

MEDIA RELEASE

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

The Office of the Director of Public Prosecutions (DPP) received a Report from the Office of the Contractor General (OCG) pertaining to its investigation into the- **Conduct into the award by the Jamaica Urban Transit Company (JUTC)**. I referred the matter to the police for further investigations. I received the police report, which includes statements taken from witnesses and also other documentary material.

I have reviewed the Contractor General's Report, the police report, witness statements and other documents and hereby rule as follows:

Re: The Status of Ms. Susan Simes and Simber Productions Limited

- (1) In August 2006, Ms. Susan Simes was allotted an additional eighty (80) shares, transferring majority holdings to her in Simber Productions Limited;
- (2) Contrary to the Contractor General's findings at **page 52, paragraph 4** the signing/ execution of this document was done three (3) weeks before the death of Mr. Douglas Chambers and not three (3) weeks after his passing. Indeed the Amended Annual Return of Simber Productions Limited was stamped "received" by the Office of the Registrar of Companies (ORC) on July 17, 2008;
- (3) As such Ms. Susan Simes' assertion at the time of the OCG's investigation of the matter, that she was the majority shareholder in Simber Productions Limited was not false, but was always an accurate statement of the facts.
- (4) **It is my ruling, therefore, that there is nothing in Ms. Simes' conduct in respect of her dealings with Simber Productions Limited which would attract any criminal liability.**

Status of Mr. Bindley Sangster as it relates to the Contractor General's Assertion that he has breached section 29(a) of the Contractor General Act.

Section 29 (a) of the **Contractor General Act** states:

"Every person who –

(a) wilfully makes any false statement to mislead or misleads or attempts to mislead a Contractor General or any other person in the execution of his functions under this Act;

Shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.”

- (5) Clearly then for a prosecution of any matter under section 29(a) of the **Contractor General’s Act** the prosecution must be able to prove that the acts and/or omissions were done either deliberately or that the accused person did not care. The standard of proof is beyond a reasonable doubt.
- (6) In this case, the material available falls below the accepted threshold required for proof beyond a reasonable doubt as a matter of law. I restate that this issue concerning Mr. Bindley Sangster and his declaration that there was procurement committee approval would at best be regarded as a procedural breach to be dealt with by such internal departmental action as is appropriate in the circumstances, and as the relevant authorities see fit.

The JUTC Board

- (7) The awarding of the contract to Simber Productions Limited was a fait accompli by Mr. Chambers, who if he were alive, would have had to bear the full responsibility for what was a procedural breach. The Board members therefore, apart from our observations outlined above about Mr. Sangster, **cannot** be held responsible at all for any procedural breaches that may have been perpetrated by Mr. Chambers’ failure to follow proper protocol in respect of the timing of the notification of the contracts to the Board. No approval of the Board was sought by Mr. Chambers before entering into contracts with Simber Productions Limited, Cool Petroleum and Protection and Security Company Limited.

Status of Mr. Douglas Chambers

- (8) From all the material reviewed it seems clear that Mr. Douglas Chambers operated as an Executive Chairman of the JUTC in a somewhat high handed manner in the operation of the company.

- (9) His conduct in seeking to wrest the majority shareholding and ownership of the Simber Company from Ms. Simes would have rendered him liable to a civil suit at the very least.
- (10) His causing the JUTC to enter into a contract with Simber Productions Limited without the knowledge and approval of the Board was a procedural breach which, however, would still not have risen to the necessary threshold required for criminal charges without more.
- (11) The line of enquiry which could have been followed by the OCG and the police to fully explore whether Mr. Chambers' conduct went above departmental breaches is closed in light of the fact that he was deceased at the time of the investigations. **The strictures of the criminal law do not allow us to speculate.**

Conclusion

- (12) **There has been no material uncovered by the Police investigators to support the preferring of any criminal charge against any one in this matter. There was no material to suggest that there was any conspiracy on the part of persons to commit any criminal act. The police investigators have uncovered no material to suggest that any of the persons interviewed obtained illicit benefits from any of the procedural breaches which have been identified.**
- (13) I would wish to emphasise that the threshold in criminal matters is very high, that is, *beyond a reasonable doubt*. Therefore, unless the evidentiary material is of a particular quality and has attained the requisite standard understood by the criminal law the prosecution should not recommend the charging of anyone for breaching the criminal law. To do otherwise would be unethical.
- (14) Further, under the Constitution of Jamaica, each citizen is entitled to due process and the protection of the law. Indeed, the rules of natural justice demand that a suspected person be heard before he is condemned. As such, the tenet which says that one is innocent until proven guilty [of breaching the criminal law] must be respected and observed as it is one of the great pillars of the administration of criminal justice. A citizen, therefore, is entitled to his good name, until or unless a tribunal of fact, whether judge or jury, after hearing evidence on oath in the criminal court, has found otherwise.

- (15) **Consequently, it is my ruling that though procedural breaches have been identified that can be dealt with as the relevant authorities deem fit, there is no material that would rise to the requisite threshold as far as the criminal law is concerned to support the charging of anyone for any criminal breach. However, I would recommend that emphasis be placed on recalibrating the systems in place to ensure that these procedural breaches identified do not reoccur in any future dispensation.**
- (16) Finally, I wish to commend the police led by Detective Inspector Carl Berry of OCID for their thoroughness and diligence in investigating this matter including the recording of statements and for the efforts, though unsuccessful for the most part, which were made in attempting to locate those persons who were integrally involved in the preparation of the first and second Quarterly Reports who no longer work with the JUTC.

As usual I also wish to commend the Office of the Contractor General for the thoroughness and attention to detail in the investigation and preparation of their report.

Paula V. Llewellyn, Q.C.
Director of Public Prosecutions