

STATEMENT

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ATTORNEY GENERAL & MINISTER OF LEGAL AFFAIRS

Regarding Legal Fees

Madam Speaker, I have been authorized by the Cabinet to make the following statement relating to expenditure by the Office of the Attorney General and Ministry of Legal Affairs (the 'Office of the AGLA') for the near six (6) year period September 2015 to June 2021 and with respect to the value for money considerations arising therefrom with particular focus on expenditure for professional fees including legal fees and forensic accounting fees by the AGLA for itself and for and on behalf of state divisions and enterprises.

General Savings:

At the outset the Office of the AGLA is able to report that the Government has achieved a savings of some \$2.456 Billion in expenditure by the simple reorganisation of three (3) ministries into two (2) ministries as in September 2015 Office of the AGLA was fashioned by the merger of the Ministry of the Attorney General, the former Ministry of Legal Affairs and part of the former Ministry of Justice. The Appropriation and Supplementary Appropriation Acts for the eleven (11) year period 2010 to 2021 demonstrate that for the period 2010 to 2015, the three separated Ministries incurred expenditure in the sum of **TT\$4.585 Billion** whilst in comparison, for the six (6) year period 2015 to 2021 the Office of the AGLA expended the sum of **TT\$2,129,938,054.00 (TT\$2.129 Billion)**.

Summary of Expenditure for External Services:

In this setting Madam Speaker, and specifically with regard to the subset of expenditure for professional fees paid to external attorneys and forensic accountants, the Office of the AGLA is now able to confirm that for the five (5) year period 2015 to 2020 that the Office of the AGLA spent **TT\$371,820,727** in all external professional services as will be particularised hereunder as against the sum of **TT\$636,224,219.76** in expenditure and liabilities incurred under the previous administration for the period 2010 to 2015.

The Office of the AGLA has expended the sum of **TT\$38,679,530.16** for external professional services in the current financial year 2020/2021 bringing the total VAT inclusive expenditure for the six (6) year period 2015 to June 2021 to **TT\$410,500,257.16**.

Madame Speaker the Office of the AGLA asks that it be noted that the payments in the sum of **TT\$410,500,257.16** for the six (6) year period up to June 2021 include payments of the sum of:

- **TT\$148,761,266.04** expended solely for and at the direction of the Office of the **Director of Public Prosecutions**; and
- **TT\$122,075,725.77** spent in the liquidation of the sum of **TT\$141,378,925.54** left unpaid by the previous administration.

Furthermore, it also includes sums paid to foreign attorneys and other entities involved in providing forensic services to the Government with the largest single items of expenditure attributed to one entity only in the sum of **TT\$134,295,545.23** paid to the investigating forensic accounting firm of Deloitte and Touche for one matter only in the six (6) year period 2015 – 2021 for forensic

work relating to investigations managed by the **Office of the Director of Public Prosecutions**.

Accordingly deducting expenditure attributable to the **Office of the Director of Public Prosecutions** and arrears paid for professional services rendered under the previous administration the Office of AGLA has spent the sum of **TT\$139,663,265.35** for the last six (6) years for the matters particularised below which includes the sum of (i) **TT\$67,441,121.45** paid to thirteen (13) foreign professionals and (ii) **\$72,222,143.90** paid to local attorneys and professionals.

Laying of Documents and Disclosure of Information:

In providing transparency in context of carry over liabilities Madame Speaker the Office of the AGLA now lays before this House additional documentation relating to the professional fees paid to each attorney and to forensic accountants for investigations during the period May 2010 – June 2021, a period of almost eleven (11) years.

Madam Speaker, the Office of the AGLA has already put into the public domain the names of all attorneys who were retained by the Office of the AGLA for the period 2015 - 2021. The Office of the AGLA has also released the total payments collectively expended to them over the periods 2010 - 2015 and 2015 - June 2021. The Office of the AGLA now wishes Madam Speaker to further supplement this information by laying in this Honourable House the amount paid to each external attorney and forensic accountant for the period May 2010 – June 2021 for the Office of the AGLA and its predecessor ministry and for and in respect of divisions and enterprises including the **Board of Inland Revenue (the ‘BIR’)**, the **Estate Management and Business Development Company (the ‘EMBD’)**, the

Education Facilities Company (the ‘EFCL’), Service Commissions and the Judiciary.

Supplementation of Information and Revision:

Madam Speaker, the Office of the AGLA asks that you note that:

- for the reasons set out hereunder, the Office of the AGLA has not yet provided the particulars of every individual matter undertaken or invoice provided by each external attorney and forensic accountant but has provided the names and full sums earned by each professional;
- The Office of the AGLA can confirm that for the period 2015 to June 2021 approximately one hundred and twenty five (125) local attorneys engaged in approximately one thousand one hundred and twenty five (1,125) matters.
- the Office of the AGLA has been engaged in the digitization and reconciliation of its record keeping and is in final stages of this task; and
- Several professionals retained under the previous administration have not yet sought to recover monies billed to the Office of the AGLA and/or its predecessor.

Accordingly the Office of the AGLA reserves the right to provide further information and to factor further revisions upwards or downwards when this process is completed for all years under review.

Context:

In providing information to this Honourable House Madame Speaker context is critical. In this regard the Office of the AGLA asks you to note *inter alia*:

- The Office of the AGLA provides legal services to the entire Government of Trinidad and Tobago. These include but are not limited to drafting legislation, commencing and defending actions against the Republic, providing legal and other services including forensic accounting services, providing advice and drafting and vetting contracts on behalf of the State.
- In this regard, the Office of the AGLA makes use of its in-house attorneys but in many cases because of the complex and specialized nature of the work, external attorneys both local and foreign are retained. This has been a feature of every administration since our Independence in 1962 however it must be noted that under this administration, the Office of the AGLA has operated with a vastly diminished staff of senior legal professionals at the Solicitor General's and Chief State Solicitor's departments largely on account of several professionals moving to the bench and/or retiring and/or moving to other employment opportunities.
- The Office of the AGLA is not only the proper Defendant in all suits brought against the State but all judicial review proceedings are required by law to be served on it. Furthermore, the Office of the AGLA is the proper claimant in all proceedings commenced on behalf of the State.

- Further it is material to note that the Office of the AGLA provides legal support and pays fees on behalf of several **State agencies including but not limited to the BIR, statutory authorities (in certain circumstances) such as the EFCL, the EMBD, the Judiciary, the Service Commissions** and others for and in respect of professionals appointed and/or retained by those entities and not the Office of the AGLA.

Value for Money:

Madame Speaker having laid the expenditure of the Office of the AGLA it is incumbent to address the value for money considerations that are relevant herein as well as to the extent of disclosure made to the Honourable House and the process of continuing disclosure in view of certain issues that must be carefully treated with.

With respect to value for money considerations it is material to note that quite simply the Office of the AGLA (i) conducts litigation with billions of dollars at stake in terms of defence and prosecution of claims, (ii) defends constitutional issues and reviews which are incalculable and (iii) develops and defends laws and principles that are rooted in the very quality of every citizen's life in Trinidad and Tobago.

By way of a few examples only it is worthwhile to note *inter alia* that the Office of the AGLA (i) has successfully initiated several suits against several entities in civil proceedings and in defending assessment by the Board of Inland Revenue and (ii) has also successfully defended claims and filed counterclaims on behalf of EFCL and EMBD.

Madam Speaker, with respect to the expenditure of **TT\$139,663,265.35** in professional fees for the last six (6) years there has been significant benefit to the income and liability of the GORTT in the following ways by way of example:

- In respect of the pursuit of matters in relation to the construction of the highway to Point Fortin the Office of the AGLA and a state enterprise secured recovery of approximately **TT\$1 Billion (US\$145,384,174.21)** in one matter and with a **cross claim** of approximately **TT\$1.4 Billion (US\$200,228,844.31)** whilst defending claims against the State close to **TT\$250m** in other matters relating to the same project. All of these matters relate to events occurring prior to 2015;
- In respect of one (1) claim for breach of constitutional rights commenced in 2015 relating to matters prior thereto the State involving damages over **TT\$80m** the Office of the AGLA achieved savings of over **TT\$30m** in damages;
- In respect of one (1) claim for breach of contract against the State commenced in 2018 relating to matters prior thereto the Office of the AGLA is in the course of mitigating over **TT\$100m** in damages.
- In respect of five (5) claims for breach of contract against the State the Office of the AGLA is in the course of mitigating over **TT\$60m** in damages.
- In respect of three (3) claims for breach of contract commenced after 2015 relating to matters prior thereto against the State the Office of the AGLA has mitigated and is in the course of mitigating over **TT\$220m** in damages.

- In respect of two (2) claims for breach of contract commenced after 2015 relating to matters prior thereto against the State in unemployment relief matters the Office of the AGLA is in the course of defending over **TT\$45m** in claims for damages.
- In respect of matters for the BIR, the Office of the AGLA has incurred expenditure in the sum of **TT\$18,406,706.68** for external professionals nominated by the BIR in forty one (41) separate matters involving the prosecution of claims for the BIR which relate to the sum of **TT\$9,272,636,145.41** (TT\$9.27 Billion). The issues in these cases have an even greater impact on the tax liability for a number of companies in the oil and gas sector for future years.
- In one case alone for the BIR the Office of the AGLA incurred expenditure in the sum of **TT\$10,230,502.96** to one (1) external professional which resulted in over **TT\$1B** in revenue being collected for the State.
- In respect of EFCL, the Office of the AGLA has incurred expenditure in the sum of **TT\$6,398,289.88** for external attorneys and other professionals to defend on-going claims against EFCL in the sum of **TT\$240,577,380.14**. However, the value of claims and counterclaims filed by EFCL and which are currently before the courts for this same expenditure amounts to the sum of **TT\$222,254,254.09**.
- In respect of EMBD, the Office of the AGLA has incurred expenditure in the sum of **TT\$7,339,870.18** for external attorneys to defend on-

going claims against EMBD in the amount of **TT\$122,738,671.74** and to prosecute claims/counterclaims against certain contractors in the amount of **TT\$409,751,554.91**.

- The Office of the AGLA wished to add that the facts relating to the proceedings in these two State entities (the EFCL and the EMBD) all occurred during the period 2010-2015. These are ‘**white collar**’ matters which are now engaging the courts and in respect of which serious allegations of fraud and corruption are the subject of criminal investigation and prosecution.

Limitations on Disclosure:

Madam Speaker, a defining principle with this Administration is accountability and transparency in the area of public expenditure. At the same time the Office of the AGLA is committed to upholding the laws of Trinidad and Tobago. These laws provide that the provision of certain types of information is, subject to certain considerations, exempt from disclosure under the Freedom of Information Act.

One such exemption is legal fees which are covered by legal professional privilege. The law jealously guards this principle so as to ensure that legal advice given, including litigation strategy, are exempt from disclosure. Consequently, **invoices** issued by attorneys in many cases contain information which will create a “*reasonable possibility that an assiduous inquirer analysing such information would be able to draw conclusions which violate core principles of legal professional privilege*”. Many invoices for example name entities and individuals who have taken sensitive investigations and identify actual steps that are in some cases not yet known to the targets of action.

The Office of the AGLA has to be mindful in making disclosures of generally exempt privileged information to apply a public interest consideration whether to disclose information whilst protecting the public interest by considering several factors. Some of these factors include:

- i. Existing criminal investigations as well as public prosecutions. Given the state of the law the Office of the AGLA cannot act in such a manner that will cause the disclosure of information to adversely affect these matters, to tip off potential witnesses or persons being investigated as well as to protect the safety of witnesses.
- ii. The disclosure of sensitive information which will reveal the litigation strategy of the State and which will compromise the relationship which the **Financial Investigations Branch of the Trinidad and Tobago Police Service (FIB) and the Financial Intelligence Unit (FIU)** have with their counterparts abroad.
- iii. Disclosure of information which will cause irreparable harm to the bilateral and multi-lateral relations between Trinidad and Tobago and its international partners and hamper crucial investigations into transnational criminal activity.
- iv. The disclosure of information which will constitute breaches of our international obligations under existing **Conventions and Treaties** and affect our ability to exchange information with other **International Agencies and Governments**.

- v. To protect the safety of security personnel, forensic accountants as well as attorneys who are engaged in security sensitive work such as applications for **Norwich Pharmacal Orders**, seizure of property under the **Proceeds of Crime Act, Unexplained Wealth Orders** and ex-parte applications for search warrants.

Madam Speaker the Office of the AGLA incurs legal and forensic accounting expenditure in respect of several new as well as on-going investigations. Much of this legal and forensic work is sensitive in nature. The Office of the AGLA must be careful that any information relating to the payment of fees in **specific matters** to named external professionals and with any accompanying information has the potential of affecting investigations that have been completed or which are on-going or which are being prosecuted. Furthermore, it has the potential of affecting fair trial rights which the courts have repeatedly cautioned against.

To this end, the Office of the AGLA has written to all attorneys asking them whether they consent to their fees being released. The Office of the AGLA has also written to the Director of Public Prosecutions, the Financial Investigation Branch, the BIR and the Central Authority. The Office of the AGLA is required to do so before it can exercise any judgment in respect of the release of information.

The Office of the AGLA has therefore Madam Speaker, adopted a bifurcated approach so that it might scrupulously comply with the legal obligations placed on it under the laws of Trinidad and Tobago including importantly, the FOIA. Firstly, contrary to the wishes of the vast majority of attorneys, the Office of the AGLA has taken a decision to release the information paid to each external professional for the period 2010 – June 2021 in respect of matters in which they have provided services on behalf of the State. For the time being the Office of the AGLA has not taken a decision to release the names of these matters for reasons provided in this

Statement. The Office of the AGLA will certainly continue to provide disclosures as matters move out of any danger of being sabotaged.

Furthermore, the Office of the AGLA is still in the process of consulting with the other State, security and investigative agencies to whom it has written and from whom it has so far not had their input save the Central Authority. On receipt of this information the Office of the AGLA will take a decision whether it proposes to release further information identifying the external professionals, the names of the matters in which they are involved and the specific fees charged by them. The Office of the AGLA has however included in the figures provided the total figure charged by each attorney without specifying the individual matters. The Office of the AGLA has not discounted the fact that it may seek the guidance of the Court as to whether in the circumstances which have been summarized in this Statement, this information is protected by legal professional privilege. The Office of the AGLA wants to ensure that the State does not run afoul of the clear obligations it has regarding fair trial rights as well as legal professional privilege.

Madame Speaker the Office of the AGLA is thus at present unable to divulge further information regarding the specifics of opinions, litigation strategy and actual invoices since this will provide in many cases a clear indication of the matters which are under consideration for investigation, are being investigated or are being pursued in the courts in civil and/or criminal proceedings.

Prosecution of Certain Matters already in the Public Domain:

Madame Speaker the Office of the AGLA is able to identify some investigations which are already in the public domain and to provide a limited and measured amount of information regarding their progress. The Office of the AGLA

is mindful on basis of the advice it has received that it should not put into the public sphere any additional information.

These include the following:

- i. Collaboration with the Dutch authorities concerning a criminal investigation into a suspicion of bribery committed by the Damen Shipyard Group. On March 16, 2015, the TTCG contracted with Damen for the construction of 12 vessels for the sum of **TT\$1,368,296,081.47**. In 2016, the Agent then sent to Damen 13 invoices on this project amounting to **TT\$177,801,185.73**. During an audit of Damen in 2015, Ernst & Young discovered discrepancies regarding these foreign agent contracts. This contract was terminated by Damen. There is now an on-going investigation between the Anti-Corruption Bureau and the Dutch prosecuting authorities which is taking place under our **Mutual Legal Assistance Act**.
- ii. Additionally, there is civil claim by the GORTT in Florida against several individuals and corporate entities for **racketeering, bid rigging, bribing public officials, wire fraud and money laundering** in which there is a claim for damages for **TT\$270,000,000.00**. This claim was not properly advanced during the previous administration primarily because the then Attorney General provided only sporadic instructions to the attorneys for the State namely, Sequor Law P.A. Consequently, this claim could not be advanced. This Administration has pressed the matter and it is now listed for trial in the United States, standing as perhaps the oldest matter in the docket of the US Court assigned to hear same.

- iii. The on-going criminal prosecutions of a former Attorney General and a former Senator who were charged with *inter alia*, conspiracy to corruptly receive financial rewards from an attorney who was retained by the former Attorney General to conduct several matters on behalf of the State. In essence, these criminal prosecutions relate to a legal fees kickback scheme in which the accused persons were implicated. There are other such like matters under investigation in the United Kingdom and elsewhere.
- iv. The continuing investigations into CLICO, CIB, BATT and CLF in which the tax payers of this country contributed in excess of **TT\$20 Billion** dollars in bailout support. So far for the period 2012-2021, the sum in excess of **TT\$181 million** has been expended to the firm of Deloitte and Touche for legal and forensic services. To date, there is an outstanding bill of almost **TT\$24 million** dollars payable to Deloitte and Touche. The conduct of this investigation is in the hands of the police service and the matter of the laying of the preferring of charges is a matter for the **Honourable Director of Public Prosecutions**. For the record I wish you to note Madame Speaker that I have recused myself from the handling of this particular matter as I served as a member of the Board of Directors of CIB for a few months and even though I am not the subject of any investigation and have not been the subject of any mention in the **Coleman Commission of Enquiry**, I handed the management of this matter over to past Ministers in the AGLA including Ministers Young and Hinds and now to current Minister in the AGLA Mrs. Sagramsingh-Sooklal.

v. On-going investigations under the **Proceeds of Crime Act** and other laws, into what is known as the ‘**Lifesport Matter**’. This was revealed *inter alia* by an audit conducted by the Ministry of Finance which revealed that monies were expended in circumstances which revealed fraud, theft, breaches of **The Proceeds of Crime Act (POCA)** and the involvement of persons who were notoriously involved in criminal gang activity. Again, this is a matter in the hands of the **Honourable Director of Public Prosecutions**. At all material times, this expenditure was incurred by a program which was under the portfolio of the Ministry of Sport.

vi. The Office of the AGLA further mentions one additional matter commonly referred to as ‘**Prisongate**’ relating to the participation by an attorney who was a former Senator in failing to dispense some \$200,000.00 to a client following upon a court order and several related matters. Madam Speaker, the former Solicitor General, now a High Court Judge requested the then Prime Minister in 2014 to investigate **circumstances “that may amount *inter alia* to breaches of professional ethics by attorneys involved and may the effect of perverting the course of justice in litigation against the State”**.

Madam Speaker, without belabouring the point by providing further examples of some of the expenditure incurred by the Office of the AGLA as a consequence of these matters, it must be appreciated that that the Office of the AGLA does not have the conduct of these investigations and is not responsible for the initiation of

prosecution of them. That is solely within the remit of the investigating authorities and the **Director of Public Prosecutions** where applicable. The Office of the AGLA is however, required to provide the necessary funding to facilitate these investigations and prosecutions and does so without pause.

Madam Speaker, these examples provide a useful insight as to why the Office of the AGLA has to carefully weigh the disclosure of information which touches and concern legal professional privilege. On the one hand the Office of the AGLA has to balance the issue of transparency in public expenditure and on the other hand the disclosure of information that will cause irreparable harm to the State.

Worrying Trend:

Madam Speaker, the GORTT is committed to the principle that the legal profession must be allowed every opportunity to discharge its responsibilities under the law and that every person is entitled to counsel. However, the impact of a multiplicity of litigation on the same issue and its consequential impact on the expenditure by the State displays a worrying trend which in is worthy of being put into the public domain so that the population can be sensitized as to what is taking place. These include the following:

- i. Trinidad and Tobago as a twin Island state in close proximity to South America is actively engaged in the fight against collaboration between gangs in South America and criminal gangs in this country. These gangs engage in joint activities dealing with trafficking in persons particularly women and children, arms and ammunition and large quantities of drugs. More recently these gangs have taken advantage of the Covid-19 pandemic to organize a thriving trade in the trafficking of people under the pretext of these persons being refugees rather than

economic migrants. Persons who engage in this activity are well organized and are able to mobilise safe houses, transport, and documentation purportedly issued under UNHCR as well as migrant certificates. All of this is well supported by a few attorneys in this country who inundate the courts with repeated applications and who appear to be in close communication with these persons who are engaged in trafficking.

- ii. A concerted and sustained effort by a small group of attorneys including but not limited to attorneys who previously held public office as well as persons who share Chambers with them and who individually and collectively have inundated the Ministry with Freedom of Information requests regarding Opinions, invoices and other documentation which are clearly covered by legal professional privilege. In many instances they are involved in litigation which can benefit from certain privileged disclosures. Furthermore, these requests are usually followed up by Constitutional Motions and Judicial Reviews in which the State is required to expend monies to defend the public interest.
- iii. These very same attorneys also use a small group of clients who are in remand or a guardian or next of kin of children who are in the care of the State to litigate matters that are totally unconnected with their Care Orders. These Actions appear, on the surface, to be innocuous but all have significant legal and financial exposure for the taxpayer.

iv. A previous Attorney General, in particular has, on occasions initiated litigation to challenge legislation or to the implementation of legislation which were introduced under the Administration he was a part of or which he piloted or supervised in the Parliament. In the case of the Children's suite of legislation, the last Administration brought the legislation into force in May of 2015 without the requisite infrastructure of Children's Residences being in place. The same previous Attorney General promptly on behalf of two minors initiated action against the Administration he had recently left and prosecuted several actions on their behalf before several courts all the way to the Privy Council.

Madam Speaker this proliferation of public law litigation, in respect of matters which in some cases could be easily resolvable by utilizing the Children's Court, which is ideally suited for the resolution of issues is a process designed to extract from the State damages and cost in matters in which the last Administration was fully responsible.

Furthermore, the Office of the AGLA's external attorneys have expressed to me the concern that some of these litigants might be used as convenient vehicles and do not appreciate the full purport of having their names as claimants in matters. These are usually people of "straw" against whom an order for cost would yield nothing to the state but a successful application on a minor point would yield a windfall for the attorneys who mine in these waters.

These ventures are done so as to weaponize the courts in what could only be a business venture rather the stated vindication of rights.

All of these matters Madam Speaker have resulted in significant monies being expended by the State to defend the taxpayers and to ensure that excessive orders for damages and costs are not made against the public purse. The cost to the Office of the AGLA, the taxpayers, in a pandemic, for scores of **Covid-19** related litigation and in Habeas Corpus matters stands in the last year at close to **TT\$14,620,340.00** for the period **March 2020 to present**.

The Office of the AGLA wishes to encourage all to join in protecting the rule of law and the process of a fair trial whilst having regard to the sensitivity with which investigations should be undertaken. The Office of the AGLA has a duty to protect the professionals who are involved in the sensitive matters especially since many of these matters occurred during the years 2010 – 2015 under the last Administration. Whilst political activism is a feature of our democracy the State needs to be vigilant to protect against collateral initiatives aimed at providing improper assistance to persons before the courts.

Conclusion:

Madame Speaker whilst the Office of the AGLA has through its reorganisation and value for money approaches achieved billions of dollars in savings with a focus on safeguarding prosecutions, claims and the public defence it wishes to assure this Honourable House that it is equally committed to providing disclosures and information in the public interest and shall continue in the exercise of continuous disclosure as stated here.

July 02, 2021