



MINISTRY OF THE ATTORNEY GENERAL AND LEGAL AFFAIRS

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PRESS RELEASE

DISCONTINUANCE OF CLAIM NO. CV 2013-01917 – PETROLEUM COMPANY OF TRINIDAD AND TOBAGO LIMITED V MALCOLM JONES

The Attorney General and Minister of Legal Affairs, Faris Al-Rawi wishes to place on record the facts relative to the discontinuance of the claim by Petrotrin against Malcolm Jones:

- As was announced yesterday 1st March 2016 Petrotrin filed a Notice of Discontinuance on the 29th February 2016 in the captioned High Court proceedings against Mr. Malcolm Jones.
- The claim was initiated by Petrotrin on May 3rd 2013 on the basis of written advice rendered by Mr. Vincent Nelson QC and Mr. Russell Martineau SC who both opined that there was a *prima facie* civil case under the Companies Act to be answered by Mr. Jones for an alleged breach of duty of care and diligence as a director and executive chairman of Petrotrin in relation to the Gas to Liquid Project.
- Petrotrin specifically gave direct authority to the former Attorney General Mr Anand Ramlogan SC for his care, conduct and close supervision in this matter. The last Government undertook to be fully liable for all costs pertaining to the claim.

- The High Court proceeding against Jones is and was directly and intimately related to the WGTL Arbitration Proceedings against Petrotrin which commenced in two phases and which were heard in Canada and the United Kingdom.
- In December 2012 Ramlogan issued a boastful public statement of victory in the Canada Arbitration proceedings and then in April 2014 he issued another boastful statement in parliament in relation to victory in the London Arbitration proceedings.
- Malcolm Jones specifically relied in his Defence to the Claim against him upon the evidence in Arbitration proceedings. However none of the material in the Arbitration proceedings was disclosed by Petrotrin in the High Court proceedings and did not form part of the case record at the High Court.
- On the 17th April 2015 Jones made an application to the court for specific disclosure of witness statements of former directors and senior management adduced by Petrotrin in the Arbitration proceedings.
- On the 5th of March 2015 Mr. Justice Rahim fixed the trial of the matter to be heard before him in the period February 22nd 2016 to February 26th 2016 in Court Room POS 07 at the Hall of Justice in Port of Spain.
- The General Elections were held on the 7th September 2015 and the PNM took office as the Government of the Republic of Trinidad and Tobago.
- Upon assuming office as the Attorney General and Minister of Legal Affairs AG Al-Rawi specifically requested updates on all litigation under his purview and specifically took the decision to keep the legal team inherited in the Petrotrin matter against Jones which comprised Mr. Vincent Nelson QC and Mr. Israel Khan SC leading Mr. Gerald Ramdeen and all instructed by Mr. Varun Debideen. This decision was taken not only because this team of attorneys were retained and paid significant fees in the matter but because the team had conduct of the matter since inception of the claim and the trial of the matter was fixed to be heard in February 2016. AG Al-Rawi also considered it appropriate that the team appointed by the former government should not be interfered with as there could be speculation of political interference if there were changes to Petrotrin's representation.

- Mr. Debideen specifically requested that he be allowed to stop his representation for Petrotrin and AG Al-Rawi requested of him, prior to making any decision to facilitate this request, that there be delivery of all papers in the proceedings as neither the Attorney General's Office nor Petrotrin had copies of any of the papers filed in the matter and more particularly the papers considered, opinions rendered and advice given which were NOT part of the official court record as they were not filed in the High Court or provided in discovery.
- Mr. Jones filed several witness statements in his Defence on the 30th October 2015 and Petrotrin file none whatsoever.
- AG Al-Rawi called for reasons as to same and specifically requested all Petrotrin's Attorneys to attend upon him for urgent conference as to the prosecution of the matter as the Government's position was that all *bona fide* claims inherited had to be pursued. Debideen filed an application to cease to act and Petrotrin resisted the application as the trial was fixed to proceed and Petrotrin's interests would be prejudiced.
- Mr. Nelson QC, Mr. Ramdeen and Mr. Debideen met with AG Al-Rawi and Petrotrin's legal team on February 16th 2016 at an all Counsel meeting at which Mr. Nelson QC provided to AG Al-Rawi for the first time, his written opinion dated October 11th 2015 which stated:

"I have been asked by Instructing Attorney in this matter to prepare a note of advice to the Board of Petrotrin in relation to the company's duty to make disclosure of witness statements by former directors and senior management adduced by Petrotrin in arbitrations against WGTL Inc. Those witness statements relate to matters that may be relevant to the events which are the subject matter of Petrotrin's legal action against the directors. The Defendant, Mr. Malcolm Jones, is seeking the disclosure."

"I was not involved in the relevant arbitrations between Petrotrin and WGTL Inc. nor was I consulted regarding the drafting of the witness statements. I have been provided with the witness statements for [names given]. I have not been provided with a copy of the arbitral award."

"In the application by Mr. Jones he indicated that in his Defence he will be relying on the outcome of the arbitration proceedings between Petrotrin and WGTL Inc and that the documents in the arbitration proceedings are "important and relevant to the defence of

this matter”In my opinion this is best approached from what I think a Court in Trinidad will order in the circumstances. There is a widespread approach that litigation should be approached with all cards on the table facing upwards. This means that a court will be inclined to order disclosure more often than not. In my view, notwithstanding an argument of confidentiality/privilege, a court will order disclosure of the relevant documents. I therefore do not think that Petrotrin will be successful in resisting the application...”.

“As mentioned in paragraph 2 above, I have attached the advices originally rendered in this matter. I have considered the contents of [names given] witness statement, which were not available in 2011 when the advices were rendered. Having considered them carefully, there is a basis for concluding that the Petrotrin Board, through bad business decisions, found itself committed to the GTL venture with WGTL Inc. The Board was naïve and probably duped by the WGTL Inc. principals. Once the Board discovered how deeply committed Petrotrin had become, it appears from the witness statements of the two directors that the company did what they could to protect Petrotrin’s assets. I apprehend that Mr. Jones will testify at trial to the same effect. A court may very well find that the decisions which taken to achieve this were bad business decisions. However, a distinction is to be drawn between bad business decisions and negligence. This is what will engage the court. I understand that [names given] were convincing witnesses at the arbitration proceedings. There is no reason to believe that they will not be equally convincing in a trial of this action. In the circumstances, there is a reasonable likelihood that a judge will be persuaded that there was a bad business decision but no negligence. This is a matter the Board will need to consider in the context of the future conduct of this action.”

- During the all Counsel meeting, Mr Nelson QC specifically opined that the matter against Jones was destined to fail and that the claim could not be successful prosecuted. He categorically advised that the matter be discontinued. AG Al-Rawi instructed Mr. Nelson QC and Mr. Ramdeen to appear at the pretrial review before Mr. Justice Rahim to secure Petrotrin’s interests and to mitigate its costs whilst Nelson QC’s opinion was put to the Board of Directors of Petrotrin. Petrotrin’s in-house counsel replaced Mr. Debideen on the record by agreement with him and pursuant to approval by Mr Nelson QC.
- Petrotrin’s Board held a meeting on the 18th February 2016 and carefully reviewed all the legal opinions presented to them. The Board passed a resolution that the proceedings against Malcolm

Jones be terminated on the basis of Nelson QC's specific advice and a Notice of Discontinuance be issued forthwith.

- The witness statements in the Arbitration proceedings in the World GTL matters directly impacted the validity of the claim against Jones.
- AGs Ramlogan SC and Nicholas had direct supervision and control of the litigation which was being driven by the Office of the Attorney General. AG Ramlogan SC specifically managed the Arbitration proceedings in the World GTL matters and would have known of the material relevance and importance of the statements and evidence on the Arbitration proceedings to Counsel in the Petrotrin v Jones matter. There was a serious and direct obligation by both AG Ramlogan SC and Nicholas to appraise the legal team led by Nelson QC of all matters directly affecting that case.
- Over \$45m has been spent by the State in the Petrotrin matters across 5 lawyers only.
- At the date of trial of the matter Petrotrin had no evidence before the court as no witness statements were filed by it. The exposure in costs in proceeding with a trial without evidence by the Claimant would be disastrous. No serious counsel as an officer of the court would subject himself to wasted costs orders in prosecuting a case which he knows has collapsed. Discontinuance of the claim against Jones had the effect of savings costs payable by the State.
- The views expressed by the UNC and Senator Wayne Sturge and Gavin Nicholas are entirely unsustainable.
- The issue at hand is why was the relevant and material evidence in the Arbitration proceedings that directly impacted the Petrotrin v Jones litigation suppressed.
- AG Al-Rawi's management of the High Court proceedings against Mr. Malcolm Jones demonstrates responsibility, care and regard for judicial time and wasted costs. He and the Board of Petrotrin accepted the advice of Mr. Nelson QC whose unequivocal and clear opinion was and is that the matter against Mr. Jones was unsustainable.

- A full copy of the advice dated the 11th October 2015 rendered by Mr. Nelson QC is now attached.

END

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March 2, 2016