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MEDIA RELEASE

LEGAL IMPEDIMENT PROHIBITS CONTRACTOR GENERAL FROM CONDUCTING INVESTIGATION INTO PURCHASE OF FERRY, ST. CATHERINE LANDS BY THE URBAN DEVELOPMENT CORPORATION

Kingston; November 11, 2008 – The Office of the Contractor General (OCG) has noted recent media reports of a request by the Leader of the Opposition, the Most Hon. Portia Simpson-Miller, for the Contractor General to investigate the circumstances which surround the alleged purchase of six and one-half acres of land at Ferry, St. Catherine, for JA\$168.7 Million, by the Urban Development Corporation (UDC).

The lands in question were reportedly owned by two private entities. They were allegedly leased to the Hydel Group of Schools, which is owned by Government Senator, Hyacinth Bennett.

The Opposition People's National Party (PNP) has reportedly accused Prime Minister Bruce Golding, the Minister with portfolio responsibility for the UDC, of "*nepotism and undue personal interest in the purchase*" of the said lands. Allegations have also been made that the UDC purchased the lands despite a warning by its internal management that it was not in its best interest to do so. The Prime Minister has said that the lands were acquired, *inter alia*, to facilitate the development of the corridor between Kingston and Spanish Town.

Having regard to the gravity of the allegations which have been made, and in the national interest, the OCG would have no hesitation whatsoever in conducting a thorough investigation into the matter.



Regrettably, however, the OCG wishes to publicly state that the Contractor General is prohibited, under law, from conducting any such investigation by virtue of a decision which was handed down by the Supreme Court of Jamaica, in 1989, in the case of ***Wright vs. Telecommunications of Jamaica Limited (TOJ) (Suit No. E199 of 1989)***.

In the ***Wright*** case, Mr. Justice Lensley Wolfe, as he was then, found that an agreement for the purchase of land by TOJ, a Public Body, for JA\$49.1 Million, was “*not a Government contract within the meaning of the Contractor General Act*”.

More significantly, the Supreme Court held “*that the Contractor General does not have jurisdiction*” over such contracts. In consequence, Mr. Ashton George Wright, the then Contractor General of Jamaica, was legally barred from investigating the terms of the said land purchase.

It is instructive to note, however, that, *en passant*, the Learned Judge, who was later to become the Chief Justice of Jamaica, observed that although he was unable to construe the Contractor General Act as giving jurisdiction to the Contractor General to scrutinize such contracts, it was nevertheless his opinion that “*the public interest demands that contracts such as the instant one should come within the ambit of the Contractor General Act*”.

The decision in ***Wright*** has prevented the OCG, since 1989, from ensuring probity, transparency and accountability in transactions which involve the purchase of land by Public Bodies. Further, although the case did not concern the divestment of State assets, a number of attempts have been made, over the years, to expand the purview of the decision in an effort to obstruct the OCG from monitoring and investigating such transactions. However, based upon a strict interpretation of the decision in ***Wright***, the OCG has strenuously and consistently resisted all such attempts.

Since his appointment to office on December 1, 2005, Contractor General Greg Christie has made several formal representations to the Government and Parliament of Jamaica to amend the Contractor



General Act to vest in the Contractor General, the unambiguous power to monitor and to investigate transactions which involve the acquisition of land by State entities. However, to date, all of these efforts have proved to be futile.

In his 2006 Annual Report to Parliament, the matter was comprehensively discussed at pages 19 to 22 of the Report. The Contractor General's discourse on the subject was concluded with the following remarks: *"The issue of the acquisition and divestment of land by Public Bodies is undoubtedly one of significant national importance. Consequently, it is one which must be accorded the seriousness which it deserves. Such transactions, and particularly those which involve the sale or divestment of Government owned assets, should be unambiguously subjected to the independent scrutiny of the Contractor General, if probity is to be assured. In the circumstances, the OCG is obliged to respectfully repeat its call to the Cabinet, and to the Legislature, to amend the Contractor General Act. This should be done to give effect not just to the OCG's recommendation, but also to the clear exhortation which was rendered by the Supreme Court (in **Wright**) more than 17 years ago."*

On September 26, 2007, the Contractor General also wrote to the then Attorney General and Minister of Justice, advising, *inter alia*, that *"The decision in **Wright** has raised doubt in some circles as to whether it was the intent of Parliament to give the Contractor General monitoring and investigating jurisdictional powers not just over contracts for the acquisition of lands by a Public Body, but also jurisdiction over contracts for the divestment of public assets, inclusive of publicly owned real estate. In the circumstances, the Commission of the Contractor General would now wish to propose, as it has on numerous previous occasions in the past, that the Legislature should take all requisite steps to ensure that all such contracts are **expressly** brought within the ambit of the jurisdictional authority of the Contractor General"*. The letter was copied to the then Prime Minister and the Cabinet Secretary.

In the Contractor General's 2007 Annual Report to Parliament, which was tabled in the House of Representatives on August 26, 2008, and in the Senate on September 12, 2008, the matter was again highlighted on pages 5 and 6 of the Report. The Contractor General then wrote that *"... several*



*sustained appeals have been made by successive Contractors General, including me, for remedial action to be taken by the Legislature (to repeal the decision in **Wright**). However, as at the end of 2007, as was the case in 2006 and 2005, nothing has resulted from these efforts”.*

The OCG views as unfortunate the failure of successive parliaments and administrations to act decisively, and in the public interest, in this most critical matter of good governance. The failure to act has now brought into sharp focus the inability of the Contractor General to lawfully conduct an investigation into a Public Body transaction which has garnered such wide-spread public attention.

“As an Attorney-at-Law and as the Contractor General of Jamaica, I am duty bound to uphold the law and the decisions of our nation’s courts. The laws of our land must, at all times, be respected, even when they are likely to operate against the public interest”, the Contractor General said.

It is instructive to note that on page 2 of the Contractor General’s 2007 Annual Report to Parliament, the following comments were made: *“It would be remiss of me if I did not place upon record the OCG’s continuing disappointment about the unacceptable levels of attention which the Government and the Parliament of Jamaica have paid to the OCG’s Recommendations, most of which are typically communicated in (a) official OCG correspondence, (b) Special OCG Investigation Reports and (c) OCG Annual Reports”.*

“Several of these Recommendations, whether made in 2007 or before, or by myself or by other Contractors General, have again, for another year, gone wholly un-heeded. If this is to become a continuing trend, then it may very well provide the basis upon which the OCG, itself, might become forced to question its own relevance”.

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