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STATEMENT TO PARLIAMENT
BY
HON. BRUCE GOLDING, PRIME MINISTER
ON THE EXTRADITION OF CHRISTOPHER COKE AND THE ENGAGEMENT OF MANATT, PHELPS & PHILLIPS
Tuesday May 11th 2010

I wish to address the House on two related matters that have generated much public discussion and controversy. The one has to do with the request by the US government for the extradition of Christopher Coke, the other with the engagement of the US law firm of Manatt, Phelps & Phillips.

The Extradition Treaty between Jamaica and the US specifies the type of information that must be provided in support of a request for extradition. Article IX(1) states that if the Minister considers that the information furnished is not sufficient to fulfil the requirements of the Treaty, she shall notify the US authorities in order to enable them to furnish additional information before the request is submitted to the Jamaican Courts for extradition hearings to proceed.

The government maintains that the information presented in support of this particular request is unacceptable because it has been used in violation of Jamaican law and in contravention of the expressed order of a Judge of the Supreme Court. For the Minister to ignore this violation and issue the authorization to proceed would be to condone and legitimize this violation and would be a dereliction of duty.

From as far back as September of last year, the government wrote formally to the US authorities requesting them to provide additional or separate information that would enable the Minister to fulfill the request. We assured the US authorities that once this is done, the Minister will sign the authorization to proceed.

The US has steadfastly refused to do so, contending that the information already submitted was presented in accordance with existing bilateral agreements between both countries as allowed under section 16(9) of the Interception of Communications Act. The agreements referred to, which were entered into in 2004, relate to the sharing of information as part of

the cooperation between law enforcement agencies of both countries. This is an arrangement that the government wholeheartedly endorses and we are appreciative of the considerable assistance and support provided by the US government in carrying out these arrangements.

However, these arrangements are patently clear as to how information so shared is to be used. They state explicitly that any information so shared is provided only for intelligence purposes and cannot be used in affidavits, court proceedings, subpoenas or for legal or judicial purposes unless it is provided in accordance with the requirements of the laws of Jamaica. The US authorities have acted in contravention of this provision in the bilateral agreements.

Our contention, therefore, is that with regard to Article IX (1) of the Treaty, the information supplied cannot fulfil the requirements of the Treaty. The Minister has still not refused the request and remains ready to sign the authorization to proceed once those requirements are met.

I wish to make it clear that the government will, without hesitation, facilitate the extradition of any Jamaican citizen wanted to stand trial for extraditable offences once the obligations under the Treaty are met. **Christopher Coke is wanted for an alleged crime in the US for which he ought to be tried and the government of Jamaica, consistent with its obligations under the Treaty, will do everything necessary to facilitate his extradition once it is done in accordance with the provisions of the Treaty and the laws of our country.**

Some argue that this is a matter for the Courts and not the Minister to determine. They are wrong! As I have already pointed out, the Treaty makes it clear that information sufficient to allow the Minister to authorize extradition proceedings must be presented before the request is submitted to the Courts. What we have, therefore, is a dispute regarding the application of the Treaty. A treaty dispute cannot be resolved by the Courts of either party to the dispute. This is why we have used every conceivable means to resolve this dispute through dialogue with the US authorities.

This is not the first time there has been a dispute between Jamaica and the US regarding the application of the Extradition Treaty. Such a dispute arose in 1992 when a Jamaican national, Richard Morrison, extradited on one set of charges to be tried in a particular Court was placed on trial for a different set of charges in a different Court, in breach of Article XIV of the Treaty.

The then PNP administration, quite rightly, took strong exception and formally notified the US government that such violation of the Treaty provisions could not be tolerated. At a meeting with the US Department of Justice in Washington on October 13th 1994, the then Minister of

National Security and Justice, Hon. K.D. Knight, advised the US authorities:

- of the importance State Parties must attach to the existing statutory and Treaty provisions as extradition is a "politically sensitive issue";

- that failure to follow the letter of the Extradition Treaty could unnecessarily test the cordial relations between Jamaica and the US with respect to criminal matters;
- that if the government of Jamaica considers that the US will violate the terms of surrender, it will not surrender the fugitive.

Subsequently, in a Cabinet Submission dated February 3rd 1995, the then Minister of Foreign Affairs and Foreign Trade, Hon. Seymour Mullings, proposed to Cabinet, inter alia, that, pending resolution of the question of a breach of the Extradition Treaty, the Minister should not issue any warrant for extradition unless he is "absolutely certain" that the provisions of the Treaty will be observed faithfully by the US authorities or, alternatively, that the Minister should not issue the authority to proceed in respect of any extradition request until the issue of the breach of the Treaty has been resolved.

The then government was very strident in its insistence that the US authorities must comply with its obligations under the Treaty. Indeed, in an interview with Mr. Wilmot Perkins on KLAS Radio on January 26th 1995, the then Prime Minister, Hon. P.J. Patterson, stated that the breach of the provisions of the Treaty had "very, very clear adverse implications for the obligations under the Extradition Treaty" and that the Minister would not be signing any other extradition documents unless he is "absolutely satisfied that in no circumstances will there be a recurrence of the breach that occurred in the Morrison case".

That dispute remained unresolved for three years during which no extraditions took place until the US government, by way of a letter from the Department of Justice dated April 27th 1995, gave the government of Jamaica the assurance that it would conform to the provisions of the Treaty and that directions had been given "to carefully review all cases involving extradition from Jamaica and to coordinate closely with our prosecutors to ensure that they maintain strict compliance with Article XIV".

In a Cabinet Submission dated May 19th 1995, the then Minister of National Security and Justice advised of this development and sought the authorization of Cabinet "to continue the extradition process with the government of the United States of America based on the assurance given". The Cabinet, by decision No. 20/95 dated May 25th 1995,

accordingly issued the authorization for extradition to the US to continue.

Speaking in the House on June 6th 1995, the then Minister of National Security and Justice, Hon. K.D. Knight, stated:

> *"I wish to give the assurance that my Ministry will do everything in its power to ensure that the extradition process in Jamaica is carried out in a manner which is faithful not only to our international obligations but also to the fundamental concepts of justice and fairness as enshrined in our Constitution".*

That is also the assurance of this government.

The position taken by the government then did not evoke any public consternation or condemnation. There was no alarm that this action would "sour" relations between Jamaica and the US and would lead to retaliatory action by the US government such as the cancellation of visas. Nor was there any protest by the then Opposition that the actions of the government were tarnishing the good name of Jamaica. Indeed, the Opposition supported the government's insistence that the provisions of the Treaty must be faithfully observed and that the "concepts of justice and fairness" be upheld. It wasn't a matter that could have been resolved by the Courts either here or in the US. It was a dispute between parties to a Treaty that was eventually resolved through dialogue, albeit, it took three years before the matter was resolved.

The government is very clear as to the responsibilities of the Minister in this particular case. However, in view of the controversy that has developed and the suggestion that the government's stand is motivated by partisan considerations, we have retained the services of Dr. the Hon. Lloyd Barnett Q.C. to seek a declaration from the Court as to the duties of the Minister and the matters she must properly take into account in exercising her authority under the Extradition Treaty. On conclusion of the matters that have been placed before the Court, the Minister of Justice will act in accordance with the declaration sought.

This government and the previous JLP government of which I was a part have always sought to strengthen our relations with the United States, often attracting criticism and ridicule from the Opposition.

We value the friendship and cooperation that have long existed between our two countries. Friends will, from time to time, have disagreements. The true value of friendship is the ability to resolve those differences in a spirit of understanding and mutual respect. That's what friends are for. That is what we seek to do and I have every confidence that that is what we will do.

I turn now to the issue of the involvement in this matter of Mr. Harold Brady and Manatt, Phelps & Phillips.

On March 16th, I stated in this House that "the government of Jamaica has not engaged any legal firm, any consultant, any entity whatsoever in relation to any extradition matter other than deploying the resources that are available within the Attorney-General's Department". That was the position then. It remains the position to this day, save and except for the engagement of Dr. Lloyd Barnett to which I have referred.

The initiative which led to the engagement of Manatt, Phelps & Phillips by Mr. Brady started within the Jamaica Labour Party in September when he was approached to see whether, through his contacts with persons in the American political system, assistance could be obtained in finding a way to resolve what was seen as a treaty dispute between Jamaica and the US. Mr. Brady is a member of the Party and a former Executive-Secretary of the International Democrat Union, an organization of centre-right parties including the US Republican Party founded in 1983, currently headquartered in Oslo, Norway and of which the JLP is an associate member.

I sanctioned the initiative, knowing that such interventions have in the past proven to be of considerable value in dealing with issues involving the governments of both countries. I made it clear, however, that this was an initiative to be undertaken by the Party, not by or on behalf of the government.

Mr. Brady's contacts referred him to the firm of Manatt, Phelps & Phillips, a highly reputable US law firm, which offered to assist on a professional, retainer basis. Mr. Brady's firm retained Manatt, Phelps & Phillips in October of last year to pursue discussions with relevant officials of the US government. A payment of US$49,892.62 was made to Manatt, Phelps & Phillips on September 18th 2009. These funds were sourced from financial contributors to the Party. Rumours and speculation carried in the media that these funds were provided by Christopher Coke are completely false as the Party is fully aware of the source of these funds.

The engagement of lobbyists to act on behalf of foreign governments, political parties or corporations is a well-known practice in the United States governed by law. There is absolutely nothing illegal or surreptitious about it. Interestingly, in the Richard Morrison case, Professor David Rowe, whose firm was retained by the government of Jamaica to seek to secure his return after he was prematurely extradited, wrote in a memorandum to the government dated June 17th 1991 as follows:

"There are at least three options which we may pursue:

(1) Diplomatic – primarily through discussions with the Department of State;

(2) Political – through discussions with interested members of Congress and the United States Attorney for the Middle District of Florida or appropriate members of the executive believe acts as the liaison between the Department of Justice and the National Security Council.

(3) Legal – continue efforts to intervene in the criminal case against Morrison and to delay or stay his prosecution.

We recommend proceeding on all three parallel tracks."

Mr. Brady, from as far back as September, had contacted the Solicitor-General to discuss issues relating to the extradition request. These discussions included email correspondence sent to Mr. Brady at an email address provided by him which, it was subsequently discovered, is an address belonging to Manatt, Phelps & Phillips. The correspondence related to issues concerning the extradition request which the government of Jamaica had raised with the US government.

From the investigations that I have made, Manatt, Phelps & Phillips were made to believe that Mr. Brady was acting for the government of Jamaica, rather than the JLP, and that their engagement was authorized by the government of Jamaica. Accordingly, in filing its representation with the Department of Justice on October 13th 2009, as it is required by law to do, it listed its client as "The government of Jamaica through Harold Brady & Company". I only became aware of this when it was brought to the attention of the House on March 16th. The Attorney-General subsequently wrote to Manatt, Phelps & Phillips stating that neither Mr. Brady nor his company was engaged as a consultant to the government nor was either of them authorized to act on behalf of the government or to engage their services on its behalf.

It has already been acknowledged that the Solicitor-General and other government officials who went to Washington in December for a meeting with officials of the State and Justice Departments met with representatives of Manatt, Phelps & Phillips at the invitation of Mr. Brady. It has also been acknowledged that a representative of the firm offered and was allowed to attend the scheduled meeting with the State and Justice Department officials but, of significance, took no part in the discussions. It is of significance because, had he been there representing the government of Jamaica, his silence would have warranted explanation.

In discussions between the Solicitor-General and Manatt, Phelps & Phillips following the meeting with the State and Justice Departments, it was suggested that a draft release be prepared on the outcome of the meeting. Email correspondence ensued between the Solicitor-General and Manatt, Phelps & Phillips on the contents of the release but the issuing of the release was eventually not pursued.

Dr. Ronald Robinson, Minister of State in the Ministry of Foreign Affairs and Foreign Trade and Deputy General Secretary of the JLP, while on a private visit to Washington, was invited by Mr. Brady to attend a meeting at the State Department but declined to do so. He did, however, attend an informal meeting between Mr. Brady and a representative of Manatt, Phelps & Phillips on November 20th to discuss the matters in relation to which the firm had been retained.

Manatt, Phelps & Phillips has relied on these meetings between its representatives and government officials and the email correspondence to which I have referred as authentication that it was acting on behalf of the government of Jamaica. However –

- Mr. Harold Brady was and is not a consultant to the government and was never authorized to act on behalf of the government or to engage the services of Manatt, Phelps & Phillips to so act;

- Manatt, Phelps & Phillips registered the government of Jamaica as its client without the knowledge or appropriate authorization of the government;
- The Solicitor-General was not aware that Manatt, Phelps & Phillips had already been retained by Mr. Brady when he met with their representatives, only that their services were available should the government wish to retain them. Had he been so aware, he would not have entertained any such meeting;
- The engagement by Mr. Brady of the services of Manatt, Phelps & Phillips has been terminated.

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