does in fact have the referenced jurisdiction.

The need for the Legal Opinion had arisen, at the time, because the OCG's oversight of the State's then ongoing divestment of the Donald Sangster International Airport, by the National Investment Bank of Jamaica (NIBJ), had been called into question.

- (4) Be that as it may, the immediate issue which I must, however, humbly submit, is currently before the country, and before you, is whether any good purpose is being served, by the Government of the Day, challenging the OCG, in the Courts, as to what the Contractor General Act means or does not mean, when the same Government holds the legislative capacity to forthwith amend the Contractor General Act to state lucidly and unequivocally whether or not it wants a Contractor General to indeed possess the lawful authority to monitor and to investigate the pre-contract phases of Government contracts, and/or to have oversight jurisdiction in matters which relate to the State's divestment of assets.
- (5) A related issue, I would also respectfully submit, Madame Prime Minister and Leader, is whether the Government, through its conduct, in taking the OCG to Court to challenge it on matters which have to do with the interpretation of the Contractor General Act, versus moving with expedition and forthrightness to repair ambiguities in the Act, may not also be sending the wrong signals to other stakeholders who will ultimately come to the view that if the Government is doing it, then they can do it too.

While the Government, and other entities, fight the OCG in court, as to what the Contractor General Act means or does not mean, or should mean, not only is the taxpayer's



money being literally thrown away in the OCG's defence of the said court actions, but invaluable human resources, which should be otherwise deployed, in the execution of the critical day-to-day anti-corruption mandates of the OCG, are also being wasted away.

- (6) In placing these matters before you, Madame Prime Minister and Leader, we should also call a spade a spade and accept that, as embarrassing as it is, political as well as other questionable considerations have, from time to time, dictated how the OCG's jurisdictional powers are viewed by the Government of the Day. Two (2) examples readily come to mind.
- (a) The first has to do with one of the two (2) afore-referenced matters which is the subject of my letter to you. In his recent Judicial Review Applications in the Supreme Court, against the OCG, one of the many Declarations that the incumbent Minister of Transport, Works and Housing, Dr. Davies, has sought to secure, as regards the OCG's attempted oversight of the Government's award of the North-South Link of Highway 2000 contract to China Harbour Engineering Company (CHEC) without competitive tender, is *"A Declaration that the Contractor General has no power under the Contractor General Act to monitor and to investigate pre-contractual activities"*.

However, it will come as a surprise to many that this very activity of the OCG, which the Ruling Peoples National Party (PNP) Administration has now asked the court to declare to be an illegal activity, and to be *ultra vires* the Contractor General Act, is the identical activity that the PNP, just over a year ago, when it constituted the Parliamentary Opposition, wanted the incumbent Contractor General to pursue with vigour.

In a Gleaner Online article, that is dated June 30, 2011, and entitled: ***'PNP calls for toll road contract to be opened to international tender'***, there was a report of a meeting of the Public Administration and Appropriations Committee of Parliament that was held on the previous day, June 29, 2011. In the news report, it was stated thus:

"It was revealed in the meeting, that the (Jamaica Labour Party) Government plans to award a concession for the (North/South Link of Highway 2000) contract to China Harbour Engineering Company. However, the PNP has taken issue with that plan, saying the project must be put to international tender under the scrutiny of the Contractor General and the Auditor General".

Similarly, in a Sunday Gleaner Online article, that was dated July 3, 2011, and entitled: ***'China Harbour pushes for more road contracts'***, there was the following news report:

"China Harbour's interest in constructing the new (North/South Link of Highway 2000) highway has already sparked debate among a parliamentary group, with Opposition Member of Parliament Phillip Paulwell [now a Senior Member of the Cabinet] sounding a note of caution that the project should be open to international tender.... He (Mr. Paulwell) wants the process to go through the National Contracts Commission and be subject to scrutiny from Contractor General Greg Christie".



- (b) The second example that I will bring to your attention has to do with the Jamaica Labour Party (JLP) Administration which held the seat of State power in 2008.

Three (3) months after the then Minister of Agriculture, Dr. the Hon. Christopher Tufton, on January 17, 2008, with the support of the then Attorney General, challenged, in writing, the OCG's jurisdiction to monitor his Ministry's then ongoing divestment of the country's publicly owned sugar industry assets, I received a letter, dated April 8, 2008, from the then Minister with portfolio responsibility for Air Jamaica, the Hon. Don Wehby, in which the OCG was requested to review the previous PNP Administration's divestment of Air Jamaica's London Heathrow Slots.

To further compound the issue, on April 23, 2008, the then JLP Minister of Finance, the Hon. Audley Shaw, during his closing speech in the Budget Debates, from the floor of the House of Representatives, publicly requested the OCG to investigate the said Air Jamaica London Heathrow Slots asset divestment by the PNP.

Quite curiously, however, there was no word from the then Office of the Attorney General objecting to the propriety of either Mr. Wehby's or Mr. Shaw's request, although only three (3) months before, the same Office had ruled that the OCG had no jurisdiction to monitor and/or to investigate State asset divestment contracts.

It is a matter of public record that Minister Wehby's and Minister Shaw's requests were acceded to by me, when a formal OCG State Asset Divestment Investigation into the matter was commenced on April 23, 2008, and a Report thereon was formally tabled by me in the House of Representatives on April 7, 2009, and in the Senate on May 8, 2009.

The bald truth of these two (2) examples, both of which are concerned with the exercise, by the OCG, of the very two (2) jurisdictional powers which the courts are now being asked to declare as illegal, is that they have demonstrated that the country's Governments, and its Parliamentary Oppositions, have previously and publicly supported the OCG in its very exercise of the said jurisdictions.

Indeed, they also stand as proof of the fact that the very same Governments, and Parliamentary Oppositions, have even gone as far as to publicly call upon the OCG to exercise the said jurisdictions.

What is unfortunate, however, is that the same (2) examples have also shown that the same Governments and Parliamentary Oppositions will, notwithstanding, at the drop of a hat, discard their referenced support for the OCG when it is politically expedient for them to do so, by deeming the subject jurisdictions to be illegal and, in so doing, publicly attack and/or knowingly undermine the integrity of the OCG institution and its leadership.

- (7) In your consideration of the foregoing matters, pivotal policy questions and issues will, therefore, necessarily arise. Your decisions, Madam Prime Minister and Leader, will give a clear indication, both within and without the country, as to the direction in which the



Government and the Parliamentary Opposition are prepared to take with respect to critical national governance issues such as truth, honesty, leadership, political will, the institutional strengthening of the country's good governance structures, and how aggressively and effectively we are prepared to fight what is now perceived to be the pervasive scourge of corruption that has permeated Government contracting and licensing in Jamaica.

- (8) In terms of the immediate issues, however, that are of concern to the OCG, the overarching question is whether it is your desire (a) that the OCG should be strengthened or weakened as one of the State's independent, anti-corruption commissions – a Commission that was established 28 years ago to ensure probity, propriety, transparency, accountability and value for money in Government commercial contracting and Government licensing, but which has fallen woefully short in the attainment of its stated objectives – and (b) whether it is your desire that the OCG should possess the lawful authority, under the Contractor General Act, to independently monitor and investigate the pre-contract phases of Government contract awards, and/or the divestment of State assets, without hindrance or obstruction.

Irrespective of what your decision is, I would respectfully submit that the Government and the Parliament should forthwith take the requisite steps to effect the necessary amendments to the Contractor General Act, to lucidly and unequivocally reflect that decision.

If, indeed, it is your wish that the OCG should not have the jurisdictional powers that are currently in question, then that is the lawful prerogative of our Honourable Parliament, and we should forthrightly and publicly say so and do the necessaries, at least to save the taxpayers the monies that are currently being wasted in the OCG's defence of these unnecessary Judicial Review claims.

Once the requisite legislative revisions are effected, there would be no need, thereafter, for Dr. Davis, or any other entity or person, to persist in any Judicial Review court proceedings that they have instituted against the OCG. However, the requisite structural adjustments to the OCG, to either downsize its operational activities, or to disband the institution altogether, would have to be made, since two (2) of the institution's major operating mandates would have been terminated.

Should you fail, Madame Prime Minister and Leader, to act urgently and decisively, in the manner that I have respectfully recommended, I can assure you that the OCG will be left in its current state of organizational ineffectiveness, disillusionment, and uncertainty as to what are its true mandates, under the law. Such a posture, I would, respectfully submit, cannot be healthy for inspiring internal or external confidence in Jamaica's national institutions.

In the premises, the OCG would welcome your urgent indication as to your considered decisions in the matter.



In light of the fact that my seven (7) year Commission as Contractor General will soon come to an end, and having regard to the gravity of the matters that I have raised herein, as well as the bearing that they will undoubtedly have upon the future direction of the Commission, I am also copying my letter, to you, to His Excellency, the Governor General of Jamaica, who is obliged by law to appoint my successor in office after consultation with you.

Additionally, and because I am the holder of a Commission of the Parliament of Jamaica, I have also taken the liberty of copying my letter, to you, to the Hon. Speaker of the House of Representatives, the Hon. President of the Senate, and the Hon. Clerk to the Houses, for distribution to all 84 Members of the said Houses of Parliament.

I avail myself of this opportunity to renew to you the assurances of my highest consideration.

Very respectfully yours,

Greg Christie (Signed)

Greg Christie
Contractor General

Copy: His Excellency The Most Hon. Sir Patrick Allen, ON, GCMG, CD, Governor General
The Hon. Michael Peart, MP, Speaker of the House of Representatives
Rev. Senator the Hon. Stanley Redwood, President of the Senate
Mrs. Heather Cooke, Clerk to the Houses of Parliament
Ambassador the Hon. Douglas Saunders, OJ, CD, Cabinet Secretary