



OFFICE OF THE CONTRACTOR GENERAL

Special Report of Investigation

**Concerning Issues of Impropriety and Irregularity in the July 29, 2015 National
Contracts Commission's Contractor Application Submitted by Seal Investments
Co. Ltd.**

National Contracts Commission

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INTRODUCTION

Special Report of Investigation **Concerning Issues of Impropriety and Irregularity in the 2015 National Contracts** **Commission's Contractor Application Submitted by Seal Investments Co. Ltd.**

The Office of the Contractor General (OCG), acting on behalf of the Contractor General and pursuant to Sections 15(1) and 16 of the Contractor-General Act, initiated an Investigation into the circumstances surrounding the July 29, 2015 application for re-registration made by Seal Investments Co. Ltd. (trading as Seal Construction), to the National Contracts Commission (NCC).

Section 15 (1) of the Contractor-General Act provides the following:

“...a Contractor-General may, if he considers it necessary or desirable, conduct an investigation into any or all of the following matters -

- (a) the registration of contractors;*
- (b) tender procedures relating to contracts awarded by public bodies;*
- (c) the award of any government contract;*
- (d) the implementation of the terms of any government contract;*
- (e) the circumstances of the grant, issue, use, suspension or revocation of any prescribed licence;*
- (f) the practice and procedures relating to the grant, issue, suspension or revocation of prescribed licences.”*



Section 16 of the Act expressly provides that *“An investigation pursuant to section 15 may be undertaken by a Contractor-General on his own initiative or as a result of representations made to him, if in his opinion such investigation is warranted.”*

The OCG’s decision to commence an Investigation into the stated matter was prompted by the receipt of a letter from the NCC under the signature of Mr. Raymond McIntyre, Chairman, NCC, dated September 21, 2015. The referenced letter indicated that upon *“...a review of the application for registration as a Works Grades 1-4 Contractor submitted by Seal Investment Company T/As Seal Construction revealed that two (2) of the members of staff represented on the company’s application indicated during a staff verification exercise that they were no longer working with the referenced company”*¹. It was further indicated that the *“...matter is referred to the Office of the Contractor General for investigation”*².

The OCG’s Investigation sought to determine, *inter alia*, whether Seal Investments Co. Ltd. fraudulently represented and/or misrepresented information on its July 29, 2015 application for re-registration with the NCC.

The foregoing objective formed the basis of the OCG’s Terms of Reference for its Investigation which was primarily developed in accordance with the provisions which are contained in Section 4 (1) and Section 15(1) (a) to (d) of the Contractor-General Act.

The Findings of the OCG’s Investigation are premised primarily upon an analysis of the responses and documentary evidence which were provided by the Respondents in hearings convened by the OCG, during the course of its Investigation.

¹ Letter dated September 21, 2015, which was addressed to the OCG by Mr. Raymond McIntyre, Chairman, NCC.

² Ibid.



METHODOLOGY

In the course of its Investigation, the OCG conducted hearings with the following persons:

1. Mr. Robert Thomas, Director, Seal Investments Co. Ltd.;
2. Mr. Chescot Brownie, Director, Seal Investments Co. Ltd.;
3. Mr. Kenneth Livingston, Chief Financial Officer, Seal Investments Co. Ltd.;
4. Mr. Orville Kerr; and
5. Mr. Farrel Drummond, Employee, Seal Investments Co. Ltd.

The OCG also perused documentary evidence provided by Mr. Robert Thomas, Director, Seal Investments Co. Ltd.

A detailed review of the responses and supporting documentation was undertaken.



JURISDICTION

Detailed below is the legal basis upon which the Contractor General has enquired into the July 29, 2015 application for re-registration submitted by Seal Investments Co. Ltd. to the National Contracts Commission (NCC). The OCG's decision to undertake an Investigation into this matter is predicated upon the representations, as it regards the staff complement, which were made on the subject NCC application form.

The jurisdiction of the Contractor General enables the Office to enquire into the circumstances surrounding the award of the registration of contractors in keeping with Sections 15 (1) and 16 of the Contractor-General Act.

As mentioned previously, Section 15 (1) (a) of the Contractor-General Act provides as follows:

*“...a Contractor-General may, if he considers it necessary or desirable, conduct an investigation into any or all of the following matters -
(a) the registration of contractors...”³*

In accordance with the above provision, the Contractor General may conduct an investigation into matters which concern the registration of contractors. Consequently, the July 29, 2015 application for re-registration by Seal Investments Co. Ltd. to the NCC falls within the OCG's lawful purview.

³ Section 15 (1) (a), Contractor-General Act.



TERMS OF REFERENCE

The primary objectives of the OCG's Investigation surround the alleged irregularities involved in the July 29, 2015 application for re-registration submitted by Seal Investments Co. Ltd. to the NCC are to determine, *inter alia*, the following:

1. Whether Seal Investments Co. Ltd. fraudulently represented and/or misrepresented information on its July 29, 2015 application for re-registration with the NCC;
2. Whether Seal Investments Co. Ltd. submitted misleading or false documentation to the NCC in support of its July 29, 2015 application for re-registration; and
3. Whether the process utilized by the NCC in reviewing the July 29, 2015 application for re-registration by Seal Investments Co. Ltd. was comprehensive, fair and impartial.

The specific objectives of the Investigation are:

1. To determine the employment status of Mr. Orville Kerr at Seal Investments Co. Ltd. as at July 29, 2015, the date on which the application was tendered;
2. To ascertain the employment status of Mr. Farrel Drummond at Seal Investments Co. Ltd. as at July 29, 2015, the date on which the application was tendered; and
3. To determine the authenticity of the résumé of Mr. Farrel Drummond, which was submitted by Seal Investments Co. Ltd., on its July 29, 2015 application for re-registration with the NCC.



FINDINGS OF FACT

1. Seal Investments Co. Ltd., trading as Seal Construction, is a construction company which was incorporated on September 2, 1994.
2. The directors of Seal Investments Co. Ltd. as at December 31, 2002, are Mr. Robert Thomas and Mr. Chescot Brownie.
3. On July 29, 2015, Seal Investments Co. Ltd. submitted an application to be re-registered on the Register of Public Sector Works Contractors in the categories of:
 - a. Building Construction - Grade 1
 - b. Civil Engineering - Grade 1
 - c. General Road Works – Grade 4
 - d. Interior Construction Works – Grade 3
 - e. Mechanical Works – Grade 3
 - f. Pipe Laying – Grade 3
 - g. Road Maintenance Works – Grade 3
 - h. Road Surfacing – Asphaltic Concrete Works – Grade 2
 - i. Road Surfacing – Double Surface Dressing Works – Grade 2
 - j. Road Surfacing – Micro Surfacing Works - Grade 2
 - k. Roofing – Grade 4
 - l. Signage – Grade 4
 - m. Steel Erection – Grade 4



- n. System Building – Grade 2; and
 - o. Tank Erection – Grade 4
4. In its July 29, 2015 application for re-registration, Seal Investments Co. Ltd. listed Mr. Farrel Drummond and Mr. Orville Kerr as members of its supervisory staff.
 5. The pre-assessment process undertaken by the NCC for the registration and/or re-registration of contractors involves a review of the application and the supporting documents as well as verification telephone calls to individuals listed as members of staff.
 6. During the pre-assessment stage of the July 29, 2015 application for re-registration by Seal Investments Co. Ltd., Mr. Farrel Drummond advised the NCC that he was not an employee of Seal Investments Co. Ltd.
 7. During a hearing, Mr. Farrel Drummond advised the OCG that he had informed the NCC representative who had called, that he was not an employee at Seal Investments Co. Ltd. as he believed that he was being targeted by a ‘scammer’. He later confirmed his employment status to the OCG as that of a full time employee at Seal Investments Co. Ltd.
 8. Mr. Orville Kerr, during the pre-assessment stage of the July 29, 2015 application for re-registration by Seal Investments Co. Ltd., advised the NCC that he has not been an employee at Seal Investments Co. Ltd. ‘for 20 months to date’.
 9. At a hearing which was convened on October 26, 2015, Mr. Orville Kerr indicated that his employment status with Seal Investments Co. Ltd. was that of a part time employee; an employee who is contracted on a needs basis. Mr. Kerr stated that at the time the assessment was conducted by the NCC, he understood employment at Seal Investments Co. Ltd. to mean employment on a full time basis. Contrastingly, on November 24, 2015, Mr. Kerr stated, *inter alia*, that he was self-employed and also indicated that he had some



concerns with Seal Investments Co. Ltd. and he was apprehensive as it regards the company becoming aware of his disclosure to the NCC that he “*no longer work for them*”.

10. Based on the details of a cheque delivery book which spanned the period November 22, 2013 to September 25, 2015, thirty-eight (38) payments were made to Mr. Farrel Drummond totalling \$983,600.00.
11. Based on the details of the referenced cheque delivery book, two (2) payments were made to Mr. Orville Kerr for the period November 22, 2013 and December 6, 2013 which totaled \$140,000.00.
12. Seal Investments Co. Ltd. was only able to provide two (2) cheques, dated November 22, 2013 and March 4, 2014, which were made payable to Mr. Orville Kerr, as a means of establishing that Mr. Kerr was employed to the company.
13. There is no information which refers to details of cheque payments for both Mr. Farrel Drummond and Mr. Orville Kerr for the period June 2015 to present⁴.
14. Mr. Chescot Brownie, by way of his Affidavit made pursuant to the Voluntary Declarations Act, signed and caused to be submitted the July 29, 2015 application for re-registration with the NCC.

⁴ As at the date of the OCG’s enquiry.



DISCUSSION OF FINDINGS

In accordance with the aforementioned Terms of Reference, the OCG sought to ascertain whether Seal Investments Co. Ltd. fraudulently represented and/or misrepresented information on its July 29, 2015 application for re-registration⁵ to the National Contracts Commission (NCC). As such, the OCG sought to determine the process which was undertaken by the NCC upon receipt of the referenced application.

The Verification Process

Subsequent to the receipt of an application for registration by a contractor, the Secretariat of the NCC (Technical Services Division, OCG) conducts a verification process which involves a review and assessment of the information represented on the application form to ensure that the contractor is in full compliance with the requirements of the NCC. In a document entitled **“NATIONAL CONTRACTS COMMISSION (NCC) WORKS CONTRACTORS REGISTRATION (GRADES 1-4) APPLICATION REVISED REGISTRATION REQUIREMENTS and PROCEDURES”**, the following, *inter alia*, is indicated:

- “• *The Pre-Assessment process also includes the verification of all staff members represented by the Contractor/Applicant on the Application Form. The process involves the placement of a call to the respective staff member assigned to the Application via the contact number on the staff members resume to ascertain [sic] the staff member’s affiliation with the Contractor/Applicant and the staff members experience in the category applied for...*

⁵ The OCG attaches, herewith, a copy of the subject application as ‘Appendix 1’.



- *The Pre-Assessment Officer is required to prepare a File Note of the staff verification process, complete and sign a Pre-Assessment Checklist.*
- *Upon completion of the Pre-Assessment Process, the Pre-Assessment Officer is required to submit the file to the TSD Works Manager, who conducts a review of the Pre-Assessment Report/File Note...’’⁶*

On its July 29, 2015 application for re-registration, Seal Investments Co. Ltd. listed Mr. Farrel Drummond and Mr. Orville Kerr as members of its Supervisory Staff. Based on the established registration procedures of the NCC, it would then become necessary for the NCC to verify the information provided by Seal Investments Co. Ltd. which would entail placing a telephone call to the noted support staff to determine their affiliation with the company as well as their experience in the category of works which was outlined in the subject application.

Mr. Farrel Drummond

As part of the pre-assessment stage, the Technical Services Division sought to verify the employment status of Mr. Farrel Drummond with Seal Investments Co. Ltd and, thereafter, completed a pre-assessment checklist and review. In a document entitled “***Review of National Contracts Commission (NCC) Works 1-4 Contractor Application***”⁷, which was prepared by the Technical Services Division and dated September 2, 2015, indicated *inter alia*, as follows:

⁶Document entitled “**NATIONAL CONTRACTS COMMISSION (NCC) WORKS CONTRACTORS REGISTRATION (GRADES 1-4) APPLICATION REVISED REGISTRATION REQUIREMENTS AND PROCEDURES**”. Page 16.

⁷ This document was prepared by the Technical Services Division upon a review of the July 29, 2015 application for re-registration which was submitted to the NCC by Seal Investments Co. Ltd.



“...On August 10, 2015 at 3:08 p.m. Mr. Farrel Drummond who was represented as a Supervisory Staff on the Application was contacted via telephone. When asked if he was currently working with Seal Investments Company Limited T/As Seal Construction, he stated that he is not working there as he is old and he goes there on occasions because his friends are there. Mr. Drummond said the last time he worked with the company was some time last year.”⁸ (OCG Emphasis)

The OCG, in furtherance of its Investigation, convened a hearing with Mr. Farrel Drummond on October 16, 2015, and sought to determine (i) his employment status at Seal Investments Co. Ltd. and (ii) whether he was aware that Seal Investments Co. Ltd. had listed him as a member of its supervisory staff on its July 29, 2015 application for re-registration with the NCC. The following, *inter alia*, was disclosed:

“CHAIRMAN: Now sir, Mr Drummond, you know Seal Investment Company Limited? You know that company?”

A: Yes.

CHAIRMAN: You have worked with that company for some time, sir?”

⁸ Document entitled “**Review of National Contracts Commission (NCC) Contractor Registration**”, prepared by the Technical Services Department, and dated August 7, 2015. Page 6.



A: *Yes, me used to work fe them private before them in that business?*

CHAIRMAN: *Before them do construction business you used to work with them?*

A: *Before them have the Seal Construction. Me used to work for them before they registered Seal.*

CHAIRMAN: *What name they used to go by then?*

A: *No name, private.*

CHAIRMAN: **Since they doing construction work how long you working with them?**

A: **From 1994.**

CHAIRMAN: **You are currently working with them?**

A: **Yes, only one time me stop when me get the strokes.**

CHAIRMAN: *And when you got the strokes?*



A: 2011.”⁹ (OCG Emphasis)

It is important to note that based on the foregoing, Mr. Farrel Drummond advised the OCG that he is currently employed to Seal Investments Co. Ltd.

At the referenced hearing the OCG also sought to ascertain the details, if any, of the telephone conversation held between Mr. Drummond and the Secretariat of the NCC. This conversation involved verifying Mr. Drummond’s employment status at Seal Investments Co. Ltd. and the authenticity of his qualifications and other information that were submitted by the company on their July 29, 2015 application for re-registration with the NCC. Mr. Drummond advised the OCG accordingly:

“CHAIRMAN: Now, what type of work you do for Seal Construction, sir?

A: Supervisor.

CHAIRMAN: Supervise what?

A: Like carpentry, masonry, plumber, electrician.

CHAIRMAN: And you have worked with them in fact all of this year basically; you have worked all of this year so far with them?

A: Yes.

CHAIRMAN: And this is on a fortnightly basis?

⁹ Transcript of judicial hearing held on October 16, 2015 involving Mr. Farrel Drummond. Pages 3-4.



A: *Yes.*

CHAIRMAN: *...And you are paid by cheque or you are paid by cash?*

A: *Sometimes cheque and sometimes cash.*

CHAIRMAN: *Now sir, on the 10th of August of this year at about 3:08 p.m., you were contacted by someone from the National Contracts Commission?*

A: *Me don't know is who did call me.*

CHAIRMAN: *Somebody call you, though?*

A: *Yes.*

CHAIRMAN: *And you were asked if you were currently working with Seal Investment Company Limited trading as Seal Construction? Were you asked that question, sir?*

A: *Yes, and me say yes.*



CHAIRMAN: *And the person who called you has made a record that you said that you are not working there as you are old and you go there on occasions because your friends are there. Did you say that to the person?*

...

When the person called you and the person asked you if you are currently working with Seal Investment Company Limited you said:

“I am not working there as I am old and I go there on occasions because I have friends there.”

A: *Yes, sir.*

CHAIRMAN: *Yes, you said that?*

A: *Yes, but can I say something more?*

CHAIRMAN: *Yes man, you are going to be allowed.*



A: Yes, because I never know who was talking and people going round and scamming people so I don't even know who, so I just answer just like that.

CHAIRMAN: The person who called, did the person identify where they were calling from?

A: No.

...

I never even hear what the person said me just answer like that as me hear the Seal...

CHAIRMAN: ...The person who called you, did the person identify themselves, sir, to you?

A: I didn't remember if they identified themselves to me...

Quite a few persons were there because the somebody talking, me say me can hardly hear you.



...

CHAIRMAN: Why you believe it was a scammer?

A: Because it happen all the while. Dem scam all my brother like that.

CHAIRMAN: Why you believe it was a scammer? Has anybody ever called your brother and asked about Seal Investment or Seal Construction?

A: Me caan recall that.

CHAIRMAN: You can't recall this thing that you tell me 'bout your brother? What is it that happened to your brother that you liken to this?

A: Because somebody used to call me.

CHAIRMAN: Call you or your brother?

A: Me, and ask when me work and me say me naw answer dem, me just heng up the



phone? Longer time, from last year.

CHAIRMAN: *So you were concerned about scammers and people calling you?*

A: *Exactly.*¹⁰ (OCG Emphasis)

It is the OCG's finding that Mr. Drummond recalled a telephone conversation in which he was asked about his employment status at Seal Investments Co. Ltd. However, he does not recall whether the caller identified him/herself as acting on behalf of the NCC. In fact, Mr. Drummond advised the OCG that he could hardly hear the questions which were being asked and that he was of the opinion the caller was a 'scammer'.

Mr. Farrel Drummond, in the hearing convened by the OCG on October 16, 2015, further advised the Office that he was not aware that his name and accompanying information were submitted by Seal Investments Co. Ltd. on its July 29, 2015 application for re-registration with the NCC. The following, *inter alia*, was disclosed:

“CHAIRMAN: *Were you aware that your name had been submitted with an application of Seal Construction advising that you work with seal Construction?*

A: *Repeat again, sir.*

¹⁰ Transcript of judicial hearing held on October 16, 2015 involving Mr. Farrel Drummond. Pages 5-11.



CHAIRMAN: *You know say them send
your name come up a
Kingston come a office?*

A: *No, sir.*¹¹

The OCG observes that this disclosure by Mr. Drummond is in contrast with the position held by Mr. Robert Thomas, Director, Seal Investments Co. Ltd. In a document entitled “**Review of National Contracts Commission (NCC) Works 1-4 Contractor Application**” and dated September 2, 2015, the NCC indicated, *inter alia*, as follows:

*“...Mr. Thomas was also advised to ensure that all
staff represented on the Application Form were
aware that they were and he stated all staff were so
aware”*.¹²

It is being reiterated that Mr. Robert Thomas informed the NCC that all members of staff of the company who were listed as such on its 2015 application for re-registration, “*were so aware*”.

Interestingly, Mr. Farrel Drummond admitted to the OCG that he was not aware of his name being submitted on a previous 2012 application for re-registration by Seal Investments Co. Ltd. to the NCC. In a hearing held by the OCG on October 16, 2015, he stated, *inter alia*:

“CHAIRMAN: *I will also just share with you
that Seal Construction
submitted your name in 2012
as part of their application
and indicated that you
worked with them as*

¹¹ Transcript of judicial hearing held on October 16, 2015 involving Mr. Farrel Drummond. Page 13.

¹² Document entitled “**Review of National Contracts Commission (NCC) Works 1-4 Contractor Application**”, prepared by the Technical Services Department, and dated September 2, 2015. Page 3.



supervisory staff. Just as they have done again for this application, they did it in 2012 also, sir, and you were also called then, sir. Are you aware of that?

A: No, sir.”¹³

In furtherance of its Investigation, the OCG sought to discern the authenticity of the qualifications of Mr. Farrel Drummond which were presented to the NCC by Seal Investments Co. Ltd. on its July 29, 2015 application for re-registration.

The OCG notes that in the referenced application, Mr. Drummond is listed as a member of the supervisory staff of Seal Investments Co. Ltd. who is “Qualified by Experience”. Accompanying this application is a copy of a document entitled “**RESUME 2012**” which lists the work experience of Mr. Farrel Drummond. In a hearing convened on October 16, 2015, the OCG, in an effort to ascertain the details of Mr. Drummond’s qualifications, proffered the following questions:

“CHAIRMAN: ...you don’t go no school and get no paper?

A: No, never go to school for that, sir.

CHAIRMAN: What I am saying you learn because even on the form what dem write your name dem say ‘qualified by experience’. So I am asking

¹³ Transcript of judicial hearing held on October 16, 2015 involving Mr. Farrel Drummond. Page 15.



*you if is out a road for 46
years you learn your trade?
You don't go school and get
no piece of paper to learn
how to build road or
electrical work?*

A: No, no paper...

*CHAIRMAN: I am going to show you a
document submitted with the
application by Seal
construction. Even more
interesting, before I go there
you don't have no resumé?
You know what resumé
mean?*

A: No, sir.

...

*CHAIRMAN: Now sir, at any time you ever
get nobody to write up no
paper fe you to list all the
place you used to work and
all the places you used to
work before?*

*A: No, sir, I don't recall doing
anything like that...*

*CHAIRMAN: Now, sir, I am going to show
you a copy of a document
which was submitted, Mr*



Drummond, along with application by Seal Construction. I am just going to hand it to you. You can have a look at it. It's the document at the top, not the ones underneath, just the one on top. I am just showing it to you. You can have a look at it.

(Document shown to witness)

Have you ever seen that piece of paper before, sir?

A: (No answer)

CHAIRMAN: Sir, did you make that document?

A: No, sir, I can't recall that.

CHAIRMAN: You can't recall or you never do it?

A: No, sir, me never do it. Mek me see it.

CHAIRMAN: The top of it says, Resumé. It means that is all the place them you work, all the job them you do. Did you make that document, sir?



A: No, sir, me can't recall.¹⁴
(OCG Emphasis)

The OCG attaches herewith a copy of the subject resume which was shown to Mr. Drummond.

Mr. Drummond further disclosed to the OCG as follows:

“CHAIRMAN: Mr Drummond, have you ever worked any place and submit a piece of paper to anybody indicating all the places you worked before you go for that job?

A: I can't remember because me write give them one time and me don't even remember.

CHAIRMAN: *You write something when, from 1994?*

A: *Could even before too.*

CHAIRMAN: ...For any time for any of the places you have worked, have you ever written up a document telling them where you work, who you work with, you work experience? You ever tell people where you work and give them – –

¹⁴ Transcript of judicial hearing held on October 16, 2015 involving Mr. Farrel Drummond. Page 17-23.



this is the reason why I must
get this job, see piece of
paper here showing all the
places I work, the people
dem I work for? Have you
ever done anything like that,
sir?

A: Me write something give
somebody already. Me can
[sic] remember who because
is long time. Me done it but
me can't remember.

CHAIRMAN: You have done what?

A: Write something give
somebody.

CHAIRMAN: ...When is the last time you
write it and how often you
write it because I tell you
about 2012, 2013, 2015, so
when is it then?

A: Me nuh member either.

...

CHAIRMAN: *What's your answer sir?*

A: *Don't know.*

...

CHAIRMAN: In terms of the thing they
call resumé, it has on it
Sterling Manor Town



Homes, houses – contract
sum \$140,1996 [sic].
Construction of reinforced
concrete frame buildings;
reinforced concrete
foundations, block walls,
clay tile roof, electrical,
plumbing, sewerage, to
include bio-digestant tile
field; pave parking, storm
water drains, et cetera.
You told somebody that?

A: Yes, sir.

CHAIRMAN: You tell them and them write
it on a piece of paper?

A: Exactly.

CHAIRMAN: When was that?

A: Sometime since year, you
know.

CHAIRMAN: This was 2012 I just read to
you; this one says 2012 sir.
So how you tell them this
year and it say 2012?...

A: No. I don't remember...¹⁵

As noted above, Mr. Drummond instructed the OCG that he now recalls telling someone about his qualifications and having them draft a résumé in that regard. Interestingly, **when questioned**

¹⁵ Transcript of judicial hearing held on October 16, 2015 involving Mr. Farrel Drummond. Pages 23-26.



on the details of one of the projects listed on the résumé, Mr. Drummond admitted to completing that project in 2015 when in fact it was stated to have been completed in 2012.

In furtherance of its Investigation, the OCG sought to ascertain the veracity of the statements made by Mr. Drummond in relation to his employment status with Seal Investments Co. Ltd. During the course of a hearing convened by the OCG on October 2, 2015 with Mr. Robert Thomas, Director, Seal Investments Co. Ltd., the following, *inter alia*, was disclosed:

“MR. DIRK HARRISON: ...Mr. Farrell
 Drummond. You are
 aware of Mr.
 Drummond, sir.

MR. ROBERT THOMAS: Yes, sir.

...

MR. DIRK HARRISON: ...Now, when last did
 Mr. Drummond work
 with the company?

MR. ROBERT THOMAS: Mr. Drummond
 worked with the
 company sir,
 presently, today as we
 speak.

MR. DIRK HARRISON: Interesting.

MR. ROBERT THOMAS: Today, as we speak.

MR. DIRK HARRISON: What location is he at
 now?



MR. ROBERT THOMAS: He is presently supervising some little cleaning up stuff going on up by The Rivera, as we speak. Mr. Farrell Drummond, paid up to last week Friday, as we speak.

...

MR. DIRK HARRISON: Mr. Farrell Drummond, he is listed under the category as supervisory staff on the application form on Page 9 of the application there. Mr. Drummond indicates that he is not working there. The call was placed to him on August 10th, 2015, at 3:08 p.m. he said he is not working, currently working with Seals Investment



Company Limited. He states that he is not working there as he is old. He goes there on occasions because he has friends there. He said the last time he worked with the company was sometime last year.

MR. ROBERT THOMAS:

Sir, no, I paid him up the [sic] last week Friday.

...

Mr. Drummond is basically full-time and get paid every fortnight, from 1994 until now.

...

MR. DIRK HARRISON:

So, from 1994 Mr. Drummond is paid every two weeks, fortnightly?

MR. ROBERT THOMAS:

Yeah, mr. Drummond did Counter Points, he did Sterling Manor, I can name



*the projects, he did
Sinclairs. Mr.
Drummond is one of
the senior workers
from inception. So, I
don't know if him get
the call and true him
know the name OCG
him gett [sic]
scared."¹⁶
(OCG Emphasis)*

Based on the representations made by Mr. Thomas, Mr. Farrel Drummond is at present, a full-time employee at Seal Investments Co. Ltd. and has been employed to the company since 1994.

Mr. Thomas also advised the OCG that he did not complete the information in the July 29, 2015 application form which was submitted to the NCC by Seal Investments Co. Ltd. He stated, *inter alia*, the following:

*"MR. DIRK HARRISON: Now, the information
that was contained in
the application form,
who filled it out, sir?"*

*MR. ROBERT THOMAS: Well, it was filled out
by the CFO and I
'assist'.*

¹⁶ Transcript of judicial hearing held on October 2, 2015 involving Mr. Robert Thomas. Pages 30-34.



MR. DIRK HARRISON: The information that was contained therein, did you check for its accuracy before signing?

MR. ROBERT THOMAS: Most of it.

MR. DIRK HARRISON: What part did you check for?

MR. ROBERT THOMAS: I basically checked over the jobs, works that 'has' done and as far as the equipment, the botching plant, the concrete botching plant, the asphalt botching plant.

MR. DIRK HARRISON: What about staffing? In terms of the staffing that was being represented on your application, is this something you confirm, the persons actually work within the organization?



MR. ROBERT THOMAS: *Yeah, for the most parts, the ones that I looked. We have various sites, I don't know now staff on an individual basis because we operate all over Jamaica and we have project managers.*

MR. DIRK HARRISON: *I mean specifically in terms of the application submitted as to whether permanent staff or part-time staff, that information is something you checked that prior to signing the application form?...The persons' names that were submitted as staff, these persons were, in fact, working with you at the time the*



names were
submitted.

MR. ROBERT THOMAS: Yes, sir, to the best of
my knowledge.”¹⁷

Based on the foregoing disclosure by Mr. Thomas, it is being highlighted that Mr. Kenneth Livingston, Chief Financial Officer (CFO), Seal Investments Co. Ltd., was the person tasked with completing the July 29, 2015 application for re-registration with the NCC. Also, Mr. Robert Thomas indicated that at the time the names of the members of staff were submitted in the referenced application form, they were, to the best of his knowledge, employed to Seal Investments Co. Ltd.

On October 2, 2015, the OCG convened a hearing with Mr. Kenneth Livingston, CFO, Seal Investments Co. Ltd. The following, *inter alia*, was disclosed:

“MR. DIRK HARRISON: Mr.
Livingston,
you were
instrumental
in filling out,
completing
this form, the
re-
registration?

...

MR. KENNETH LIVINGSTON: I was not
instrumental,

¹⁷ Transcript of judicial hearing held on October 2, 2015 involving Mr. Robert Thomas. Pages 4-6.



because I
didn't fill out
the form.

MR. DIRK HARRISON:

So, you had
nothing to do
with it at all?

MR. KENNETH LIVINGSTON:

No, I didn't
say I don't
have anything
to do with it, I
had input, but
I was not the
one...

MR. DIRK HARRISON:

What input, if
any, did you
have?

MR. KENNETH LIVINGSTON:

Most of the
financial
information
that they used.

...

MR. DIRK HARRISON:

Okay, now, in
respect of the
persons who
are there like



the staffing or
any other
aspect, were
you, Mr.
Livingston,
involved in
the
verification of
any of the
information
there?

MR. KENNETH LIVINGSTON:

Some of them.

MR. DIRK HARRISON:

And in terms
of the
staffing, the
supervisory
staffing, were
you involved
in contacting
anybody to
say, let me put
it in strict
term as it is
said in the
construction
industry, “A
gah submit a



application to
NCC yuh
nuh, a gwaan
put yuh name
on the
application, it
awright, mi
can use yuh
name?

MR. KENNETH LIVINGSTON:

One person.

...

That person
was always on
the listing, but
his resume
that we had
was old and
the document
says I need
updated
resume for
everybody so,
I had to call
him.

CHAIRMAN:

Who was that
person?



MR. ROBERT THOMAS [sic]:

Mr. Alder, the
electrician.

...

MR. KENNETH LIVINGSTON:

...I was
advised by the
officer that all
the resumes
had to be
updated, so,
when I was
going through
I didn't see
one for him at
all.

...

MR. DIRK HARRISON:

...when you
look at Farrell
Drummond
and Mr.
Orville Clarke
[sic], theirs
are 2012?

MR. KENNETH LIVINGSTON:

Yes, remember
I said I didn't
put together
the document



...

MR. DIRK HARRISON:

To your
personal
knowledge,
who is it that
dealt with the
verification
for the other
staffing
members as
one prepared
to resubmit
the
document?

MR. KENNETH LIVINGSTON:

I think it was
Patrick.

MR. DIRK HARRISON:

Patrick,
Patrick who?

MR. KENNETH LIVINGSTON:

Patrick Blake.

MR. DIRK HARRISON:

Patrick Blake,
and who is he,
sir?

MR. KENNETH LIVINGSTON:

He is a
subcontractor,
but he helped



*in putting it
together,
because I
didn't have the
time.*

...

MR. DIRK HARRISON:

*The role that
Mr. Patrick
Blake
performed,
seeing that
you do not
have the time,
that you
mentioned
earlier, I am
asking
whether or not
it was his job,
in the absence
of your
availability, to
contact
persons who
were listed as
being staff
members to*



*determine
whether or not
the
information
was correct
and could be
utilized?*

MR. KENNETH LIVINGSTON:

*I did not give
him a terms of
reference, so, I
don't know the
process he
used.*

...

OCG OFFICER:

Mr.
Livingston,
you stated
that the office,
and I am
assuming you
mean the
NCC, told you
that updated
resumes were
required for
everyone.



MR. KENNETH LIVINGSTON:

*Yes, I actually called in and asked. What happened, is that I was using a form and then they told me the form is old and that, so I asked what was the process and they said I have to have updated resume for everybody.*¹⁸

The OCG accepts that Mr. Kenneth Livingston, CFO, Seal Investments Co. Ltd., admitted to the OCG that he was not the person who completed the majority of the information on the company's July 29, 2015 application for re-registration. We further accept that he provided most of the financial information outlined therein and was aware that updated résumés were required for members of staff who were represented on an application to the NCC. It is also accepted that it was 'Patrick Blake' who "*dealt with the verification for the other staffing members*" on the company's July 29, 2015 application for re-registration with the NCC.

¹⁸ Transcript of judicial hearing held on October 2, 2015 involving Mr Kenneth Livingston. Pages 48-57.



At this juncture, the OCG notes the following, *inter alia*, which is outlined in the document entitled “**NATIONAL CONTRACTS COMMISSION DETAILED REQUIREMENTS FOR REGISTRATION FOR PUBLIC SECTOR WORKS CONTRACTORS REGISTRATION (GRADES 1-4)**”, and which applies to the re-registration of applicants which were registered with the NCC after September 1, 2010:

“NO.	LIST OF ITEMS	DESCRIPTION	REQUIREMENTS
10.	<p><i>Supervisory Staff</i></p> <ul style="list-style-type: none"> <i>Individuals with considerable experience in the construction industry with responsibility for on-site day-to-day activities.</i> <p><i>Individuals may also be professionally and technically trained.</i></p> <p><u>AND</u></p> <ul style="list-style-type: none"> <i>At the time of Application, individuals who have a formal</i> 	<p><i>Refer to Page 9 of the Register of Public Sector Works Contractors Grades 1-4 Application Form and the Appendix to Contractor Application Form</i></p>	<p>1. Updated Resumes</p> <ul style="list-style-type: none"> <i>must include given name, contact information, education attained, work experience including dates, names of places worked, a brief description of the work duties, name and nature of major projects done.</i>



	<i>working relationship with the Contractor and/or Company in a capacity such as Consultants, Full-time or Part-time staff.”</i>		<p><u>NB.</u></p> <p><i>*Where the staff complement is the same as that of the previous NCC registration, the Contractor will not be required to resubmit the original and photocopy of their academic /professional certification.</i></p> <p><i>However, <u>updated Resumes must be submitted for all members of staff.</u></i></p>
--	--	--	--

Mr. Orville Kerr

In its July 29, 2015 NCC application for re-registration with the NCC, Seal Investments Co. Ltd. listed Mr. Orville Kerr as a member of its supervisory staff who has been ‘with the firm’ for twelve (12) years. Of note, in describing individuals who fall within the scope of supervisory staff, the application form stated as follows:

“Supervisory Staff includes:



- *Individuals with appropriate experience in the construction industry with responsibility for on-site day-to-day activities.*
- *At the time of Application, individuals who have a formal working relationship with the Contractor and/or Company in a capacity such as Consultants, Full-time or Part-time staff. Individuals may also be professionally and technically trained.”¹⁹*

In keeping with the established provisions outlined in the document entitled “**NATIONAL CONTRACTS COMMISSION (NCC) WORKS CONTRACTORS REGISTRATION (GRADES 1-4) APPLICATION REVISED REGISTRATION REQUIREMENTS AND PROCEDURES**”, as part of its pre-assessment stage, the Technical Services Division sought to verify the employment status of Mr. Orville Kerr with Seal Investments Co. Ltd. and thereafter completed a pre-assessment checklist and review. In a document entitled “**Review of National Contracts Commission (NCC) Contractor Registration**”, which is a review of the 2015 application for re-registration by Seal Investments Co. Ltd. prepared by the Technical Services Division, it was indicated, *inter alia*, as follows:

“Orville Kerr...

*On August 13, 2015 at 3:29 p.m. Mr. Orville Kerr was contacted via telephone. He was asked of his current affiliation with Seal Investments Co. Ltd-T/as Seal Construction. **He stated that he no longer works with the company. I asked him when did he stop working with the company and he said for a good while now. I asked Mr. Kerr to give a more***

¹⁹ “**NATIONAL CONTRACTS COMMISSION** REGISTER OF PUBLIC SECTOR WORKS CONTRACTORS GRADES 1-4 **APPLICATION FORM**” submitted to the NCC by Seal Investments Co. Ltd. on July 29, 2015. Page 9.



precise response and he stated that he stopped working with the company for over a year.²⁰

(OCG Emphasis)

Below is a further extract of the account which was provided by the NCC and which was captured in the document entitled “***Review of National Contracts Commission (NCC) Works 1-4 Contractor Application***” dated September 2, 2015. The following, *inter alia*, was stated:

“...I asked Mr. Kerr how long since he had stopped working with Seal Construction and he stated that he has not been working with the company for 20 months to date.

Mr. Kerr was asked if he had any intentions of working with them in the future and he said not to his knowledge. *He was then asked who were the persons he would speak to regarding projects/ work and he said both the Directors Mr. Brownie and Mr. Thomas. **He was then asked when was the last time he spoke to them regarding any projects and he stated 20 months ago.** I asked him again, should the company require him to work with them would he do so and he said he is too old right now and he can’t bother with the stress.*

Mr. Kerr was asked whether he was aware of any projects that the company is currently undertaking and he said not to his knowledge and he is not

²⁰ Document entitled “***Review of National Contracts Commission (NCC) Contractor Registration***”, prepared by the Technical Services Department, and dated August 7, 2015. Page 6.



interested. He was also asked if he had any disputes with them and he said not to his knowledge.”²¹

At a hearing held on October 2, 2015, the OCG put the abovementioned assertions to Mr. Robert Thomas, Director, Seal Investments Co. Ltd. The following, *inter alia*, was revealed:

“MR. DIRK HARRISON: Sir, in respect, specifically of Mr. Orville Kerr, at the 29th of July, 2015, the date of the submission of your NCC application for re-registration, was Mr. Orville Kerr employed to your company?

...

MR. ROBERT THOMAS: ...Yes, Gary, I call him Gary, so just excuse me if I address him as Gary. I will just deal with him as better known...What

²¹ Document entitled “**Review of National Contracts Commission (NCC) Contractor Registration**”, prepared by the Technical Services Department, and dated September 2, 2015. Page 3.



Gary does is temporary for now, he will come into, like the Riviera Project or any other project on call and work. Gary is supposed to start working specifically on a project in Green Pond starting this month, so I would say, yes.

MR. DIRK HARRISON: But at July 29th, 2015, when you submitted the application, he was not engaged?

MR. ROBERT THOMAS: Yeah, we engaged Gary.

MR. DIRK HARRISON: Okay. So, at the 29th of July, 2015, he was being paid by you?

MR. ROBERT THOMAS: He was paid on a on-call basis at that point. The full-time



*job for 15 months
wouldn't be starting
until this month.*

...

MR. DIRK HARRISON:

*Mr. Orville Kerr was
contacted, sir, on the
13th of August, 2015,
and he says he no
longer works with the
company, "I stopped
working with the
company a good
while now." He was
asked to give a
precise response and
he said he stopped
working with the
company for over a
year?*

...

MR. ROBERT THOMAS:

*...Mr. Kerr, for the
better part of it, since
that time I don't
know if Gary
misunderstood the
question that was*



asked of him at that particular time, but Gary was the last person at the Rivera project as full-time in the capacity as supervisor...

The construction part of it, the building part of it ended last year about, was it July - - I think October.

MR. DIRK HARRISON: ...but between October and when his engagement is to start now this month, has he worked with you?

MR. ROBERT THOMAS: Yes, Mr. Kerr does things for us.

MR. DIRK HARRISON: He has worked?

MR. ROBERT THOMAS: Yeah.

...



MR. DIRK HARRISON: ...at that time, the
29th of July, 2015,
then, he wasn't on
staff, unless you had
a project?

MR. ROBERT THOMAS: He wasn't full-time,
full-time
employed.²²

(OCG Emphasis)

The OCG reiterates for emphasis that Mr. Robert Thomas, in his statement to the OCG, advised that Mr. Orville Kerr might have misunderstood what was asked of him by the NCC when the Commission called to ascertain his employment status at Seal Investments Co. Ltd. He also stated that Mr. Kerr was employed on a full-time basis on the Rivera project which he recalled ended in October 2014. Mr. Thomas later mentioned that during the period of October 2014 and the date of the mentioned hearing, Mr. Kerr had “*done things for*” the company on an “*on-call basis*”. However, we find that at the time of the July 29, 2015 application for re-registration, **Mr. Kerr was not employed on a full-time basis nor a part-time basis as a supervisor by Seal Investments Co. Ltd.**

Having regard to the substance of the allegations which formed the basis of the OCG's Investigation, a hearing was convened with Mr. Kerr on October 26, 2015, wherein the Office sought to determine his employment status with Seal Investments Co. Ltd. as well as whether he was aware that the company had listed him as a member of its supervisory staff in its July 29, 2015 application for re-registration with the NCC. The following, *inter alia*, was disclosed:

“MR. DIRK HARRISON: Are you aware of the
company Seal

²² Transcript of judicial hearing held on October 2, 2015 involving Mr. Robert Thomas. Pages 7-29.



Investment Company
Limited?

MR. ORVILLE KERR: Yes, sir.

MR. DIRK HARRISON: Have you done work
with them sir,
before?

MR. ORVILLE KERR: I have worked with
them from 2000 up
until 2013 on a full-
time basis, but since
2013, there were
times when they
would call you to ask
you to carry out some
duties maybe for a
day or so.

MR. DIRK HARRISON: Now, from 2013 to
the present date, at
any time that you
have worked with
Seal Construction,
it's on part-time
basis.

MR. ORVILLE KERR: It is a part-time...I
would say part-time,
like they would call



you in and say, we don't have anyone to do the pay bills, so can you do it.

MR. DIRK HARRISON: ...So, you do pay bills for them sometimes too?

...

MR. ORVILLE KERR: Yes, and there were times they will send me out on different missions, like, sometimes to do some work on some doors or something like that.

MR. DIRK HARRISON: ...For the time that you were full-time with Seal Construction, you received a cheque from them and you also received certain benefits, and when I say benefits, I refer to things like you pay NIS, probably health,



*you understand what I
am saying?*

MR. ORVILLE KERR: Yes, sir.

*MR. DIRK HARRISON: You had such an
engagement with them
when you were on
full-time basis?*

*MR. ORVILLE KERR: On a full-time,
working I get the
cheque (inaudible)
every month or every
fortnight.*

*MR. DIRK HARRISON: And the occasion that
you call it part-time,
did you have the same
benefits?*

*MR. ORVILLE KERR: No, sir. Like you
finish working today
and you would get the
money same time.*

*MR. DIRK HARRISON: Whereas on a full-
time basis you are
paid what, monthly or
fortnightly?*

MR. ORVILLE KERR: Fortnightly.



...

MR. DIRK HARRISON: I asked whether or not you are aware, Mr. Kerr, that your name was submitted as part of the application by Seal Construction on the 29th of July, 2015?

MR. ORVILLE KERR: No, sir.

MR. DIRK HARRISON: You are aware, of course, that the National Contracts Committee [sic], a representative from the National Contracts Committee [sic] contacted you with a view to verify that you worked with Seal Construction?

MR. ORVILLE KERR: Yes, sir.

MR. DIRK HARRISON: *The person who called you identified themselves to you?*



MR. ORVILLE KERR: *Yes, sir, but I don't
remember the name.*

...

MR. DIRK HARRISON: *...The representative
from the National
Contracts
Commission
indicates that after
putting a question to
you, you answered as
follows -- you were
asked to state your
current affiliation
with Seal
Investments
Company Limited,
trading as Seals [sic]
Constructions, can
you recall being
asked that question?*

MR. ORVILLE KERR: *I don't remember
that question.*

...

MR. DIRK HARRISON: *...the person from the
National Contracts
Commission said that*



you said that you no longer worked with the company? You recall saying that?

MR. ORVILLE KERR: Yes, I said that because what I think, is, I don't longer work for the company because I no longer have a 9:00 to 5:00 job everyday with this company they would only call me -- for the past say, 18 months, they have called me maybe five times, you understand, and so that is what I said, I no longer work for this company. I thought working for this company would be to get up and going to work like how I did for that 13 years go to this company.



...

MR. DIRK HARRISON: The officer from the NCC said that you were asked to indicate when you had stopped working with the company and your answer was, "A good while now," can you recall that being asked and you answering as such?

MR. ORVILLE KERR: I think I had answered that question that it was in December 2013, if I remember it correctly."²³

(OCG Emphasis)

Mr. Kerr stated that, in his opinion, (i) he was employed to Seal Investments Co. Ltd. on a full-time basis up to 2013; (ii) he is currently employed to the company on a part-time basis; (iii) that when the NCC enquired of his employment status at the company he understood this to mean he was employed on a full-time basis; and (iv) he was not aware that Seal Investments Co. Ltd. submitted his name as a member of staff in its July 29, 2015 application for re-registration with the NCC.

²³ Transcript of judicial hearing held on October 26, 2015 involving Mr. Orville Kerr. Pages 4-10.



The OCG reiterates that Mr. Robert Thomas informed the NCC that all members of staff of the company who were listed as such on its 2015 application for re-registration, “*were so aware*”.

The Tests of Employee Status

Notwithstanding the representations made by Mr. Orville Kerr, the OCG’s research indicates that Mr. Kerr’s employment status would be reflective of an independent contractor.

Mutual Obligation

A common law test is usually applied in determining the employment status of persons. It is a general prerequisite for a mutuality of obligation to exist in a contract of employment. This obligation is required by both employer and employee— an obligation on the employer to provide work and on the employee to execute same.²⁴

This point was further established in the case of *Clark v Oxfordshire Health Authority*²⁵. In the referenced case, the applicant worked under a global contract of employment with the respondent but was only offered work as it became available. There was no obligation on either the applicant or the respondent to provide work or to work. Notwithstanding that, the applicant worked for three years with gaps totalling four and a half months. The Court of Appeal held that the applicant was not an employee because there was no mutuality of obligation since she could refuse work as she desired.

Further, in *Carmichael v National Power plc*²⁶, it was held that work on a ‘casual as required’ basis was not sufficient to give rise to a mutually binding obligation. Additionally, it was held

²⁴ *Nethermere (St Neots) Ltd v Taverna and Gardiner* [1984] IRLR 240

²⁵ [1998] IRLR 125

²⁶ [2000] IRLR 43



that consideration should be given “...not only to documents recording the relationship but also the way in which the relationship had worked in practice...”²⁷

Factors Indicating Employment Status

While the test of mutual obligation appears to be generally applied, there are other factors which indicate one’s employment status. For example, it can be suggested that **a person is considered an independent contractor if he is engaged on a casual or short term basis, especially where he retains the right to be employed elsewhere**²⁸.

In the case of *Hall v Lorimer*²⁹, the respondent, a vision mixer, worked for a number of production companies and the majority of his jobs lasted only for a day. The Court of Appeal held that he was self-employed and not employed by the companies under individual contracts of service.

With specific reference to the account(s) provided by Mr. Orville Kerr on diverse days to the NCC October 26, 2015, in which he stated that he was a part-time employee at Seal Investments Co. Ltd., Mr. Kerr made a contrasting admission to the OCG during a hearing convened on November 24, 2015, as follows:

“CHAIRMAN: Are you presently employed, sir?

A: How do I put this? I am a carpenter. Self-employed.

CHAIRMAN: Now sir, have you ever been employed to Seal Investments Company Limited or

²⁷ Ibid

²⁸ *Argent v Minister of Social Security* [1968] 3 All ER 208

²⁹ [1994] IRLR 171



*otherwise known as Seal
Construction Company
Limited, sir?*

A: Before 2013, December.

*CHAIRMAN: Now sir, before 2013,
December, what happened
after 2013, December, sir.*

*A: I resigned the job 2013
December.*

*CHAIRMAN: And did you have any
engagement with Seal
Construction after 2013
December, when you
resigned?*

*A: I think they called me on
three occasions.*

*CHAIRMAN: The three occasions that
they called you, you ended
up doing jobs for them?*

*A: One day each time.*³⁰

(OCG Emphasis)

In applying the common law test of mutual obligations to determine the employment status of Mr. Orville Kerr at the date of the July 29, 2015 application by Seal Investments Co. Ltd. for re-

³⁰ Transcript of hearing held on November 24, 2015 involving Mr. Orville Kerr dated. Pages 1-2.



registration, one must examine the relationship between both parties and conclude whether there exists an obligation on the employer to provide work and on the employee to execute same. Therefore, the question of key importance becomes, was Seal Investments Co. Ltd. obligated to provide work for Mr. Kerr and was he obligated to work for the company?

Based on the accounts provided by both Mr. Orville Kerr and Mr. Robert Thomas, Director, Seal Investments Co. Ltd. during the course of OCG hearings, there was no mutual obligation as Mr. Kerr could refuse to work if he so desired and he was only provided work by Seal Investments Co. Ltd. as the company deemed necessary.

Further, it is the OCG's opinion that the employment status of Mr. Kerr is that of an independent contractor and not a part-time employee. Mr. Kerr advised the OCG that he is self-employed and is a carpenter by profession. When utilising the test of factors indicating employment status, one has to consider the particular circumstances at hand in order to determine a person's employment status. In the instant regard, factors such as the duration of Mr. Kerr's involvement with the company and the manner in which he was paid should be considered. Mr. Kerr's recent jobs with Seal Investments Co. Ltd. involve the performance of tasks which only last for a single day on three separate occasions, after which he was paid. In applying the decision in *Argent v Minister of Social Security*³¹, Mr. Kerr can be deemed an independent contractor as he was employed on a casual or short term basis and he retained the right to be employed elsewhere.

Apprehension of Fear

During the course of the application verification process, Mr. Kerr indicated to the NCC that he did not want Seal Investments Co. Ltd. to be made aware of his admission to the NCC of not being an employee of their company. Mr. Orville Kerr disclosed the following, *inter alia*, to the OCG:

“MR. DIRK HARRISON: Do you recall
 indicating to the

³¹ [1968] 3 All ER 208



person, the caller,
that you are afraid
and you did not wish
the owners to know
that you are here
saying that you don't
work with them?

MR. ORVILLE KERR: I don't think I
remember that part,
saying that.

MR. DIRK HARRISON: But, I am saying to
you that's what the
officer has indicated
was one of your
concerns. You did not
wish it to be
communicated and for
the owners to hear
back that you, on
being called, say you
don't work for them
anymore and I quote,
"For over a year
now."



MR. ORVILLE KERR: *I don't remember that one.*³² (OCG Emphasis)

However, on November 24, 2015, Mr. Kerr, in the presence of his attorney, made an entirely different statement in another hearing convened by the OCG when he stated, *inter alia*, as follows:

“CHAIRMAN: ...Did you indicate to the caller from the National Contracts Commission that you didn't want the Seal Construction persons to know that you had said you no longer work with them?

A: Yes, sir.

...

CHAIRMAN: ...Had you indicated, in my words or in any other words, that the reason is that you are afraid of the sort of persons that are associated with Seal Construction and that's why you wanted the NCC person not to repeat that you no longer work with them.

³² Transcript of judicial hearing held on October 26, 2015 involving Mr. Orville Kerr. Page 15.



A: *I think I recall I said I would prefer if the NCC office investigate that for themselves.*

CHAIRMAN: *But in fact you have some concerns? That's the general way of saying it.*

A: *Yes, sir, because when I left they still owed me money and they didn't pay me and still sending my name up here.*³³ (OCG Emphasis)

Further concerns were expressed by Mr. Orville Kerr during the hearing which was convened on November 24, 2015 in the presence of his attorney. These concerns arose in respect of Mr. Thomas' assertion, during the course of a hearing held on October 2, 2015, that "...Gary [Orville Kerr] is supposed to start working specifically on a project in Green Pond starting this month..."³⁴ The stated assertion was formally put to Mr. Kerr and to the contrary, Mr. Kerr, during the course of a hearing which was held on November 24, 2015, disclosed to the OCG **that he was not aware that he was being engaged for a project in Green Pond which was scheduled to commence in October 2015.** Mr. Kerr further indicated that he did not start any form of work in this regard and disclosed, *inter alia*, the following:

"CHAIRMAN: *...Mr. Thomas when being asked questions said:*

³³ Transcript of judicial hearing held on November 24, 2015 involving Mr. Orville Kerr. Pages 6-7.

³⁴ Transcript of hearing held on October 2, 2015 involving Mr. Robert Thomas. Page 7.



“What Gary does is temporary for now. He will come into, like the Riviera project or any other project on call and work. Gary is supposed to start working specifically on a project in Green Pond starting this month, so I would say, yes.” So you were given a specific time to work on the Green Pond project?

A: Not to anymore [sic] knowledge.

CHAIRMAN: And you have not started on any work with them at all?

A: No, sir.³⁵

At this juncture, the OCG highlights the following clause of the document entitled “NATIONAL CONTRACTS COMMISSION REGISTRATTION OF WORKS CONTRACTORS GRADES 1-4 GENERAL INFORMATION”:

“15. IF THE INFORMATION PROVIDED BY THE APPLICANT ON WHICH EVALUATION AND AWARD(S) WERE BASED IS FOUND TO BE ERRONEOUS THEN THE CONTRACTOR(S) MAY

³⁵ Transcript of hearing held on November 24, 2015 involving Mr. Orville Kerr. Page 13.



**NOT BE REGISTERED, OR IF
ALREADY REGISTERED, THE
REGISTRATION WILL BE
REVOKED...** (OCG Emphasis)

The OCG notes that Mr. Chescot Brownie, Director, Seal Investments Co. Ltd., in his supporting Affidavit³⁶ which was affixed to the July 29, 2015 application for re-registration with the NCC, declared that, to the best of his knowledge, information and belief, the information contained in the referenced application was “...*true and correct*”. He further declared that he understood that “...*if the information provided, is found to be erroneous, then the firm may not be registered and if already registered, the registration maybe revoked.*”

Further, Mr. Brownie, during the course of a hearing held on October 2, 2015, advised the OCG of Mr. Orville Kerr’s employment status, as indicated below:

“MR. DIRK HARRISON: ...Mr. Kerr has
 indicated when asked
 by us at August 13 of
 this year, he has said
 he no longer works
 with the company and
 he says he has not
 worked with the
 company for over a
 year.

MR. CHESCOTT BROWNIE: I don’t have a hands
 on with the workers
 as such, but if I can

³⁶ Made pursuant to the Voluntary Declarations Act.



*recall, he is a worker,
that does a lot of
work for us. We call
him from time to
time, he is actually
employed not full-
time employed to the
company...he comes
in and out to do
things whenever
there is something to
be done, like a major
project or so...*

...

*We wouldn't lie
about these person
are not significant for
us to get back our
Grade 1, so, why then
would we want to lie
about these two
workers when we
have so many
different workers or
supervisors on to our
contracts to show
that...*



...

*Almost ten years we
have been a Grade 1,
so simple things like
this shouldn't be
worthy for us to be
sitting here, the last
time we did it they
were on it, you
know.”³⁷*

(OCG Emphasis)

At this juncture, the OCG places emphasis on Section 29 of the Contractor-General Act, which provides, *inter alia*, the following:

“Every person who—

**(a) willfully makes any false statement to
mislead or misleads or attempts to mislead
a Contractor-General or any other person
in the execution of his functions under this
Act; or**

(b) without lawful justification or excuse –

**(i) obstructs, hinders or resists a
Contractor-General or any other
person in the execution of his
functions under this Act; or**

³⁷ Transcript of hearing held on October 2, 2015 involving Mr. Chescot Brownie. Pages 61-67.



(ii) *fails to comply with any lawful requirement of a Contractor-General or any other person under this Act;*
or

(c) *deals with documents, information or things mentioned in section 24 (1) in a manner inconsistent with his duty under that subsection,*

shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

Based on the foregoing provisions, the OCG notes that Mr. Robert Thomas and Mr. Chescot Brownie, Directors of Seal Investments Co. Ltd., breached Section 29 of the Contractor General Act as they made false statements to the Contractor General during the course of hearings, as it regards the employment status of Mr. Orville Kerr.



Anomalies, Irregularities and Inconsistencies in Representations made to the OCG Concerning the 2015 Application for Re-Registration with the NCC by Seal Investments Co. Ltd.

It is the OCG's observation that there were several irregularities in the representations made to the NCC and the OCG by employees and Directors of Seal Investments Co. Ltd. concerning the company's 2015 application for re-registration with the NCC.

Anomalies Regarding the Employment Status and Qualifications of Farrel Drummond

In relation to the employment status and qualifications of Mr. Farrel Drummond, the OCG noted several inconsistencies. Firstly, Mr. Farrel Drummond advised the NCC that he was not employed to Seal Investments Co. Ltd. "...as he is old and that he goes there on occasions because his friends are there"³⁸. However, during the course of the hearing held on October 16, 2015, Mr. Drummond advised the OCG that he is in fact employed to Seal Investments Co. Ltd. Mr. Drummond stated that when he received the telephone call from the NCC, he was unsure of the identity of the caller and that he believed he was being targeted by a scammer.

In support of the representation that Mr. Drummond was in fact employed to Seal Investments Co. Ltd., Mr. Thomas provided the OCG with a letter dated October 6, 2015. The letter stated that:

"Mr. Farrel Drummond has been employed to Seal Construction Limited as a foreman supervisor since 1994... He has worked on projects such as: Sterling Manor (Reading, St. James), Sinclair Townhouse Complex (Coral Gardens – St. James), Counter Point Complex (Ironshore – St. James), The Riviera (Bogue, St. James) and other residential projects to

³⁸ Document entitled "**Review of National Contracts Commission (NCC) Contractor Registration**", prepared by the Technical Services Department, and dated August 7, 2015. Page 6.



present date. Mr. Drummond is paid twenty five thousand dollars (\$25,000) fortnightly.”³⁹

Of note, Mr. Drummond’s signature was affixed to the letter confirming the accuracy of the information which had been detailed.

Attached to the referenced letter was an extract from a cheque delivery book which was prepared by Seal Investments Co. Ltd., and which reflected the dates of cheques, the dates on which they were collected, as well the amounts which were made payable⁴⁰. The following was prepared by the OCG based on the information observed from the extract of the cheque delivery book. Of note, the extract spanned the period November 22, 2013 to September 25, 2015, and was provided by Mr. Robert Thomas.⁴¹

No.	Cheque Number	Date Represented	Amount Made Payable
1	00173	November 22, 2013	\$35,000.00
2	00207	December 6, 2013	\$20,000.00
3	00275	December 6, 2013	\$50,000.00
4	00302	January 3, 2014	\$35,000.00
5	00372	January 17, 2014	\$35,000.00
6	200027	January 31, 2014	\$35,000.00
7	200100	February 14, 2014	\$35,000.00
8	234	March 14, 2014	\$35,000.00
9	000832	March 31, 2014	\$35,000.00
10	358	April 11, 2014	\$35,000.00
11	Paid by cash	May 9, 2014	\$35,000.00
12	Paid by cash	May 21, 2014	\$35,000.00
13	Paid by cash	June 13, 2014	\$15,000.00
14	Paid by cash	June 24, 2014	\$17,000.00
15	200388	July 4, 2014	\$20,000.00

³⁹ Letter dated October 6, 2015 which was addressed to the OCG and signed by Mr. Robert Thomas and Mr. Farrel Drummond.

⁴⁰ In his response to the OCG dated August 4, 2016, Mr. Robert Thomas, Director, Seal Investments Co. Ltd., indicated that “the dates indicated on the referenced extract generally reflect the date of the cheques and also generally reflect the dates on which the cheques were collected by the payees.”

⁴¹ Attached to Response dated October 8, 2015, which was addressed to the OCG and signed by Mr. Nigel Jones, Attorney-at-law, Nigel Jones & Co., attorney then acting on behalf of Mr. Robert Thomas.



16	200511	July 8, 2014	\$25,000.00
17	Paid by cash	August 4, 2014	\$25,000.00
18	Paid by cash	August 15, 2014	\$15,000.00
19	Paid by cash	August 28, 2014	\$10,000.00
20	Paid by cash	August 29, 2014	\$3,000.00
21	Paid by cash	September 12, 2014	\$20,000.00
22	Paid by cash	September 26, 2014	\$25,000.00
23	Paid by cash	October 18, 2014	\$25,000.00
24	Payment method not indicated	October 26, 2014	\$10,000.00
25	Paid by cash	October 30, 2014	\$18,000.00
26	Paid by cash	November 7, 2014	\$20,000.00
27	Paid by cash	November 21, 2014	\$20,000.00
28	Paid by cash	December 5, 2014	\$10,000.00
29	Payment method not indicated	December 24, 2014	\$10,000.00
30	Paid by cash	February 2015	\$30,000.00
31	22361	February 6, 2015 ⁴²	\$35,000.00
32	Paid by cash	March 13, 2015	\$30,000.00
33	200536	March 27, 2015	\$35,000.00
34	200557	April 20, 2015	\$35,000.00
35	200587	May 1, 2015	\$20,000.00
36	Paid by cash	August 31, 2015	\$25,000.00
37	Paid by cash	September 25, 2015	\$25,000.00
38	200170	Undated	\$40,600.00
		TOTAL	\$983,600.00

Additionally, copies of payroll summaries were attached to Mr. Thomas' response. The following was indicated:

Date	Payee Name	Project Name	Invoice Amount
May 13, 2015	Farrel Drummond	Name illegible	\$35,000.00
August 19, 2015	Farrel Drummond	Riviera	\$35,000.00
September 23, 2015	Farrel Drummond	Riviera	\$25,000.00
TOTAL			\$95,000.00

⁴² There is also an email correspondence dated February 5, 2015 from Ms. Lisa Gordon, Rheshan Capital Management Limited, to ryan.parkes@gk.co.com which details a payroll summary corresponding with this information.



The foregoing information supports the responses provided by Mr. Drummond and Mr. Thomas in the OCG's hearings, that is, the records support the finding that Mr. Drummond is a full-time employee at Seal Investments Co. Ltd. who receives a salary fortnightly.

On a review of an extract of the cheque delivery book which was provided by Mr. Robert Thomas, the OCG notes that varying signatures were affixed to the document to represent that of Mr. Farrel Drummond.

As it regards the submission of a résumé for Mr. Farrel Drummond by Seal Investments Co. Ltd. in its 2015 application for re-registration, Mr. Drummond advised the OCG that he did not recall drafting such a document or giving instructions to anyone to draft same on his behalf. Further, upon being presented with details of a certain project that he worked on, Mr. Drummond advised the OCG that he completed same in 2015. However, as a point of fact, the project which was described to Mr. Drummond, by the OCG, was completed in 2012, based on the information which was outlined in his résumé which bore the date 2012.

Mr. Robert Thomas, Director, Seal Investments Co. Ltd., advised the NCC that the listed members of staff were aware that their names were being submitted on the company's July 29, 2015 application for re-registration with the NCC. In contrast, Mr. Drummond and Mr. Kerr stated during their respective appearances before the Contractor General on October 16 and 26, 2015, that they were not aware that their names were submitted on the referenced application.

Anomalies Regarding the Employment Status of Orville Kerr

The OCG observed several irregularities in respect of the employment status of Mr. Orville Kerr with Seal Investments Co. Ltd. Firstly, during the hearing convened by the OCG on October 2, 2015, Mr. Robert Thomas, Director, Seal Investments Co. Ltd. indicated to the OCG that Mr. Orville Kerr was employed on a full-time basis at the company until August 2014. However, Mr. Kerr advised the OCG that he was employed full-time at the company until December 2013.



In a letter prepared and signed by Mr. Robert Thomas, addressed to the OCG and dated October 6, 2015, Mr. Thomas refers to the employment status of Mr. Kerr. He indicated that *“Mr. Kerr was employed without a written contract on a full time basis up to August 2014. Since that date however, he has been engaged on an ‘as needed’ basis to perform functions...Mr. Kerr has been paid cash on all works done, which ranges per day from three thousand dollars to six thousand dollars (\$3000-\$6000) depending on the nature of work. Based on the above we have not requested an updated resume for Mr. Kerr and therefore cannot provide one as requested.”*⁴³

It must be noted that Seal Investments Co. Ltd. was required to provide updated résumés for all support staff listed in its July 29, 2015 application for re-registration with the NCC in accordance with the document entitled **“NATIONAL CONTRACTS COMMISSION (NCC) WORKS CONTRACTORS REGISTRATION (GRADES 1-4) APPLICATION REVISED REGISTRATION REQUIREMENTS AND PROCEDURES”**. Further, in a document prepared by the Technical Services Division, entitled **“Review of National Contracts Commission (NCC) Works 1-4 Contractor Application”** and dated September 2, 2015, the following, *inter alia*, is indicated:

“For the record, Mr. Robert Thomas, one of the Directors of Seal Investment Company Limited was the person who submitted the Application on the Company’s behalf. Mr. Thomas prior to the submission and acceptance of the Application had made at least three (3) previous visits to the Office in an attempt to submit the Company’s Application; the Application was not accepted on those occasions as the Application was incomplete. During those visits to the NCC Mr. Thomas was advised to update the resumes of the respective

⁴³ Letter dated October 6, 2015 which was addressed to the OCG and signed by Mr. Robert Thomas.



staff members represented on the Application
Form.⁴⁴ (OCG Emphasis)

Further, it should be noted that Mr. Kenneth Livingston, Chief Financial Officer, Seal Investments Co. Ltd., was aware that updated résumés were required for members of staff who were represented on an application to the NCC. The OCG is of the view that the résumés of Mr. Drummond and Mr. Kerr which supported the company's 2015 application for re-registration were not updated. This is premised on the fact that both the résumés of Mr. Drummond and Mr. Kerr bore 2012 dates notwithstanding having been submitted and stamped by the NCC on July 29, 2015. Of note, the résumés of Mr. Drummond and Mr. Kerr which bore 2012 dates are identical copies of those which were submitted with the applications for re-registration with the NCC by Seal Investments Co. Ltd. on August 27, 2012 and September 6, 2013.

Attached to Mr. Thomas' letter of October 8, 2015, were copies of cheques which were made payable to Mr. Orville Kerr as follows:

Cheque Number	Date of Cheque	Amount Made Payable	Bank of Encashment
00177	November 22, 2013	\$70,000.00	First Global Bank
00211	December 6, 2013	\$70,000.00	First Global Bank
000829	March 4, 2014	\$140,000.00	Bank of Nova Scotia
	TOTAL	\$280,000.00	

Also affixed to the referenced response was an extract from a cheque delivery book, prepared by Seal Investments Co. Ltd., which reflects the names of persons collecting cheques, the cheque number, and the amounts which were made payable. The cheque delivery book, which spanned the period November 22, 2013 to September 25, 2015, displayed the following information in relation to Mr. Kerr:

⁴⁴ Document entitled "Review of National Contracts Commission (NCC) Contractor Registration", prepared by the Technical Services Department, and dated September 2, 2015. Pages 2-3.



Date Represented	Amount Made Payable
November 22, 2013	\$70,000.00
December 6, 2013	\$70,000.00
TOTAL	\$140,000.00

Notwithstanding the absence of documentary evidence, in the form of cheque payments for employment to Mr. Orville Kerr after March 4, 2014, Mr. Kerr advised the OCG that he is a part-time employee at Seal Investments Co. Ltd. and is employed on a needs basis.

Of note, the cheque dated March 4, 2014 made payable to Mr. Kerr is not reflected in the extract of the cheque delivery book which was presented to the OCG.



CONCLUSIONS

Based upon the sworn responses provided by employees and directors of Seal Investments Co. Ltd. as well as documentary evidence submitted to the OCG during the course of hearings, the OCG has arrived at the following considered conclusions:

1. Mr. Farrel Drummond is a full-time employee of Seal Investments Co. Ltd.
2. The OCG accepts that during the course of the verification process, a representative of the NCC had identified himself to Mr. Farrel Drummond. The OCG concludes that Mr. Drummond was being disingenuous in his statement to the OCG that he was of the opinion that the caller was a 'scammer'.
3. Mr. Orville Kerr is an independent contractor/self-employed and at the time of the company's July 29, 2015 application to the NCC for re-registration, he was **not** an employee of Seal Investments Co. Ltd.

The OCG accepts the representations which were made to the NCC by Mr. Kerr wherein he advised that he was no longer employed to Seal Investments Co. Ltd. and that the last time communication was made with the company regarding a project was in 2014.

The subsequent indication by Mr. Robert Thomas that Mr. Kerr was employed on a needs basis and was employed in that capacity as at the date of the company's July 29, 2015 application for re-registration with the NCC, is rejected. Mr. Thomas has failed to provide evidence to substantiate that Mr. Kerr was employed and was being paid for services rendered during this period. As a point of fact, Mr. Thomas and by extension, Seal Investments Co. Ltd., has only provided proof of payment to Mr. Kerr which ends on March 4, 2014. This is further buttressed by the fact that Mr. Kerr has indicated that he had some concerns regarding the Seal Investments Co. Ltd. as monies were owed to him upon his resignation and the company still listed him as a member of staff in their application for re-registration with the NCC. Given the compendium of facts, **the OCG**



reiterates the view that Mr. Orville Kerr was not employed at the time of the application.

4. The OCG concludes that Seal Investments Co. Ltd. submitted Mr. Orville Kerr's name as a member of its supervisory staff on its July 29, 2015 application to the NCC for re-registration, without his permission or consent.
5. Mr. Chescot Brownie, by way of his Affidavit made pursuant to the Voluntary Declarations Act, signed and caused to be submitted the July 29, 2015 application for re-registration with the NCC.
6. Having regard to Clause 15 of the document entitled "**NATIONAL CONTRACTS COMMISSION REGISTRATION OF WORKS CONTRACTORS GRADES 1-4 GENERAL INFORMATION**", the OCG concludes that the information submitted by Seal Investments Co. Ltd. in its 2015 application for re-registration with the NCC, as it regards the employment status of Mr. Orville Kerr, **is erroneous**.
7. Having concluded that Mr. Orville Kerr was not a full-time or part-time employee at Seal Investments Co. Ltd. at the time the company submitted its 2015 application for re-registration with the NCC, the OCG further concludes that Seal Investments Co. Ltd. misrepresented information to the NCC in this regard.
8. The OCG concludes that a determination should be made by the relevant authority on whether Seal Investments Co. Ltd. misrepresented information to the NCC in its July 29, 2015 application for re-registration. The OCG's position is premised on the suspicion which surrounds the authenticity of the 2012 Résumé of Mr. Farrel Drummond, given the testimony of Mr. Drummond that he cannot recall whether he had instructed an agent to draft the referenced document on his behalf.



9. The OCG accepts Mr. Orville Kerr's account to the NCC in which he stated that he did not want Seal Investments Co. Ltd. to be made aware of his admission of not being an employee of their company.
10. Mr. Robert Thomas, Director, Seal Investments Co. Ltd., misled the NCC when he asserted that Mr. Orville Kerr and Mr. Farrel Drummond were aware that they were listed as members of the company's supervisory staff in the referenced 2015 application for re-registration. Messrs. Drummond and Kerr have both advised the OCG on more than one occasion that they were not aware that their names were being submitted to the NCC in this manner, albeit being employed to Seal Investments Co. Ltd.
11. The OCG concludes that the submission of the résumés of two employees of Seal Investments Co. Ltd., namely Messrs. Farrel Drummond and Mr. Orville Kerr, were submitted to the NCC without their knowledge.
12. The OCG has seen no evidence to suggest that the process utilized by the NCC in reviewing the July 29, 2015 application which was submitted by Seal Investments Co. Ltd. for re-registration was less than comprehensive, fair and impartial.
13. Based on the details of a cheque delivery book which spanned the period November 22, 2013 to September 25, 2015, thirty-eight (38) payments were made to Mr. Farrel Drummond totalling \$983,600.00.
14. Based on the details of the referenced cheque delivery book, two (2) payments were made to Mr. Orville Kerr for the period November 22, 2013 and December 6, 2013 and which totaled \$140,000.00.
15. Two (2) cheques, dated November 22, 2013 and March 4, 2014, were made payable to Mr. Orville Kerr and which totaled \$280,000.00.



16. The OCG has seen no evidence which refers to details of cheque payments for Mr. Orville Kerr for the period April 2014 to present⁴⁵. In point of fact, the last date on which payment has been evidenced by the OCG for Mr. Orville Kerr is March 4, 2014.

⁴⁵ As at the date of the OCG's enquiry.



REFERRALS

The OCG, in the conduct of its Investigation, is guided by Section 21 of the Contractor General Act. Section 21 provides as follows:

“If a Contractor-General finds, during the course of his investigations or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence on the part of an officer or member of a public body, he shall refer the matter to the person or persons competent to take such disciplinary or other proceeding as may be appropriate against that officer or member and in all such cases shall lay a special report before Parliament.”⁴⁶ (OCG Emphasis)

1. In keeping with the findings and conclusions cited herein, the Contractor General refers Messrs. Robert Thomas and Chescot Brownie, Directors, Seal Investments Co. Ltd., to the Commissioner of Police and refers a copy of its Special Report of Investigation for further investigation and a determination to be made as to whether the company, misrepresented information to the NCC in its 2015 application for re-registration.

This Referral is being made on the basis of the submission of erroneous information by Seal Investments Co. Ltd. for its 2015 NCC Application for re-registration.

2. The Contractor General refers Messrs. Robert Thomas and Chescot Brownie to the Director of Public Prosecutions for a determination to be made as to whether they willfully made a false statement to the Contractor General as it regards the employment

⁴⁶ The Contractor General Act, Section 21.



status of Mr. Orville Kerr, and as such have breached Section 29 of the Contractor General Act.

The OCG is referring a copy of its Special Report of Investigation to Director of Public Prosecutions, having particular regard to the stated offence.

3. The Contractor General also refers Mr. Chescot Brownie, Director, Seal Investments Co. Ltd., to the Commissioner of Police for further investigation, on the grounds that the Affidavit under the Voluntary Declarations Act, was signed by him. The Affidavit attested to the truthfulness and correctness of the information provided within the subject 2015 application for re-registration with the NCC. In furtherance of the Findings and Conclusions herein, it has been revealed that information submitted by Seal Investments Co. Ltd. in its 2015 NCC application for re-registration was considered to be erroneous.
4. In furtherance of the Findings and Conclusions, the OCG refers same to the NCC for consideration, as it regards effecting Clause 15 of the **“NATIONAL CONTRACTS COMMISSION REGISTRATION OF WORKS CONTRACTORS GRADES 1-4 GENERAL INFORMATION”**, and consequent upon same, consider our recommendation to delay its due consideration of the application for re-registration of the entity, Seal Investments Co. Ltd., for such time as the matters which are contained in this said Report as referred to the Commissioner of Police and the Director of Public Prosecutions have been determined.

This Referral is being made on the basis of the submission of erroneous information by Seal Investments Co. Ltd. for its 2015 application for re-registration with the NCC.



RECOMMENDATIONS

Section 20 (1) of the Contractor-General Act mandates that “after conducting an investigation under this Act, a Contractor-General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefor of the result of that investigation and make such recommendations as he considers necessary in respect of the matter which was investigated.” (OCG’s Emphasis)

1. The OCG hereby recommends that Contractors seeking to register with the NCC must carry out the necessary due diligence to verify information and ensure the authentication of documentation that support their applications for the NCC’s consideration and registration. The OCG considers this recommendation to be absolutely important as there is no latitude for Contractors who provide false information or misrepresent information on their Application Forms.

Further, the OCG wishes to remind contractors of Section 1.3.2 , Volume 2 of the Government of Jamaica Handbook of Public Sector Procurement Procedures, which provides information pertaining to following:

“DEBARMENT, SUSPENSION AND INELIGIBILITY

A contractor may be disqualified and/or stricken from the NCC Register of Public Sector Contractors without liability to GoJ, if it is found at any time, that the information submitted concerning his/her qualifications was deliberately falsified. Procuring Entities should, therefore, report any such findings to the NCC promptly, along with any evidence substantiating the falsification. Contractors may also be disqualified, suspended, or stricken from the




*NCC Register without liability to GoJ, for reasons
of poor performance.”*

2. The OCG recommends that provisions be inserted in the NCC Application Form to specify explicitly, the employment status of staff members **at the date of submission of applications** for registration with the NCC, namely, whether the named members of staff are full-time employees, part-time employees, independent contractors or are employed on a needs basis.
3. The OCG recommends that the NCC implements a telephonic recording system that will allow maximum quality control when its staff interacts with contractors and serves as a tangible record of the discourse and communication held between the NCC and contracting entities in respect of the verification process.
4. The OCG recommends that the NCC be more vigilant in the processing of documents for the registration of contractors such as the review of résumés or accreditation documentation.



APPENDICES

Appendix 1



NATIONAL CONTRACTS COMMISSION

REGISTER OF PUBLIC SECTOR WORKS CONTRACTORS

GRADES 1-4

APPLICATION FORM

Name of Company: *SEAL INVESTMENTS CO LTD* *The Seal Construction Co*


NATIONAL CONTRACTS COMMISSION
THE CONTRACTS SECRETARIAT
OFFICE OF THE CONTRACTOR-GENERAL
1ST FLOOR, PLOI BUILDING
16 OXFORD ROAD KINGSTON 5
Telephone: 929-8560/6666/4560
Fax: 929-7335/920-4104
Website: www.ncc.gov.lk

Type of Application: (please indicate)
☐ New
☒ Annual Registration

Upgrade
Additional Category (ies)

NCC Registration No. *SE 613/05-15/9-1*

PLEASE INDICATE METHOD OF RECEIVING CERTIFICATE OF REGISTRATION BY TICKING THE APPROPRIATE BOX: ☐ HOLD ☐ MAIL



*RECEIVED
N.C.C.
JUL 19 2015*



Application for Inclusion on the GOVERNMENT OF JAMAICA Register of Public Sector Works Contractors

Grades 1-4

(Application must be completed in black ink using block lettering or typed)

1. What is the Registered Name of the Firm?

SEA INVESTMENT CO LTD THSEALS CONSTRUCTION

What is the legal structure of the Firm? Sole Proprietorship | Partnership | Limited Liability Company |

| Copy of Certificate of Incorporation attached

What is the Registered Business Address of the Firm?

Street Address 5 Louisa Zoum Avenue Mombay

Parish ST James

Mailing Address

Address AS ABOVE

Does the Firm Have a Branch Office?

Address NA

Parish

Parish

Does the firm have? ☒ Warehouse ☒ Storage ☐ Workshop (please indicate)

Please State Other Methods of Contacting the Firm

Telephone No: 1) 952-9661 2) [REDACTED]

Fax No. [REDACTED]

Email [REDACTED]

Contact Persons (Manager/Principal etc.): 1) KENNETH LEVINGSOON 2) ROBERT THOMAS



2. How many years has the Firm been operating as a contractor? (Weighted 10% of Evaluation)

Under its present name? 14 years

What was the Date of Registration? Year/Month/Day 1994 / 09 / 02

Under any other name? yes Please state the other name: NA

3. Who are the Owners/Principals? 1) CHESCOI Browne ROBERT Thomas

3) _____ 4) _____

5) _____ 6) _____

4. Please State the Directors/Managers of the Firm:

1) Name CHESCOI Browne Position DIRECTOR

2) Name ROBERT Thomas Position DIRECTOR

3) Name KENNETH Liversidge Position CEO

4) Name _____ Position _____

5) Name _____ Position _____



5. Please indicate the Category and Grade for which registration is sought by inserting the requested grade (1, 2, 3, 4) in the space provided for each category.
(For further information on Grades and Categories see Appendix)

No.	Categories	Grade	No.	Categories	Grade
1	Blasting		18	Mechanical Works	
2	Bridge Construction		19	Medical Equipment	
3	Building Construction		20	Painting & Decorative Finishes	
4	Building Maintenance		21	Piling	
5	Civil Engineering		22	Pipe Laying	
6	Drilling		23	Road Maintenance Works	
7	Electrical Works		24	Road Surfacing - Asphaltic Concrete Works	
8	Elevator, Escalator & Moving Walkways		25	Road Surfacing - Double Surface Dressing Works	
9	Fencing		26	Road Surfacing - Micro Surfacing Works	
10	General Road Works		27	Roofing	
11	Heating, Ventilation, Air Conditioning & Refrigeration		28	Sandblasting	
12	Industrial Maintenance		29	Security Systems	
13	Information Technology Systems		30	Signage	
14	Instrumentation		31	Steel Erection	
15	Interior Construction Works		32	Steel Fabrication	
16	Landscaping		33	System Building	
17	Marine Engineering		34	Tank Erection	

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6. Please list the major items of relevant plant and equipment available to the Firm: (This page may be copied as required)
 If listed equipment as Owned is not supported by a Detailed Fixed Asset Schedule of the Audited Financial Statements, it will not be considered.

No	Item	Age	Owned	Lensed/Rented	Condition (e/g/F/p)
1	HULL TREES BUILDING SYSTEMS	2			
2	INTER LOCKING ZISA 4300				
3	EXPANDABLE SYSTEM				
4					
5	ASPHALT PRODUCTION PLANT	11			
6	ASPHALT DRUM / FEED BIN A/C TANK				
7	FUEL TANK; Silo TRUCK				
8	DRUM CONVEYOR 30K A/C TANK				
9	TRUCK TANK ETRUCK 79 PORTABLE 30'				
10	180 TON PER HOUR NEPA TANK				
11					
12	KAMATSYA PC 300CC EUCR 8 HAMMER 49/2				
13	AT BUCK HOE 4305				
14					
15	SEE ADDITIONAL EQUIP ATTACHED				



No	Item	Age	Owned	Leased/Rented	Condition (e/g/f/p)
1	ELECTRIC GENERATOR WORKING RUNNT		✓		
2	DUMPING TRUCK		✓		
3	TOYOTA FORK LIFT		✓		
4	CATERPILLAR EXCAVATOR 330L		✓		
5	330L		✓		
6	FORM FOR 2 BATHS, HOUSE		✓		
7	" 1 BATH, HOUSE		✓		
8	C&E OFFICE TRAILER, 14' X 20'	7yrs	✓		
9	TOAD 550 MECHANIC TRUCK	2yrs	✓		
10	CEDAR AMPHIB CAR 4WD & ASPHALT PAVED	8yrs	✓		
11	STEERING 4750L DIESEL TRUCK	8yrs	✓		
12	ROAD 475000 FUEL TRUCK	19yrs	✓		
13	ETNABE MODEL K, CHIP SPRAYER	8yrs	✓		
14	WOLFGANG HITTING MACHINE 102000	9yrs	✓		
15	HAWKIN 1500 PAVING MACHINE	12yrs	✓		
16	ROUSEH CUBBER 5700 SUPER SCUBA P/A	9yrs	✓		
17					
18					



No	Item	Age	Owned	Lensed/Rented	Condition (e/g/ty)
1	BOHAG BUS 2000AD POWER	16 yrs	✓		
2	BOHAG BUS 120 RB - 3 POWER	18 yrs	✓		
3	BOHAG BUS 213BH - 3.5A POWER	11 yrs	✓		
4	VEBAMING POWER		✓		
5	STATIC POWER				
6	BYNA PAK AUREGALPOWER	11 yrs	✓		
7	TRUVE PAK	14 yrs	✓		
8	JOHN DEERE GRABER	8 yrs	✓		
9	CATERPILLAR GRABER 140 G		✓		
10	CATERPILLAR BSC		✓		
11	CATERPILLAR BSL		✓		
12	CATERPILLAR BACK HOE 408C		✓		
13	" " 416C		✓		
14	ICEB BACKHOE 3CX-14T SITE MASTER	3 yrs	✓		
15	ROAD TIED 2000 GAL WATER TRUCK	4 yrs	✓		
16	WATER TRUCK	24 yrs			
17	MACK COTTS DUMP TRUCK	9 yrs	✓		
18	" " TRUCK	11 yrs	✓		



No	Item	Age	Owned	Leased/Rented	Condition (ref/fo)
1	INTL DUMP TRUCK	17 yrs	✓		
2	"	18 yrs	✓		
3	"	22 yrs	✓		
4	"	24 yrs	✓		
5	VOLVO TRACTOR HEAD	15 yrs	✓		
6	34T DUMP BOX TRAILERS	-	✓		
7	CHEVROLET 2500 4x4 TRUCK	7 yrs	✓		
8	" 2500 4x4 TRUCK	7 yrs	✓		
9	" 2500 4x4 TRUCK	6 yrs	✓		
10	CATERPILLAR TRUCK	22 yrs	✓		
11	HYUNDAI TRUCK H300	3 yrs	✓		
12	40 FT. FLATBED	-	✓		
13	40 FT. CHERSIS	-	✓		
14	1 N2 BACKCAT		✓		
15	CATERPILLAR, LOADER 940F		✓		
16	" 930F		✓		
17	CONCRETE PAVING PLANT		✓		
18	INTEGRAL PUMP AIR COMPRESSOR		✓		



6. Please list the major items of relevant plant and equipment available to the Firm: (This page may be copied as required)
If listed equipment as Owned is not supported by a Detailed Fixed Asset Schedule of the Audited Financial Statements, it will not be considered.

No	Item	Age	Owned	Leased/Rented	Condition (e/g/f/p)
1	DRY CONCRETE BATCHING PLANT	3 yrs			
2	PRODUCTION RATE OF 100 CYD				
3	PER HOUR				
4	6 MIXER	12 yrs			
5	2 CONCRETE MIXER				
6	2 PUMP TRUCK	11 yrs			
7					
8	540 PIECES OF CHINESE PIPE				
9	SCAFFOLDING				
10	400+ PILES				
11					
12	HYUNDAI TRUCK	4 yrs			
13	ISUZU TRUCK	10 yrs			
14					
15					



7. Financial Information (Weighted 30% of Evaluation)

7.1 Please State the Total Annual Volume of Construction work performed in the past five (5) years

Year	Total Annual Volume
2014	317 M
2013	391 M
2012	313 M
2011	442 M
2010	434 M

7.2 Please Provide Audited Financial Reports for the Last Three (3) Years: Balance Sheets, Profit and Loss Statements, Cash

Flow, Accountant's/Auditor's Reports etc. Please List below and Attach:

7.2.1 For Re-Registration, please provide the Last Year's Financial Statement Only:

7.2.2 For Newly Incorporated Companies, please refer to page 12 of the Supplementary Registration Requirements for New Applicants.

Year	Items
2014	Final Financial Statement
2013	Final Financial Statement
2012	Final Financial Statement



7.3 Financial Institution Reference

Please state the name(s) of your bank(s) and other financial institutions who provide financial services and who may be contacted to provide references.

- a) Name of Institution: [REDACTED]
b) Address: [REDACTED] Telephone# [REDACTED]
c) Contact Person: [REDACTED] Position: *Branch Manager*
- a) Name of Institution: [REDACTED]
b) Address: [REDACTED] Telephone# [REDACTED]
c) Contact Person: [REDACTED] Position: [REDACTED]
- a) Name of Institution: [REDACTED]
b) Address: [REDACTED] Telephone# [REDACTED]
c) Contact Person: [REDACTED] Position: [REDACTED]



STAFFING (Weighted 30% of Evaluation) (This page may be copied as required to provide information for additional staff members.)

8.3 Supervisory (10% of evaluation)

Supervisory Staff includes:

- Individuals with appropriate experience in the construction industry with responsibility for on-site day-to-day activities.
- At the time of Application, individuals who have a formal working relationship with the Contractor and/or Company in a capacity such as Consultants, Full-time or Part-time staff. Individuals may also be professionally and technically trained.

Name of Individual: W. R. VELLE KEER Years with Firm: 12

Number of years in construction industry: _____

Educational Level Achieved (eg: High / Tech Sch., Cert, Dip, Bsc, Ma, Msc)

Year Qualified

Accrediting Institution

Construction / 2009 / ACTIVET HONEST TRUST

Information regarding experience in each category of work for which registration is requested:

Category Applied for (Last name of category)	No. of Years Experience in this Category of Work	Position Held	Project Description
Bld. Const	20 ⁺ yr	Supervisor	
Civil Eng	20 ⁺ yr	"	
PCB Layout	20 ⁺ yr	"	
Elect Works	20 ⁺ yr	"	



RELATIONSHIPS

9. Please state the following Relationships with other Organizations:

A. If the Principal(s) and/or Director(s) of the Company are Principals and/or Directors and or Employees (including Public Sector Employees) of other organizations which also provide goods, works, or services to the construction industry (except those stated above) please state:

(a) Name of Individual	(b) Name of Organization	(c) Position Held
N/A		

B. If the Firm is a division/subsidiary of another company, please state the name of the parent company:

N/A

C. If the Firm is otherwise associated with or attached to other organizations (Parent, Subsidiary, Associate, Joint-Venture, etc.) which provide goods, works, or services to the construction industry, please state the organizations' names and nature of association:

Name of Organization	Nature of Association
N/A	



AFFIDAVIT UNDER THE VOLUNTARY DECLARATIONS ACT

IN THE MATTER of Part IIIA
of the Contractor-General Act.

AND IN THE MATTER of the
National Contracts Commission

I, CITESCOT BROWNIE, being duly sworn, make oath and say
(Name(s) of owner or director)
as follows:

1. That I am [redacted] years of age and I reside and have my true place of abode at [redacted]
[redacted] of [redacted]
(Postal address of person(s) above)

and I am DIRECTOR and I am duly
(Description and relationship to contractor-owner or director)

authorised to make this affidavit on behalf of SEAL INVESTMENT G. LTD.
(Name of Contractor / firm)

2. That the facts set forth in the National Contracts Commission Application for Inclusion on the Register of Contractors for the Government of Jamaica are based on my/~~our~~ personal knowledge or information obtained from the files of

SEAL INVESTMENT G. LTD.
(Name of Contractor / firm)

to which I/we

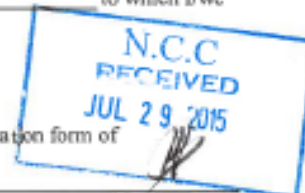
have full access.

3. That I/we declare that I/we have carefully read the foregoing application form of

SEAL INVESTMENT G. LTD.
(Name of Contractor / firm)

and that to the best of my/our information, knowledge, and belief, the information provided in the said form is true and correct.

4. I understand that the information provided, if found to be erroneous, then the firm may not be registered and if already registered, the registration may be revoked.





AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Voluntary Declarations Act.

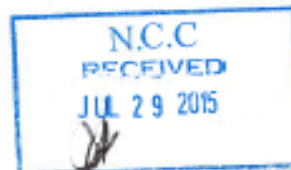
Sworn to at 214 Strand Tower
This 27 Day of July 2015
Before me:-

E. Thompson
Everald G. Thompson
Justice of the Peace

No. B00516
Justice of the Peace for the Parish of:

[Signature]
Signature of owner or director

July 29 2015
(Date)





Declaration Form

REGISTRAR OF PUBLIC SECTOR WORKS CONTRACTORS GRADES 1- 4

This form may be duplicated as needed and must be completed by each Director and Owner

Instructions (Please read carefully):

1. This form may be duplicated as needed and **MUST** be completed by **EACH** Director /Owner (N.B. One sheet per Director).
2. For Incorporated Companies: A **current** "Form 23" certified by the Companies Office of Jamaica Must accompany this document.
3. The "Form 23" must not be dated more than two months prior to the date of submission of application to the NCC.

Section 1 CHECOT LEONIE Director ☒ Owner ☐
(Name of Director/Owner)
of SEAL INVESTMENT CO LTD TA SEAL CONSTRUCTION CO solemnly declare that:
(Name of Company)

Section 2

- a) I am currently employed to a Government entity Yes ☐ No ☒
- b) I am currently a Director on the board, or a member of a board committee of a Government entity Yes ☐ No ☒

N.B. If your answer to either Question a) or b) in Section 2 is yes, please complete Section 3

Section 3

- a) I have received written permission from the Office of the Services Commission/Permanent Secretary to operate this establishment for which registration with the NCC is being sought and the said permission letter explicitly indicates that there exists no conflict of interest ☐

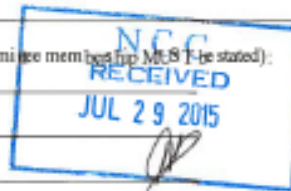
i. Permission letter attached: ☐ (failure to attach this letter will result in the non-acceptance of your application)

ii. Name of Government Agency: _____

iii. Date of Employment: _____

iv. Position (s) held within Agency during the last five years (All committee membership MUST be stated):

1. _____
2. _____
3. _____



Section 4

Are you affiliated with any other company previously or currently registered with the National Contracts Commission?

Yes ☐ No ☒ If yes, please state name of company (ies) and nature of affiliation: _____

Signature: [Signature] Director/Owner
Date: July 29 2015

Signature: [Signature] Justice of the Peace
Date: 29-7-2015

Please note that the signing of this Form MUST be witnessed in the presence of the Justice of the Peace



Declaration Form

REGISTRAR OF PUBLIC SECTOR WORKS CONTRACTORS GRADES 1-4

This form may be duplicated as needed and must be completed by each Director and Owner

Instructions (Please read carefully):

1. This form may be duplicated as needed and **MUST** be completed by **EACH** Director /Owner (N.B. One sheet per Director).
2. For Incorporated Companies: A **current** "Form 23" certified by the Companies Office of Jamaica Must accompany this document.
3. The "Form 23" must not be dated more than two months prior to the date of submission of application to the NCC.

Section 1

I, ROBERT THOMAS Director ☒ Owner ☐
(Name of Director/Owner)
of REAL INVESTMENT CO. LTD. T/A SEAL CONSTRUCTION Co.
(Name of Company), solemnly declare that:

Section 2

- a) I am currently employed to a Government entity Yes ☐ No ☒
- b) I am currently a Director on the board, or a member of a board committee of a Government entity Yes ☐ No ☒

N.B. If your answer to either Question a) or b) in Section 2 is yes, please complete Section 3

Section 3

- a) I have received written permission from the Office of the Services Commission/Permanent Secretary to operate this establishment for which registration with the NCC is being sought and the said permission letter explicitly indicates that there exists no conflict of interest ☐

i. Permission letter attached: ☐ (failure to attach this letter will result in the non-acceptance of your application)

ii. Name of Government Agency: _____

iii. Date of Employment: _____

iv. Position (s) held within Agency during the last five years (All committee membership MUST be stated):

1. _____
2. _____
3. _____

Section 4

Are you affiliated with any other company previously or currently registered with the National Contracts Commission?

Yes ☐ No ☒ If yes, please state name of company (ies) and nature of affiliation: _____

Signature: [Signature]
Director/Owner

Date: 29-07-2015

Signature: [Signature]
Justice of Peace

Date: 29-7-2015

Please note that the signing of this Form MUST be witnessed in the presence of the Justice of the Peace

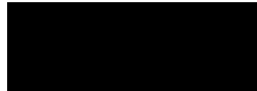


Appendix 2

RESUME

2012

Name: Farrel Drummond



Date of Birth: [REDACTED]

Education: Qualified by Experience. Attended technical school; No formal Tertiary Education;

Summary of Experience:

Over fifty (50) years of experience in building and infrastructure works. Started in construction industry working various trades such as Mason; Carpenter; Plumber at various levels. Currently employed as a foreman/supervisor on road and infrastructure projects. Attained the level of supervisor for over forty (40) years.

Companies worked:

Ernest Aljoe construction Co. Ltd.; Mafoots, St. James 1950-1957

Woollery & Partners, Cottage Rd. Montego Bay 1965-1982

Assumed various projects on my own in between jobs.

Seal Construction Co. Ltd. 1994 to Present: Responsible for general supervision of construction projects reporting to Project Manager. Construction of projects from lining out to completion and hand over to owners. Lining out buildings; compliance with specifications; ensuring project is done in timely manner; Preparation of payroll; Checking general attendance of workers/tradesmen. Resolving on site disputes among workmen; Liaising with architect and/or engineer and owners. Checking plans to ensure compliance with building codes and standards.

Projects worked on: Intact Villa-Contract Sum \$1.8M. (1995). Private residence-Consisting of three floors; Reinforced concrete foundations; Reinforced concrete columns and beams; Reinforced concrete blocks; Reinforced concrete roof slab and asphalt shingles; Electrical; Plumbing; Air conditioning; Paved driveway and stormwater drains.

Sterling Manor Town Houses-Contract Sum \$140M (1996) Construction of Reinforced concrete framed buildings; Reinforced Conc. Foundations; Block walls; Clay tile roof; Electrical; Plumbing; Sewerage to include bio digester and tile field. Paved parking; stormwater drains etc.

