



Office of the
Conflict of Interest and
Ethics Commissioner

Commissariat aux
conflits d'intérêts et
à l'éthique

Miller Report
Referral from the
Public Sector Integrity
Commissioner

2020

April 2020



Mario Dion

Conflict of Interest and
Ethics Commissioner

Miller Report

made under the *CONFLICT OF INTEREST ACT*

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PREFACE

The *Conflict of Interest Act*, S.C. 2006, c.9, s. 2 (Act) came into force on July 9, 2007.

Pursuant to section 68 of the Act, if a matter is referred to the Conflict of Interest and Ethics Commissioner by the Public Sector Integrity Commissioner under subsection 24(2.1) of the *Public Servants Disclosure Protection Act*, the Conflict of Interest and Ethics Commissioner must provide a report to the Prime Minister setting out the facts in question as well as the Commissioner's analysis and conclusions in relation to the referral. A copy is provided to the public office holder or former public office holder who is the subject of the report and to the Public Sector Integrity Commissioner. The report is also made public.

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REFERRAL

[1] Pursuant to the *Public Servants Disclosure Protection Act*, the Public Sector Integrity Commissioner is mandated to review and report on disclosures of wrongdoing by public servants. However, where the subject matter of any disclosure received is within the jurisdiction of the Office of the Conflict of Interest and Ethics Commissioner (Office), the Public Sector Integrity Commissioner must, under subsection 24(2.1) of the *Public Servants Disclosure Protection Act*, refer the matter to this Office.

[2] When I receive a referral in this manner, the *Conflict of Interest Act* (Act) requires that I issue a public report setting out the facts in question and my analysis and conclusions, irrespective of the outcome. If I have reason to believe that the public office holder who is the subject of the referral has contravened the Act, I may commence an examination under section 45 of the Act. Even if I do not launch an examination under section 45 of the Act, the Act nevertheless requires that I write and publish a report.

[3] In this case, in a letter dated September 18, 2019, the Public Sector Integrity Commissioner referred to me, under subsection 24(2.1) of the *Public Servants Disclosure Protection Act*, a disclosure of an allegation of a conflict of interest made against Ms. Moreen Miller. Ms. Miller was appointed as Chairperson of the Board of Directors of Defence Construction Canada (Defence Construction) on November 22, 2017, and as of this date, became a public office holder subject to the Act. At the time of her appointment, Ms. Miller also held the position of President and Chief Executive Officer of Fowler Construction.

[4] The discloser outlined three allegations, described below, relating to general conflict of interest concerns between Ms. Miller's public duties as Chairperson of the Board of Directors (Board) of Defence Construction, a Crown corporation, and her private interests in Fowler Construction, a private construction company, as its President and Chief Executive Officer. The discloser did not cite any provisions of the Act.

PROCESS

[5] On November 15, 2019, I wrote to Ms. Miller informing her that I had received a referral and enclosed a copy of a summary of the allegations provided by the Public Sector Integrity Commissioner. I invited Ms. Miller to comment on the allegations. I also informed Ms. Miller that I would consider her response to determine whether to proceed with the publication of the report without the need to gather additional information or whether to commence an examination under the Act.

[6] In a letter dated November 29, 2019, Ms. Miller, through her legal counsel, provided a detailed response to each of the allegations made by the discloser.

[7] After having considered the additional information received from Ms. Miller relating to the allegations made in the disclosure, I determined that I did not have reason to believe that Ms. Miller may have contravened the Act and, therefore, did not pursue the matter further.

FACTS AND ANALYSIS

[8] The following sets out the information gathered by this Office in relation to the various allegations made in the disclosure concerning Ms. Miller's conduct.

[9] A first allegation raised by the discloser was that Ms. Miller had not been forthcoming in disclosing her position with Fowler Construction prior to her appointment as Chairperson of the Board of Defence Construction. Had she done so, the discloser alleged Ms. Miller would not have been appointed.

[10] In response to this allegation, Ms. Miller, through her legal counsel, confirmed that her employment as President and Chief Executive Officer of Fowler Construction was disclosed prior to her appointment as Chairperson of the Board of Defence Construction, and that it was referred to in Ms. Miller's application for the position and discussed in a subsequent interview.

[11] Because this first allegation related to a possible conflict of interest that is alleged to have occurred prior to Ms. Miller's appointment as a public office holder, it falls outside the purview of this Office.

[12] The second allegation related to Ms. Miller's access to confidential information about Fowler Construction's competitors. The discloser alleged that Fowler Construction had bid on Defence Construction calls for tenders in the past. This, in the discloser's view, would have a negative impact on the perceived impartiality of Defence Construction's procurement process.

[13] In response to this allegation, Ms. Miller's legal counsel described Fowler Construction as a relatively small, local company that had only ever worked on one project for Defence Construction as a subcontractor in 2010.

[14] Included with the written submission was a copy of a letter dated October 28, 2019, from Fowler Construction's President to the Chief Executive Officer of Defence Construction confirming that, during the 70 years of the company's existence, it had never bid on Defence Construction work and had never approached Defence Construction for work.

[15] The October 28, 2019 letter also confirmed that following Ms. Miller's appointment, the Government of Canada had asked the company to set up internal conflict of interest screens to prevent Ms. Miller from seeing any interactions between the company and Defence Construction, which, according to the President, the company complied with even though it did not interact with Defence Construction.

[16] Ms. Miller's legal counsel also referred to the ongoing communications, which are described below, between Ms. Miller and this Office following her appointment as Chairperson of the Board, as well as to the role of the Director, Governance and Legal Affairs and Corporate

Secretary of Defence Construction, in assisting Ms. Miller on how to manage the potential conflict of interest.

[17] Within three months following Ms. Miller's appointment, I received a letter on February 22, 2018, from a member of the Board of Defence Construction, written on behalf of members of the Board of Defence Construction, requesting advice on a potential conflict of interest between Ms. Miller's appointment and her interest in Fowler Construction as its President and Chief Executive Officer. On the same day, I also received a letter from Ms. Miller in which she formally sought advice from this Office.

[18] Section 29 of the Act gives me the authority to determine the appropriate measures by which a public office holder shall comply with the Act. In certain cases, these measures may include making formal arrangements in order to assist a public office holder in avoiding dealing with files that may pose a real or potential conflict of interest, otherwise known as a conflict of interest screen. When a screen is in place, files that pose a potential conflict of interest are not brought to the public office holder's attention.

[19] Accordingly, following discussions and correspondence with Ms. Miller and the Director, Governance and Legal Affairs and Corporate Secretary of Defence Construction, I determined that a screen was required in order to prevent a conflict of interest situation from arising between Ms. Miller's official duties and her private interests in Fowler Construction. The screen prohibited Ms. Miller from participating in any discussion, decision, debate or vote on any matters relating to Fowler Construction. In the event that any issue or matter subject to the conflict of interest screen was not caught by the screen, Ms. Miller was required to recuse herself from that issue and inform this Office.

[20] On April 24, 2018, Ms. Miller signed the conflict of interest screen which was administered by the Director, Governance and Legal Affairs and Corporate Secretary of Defence Construction. The Minister of Public Services and Procurement and the Board of Defence Construction were duly informed in writing of this conflict of interest screen. A signed copy was included in our Office's public registry and posted on our website.

[21] According to information provided to this Office, around this same time, the Chief Executive Officer of Defence Construction wrote to Ms. Miller informing her that Fowler Construction's bidding privileges relating to Defence Construction calls for tenders had been suspended.

[22] In my view, the implementation of the conflict of interest screen, the internal conflict of interest measures put in place by Fowler Construction at the Government of Canada's request, as well as Defence Construction's decision to suspend the company from bidding on any of its work, would have made it nearly impossible for Ms. Miller to place herself in a conflict of interest. In any event, at the time of the implementation of the conflict of interest screen, no information was brought to my attention in respect of a breach of Ms. Miller's obligations under the Act.

[23] A third allegation raised the concern that after a conflict of interest screen had been recommended by this Office and implemented, Ms. Miller continued to inquire about the confidential aspects of Defence Construction's dealings with Fowler Construction's competitors.

[24] In response to this third allegation, Ms. Miller, in her written response, denied that she asked anyone about confidential aspects of Defence Construction's dealings with Fowler Construction's competitors.

[25] Ms. Miller also submitted that the Board discussions held while she still occupied a position at Fowler Construction were strategic in nature and related to the general oversight of Defence Construction.

[26] According to the information provided to this Office, the Board did not hold any meetings with Ms. Miller to conduct Board business until June 2018. According to Ms. Miller's legal counsel and corroborated by information provided to this Office, the June 2018 Board meeting was limited to the approval of financial statements, and the September 2018 Board meeting dealt mostly with internal administrative matters. Ms. Miller's written response also emphasized that the conflict of interest screen was at the time actively managed by the Director, Governance and Legal Affairs and Corporate Secretary, who attended all Board meetings.

[27] On September 27, 2018, Ms. Miller informed this Office that on September 14, 2018, she had resigned from her position as President and Chief Executive Officer of Fowler Construction. As a result, I determined that Ms. Miller's conflict of interest screen was no longer necessary and shortly thereafter it was removed from the Office's public registry. In mid-November 2018, Defence Construction rescinded Fowler Construction's bidding suspension.

[28] On October 17, 2019, media articles suggested that Ms. Miller was in a conflict of interest as she continued to work for Fowler Construction as a consultant after she had resigned from the company and the conflict of interest screen had been removed. As it was reported in the media on October 29, 2019, Ms. Miller consulted this Office and was advised that the reinstatement of a conflict of interest screen was not required.

[29] Considering Ms. Miller's continued communications with this Office, I find it unlikely that she ignored or ran afoul of the terms of the conflict of interest screen put in place by this Office, especially following Defence Construction's suspension of Fowler Construction's bidding privileges from April to November 2018. Additionally, based on the information gathered by this Office thus far, and in the absence of any information to the contrary, I have no reason to doubt that the administrator of the conflict of interest screen, who was present at the June and September 2018 Board meetings, would have ensured that Ms. Miller remained in compliance with her obligations under the Act.

CONCLUSION

[30] After weighing the information I obtained against the allegations contained in the referral, I have no reason to believe Ms. Miller may have contravened any of her obligations under the Act. I will, therefore, not initiate an examination under section 45 of the Act and consider the matter closed.

A handwritten signature in black ink that reads "Mario Dion". The signature is written in a cursive style with a large, prominent "D" at the end.

Mario Dion
Conflict of Interest and Ethics Commissioner

April 22, 2020