



INTEGRITY COMMISSION

CORRUPTION PROSECUTION DIVISION
5TH FLOOR, SAGICOR SIGMA BUILDING
63-67 KNUTSFORD BOULEVARD, KINGSTON 5

Re: Investigation Report into the Statutory Declarations submitted by The Most Honourable Mr. Andrew Holness, Prime Minister, for the years 2019-2022, in respect of concerns that he owns assets disproportionate to his lawful earnings, and that he made false statements in his Statutory Declarations, by way of omissions, contrary to law.

Background

1. On July 19, 2024, the Corruption Prosecution Division (CPD) received a case file from the Director of Investigation (DI), for a determination to be made, as to whether the evidence collected met the *prima facie* standard for a viable prosecution to be mounted against the Most Honourable Mr. Andrew Holness, Prime Minister of Jamaica (hereinafter referred to as “the HPM”). It was alleged, *inter alia*, that the HPM committed the offence of **Making a False Statement in a Statutory Declaration**, contrary to **section 43(2)(a)** of the *Integrity Commission Act (ICA)*.
2. It should be noted that the considerations herein, are limited to the aforementioned offence and/or offences relating to ‘acts of corruption’ as may be disclosed on the material provided, in keeping with, the provisions of **section 34(1)(a)** of the *ICA*, which reads:

The Director of Corruption Prosecution shall-

- (a) *subject to the powers conferred on the Director of Public Prosecutions by section 94 of the Constitution of Jamaica, institute, undertake and have the conduct of prosecutions in respect of acts of corruption and offences committed under this Act.*

Acts of corruption has been defined by the *ICA*, in **section 2**, as:

(a) *an offence under the **Corruption (Prevention) Act**; or*

(b) *an offence relating to the conduct of any person that constitutes an abuse or a misuse of his office (whether or not within the public sector) for the purpose of conferring a benefit or an advantage to himself or another person, being an offence arising under the common law or any enactment;*

3. *Making False Statement in a Statutory Declaration – The Law*

Section 39(1) the *Integrity Commission Act* states:

Subject to the provisions of this Act, every person who, on or after the appointed day, is a parliamentarian or public official, shall submit to the Director of Information and Complaints, a statutory declaration of his assets and liabilities and his income in the form set out in the Third Schedule.

Further **section 43(2)(a)** of the *ICA* prescribes:

(2) *A person who-*

(a) *knowingly makes a false statement in a statutory declaration;*

(b) *...*

commits an offence, and is liable on summary conviction in a Parish Court to a fine not exceeding two million dollars, or to a term of imprisonment not exceeding two years and the Court may make such order as it thinks fit.

4. *Making False Statement in a Statutory Declaration– The Facts*

The Statutory Declaration of assets, liabilities and income filed by the HPM for the period ending December 31, 2021, was reviewed in making a determination with regard to this offence. There is no dispute that the HPM is a parliamentarian and, as such, is required to submit a Statutory Declaration for the period ended December 31, 2021. A statement on file from the relevant Reporting and Compliance Officer of the Information and Complaints Division (I&C) of the Integrity Commission, noted that the HPM submitted his Statutory Declaration for this period, and a review was conducted of same on August 17, 2022. It is noted in the relevant statement that:

The examination process involves the review of the current statutory declaration to highlight new information as well as information removed when compared to the previous Statutory Declaration submitted. The examination process also includes the inspection to determine whether all the relevant supporting documents are appended based on the information declared on the Statutory Declaration, and conducting third-party verifications via access to available Third-Party Databases as well as requesting information from Third-Party Entities. In the event that any disparity is identified between the current and previous statutory declarations, the supporting documents appended, and the information obtained from any Third-Party Entity or Database, a request is sent to the declarant by way of letter to provide additional information and/or explanation(s) to clarify the finding(s) of the Integrity Commission.

5. On October 26, 2022, the Integrity Commission sent a letter of even date to several Financial Institutions requesting information pertinent to accounts held for the period January 31, 2016 to December 31, 2021, in the names of public officials identified, who were required to file Statutory Declarations in accordance with the ***Integrity Commission Act***. The HPM was included in the list of names provided with the request for account information from the Bank of Nova Scotia Jamaica Limited (BNS), a copy of which is on file, exhibited with the relevant statement and labelled.
6. On January 23, 2023, a response was received from Scotia Group Jamaica Limited along with financial information, relevant to the HPM as per the Integrity Commission's request on October 26, 2022, identifying accounts held with Bank of Nova Scotia Jamaica Limited. On February 21, 2023, the review of the HPM Statutory Declaration of Assets, Liabilities and

Income as at December 31, 2021 recommenced, to incorporate all the information received during the Integrity Commissions' third-party verification process. With the requested financial information to hand, the further review of the 2021 Statutory Declaration unearthed three (3) Bank of Nova Scotia Savings accounts numbered **21, **64 and **60, which were not declared to the Integrity Commission on any previous Statutory Declarations submitted by the HPM.

7. On March 10, 2023, the Director of Information and Complaints (DoIC) wrote to the HPM requesting additional information cornering his 2021 Statutory Declaration to include, but not limited to, his interest, if any, in the three (3) Bank of Nova Scotia Savings accounts numbered **21, **64 and **60, which were not declared in his 2021 Statutory Declaration. On March 13, 2023, a Letter of Response dated March 12, 2023, was received from the HPM providing noted responses as follows:

Bank of Nova Scotia Jamaica Limited Savings account numbered **21

“This account belongs to my father, Morris Holness. Other than my name being added to the account many years ago as a precaution in the event of emergency, I claim no interest in the account and it is not part of my assets.”

Bank of Nova Scotia Jamaica Limited Savings account numbered **64 and **60

“These accounts belong to my mother, Carol Harvey. Other than my name being added to the accounts many years ago as a precaution in the event of an emergency, I claim no interest in the accounts and they are not apart of my assets.”

8. Subsequent to this response, no further communication occurred between the HPM and the DoIC regarding any of these three (3) accounts. Additionally, no evidence was provided to indicate a review having then been conducted by the DoIC in relation to the Statutory Declaration for the period ending December 31, 2022.

9. Having identified, *inter alia*, the alleged false statement by way of omission from the review of the HPM’s Statutory Declaration for period ending December 31,2021, the matter was then referred to the DI for an investigation. The lead Investigator in a statement noted that, as part of the investigation, a request was sent to BNS requesting any and all information regarding the HPM and any companies associated with him. A statement dated June 9, 2023, from an authorised officer at BNS, disclosed all accounts located by that institution, held solely by the HPM and with him as joint account holder, for the period January 1, 2020 to the date of the statement. This statement disclosed four (4) Bank of Nova Scotia Savings accounts jointly held, numbered **21, **64, **60 and **42, not declared by him in his Statutory Declaration for period 2021. The authorised officer’s statement exhibited a Customer Details Table labelled **NFP1** which highlighted information to include, but not limited to, these four (4) accounts as follows:

Account	Account Holder (s)	Date Opened	Status as at May 30, 2023
**21	AH [HPM] and MH [Father]	January 27, 1989	Active (\$40,606.74)
**64	AH [HPM] CHR [Mother], SA [Sister]	January 10, 1984	Active (\$149,464.70)
**60	AH [HPM] CHR [Mother], SA [Sister]	June 20, 1975	Active (\$204,920.38)
**42	AH [HPM] and ER	July 28, 2005	Active (\$50,956.44)

10. Subsequent to receiving the response from the authorised officer at BNS where the four (4) jointly held accounts were identified, a letter dated August 18, 2023 was drafted and sent under the hand of the Director of Investigation, with attached Judges’ Rule Notice, to Counsel for the HPM, advising that the HPM is a suspect in an investigation for breaches not limited to **section 43(2)** of the *ICA*. This letter consisted of questions relating to, among other things, the four (4) BNS accounts referenced. A response was provided to the DI by the HPM dated September 29, 2023, and of note are the following responses:

Question 21: *“How are you associated with BNS Account #**60? See Appendix 8 to the Commission’s Notice of August 18, 2023.”*

Answer: *“BNS Account **60 is primarily held by my mother, Carol Harvey Richards. My name was added to this account for survivorship reasons.”*

Question 22: *“What was the source of funds used to maintain this account, of BNS Account #**60?”*

Answer: *“I am not able to say with certainty and completeness regarding the source of funds for all the deposits to this account. According to the statements provided at appendix 8, deposits appear to be National Insurance payments from the Ministry of Labour. There are also transfers from my personal accounts to BNS#**60.”*

Question 23: *“How are you associated with BNS Account #***64? See Appendix 9 to the Commission’s Notice of August 18, 2023.”*

Answer: *“BNS Account ***64 is primarily held by my mother, Carol Harvey Richards. My name was added to this account for survivorship reasons.”*

Question 24: *“What was the source of funds used to maintain this account, of BNS Account #***64?”*

Answer: *“I am not able to say with certainty and completeness regarding the source of funds for all the deposits to this account. From to the statements provided at appendix 9, deposits appear to be payments from the Accountant General. [sic] from which my mother is retired and currently pensionable. My mother is retired and receives a pension from the Government of Jamaica. There were also transfer from my personal accounts to BNS#***64.”*

Question 25: *“How are you associated with BNS Account # ***21? See Appendix 10 to the Commission’s Notice of August 18, 2023.”*

Answer: *“BNS Account ***21 is primarily held by my father, Morris Holness. My name was added to this account for survivorship reasons.”*

Question 26: *“What was the source of funds used to maintain this account, of BNS Account #***21?”*

Answer: *“I am not able to say with certainty and completeness regarding the source of funds for all the deposits to this account. Morris Holness operates a farm selling livestock and produce. From the statements provided at Appendix 10, some deposits appear to be proceeds from his farm. There were also transfers from my personal accounts to BNS#***21.”*

Question 27: *“How are you associated with BNS Account #***42? See Appendix 11 to the Commission’s Notice of August 18, 2023.”*

Answer: *“BNS Account ***42 is primarily held by Elizabeth Reid who worked in my constituency office more than 20 years ago. My recollection is that I had encouraged her to open a bank account through which her wages could be paid online. I do not recall the circumstances which my name was added to her account. I have written to the bank to have my name removed from the account.”*

Question 28: *“What was the source of funds used to maintain this account, of BNS Account #***42?”*

Answer: *“I am unable to comment on the source of funds used to maintain BNS ***42.”*

11. Making False Statement in a Statutory Declaration– Application of Law to Facts

*Was there an obligation to declare BNS Savings Accounts # **21, **64, **60 and **42?*

Based on the witness statements on file, there is no dispute that the HPM had an obligation under **section 39(1)** of the *ICA*, to submit a Statutory Declaration for the period ending December 31, 2021. It is also undisputed that same was submitted for the noted period. Additionally, it is not in question that he was a joint account holder of four (4) Bank of Nova Scotia savings accounts numbered **21, **64, **60, and **42, as he acknowledged this in his responses provided on September 29, 2023. **Section 2** of the *ICA* defines “property” to include “assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets”. Accordingly, the requirement for disclosure pursuant to **section 39(1)** of the *ICA*, extended to these bank accounts and, therefore, should have been declared by the HPM in his Statutory Declaration for the period during which he was a joint holder. Having established that these accounts are considered assets and should have been disclosed, the question is whether or not these accounts should have been disclosed in his Statutory Declaration of Assets, Income, and Liabilities for the specific period ending December 31, 2021. It is, therefore, necessary to demonstrate that the HPM was a joint holder of these accounts between January 1, 2021, and December 31, 2021.

*BNS Account #s **60 and **64*

Account **60

12. The authorized officer of BNS in a statement, exhibited a transaction history for the period from October 31, 2017, to October 31, 2019, labelled **NFP1**, and from October 31, 2019, to May 5, 2023, labelled **NFP7**, for account# **60. Each page of the statement shows only one name, noted to be the mother of the HPM. Based on the transactions noted in the account during this period, pension deposits into the account each month were clearly identified. A further review of the exhibit reveals no more than eight (8) transactions in any month, and detailed debit loan transactions, pension payments credited to the account, and interest payments.

13. A statement from another authorized officer at BNS dated June 11, 2024, outlines the procedure for effecting joint ownership of an account. The statement noted that, in relation to BNS account #**60 the relevant signature sheet does not assist in determining when the HPM was added to the account, as that document is illegible. Additionally, no other evidence was provided on file to establish, whether independently or from questions posed to the HPM, when he became a joint account holder for this account. The banking transactions for this account for the period 2017-2023 only show his mother as the owner and, therefore, it cannot be confirmed or inferred that the HPM was a joint holder during the period covered by the transaction history. The fact that transactions were observed from another account, held solely by the HPM, to this account does not give rise to an inference that he was a joint holder during the specific period 2021. Consequently, a critical element would not have been proven to proceed with the noted offence for this account, as there is insufficient evidence that during the period 2021, he was a joint holder of this account, which would place a legal obligation on him to declare same.

Account **64

14. The authorized officer at BNS, in a statement, exhibited a transaction history for this account for the period from October 31, 2017, to October 31, 2019, labeled **NFP4**, and for the period from October 31, 2019, to April 5, 2023, labeled **NFP8**. As with the previous account, each page of the statement shows only one name, noted to be the mother of the HPM. There is no evidence provided that this account is jointly owned with the HPM, or any other individual, as noted in the exhibit **NFP1** Account Details Table. A statement from another authorized officer at BNS dated June 11, 2024, outlines the procedure for effecting joint ownership of an account. The statement noted that, in relation to BNS accounts #**64, the bank is unable to confirm the date when the HPM became a joint holder for said account, as the relevant records are not available. Similarly, as with the account discussed above, no other evidence was provided to establish this fact. The banking transactions for this accounts for the period 2017-2023 only detail his mother as owner and, therefore, it cannot be confirmed or inferred that the HPM was a joint holder during the period covered by the transaction history. As with the previous account, a critical element would not have been proven to proceed with the noted offence for this account, as there is insufficient evidence that during the period 2021, he was a joint holder of this account, which would place a legal obligation on him to declare same.

BNS Account# **42

15. This account was opened on July 28, 2005, as stated in the exhibit labelled **NFP1**, and is jointly owned by the HPM and another. The authorised officer in a statement, exhibited a transaction history for the period October 31, 2017 to October 31, 2019 labelled **NFP8** and period October 31, 2019 to April 5, 2023, labelled **NFP10** for account **42. The HPM is properly identified as one of the account holders by this record. Of note, no transaction was observed between this account and any other account associated with the HPM. Each month during the period, the account was noted to be credited electronically with transactions detailed as “Electoral Office Admin”, among others, none of which are, however, connected to any other accounts held by the HPM, whether solely or jointly. It can be concluded with regard to this account, that the HPM had an obligation during the relevant period to declare same in his Statutory Declaration.

BNS Account #**21

16. This account was noted to be held jointly by the HPM and his father. The authorized officer from BNS noted that “Mr. Holness was added” as a joint account holder on January 27, 1989, when the account was first opened. At that time, the HPM was a minor. The reference to “Mr. Holness” in the statement is unclear, as to whether it is the HPM or his father that is being identified. It is nevertheless, important to note that the HPM's signature was recorded on July 29, 2005 as having been added to the account, and the HPM's name was not removed from the account until September 2023, following his written instructions to BNS. Additionally, the transaction history produced by BNS for the period October 31, 2017 to February 5, 2023, labelled **NFP3** identifies both persons as account holders, with his father appearing to be the primary account holder. Consequently, the HPM had a duty to declare BNS savings account #**21 in his 2021 Statutory Declaration.

*Is there Prima Facie Evidence of Making a False Statement by Omission for BNS Savings Accounts #**21 and **42?*

17. To determine if the omissions amount to an offence under the noted provisions, two main legal issues require ventilation: (1) can non-disclosures (omissions) be regarded as ‘false statements’ for the purposes of the offence - particularly when ‘statements’ are generally regarded as being expressed, that is, averments of fact; and (2) whether or not there is sufficient evidence to establish that the Declarant knowingly omitted the asset from the relevant Statutory Declarations or, in the circumstances of the present case, is it to be deemed in the absence of the necessary intent, as has been suggested by his responses.
18. The mischief the law is seeking to address by mandating the submission of Statutory Declarations would be unrealized if intentional non-disclosures were not treated as ‘false statements’. The highest level of probity is necessary for public officials in the conduct of their functions and this is what the law seeks to ensure in requiring that accurate and complete Statutory Declarations be made. It follows then, that the law would be rendered an absurdity if the offence of Making a False Statement in a Statutory Declaration was interpreted in a manner that excluded intentional non-disclosure. Additionally, the Statutory Declaration requires execution in the presence of a Justice of the Peace, to whom the Declarant solemnly and sincerely declares that the particulars given therein are, to the best of his/her knowledge, true, accurate and complete.
19. The case of **Regina v Fiona Jones and Desmond Whicher**¹ is instructive, and is outlined as follows:

“A General Election was held and Jones was elected as a Member of Parliament for the Newark constituency. Mr. Desmond Whicher served as Jones’ election agent. Following the election, Mr. Whicher made a return of the election expenses incurred by Jones at this election, and both he and Jones declared that to the best of their knowledge and belief the return was complete and correct. The declaration was made pursuant to Section 81(1) of the Representation of the People Act 1983 (UK) that mandates both the election agent and the candidate to deliver to the appropriate officer a declaration in the form specified in Schedule 3 to the Act, which provides for a declaration that the return is to

¹ 1999] EWCA Crim J0422-17

the best of the candidate's and the agent's knowledge and belief a complete and correct return as required by law. Both he and Jones made the required declaration as to the completeness and correctness of that return. Section 82(6) of the Act, under which the appellants were prosecuted, provides: "If a candidate or election agent knowingly makes the declaration required by this section falsely, he shall be guilty of a corrupt practice. One of the two major charges made by the prosecution was that in the return made under section 81, verified by both appellants under section 82, there was an exclusion (non-disclosure) of an office rental expense incurred during the campaign."

Held: Before any defendant may be convicted of an offence under section 82(6) of the Act, the tribunal of fact must be satisfied;

- 1. that the defendant made a declaration as to election expenses as required by the section;*
- 2. that such declaration was false, in that expenses which should have been included were omitted or expenses which were included were understated, or both;*
- 3. that the defendant knew such declaration to be false, either because the defendant knew that expenses which should have been included were omitted or because the defendant knew that expenses which were included were understated, or both.*

The third requirement is crucial for present purposes, as it defines the dishonest knowledge which constitutes the *mens rea* of the statutory crime, and which must be established before a defendant is convicted.

20. The issues in the matter under consideration are analogous to those noted in the preceding authority, and touch and concern non-disclosures in a Statutory Declaration, and whether or not this amounts to "making a false statement". The three (3) elements outlined by the Court in that case, that the Prosecution must establish are noted, and that test will be applied to the circumstances of the current case in examining the evidence, and whether it properly gives rise to a resultant prosecution.

(1) The defendant made a declaration as required by Law:

As detailed above, this element has been satisfied, as the HPM was required to submit the Statutory Declaration which he confirmed was, in fact, made by him. Of critical importance is the previously referenced certification, signed at the end of the Statutory

Declaration Form submitted by the Declarant, in which he solemnly and sincerely declared that the particulars given therein are, to the best of his knowledge, true, accurate and complete.

(2) The declaration was false, in that assets which should have been included were omitted:

The review conducted of the Statutory Declarations submitted by the HPM for the period 2021, determined that the said Statutory Declaration did not include the questioned BNS accounts #**21 and **42, jointly held by the HPM and others during the relevant period. As previously established, this was an asset that ought to have been disclosed. Having omitted an asset that should have been included, the second element in Regina v Jones & Whicher is also satisfied.

(3) The defendant knew such declaration to be false:

In accordance with the legal requirements regarding intent, where establishing knowledge by the accused is a necessary component of proving the offense, it is essential to assess the supporting circumstances and the conduct of the Declarant to determine whether he can be deemed to have known that the submitted Declarations were false. The interactions documented through transactions related to the accounts prior to the completion and submission of the Statutory Declaration, as well as the responses provided by the HPM, will be examined in turn to ascertain the HPM's intention at the time the alleged false statement was determined to have been made.

BNS Savings Account #**21

21. The HPM when invited by the Commission to provide an explanation for the omission of BNS Account #**21, maintained that *“This account belongs to my father, Morris Holness. Other than my name being added to the account many years ago as a precaution in the event of an emergency, I claim no interest in the account and it is not part of my assets”* and further, *“BNS Account **21 is primarily held by my father, Morris Holness. My name was added to this account for survivorship reasons”*. When asked specifically about the source of funds for this account, the HPM responded *“I am not able to say with certainty and completeness regarding the source of funds for all the deposits to this account. Mr. Holness operates a farm selling livestock and produce. From the statements provided at Appendix 10, some deposits*

*appear to be proceeds from his farm. There were also transfers from my personal accounts to BNS#**21*". As previously indicated, a key factor in determining liability for Making a False Statement in a Statutory Declaration is whether the party had actual knowledge or a reasonable belief that the Declaration was false, which in the present case, occurs by virtue of the omission identified.

22. The transaction history provided for BNS Account#**21, offers support to the explanation provided by the HPM, and details approximately ten (10) transactions between the HPM's personal account, held solely by him, and the referenced joint account, for the period 2017 to 2023. No additional material has been provided on file to contradict this explanation. Having requested of the HPM and been provided with his account, which goes directly to the issue of intent as an element of the offence, the onus falls on the Prosecution to provide cogent, admissible evidence to satisfy the Court that the required mental element has otherwise been proven. Additionally, there was nothing on file to suggest impropriety with regard to the source of funds, or that the amounts themselves required additional scrutiny during the course of the investigation, which would provide support inferentially to establishing that the omission was intentional. Given the evidence that has been made available, the Prosecution would be challenged in establishing to the requisite standard, this critical element of the offence.

BNS Savings Account #**42

23. When invited by the Commission to offer an explanation with regard to his association with BNS Account #**42, the HPM referred to an appended document with details about the account. He stated, *"BNS Account **42 is primarily held by Elizabeth Reid, who worked in my constituency office more than 20 years ago. I recall encouraging her to open a bank account for her wages to be paid online. I do not recall the circumstances under which my name was added to her account, and I have written to the bank to have my name removed from the account"*. The HPM also mentioned that he was unable to comment on the source of funds used to maintain BNS Account #**42.
24. It is important to note that while the referenced appended document included statements detailing transactions relevant to this account, no transactions were observed between the account being considered and the accounts attributed to the HPM, whether solely or jointly, during the period 2017 to 2023. There was observed, however, for this account, monthly

payments from the electoral office, in keeping with the purpose as asserted by the HPM in his response. Additionally, no other evidence has been provided to contradict this account or suggest use of this account beyond the purpose as has been indicated.

25. In accordance with the principles outlined in **Regina v Jones & Whicher**, therefore, the Prosecution would again be challenged to establish that the omission was intentional, as required for the “knowingly” element of this offence, in the face of even greater support for the explanation that has been provided.

Ruling

In light of the foregoing, there is insufficient evidence on file to establish that the HPM, by way of omission, made a false statement in his Statutory Declaration for period ending December 31, 2021, as it relates to BNS Savings Accounts #**60, **42, **21, and **64. Accordingly, no charges are to be laid.



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

September 2, 2024

Date