



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**

**Statement of the Office of the Contractor General Regarding its Application for Leave to File Judicial Review against the Decision of the Director of Public Prosecution in Relation to Possible Offences by the Former Mayor of the Hanover Parish Council, Ms. Shernet Haughton**

**Kingston; November 26, 2015** – The Office of the Contractor General (OCG) wishes to advise the public that the Director of Public Prosecutions (DPP), Ms. Paula Llewellyn, Q.C., has now conceded that she erred when she declined to act on the Special Report of the Contractor General arising from his Investigations of nepotism and criminal offences in the award of contracts by the Hanover Parish Council. In the words of the Director issued on November 24, 2015, *“it would appear that my interpretation of circular No. 16 did not fully embrace all of the provisions of the said **Regulations**. I now find that circular No. 16 does not exclude contracts below \$500,000 from the scope of the said Regulations and they would therefore be applicable in this matter concerning former Mayor of the Hanover Parish Council, Ms. Shernet Haughton”*.

The OCG’s Investigation into the ‘Circumstances Surrounding Allegations of Nepotism, Conflicts of Interest, Irregularity and/or Impropriety in the Award of Government Contracts at the Hanover Parish Council to Persons Affiliated with the then Mayor of the Hanover Parish Council’ was pursuant to Sections 15 and 16 of the Contractor-General Act. It included interviews of several persons, collection of evidence on oath and detailed examination of relevant documents in the custody of the Parish Council. Based on this exhaustive and thorough investigation, the Contractor General, Mr. Dirk Harrison, concluded among other things, that twenty-two (22) contracts, with a cumulative value of \$3,744,791.00 were awarded by the Hanover Parish Council to relatives and persons affiliated with Miss Shernet Haughton.

The Contractor General, having examined the law, further concluded and brought to the attention of the DPP that the award of these contracts constituted criminal offences; being breaches of the law and regulations aimed at ensuring propriety in the award of Government contracts (Government of Jamaica Handbook of Public Sector Procurement Procedures and the attendant Regulations to the Contractor-General Act (Public Sector Procurement Regulations), submitted in his report to the DPP. The CG, having regard to the gravity of the matter, also considered it prudent to directly engage the DPP and to convey to her all information within his possession regarding the applicability and interpretation of the legislation relating to propriety in the award of government contracts and the criminal offence and the



misconduct in public office, inviting her to (fulfil her constitutional duties) and initiate the process for appropriate criminal proceedings.

The DPP, by way of letters dated April 23, 2015 and June 4, 2015, to the CG declined to institute legal proceedings against Miss Shernet Haughton, as she stated that despite evidence that there *“was nepotism of the most egregious...a viable prosecution could not be mounted against Miss Haughton in a criminal court of law for having committed any offence without this conduct being part and parcel of the ingredients of the contravention of some other provision in the criminal law”* (OCG Emphasis). In other words, the DPP accepted that there was overwhelming evidence of misconduct but asserted that this did not amount to criminal offences as Miss Haughton did not recommend any contracts for more than Five Hundred Thousand dollars (\$500,000.00). In response, the Contractor General again wrote to the DPP seeking to further explain and clarify the law but the DPP insisted that she would not initiate steps for prosecution. The DPP stated *“Respectfully, this office does not agree with your view of the law. All due, appropriate and purposeful consideration was given to the full scope of the Regulations, particularly the sections commented on by you...Our opinion ...therefore stands”* (OCG Emphasis).

The DPP’s communication with the CG was accompanied by several public statements by the DPP by way of media releases and interviews. In those public statements she had insisted that there was no basis for her to exercise her powers in relation to the findings of breaches of the criminal law made by the CG. 1) The DPP in a Gleaner article entitled “OCG doomed to fail - DPP” dated June 30, 2015, commented that *“...the contractor general in going to court to overturn her decision...has very little chance of succeeding...we will be ready to meet any and every possible argument that the OCG will posit...”*(OCG Emphasis). 2) The DPP in a Gleaner article dated July 8, 2015, entitled “Llewellyn: Bring it on! DPP undaunted by performance criticisms” commented that *“All I will say is, bring it on”...alluding to the decision by the Contractor General Dirk Harrison to go to court to get a reversal of her decision...”*

In those circumstances the CG considered that the public controversy should be abated and the appropriate arena for the resolution of the matter (this difference of opinion) was the Supreme Court of Jamaica and accordingly was obliged to institute an application to the Court in this regard. Given that the DPP has now acknowledged that her interpretation of the law was wrong, the OCG has discontinued its application to the court. The court has ordered that the DPP pays the costs incurred by the CG in relation to the application to the court.

While the CG welcomes this change of stance albeit late in the day, his regret is that it took the institution of a court action, subsequent consultation with a Queen’s Counsel and the Acting Chief Parliamentary Counsel after the case was well underway and the passage of 8 months, for the DPP to properly advise herself that in essence, the Regulations which govern public sector procurement are applicable to all procurement of goods, works, services irrespective of the value and that Circular No. 16 does not exclude contracts below Five Hundred Thousand dollars (\$500,000.00) from criminal liability.

At this stage, public interest having been ignited, the CG considers that he is obliged to make the public aware of this important development. The CG notes that as an important Anti-Corruption agency in Jamaica, he has a duty to the public and Jamaica’s local and international partners and stakeholders to



carry out his statutory obligations with a view to ensuring that contracts are awarded impartially and on merit and in circumstances that do not involve impropriety or irregularity. The CG is particularly concerned to note the Organization of American States' (OAS) final Report on Jamaica, entitled - "Mechanism for Follow-Up on the Implementation of the Inter-American Convention Against Corruption...September 8-12, 2014" in which it was reported that *"as these government bodies rely exclusively upon the DPP to carry out prosecutions of corruption and corruption related offences, their effectiveness can only go so far if prosecutions are not being carried out. The Committee observes that the country under review should consider addressing the lack of prosecutions or actions undertaken by the Office of the DPP, whether it is an issue of priorities or resources."*

The CG remains committed to fulfilling his statutory obligations under the Contractor-General Act and his obligations to the Parliament and people of Jamaica.

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