



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

ANY REPLY OR SUBSEQUENT REFERENCE TO THIS COMMUNICATION SHOULD BE ADDRESSED TO THE DIRECTOR OF PUBLIC PROSECUTIONS AND **NOT TO ANY OFFICER BY NAME** AND THE FOLLOWING REFERENCE QUOTED:-

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KINGSTON,

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March 21, 2013

MEDIA RELEASE

Re: Reasons for the Exercise of the Discretion of the Office of the Director of Public Prosecutions (ODPP) for the entering of a Nolle Prosequi in the Carlos Hill Matter

Having received a comprehensive written report from Crown Counsel in the captioned matter I now in the public interest outline a chronology of events along with a discussion of what occurred in Court in an effort to bring clarity to the issues which have found its way into the public domain. In light of the current public discourse on the events of this week in the matter of *R vs. Carlos Hill*, the Office of the Director of Public Prosecutions would wish to state the following in order to correct certain misperceptions:

1. The statements of all the witnesses to fact on whom the Crown intended to rely were served on the Defence no later than September 2012, except for the formal statements of bank personnel and a former officer of the Financial Services Commission.
2. The statements of the bank personnel were served on March 8, 2013 and the statement of the former Financial Services Commission officer was served on March 13, 2013. This occurred because the bank personnel who had given the same statement which were served previously were no longer in the employ of the bank and we had to get substitute statements from the persons working in that capacity. The information contained in the statement remains the same.
3. The trial commenced on March 11, 2013 in the Supreme Court. The Crown called two (2) civilian witnesses to fact.
4. On March 12, 2013, the Crown sought to tender company records of Cash Plus Limited and Cash Plus Group through the third witness. This was formal evidence. The Defence had already been served with the relevant statement in 2011, listing the particular companies prior to trial. The Defence objected and sought further disclosure of the actual company registered documents from the Registrar of Companies office. These documents are only kept in the Registrar of Companies office. The ODPP were not in possession of these documents. The trial was halted to accommodate the request of the Defence. Copies of these documents were

made available by the witness from the Registrar of Companies and then served on the Defence the following day, March 13, 2013 in fulfillment of their request.

5. Based on the nature of the Defence's request with respect to the company documents and the learned trial judge's corollary ruling, the Crown thought it prudent to serve bank records in Compact Disc (CD) format on the Defence on March 13, 2013. These records pre-date by far the specific time period named in the indictment. They were served out of an abundance of caution even though the Crown had no intention to rely on bank records that related to a time period outside the specific time period of the indictment. A Digital Video Display (DVD) in a non related matter had already been served on the Defence from September 2010. This DVD contained information the Crown would have relied on in proving its case.
6. On March 13, 2013 the Crown made an application to amend the indictment. This amendment related specifically to the Particulars of Offence. The offence for which Mr. Carlos Hill was charged was not changed. The application was granted by the Court.
7. By law, statute and case law amendments to indictments are permitted at any stage of the trial once it does not prejudice the accused.
8. On March 14, 2013, the Defence extended an invitation to the Crown to meet the judge in Chambers. The Defence indicated that based on the

Crown's successful application to amend the indictment, the Defence would need more time. They indicated that they would need four weeks.

9. The learned trial judge indicated that she was not minded to adjourn a jury matter for four weeks.

10. The Defence asked the prosecutors to enter a Nolle Prosequi (discontinue the case with a view to recommencing it in the future) so that they the defence would have more time to prepare. They indicated this would involve speaking with Accountants and Forensic Auditors and that not all potential witnesses whom they would need to consult were immediately available. The Defence indicated that they would not object to the entering of the Nolle Prosequi.

11. The representatives of the Crown had consultations with me. The matter was adjourned to March 18, 2013.

12. Under the Constitution of Jamaica and the Criminal Justice Act only the Director of Public Prosecutions (DPP) can authorize the issuing of a Nolle Prosequi under her signature.

13. On March 15, 2013, the Crown received a letter from the Defence at 2:43 pm requesting a number of specific documents, most of which are not in the Crown's custody nor physically in the Director of Public Prosecution's office. The Crown had not sought to procure these documents as we were

not relying on them in proof of the case. As a result, the Crown would have to make, and is making efforts to facilitate these specific requests. This exercise could not have been completed on the weekend by March 18, 2013.

14. At no time before the commencement of the case upon service of the statements did the Defence indicate prior to March 15, 2013 that they would require these additional documents.

15. On Monday March 18, 2013, the Defence renewed their requests for the documents which they had requested in their letter received on March 15, 2013. The Crown, based on the nature of the documents, requested the sourcing of the documents, which are not within our immediate control. The Crown was not in a position to give a definitive timeline as to when the Defence's specific requests could be accommodated fully. The Defence complained that continuing the trial would cause undue prejudice to the accused, and the learned trial judge invited the Crown to advise me of the situation.

16. The representatives of the Crown had further consultations with me. I directed that a Nolle Prosequi be entered so that the matter could be commenced do novo, so that the Defence's requests could be facilitated as far as possible in an effort to ensure maximum fairness to the Accused.

17. The following factors were taken into consideration by me in exercising my discretion to enter a Nolle Prosequi:

- The fact that this was not a judge alone situation, the scenario was that there was a sitting jury and it would have been inappropriate to have adjourned the matter for any extended period of time. Jury trials by their very nature must sit from day to day until there is a verdict of conviction or acquittal. This means the accused would have been discharged or convicted and could therefore not be retried on this indictment. By the entering of a Nolle Prosequi the matter can be discontinued and retried.
- As ministers of justice we also have to balance not just the interest of the public but also that of the accused. We have to ensure that the accused is afforded a fair trial. If the defence requests more time to prepare their defence based on the Crown's successful application to amend the indictment and also in relation to the defence request for disclosure of further documents, the Crown must protect the integrity of the accused's right to a fair trial.
- The public interest would not be served by securing a conviction in the circumstances to have it overturned on appeal because of questions of fairness or the lack of preparedness by defence counsel, which should not be held against the accused.

18. With the proceedings having been suspended by the entering of the Nolle Prosequi, the Accused was re-arrested and a Voluntary Bill of Indictment preferred with the same charge and particulars as the previous amended

indictment. He was admitted to bail without objection by the Crown. A Plea and Case Management Hearing (PCMH) was set for May 17, 2013.

19. The accused man's re-arrest ensured in the public's interest that he submitted to the jurisdiction of the Supreme Court and would therefore be obligated if granted bail to return for his future trial.

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