



## INTEGRITY COMMISSION

OFFICE OF THE EXECUTIVE DIRECTOR

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February 16, 2023

The Hon. Marisa Dalrymple-Philibert, CD, MP  
Speaker of the House of Representatives  
Houses of Parliament  
Gordon House  
81 Duke Street  
Kingston

Senator the Hon. Tom Tavares-Finson, OJ, CD, KC, JP  
President of the Senate  
Houses of Parliament  
Gordon House  
81 Duke Street  
Kingston

Dear Honourable Speaker and Honourable President:

**Re: Ruling of the Integrity Commission's Director of Corruption Prosecution Regarding the Special Report of Investigation Conducted into Circumstances Surrounding the Award of Government of Jamaica Contracts to Westcon Construction Limited during the Period 2006 to 2009.**

I have the good honour and privilege to write to you in relation to the above-captioned matter and further to our letter to you, dated Monday, January 12, 2023, under the cover of which the captioned Investigation Report was conveyed to you, at the direction of the Commission, for tabling in the Houses of Parliament. The Report was subsequently tabled in the House of Representatives on Tuesday, February 14, 2023.

Following the Commission's review of the Ruling that was made by the Commission's Director of Corruption Prosecution, Mrs. Keisha Prince-Kameka, dated January 12, 2023, regarding the matters in the Investigation Report that were referred to her for her consideration, the Commission, through its Chairman, the Hon. Mr. Justice (Ret'd) Seymour Panton, directed yesterday, Wednesday, February 15, 2023, that the Ruling should now be submitted to you for tabling in the Houses of Parliament.

In keeping with the directive of the Chairman of the Commission, I now, hereby, do so.

Please be advised that the Ruling will also be published by the Commission.

To facilitate the previously expressed desire of the former Speaker of the House to ensure the speedy and cost-effective publication of Integrity Commission Reports, I have enclosed, herewith (to the Clerk to the Houses), a USB Flash Drive containing a full PDF electronic copy of the attached Ruling. Please feel free to use same, in the discharge of your functions, as you may deem fit.

I avail myself of this opportunity to renew to you the assurance of my highest considerations.

Very respectfully yours,



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Greg Christie  
Executive Director  
**For and on behalf of the Integrity Commission**

*Enclosures*

Copy: Ms. Valrie Curtis, CD, BH (M), JP, Clerk to the Houses of Parliament  
The Hon. Mr. Justice (Ret'd) Seymour Panton, OJ, CD, Chairman, Integrity Commission  
Mr. Kevon Stephenson, JP, Director of Investigation, Integrity Commission  
Mrs. Keisha Prince-Kameka, Director of Corruption Prosecution, Integrity Commission



**INTEGRITY COMMISSION**  
CORRUPTION PROSECUTION DIVISION  
1<sup>ST</sup> FLOOR PIOJ BUILDING  
16 OXFORD RD, KINGSTON 5

**Re: Special Report of Investigation conducted into the Circumstances Surrounding the Award of Government of Jamaica Contracts to Westcon Construction Limited during the period 2006 to 2009.**

**BACKGROUND**

1. The allegations concern the award of contracts to Weston Construction Limited and the relationship/connection between the directors/shareholders of that entity and the Prime Minister of Jamaica, the Hon. Andrew Holness.

**ISSUES FOR DETERMINATION BY THE CPD**

2. At the close of the investigation, the file was forwarded to the Director of Corruption Prosecution (DCP) for consideration of the following recommendations:
  - a) **Recommendation 1:** Possible breach of **section 29** of the then applicable *Contractor General Act* in respect of the failure of the Ministry of Education, Youth and Information (MOEYI/Ministry of Education) to report to the then Office of the Contractor General (OCG), contracts which were awarded to Westcon Construction Limited;
  - b) Possible breach of **section 29** of the then applicable *Contractor General Act* in respect of the failure of the National Works Agency (NWA) to report to the then Office of the Contractor General (OCG), contracts which were awarded to Westcon Construction Limited;
  - c) Possible breach of **section 29** of the then applicable *Contractor General Act* in respect of the representations which were made by the Social Development Commission (SDC) in its Quarterly Contract

Awards (QCA) Reports, concerning the procurement methodology which was utilized in the award of contracts to Westcon Construction Limited;

- d) Possible breaches of then applicable 2012 Government of Jamaica Handbook of Public Sector Procurement Procedures, section 36 of the *Contractor General Act*, the Public Sector Procurement Regulations 2008, and the *Corruption (Prevention) Act*; and
- e) The common law offence of Misconduct in Public Office in relation to the alleged conflict of interest which arose in relation to the recommendation which was made by the Hon. Mr. Andrew Holness to a company in which at least one of the Directors is a personal friend for over twenty (20) years, as well as a business partner.

## DISCUSSION

- 3.1 In relation to **Recommendations 1 and 2**, there exists prima facie evidence that the offences identified in breach of **section 29** of the *Contractor General Act*, with respect to failure to report the award of contracts to the Contractor General in the Quarterly Contract Awards Reports of the MOEYI and the NWA, were committed.
- 3.2 It is alleged that the MOEYI failed to report to the then OCG, a number of contracts which were awarded during the relevant period. The noted dates for the contracts are as follows: September 8, 2009; July 9, 2008 and two (2) contracts dated December 11, 2007.
- 3.3 Likewise, it is further alleged that the NWA failed to report to the then OCG, contracts awarded during the period November 1, 2006 to July 16, 2009.
- 3.4 It was an offence under **section 29** of the then applicable *Contractor General Act*, for a person to fail to comply with a lawful requirement of the Contractor General without lawful justification or excuse. The relevant section states:

*“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 function under this Act; or*

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

*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.”*

3.5 The offence requires proof of the following:

- a) That there was a lawful requirement made by the Contractor General
- b) That the requirement was not complied with; and
- c) That there was no lawful justification or excuse for failing to comply with the requirement.

3.6 There is now on file a statement, dated the 9<sup>th</sup> of November 2021, from Mrs. Kimaya Golding-Randall, an officer employed to the Integrity Commission, and who was employed to the Office of the Contractor General (OCG) since 2008. She is currently the Interim Manager of the Quarterly Contract Awards (QCA) Portfolio. Whilst she cannot speak to the administration of the QCA system, she speaks to searching the database and also examining hard copies of the relevant quarterly returns. She is able to say that for the period in question quarterly returns were made by both the Ministry of Education, Youth & Information (MOEYI), and The National Works Agency (NWA). Mrs. Golding-Randall details that for the noted periods, four (4) contracts were not reported by the MOEYI, and twenty-six (26)

contracts unreported by the NWA to the OGC, neither electronically nor in hard copy submissions, having been omitted from the relevant QCA Reports. Copies of the QCA Reports are attached to her statement with the name, title and signature of the Certifying, Principal or Accounting Officer, beside which is a signature imputed to be that of the officer identified.

- 3.7 Mrs. Golding-Randall also furnished copies of the requisitions from the then Contractor General dated July 11, 2006 and November 20, 2008 addressed to “All Cabinet Secretary, Financial Secretaries, Permanent Secretaries and Accounting or Principals Officers of Public Bodies” requiring the filing of QCAs and the attendant consequences on failure to do so.
- 3.8 In the absence of any evidence regarding service of the requisition letters themselves at the noted entities, and in the absence of any witness accounts to establish what specific procedures existed in relation to the preparation of and ultimate submission of the QCA Reports, the prosecution would be relying on an inference being drawn from the signatures on the submitted QCA reports, to establish that the requisitions had been duly received, and that there was knowledge of the lawful requirement of the Contractor General, by the signee to that document. This would be further supported by the position of the noted individual as Certifying, Principal or Accounting Officer.
- 3.9 For the period 2009, one (1) QCA Report was received from the Ministry of Education, with the Certifying Principal or Accounting Officer identified to be Mrs. Audrey Sewell, Permanent Secretary, with an accompanying signature. For the period 2008, two (2) QCA Reports were received from the Ministry of Education, with the Certifying, Principal or Accounting Officer identified to be Mrs. Audrey Sewell, Permanent Secretary, in one report, and Ms. Barbara Allen, Acting Permanent Secretary, in the other. Both reports are purported to be signed by the relevant officer.
- 3.10 For the period 2007, four (4) signed QCA Reports were received from the Ministry of Education, with the Certifying, Principal or Accounting Officer identified to be Mrs. Maria Jones, Permanent Secretary, however, one (1) of the Reports with reporting date July 20, 2007 bears a signature of an unidentified individual who is noted to have signed on behalf of Mrs. Maria Jones. This period relates to the two (2) contracts dated December 11, 2007, which fall after the reporting dates of all four

(4) QCA Reports for that year, with the last reporting date noted to be October 29, 2007. The subsequent report immediately following this period is noted to cover April to June of 2008. There exists therefore no document provided for the period relevant to the two (2) contracts of December 2007. This is critical to not only identifying the relevant officer, but to also offer concrete evidential support to ascribing responsibility for that period to the signee to that document, given the nature of the available evidence, to satisfy the elements of the offence being contemplated, as previously outlined.

- 3.11 For the National Works Agency during the period November 1, 2006 to July 16, 2009, six (6) QCA Reports were submitted with the Certifying, Principal or Accounting Officer identified to be Mr. Milton Hodelin, Chief Executive Officer, in five (5) of the reports, and Mr. Patrick Wong, Chief Executive Officer, in the one remaining report with reporting date of July 17, 2009. All reports are purportedly signed by the noted officers.
- 3.12 Based on the evidence provided, Mrs. Audrey Sewell, Ms. Barbara Allen, Mr. Patrick Wong and Mr. Milton Hodelin, are deemed to be in breach of **section 29** of the *Contractor General Act*. It is important to consider, however, that these breaches concern the discharge of administrative functions by these officers some thirteen (13) to sixteen (16) years ago. Due to the lapse of time, the issue of delay regarding the commencement of proceedings in these matters arises as an important consideration.
- 3.13 Although there is no limitation period for prosecution of offences under the Act, a likely challenge to these proceedings is one of a lack of fairness to the accused, on the basis of the constitutional right to a fair trial within a reasonable time, in accordance with the **Constitution of Jamaica**. The issue was considered in the case of *Heron v DPP [2000] 61 WIR 319*, and the possibility that the delay may cause prejudice to the accused, and therefore impact his right to a fair trial. While it is noted that mere delay does not by itself give rise to proceedings being stayed or dismissed, as noted in the case of *Brants v DPP [2011] EWHC 754 (Admin) [47]* “there is public interest in prosecuting offences which transcends any consideration of punishing the prosecution for delay. If delay by the prosecution does not cause prejudice to the defence, then normally it would not be appropriate to stay

proceedings for the abuse of process.” The more important aspect of any such consideration, therefore, relates to unfairness to the accused.

- 3.14 In the present case, the officers identified would be asked to account for failings relating to administrative functions being undertaken thirteen to sixteen years ago. Critical records and similar documentation that may be necessary to assist in the conduct of their defence are likely to be inaccessible or otherwise unavailable due to the delay. While it is not being suggested that delay, without more, should ultimately result in a decision not to prosecute, a balance must be drawn between the accused’s right to a fair trial having regard to the delay, and any prosecution to be undertaken having regard to the public interest. On a careful consideration of all the circumstances of the material provided, the prosecution would be hard-pressed to resist a challenge on the basis of abuse of process as a result of undue delay.
- 3.15 **Recommendation 3** concerns Dr. Dwayne Vernon, Executive Director of the Social Development Commission (SDC), who is alleged to have willfully made a false statement to mislead the Contractor General and, therefore, in breach of **section 29** of the *Contractor General Act*. Dr. Vernon is noted to have indicated in a written response, dated July 11, 2016, to a requisition from then Chief Investigator, Ms. Sashein Wright, that “there is no evidence of SDC utilizing formal tender procedures for the procurement for the works and services executed by Westcon Construction Limited...”.
- 3.16 This assertion is, however, contrasted with a QCA Report submitted for the SDC which has now been made available, under the hand of Dwayne Vernon, Executive Director, with reporting date October 15, 2009, six years prior, where in a table of the Report the procurement method for one of the contracts in issue was noted as “LT”, indicating Limited Tender, suggesting that Dr. Vernon made a false statement to the then Contractor General. Of note, however, is a subsequent indication by Dr. Vernon in the same response to Chief Investigator Wright, that “There is no evidence available to the SDC detailing how Westcon Construction was selected to provide services as the SDC did not procure such services. This was done at the level of the Constituency”. The actual position with regard to the statements has not been verified. At best, what has been identified are two statements which *may* be deemed conflicting, though the context of each and when they were made, does not automatically give rise to the inference that this is so. Additionally, to satisfy the



elements of an offence under the noted section, it must be demonstrated that a false statement was **willfully made with the intention to mislead, did mislead, or attempted to mislead the Contractor General**. Nothing beyond what has previously been mentioned has been made available to offer tangible support to these allegations beyond the suggested inference, which is neither inescapable or in any way conclusive of that intent. Accordingly, no prosecution can be pursued with regard to this aspect of the investigation.

3.17 **Recommendation 4** relates to allegations that Mr. Andrew Holness breached **section 36** of the **Public Sector Procurement Regulations 2008** by failing to declare a conflict of interest in relation to two (2) procurement procedures.

3.18 While a recommendation was made in respect of breaches of the **2012 Government of Jamaica Handbook of Public Sector Procurement Procedures**, (which contains general guidance in relation to ethical principles governing the procurement process), this document is merely an administrative guide and does not have the force of legislation; it is therefore incapable of creating criminal offences.

3.19 **Section 36** of the *Public Sector Procurement Regulations 2008* states:

*(1) It shall be the duty of any public officer directly or indirectly involved with the procurement process and particularly in the preparation of bidding documents, evaluation, contact negotiations and contact management and payments to-*

*(a) Declare to the head of the entity or chairman of the entity's procurement committee any potential conflict of interest in relation to a proposed Government Contract*

*(b) Declare to the head or chairman, any relationship with a bidder, supplier, contractor or consultant and refrain from taking part in either the decision making process of the implementation of any government contract where such a relationship exists.*

Section 40 of the *Public Sector Procurement Regulations 2008* states:

“a person who-

- (a) **Contravenes these Regulations; or**
- (b) **Aids, abets or otherwise knowingly facilitates or is an accessory to the contravention of these Regulations, commit an offence and is liable, on summary conviction in a Resident Magistrate’s Court, to finenot exceeding one thousand dollars or imprisonment for a term not exceeding three months or both such fine and imprisonment.”**

Any breach of the **2008 Regulations** constitutes an offence based on section 40 of the *Public Sector Procurement Regulations 2008*. The current investigation report alleges a breach of **Section 36** of the Regulations, in that:

- a) the Most Honourable Andrew Holness, being a public servant,
- b) was involved (whether directly or indirectly) with the procurement process, in that he issued instructions authorizing the payments of sums to a contractor,
- c) which he had business relations with,
- d) and failed to disclose this conflict of interest to the head of the entity.

3.20 If the above statement is proven to be correct then it is capable of amounting to a breach of **Section 36** of the **Public Sector Procurement Regulations 2008** and therefore an offence under the Regulations. It is therefore necessary to examiningthe evidence provided in support of these allegations.

3.21 The allegations concern two contracts which were awarded by the Social Development Commission (SDC) to Westcon Construction Limited for the period December 20, 2007 and September 10, 2009. During the relevant periods Mr. Holness was the Prime Minister of Jamaica, Member of Parliament for WestCentral St. Andrew, and the Minister of Education. Mr. Holness, therefore, was a public servant for these purposes.

3.22 It is further alleged that Mr. Holness was involved in the procurement process. In support, Dr. Dwayne Vernon, Executive Director, SDC, is noted to have indicated in his response to the requisition from the Contractor General that: "... *Westcon Construction was introduced to the SDC by way of letter from the MP*" and that "... *there is no evidence available to the SDC detailing how Westcon Construction was selected to provide services as the SDC did not procure such services. This was done at the level of the Constituency*".

3.23 There are also two (2) letters from Mr. Holness addressed to Mr. Daniel Wilson – Acting Executive Director of the SDC in which he:

a) by letter dated December 20, 2017 (signed by Andrew M. Holness MP West Central St. Andrew)- indicated that Westcon Construction Ltd. is to be paid for works completed in the "Christmas Work Programme 2007" in three divisions within West Central St. Andrew and therefore the payment instructions contained in the letter should supersede those previously issued; and

b) by letter dated September 23, 2009 (signed by Andrew Holness, Minister of Education and Member of Parliament for West Central St. Andrew)- indicated that effective June 1, 2008 Robert Garvin is employed as the Project Manager under the Constituency Development Fund in West Central St. Andrew

3.24 A Judges' Rules Interview was, subsequently conducted with Prime Minister Holness on September 26, 2022 in which he offered greater clarification to the circumstances of these correspondences. He notes:

*As Minister of Education, I have never directed any public entity, to award a contract to any company, inclusive of Westcon Construction Limited. I have, however, made recommendation, as Member of Parliament (MP) to Ministries, Departments and Agencies (MDA) for contractors to be considered in the appropriate procurement process, which was customary. As it relates to Westcon, and my role as Ministry [sic] of Education, I have not recommended Westcon for any contract with the Ministry of Education. It should be noted for completeness, that Westcon Construction Limited was existing contractor for the Ministry of Education before my appointment as Minister of Education. It should be noted that Westcon contracts, inclusive of those before my term as Minister of Education, would be outside my constituency and that the practice of MPs to*

*recommend contractors would be limited to their constituencies. I therefore would have no basis to recommend any contractors. Ministers are not allowed to recommend contractors generally. So any recommendations I make are for contractors for works within my constituency as MP.*

3.25 When shown his letter dated December 20, 2007, Prime Minister Holness noted:

*This is a letter coming from me, in my capacity of MP, requesting payment . . . , which was in keeping with principle of any potential recommendation;  
and further*

*My recollection as to the circumstances of this letter, is due to the fact that I would have submitted to the SDC a list of projects and beneficiaries of supervisors to do bushing works. I recall getting a telephone call to state that the SDC was running late with payments as they did not have the time to prepare all the cheques for the supervisors, for work which was already completed. The SDC requested that I submit the name of one person/entity who was NCC registered to receive payment. At the time, to my recollection, the only person/entity who I could trust to receive payment and subsequently pay the supervisors in time for Christmas, who was NCC registered, and had an up to date TCC, was the entity Westcon Construction Limited. I did not recommend a contractor to receive a contract for works, as the works would have already been completed for payments to be generated. The SDC explained that given the volume of cheques to be produced if they were to make payments to the supervisors as previously recommended, they would not have been able to produce the volume of cheques in time. Note that this letter was sent December 20, a day before the close of business for the year. Westcon was not the contractor for works, but work would have been done by the individuals previously recommended. It is important to note that there was a worksheet submitted with the individual jobs and personnel to complete the work Division by Division. My letter asked, having regard to the circumstances of the urgency of time, that Westcon be substituted for the supervisors.*

3.26 In response to a question posed regarding the medium of the call for the provision of the entity to the SDC, Mr. Holness noted:

*My distinct recollection is that this conversation with the SDC was by telephone. I remember because of the panic they caused when they called me on the 20<sup>th</sup> of December stating that payments cannot be made. Payments would have to be made by the 22<sup>nd</sup> of December, to the supervisors and workers, which would be the last working day before*

*Christmas. The non-payment would have created a great disappointment for persons who would not have been paid before Christmas.*

3.27 When asked if he recalled the individual to whom he spoke from the SDC he provided *"I am not quite sure, whoever that officer was at the time"*.

3.28 There is no material on file with regard to checks being made for this officer, and the only relevant account from the SDC comes from the statement of Dwayne Vernon, dated February 15, 2022, regarding his position as Executive Director for the noted period, and provides support to the assertions made by Prime Minister Holness, in which he states:

*There were absolutely no disclosures made to me by Mr. Andrew Holness, then Member of Parliament, in relation to contracts awarded to Westcon Limited. When I researched the files, based on questions asked by the Office of the Contractor General, I saw a letter on file coming from Mr. Holness who was MP at the time, introducing the company Weston Limited that would have been taking the contract, which was standard practice. In 2009, when I was the acting Executive Director, I am not aware of any Procurement Committee at the time in relation to the Constituency Development Fund (CDF) contractual arrangements, as the procurement standards/guidelines would have been different. There was an internal procurement unit responsible for our internal procurement matters, not relating to CDF arrangements... At the time, for me, the project would have been underway and there would have been no need for any disclosures.*

3.29 Mr. Holness, himself asserted in the interview of September 26, 2022:

*The Constituency Development Fund replaced the Social Economic and Support Program (SESP) with a much broader mandate for constituency support and development. My recollection is that the CDF was provisioned in the budget for 2008 but was not immediately operationalized, meaning that they did not fully establish all the procedures, or an Operational unit to effect the CDF;*

and when asked about the specific need to disclose his relationship with Robert Garvin and/or Westcon Construction Limited, he provided this response:

*No. I do not think there needed to be any disclosure. It would have been known by the SDC office, that Mr. Garvin worked in my constituency as a project officer and organizer*

*and would have worked with the SDC on projects for my constituency. Outside of the context of the emergency request by the SDC or if they were not aware, I could see a conflict of interest concern. However, since it was the SDC who asked me to recommend someone, given the emergency situation which required urgent payment, and the fact that they would have already been aware that Mr. Garvin worked in my constituency, then a conflict would not arise. I was not trying to find someone to undermine the integrity of the payment system, rather I was trying to facilitate an emergency situation which occurred in December 2007, and as it relates to his employment to the CDF as a project officer, there would be no conflict of interest as the requirement would be to have a project officer in whom the MP would have confidence to administer of the affairs of the constituency.*

3.30 No material has been provided to contradict the accounts referenced and the only guidelines pertaining to the operations of the CDF is noted to be the **Revised Constituency Development Fund Operational Procedures dated March 27, 2019**. Investigations have not revealed any additional information confirming the applicable processes/procedure at the relevant time, in light of the disclosures made. Given the uncontradicted accounts now made available, the recommendation with regard to **Section 36** of the *Public Sector Procurement Regulations 2008* could no longer be substantiated as there is no evidence of the alleged interference with the procurement process as defined.

3.31 **Recommendation 5:** The case of *Attorney-General's Reference No 3 of 2003* details that a public officer commits the common law offence of misconduct in a public office if, acting as such, he willfully neglects to perform his duty and/or willfully misconducts himself, to such a degree as to amount to an abuse of the public's trust in the office holder, without reasonable excuse or justification. Therefore, in determining whether or not this offence has been committed one must establish that:

- a) the accused is a public officer;
- b) he had conferred on him by virtue of this position, whether by commonlaw or statute, the obligation to perform a particular duty;
- c) He willfully, not merely inadvertently neglected this duty; and
- d) Such neglect was injurious to the public interest meriting condemnation or punishment.

3.32 On the material provided the first and second elements of the offence are deemed to have been satisfied. With regard to the willful neglect of duties however, in light

of the additional material now available, more is required to establish this element of the offence bearing in mind the that “*not every failure to discharge a duty which devolved on a person as the holder of a public office gives rise to the common law offence of misconduct in that office*” Per Lord Widgery CJ in *R v Dytham* [1979]QB 722. In the absence of such evidence, no consideration of the gravity of neglect being injurious to the public interest arises. Accordingly, a prosecution favouring this offence on the evidence provided cannot be undertaken.

### OPINION

In light of the foregoing:

- In relation to **recommendations 1 and 2**, though evidence has been identified sufficient to mount charges for the noted offences, the prosecution would be hard-pressed to resist an abuse of process application with regard to undue delay.
- Re: **recommendation 3**, the evidence does not reveal a prima facie case with a realistic prospect of conviction in relation to the alleged offence, therefore no criminal charges are being recommended in respect of this offence.
- In relation to **recommendations 4 & 5**, with additional material being made available which investigations have failed to contradict or provide more evidence in support of the offences contemplated, no criminal charges can be laid.

### RULING

In light of the foregoing, no charges are to be brought in support of the allegations made.

### REDACTION

In the absence of a prosecution being undertaken, no redaction is deemed necessary to protect against prejudicing a prosecution pursuant to **Section 54(4)** of the *Integrity Commission Act*.



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Keisha Prince-Kameka (Mrs.)  
Director of Corruption Prosecution

January 12, 2023

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Date