

RESPONSE TO STORY ON LETTER ON WATER PLANT SITE

MARCH 24th 2015

It was at a time some 14 years ago back in 2001 when the territory was under a severe water crisis, my predecessor Minister for Communications and Works in an attempt to ease the crisis had gone as far as to bring a floating Water Plant (barge) into the territory to be stationed in Sea Cows Bay to produce water and pumped into the Hannah Hill Reservoir. This initiative never materialized because the plant had a short call elsewhere and was met with issues resulting in its premature departure from the territory.

After the setback with the floating Plant, the Minister engaged with Hydro Management Resources Inc. (HMR Inc.) of New York and proceeded to search for a suitable place to erect a plant to supply the Hannah Hill reservoir. According to the Minister they had considered Pockwood Pond but it turned out to be unsuitable. However, on their way back to Road Town they took a liking to the property owned by Mr. Earl Fraser. The following day, while serving as Minister for Natural Resources and Labor I was invited to accompany the Minister and his team to see the site and basic agreement was reached as to the site.

Unfortunately, before the Minister could advance the project there was a Cabinet shuffle. In that same shuffle I became the new Minister in 2002 and inherited the concept of the water Plant being on the Site and I proceeded to advance it.

Is it true that, "I wrote a letter agreeing for the Virgin Islands Party (VIP) Government at the time to lease property for a desalination plant in Sea Cows Bay from my brother, Earl Fraser, when in fact the land had belonged to Government"?

Absolutely not, it is not true that I wrote to lease any property, for nowhere in my letter is the word lease ever mentioned. And neither is it true that the land belonged to the Government, the land belonged to Earl Fraser who under a 1977 authorization by the Executive Council reclaimed the land and was in the process of obtaining a Lease for the Sea Bed. The process was a normal one. And the letter I wrote was an offer letter and not a lease. Let me take the opportunity to quote the paragraph in my letter:

"Given the importance of this operation, its short duration, and the revenues being realized by the main contractor (HMR Inc.), \$15.8 / 1000 l-gals, we consider an offer to you of \$1.00 / 1000 l-gals flat, to be fair. Term 6 of the Agreement calls for the Plant to be in operation for a period of 2 years, after which, both the government and HMR Inc. will enter into arrangement to remove the Plant from your site".

The terms and conditions of any Agreement was to have been negotiated between Earl Fraser and the Ministry for Executive Council's approval.

With regards to the report of a 2010 claim made by Mr. Earl Fraser for about \$1.5 million from Government.

The facts tells the story, as Mr. Fraser made his initial claim to Government from as far back as 2004 during the NDP Administration of 2003-7 which triggered an opinion by the Attorney General, followed by an Executive Council Paper in 2007 for compensation and a lease for the Seabed. As a matter of fact the Council had already taken a decision on the lease in Mr. Fraser's favor, and decided to make compensation conditional upon his receipt of the seabed lease.

Raising an alarm that my letter also acknowledged that the contract between Government and HMR Inc. was copied to Mr. Earl Fraser, a private citizen, is nothing but a red-herring.

This is common, since Mr. Fraser had all rights as the landlord to know how an operation being carried out on a property he owns will be conducted and is likely to impact upon him. Besides, the Agreement is a Public Document which everyone has access to.

To state that the files did not show that the Executive Council, now called Cabinet, had taken a decision to enter the agreement with Mr. Earl Fraser to lease the property, is basically posturing.

There was never any mention of leasing property like I said earlier. What Mr. Fraser got was an offer. An offer which the Attorney General in his opinion states legally binds the Government. And in addition, pointed to the contract with HMR Inc. which was signed by the same Minister but no objections were raised.

The question here is how is an Agreement to pay \$15.8 / 1000 l gal authoritative, but an offer of \$1.00 / 1000 l gals not.

Referring to a statement made by the Permanent Secretary that in the process of preparing an Executive Council (Cabinet) memorandum for approval of the heads of terms for the lease, found that the Mr. Earl Fraser did not own the property.

This statement is not correct, what the Permanent Secretary found is that Mr. Fraser did not have a lease for the seabed, but he did indeed own the property. Owning Reclaimed land is like owning a building on someone else's property for which a lease must be obtained.

For the Minister to say that "only now in 2007 we realized it is not his property. It was the Government property all along," is good entertainment but does not say anything.

I reiterate, the land is not government's land, never was and most definitely never will be. The seabed for which Mr. Fraser needed a lease, belongs to the government.

According to the Minister it wasn't until June 26, 2008 that Hon. Fraser absented himself from the Cabinet and it was on that day that the lease was granted to Mr. Earl Fraser.

Mr. Fraser made his claim to government from as far back as 2004 with the NDP Administration and the process for compensation had begun, including Executive Council approval together with the granting of a lease for the Seabed.

The Minister said, "something is wrong with the Minister of Communications being his brother and giving permission to rent land five years before that was his land".

Again, let me quote from the AG's opinion. "The existence of the ostensible authority of the former Minister to make an offer of \$1.00 for every 1,000 l gals of water as consideration for the use and occupation of the land did not result in a final agreement with Mr. Earl Fraser".

The Minister said that the property was legally awarded to Mr. Earl Fraser in 2010.

But this is not true, what was awarded to Mr. Fraser was a lease of the seabed. This is not the same as Wickham's Cay land which was created by government and owned by government.

According to the Minister, in February 2010, Mr. Earl Fraser through his lawyers made a claim for compensation in the amount \$1,504,919.81, which included interest of \$500,000.

What's the point being made here? If the NDP Government of 2003-7 had acted in accordance with Term 6 of the Agreement with Hydro Management Resources Inc. (HMR Inc.), and the letter to the same Earl Fraser, which mandated the removal of the Plant from the site after two years, meaning 2005, there would be no submission of this sort.

The Minister stated that he doesn't know if the agreement was binding since there was no Executive Council approval.

However, the Attorney General by way of letter to the Permanent Secretary dated

September 2004 affirmed that the Minister had, "Ostensible authority to make the offer by virtue of his position as the Deputy Chief Minister and Minister for Communications and Works". In **Town Investment Ltd. V Department of the Environment {1978} A.C. 359** the House of Lords held that the exercise of an act of Government by a Minister in his official designation binds the Government.

Brothers' History

According to the Editor, Both Hon. Julian Fraser and his brother, Mr. Earl Fraser was fingered in a damning report by the Auditor General on the Sea Cows Bay Harbor project.

This is the same Report which I took strong exceptions to on the grounds that it was based on a false premise, and was subsequently found by the Governor to be groundless in a request for a Commission of Inquiry.

The Editor claims that, "The Auditor General found that the general absence of information in the Government's records and the substantive exclusion of the accounting officer from the process, created the impression that the Sea Cows Bay harbour project was a private undertaking that was being financed by the Government".

This whole claim that records couldn't be found will soon be rectified as the matter is now before the Public Accounts Committee where it will receive a proper review and the facts will be revealed.

According to the Editor, The report found that Mr. Earl Fraser had seabed lease plans approved, but at the same time, arrangements were being made for petty contracts to bulkhead the property and others under the proposed project.

Which was exactly as approved by the Executive Council in 2003, the approvals Mr. Fraser got was for the installation of Jetties which was separate and apart from the bulk-heading.

The Editor noted that two contracts issued to two of Mr. Fraser's brothers which were part of seven petty contracts issued in relation to the bulkhead works and received a 10% deposit on their respective contract sums. This means that each received close to \$10,000 deposit.

This is a normal procedure for contracts such as this requiring long lead items.

The other petty contracts were issued to Ira and Akeem Smith in the amount of \$97,023.78 for the supply of 56 sheet piles bulkhead, while Sugar Apple Group, No Limit Construction, Shane Winter and E&K Concrete Pumping were each issued contracts in the amount of \$96,666.70 for the supply of 38 sheet piles bulkhead.

These contractors also received close to \$10,000 deposit.

Only two companies, E&K Concrete and Shane Winter completed the job and were paid in full.

The other contractors did not complete their contracts because the current NDP Government stopped the contractors from proceeding and they are still awaiting instructions from the Government.

