



Office of the
Conflict of Interest and
Ethics Commissioner

Commissariat aux
conflits d'intérêts et
à l'éthique

Qualtrough Report

Referral from the
Public Sector Integrity
Commissioner

2020

April 2020



Mario Dion

Conflict of Interest and
Ethics Commissioner

Qualtrough 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 the Honourable Carla Qualtrough, who at that time was Minister of Public Services and Procurement Canada. As a minister, Ms. Qualtrough was a reporting public office holder subject to the Act.

[4] The allegation in the disclosure related to Ms. Qualtrough's appointment of Ms. Moreen Miller as Chairperson of the Board of Directors (Board) of Defence Construction Canada (Defence Construction), a Crown corporation, while Ms. Miller was also President and Chief Executive Officer of Fowler Construction, a private construction company that, according to the discloser, had strong ties to the Liberal Party of Canada. The discloser did not cite any provisions of the Act that were alleged to have been contravened.

PROCESS

[5] On November 15, 2019, I wrote to Ms. Qualtrough 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. Qualtrough to comment on the allegations.

[6] I also asked Ms. Qualtrough to comment on media articles dated September 2019 suggesting that Ms. Miller's appointment may have been politically motivated, since one of the construction company's partners was a former Liberal cabinet minister. I also asked Ms. Qualtrough to confirm whether she or anyone in her office had had any communications with the former minister in question regarding Ms. Miller's appointment.

[7] I informed Ms. Qualtrough 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.

[8] In a letter dated December 20, 2019, Ms. Qualtrough provided a detailed response to the allegation made by the discloser.

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

FACTS AND ANALYSIS

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

[11] The discloser alleged that the merit-based appointment process used by the Government of Canada was not respected in the case of Ms. Miller's appointment as Chairperson of the Board of Defence Construction, and that Ms. Miller's appointment resulted from Fowler Construction's strong ties to the Liberal Party of Canada, of which Ms. Qualtrough is a member, rather than Ms. Miller's qualifications.

[12] In response to this allegation and the allegations reported in media articles—according to which Ms. Miller was appointed because one of the Fowler Construction's partners was a former Liberal Cabinet minister— Ms. Qualtrough confirmed that Ms. Miller's appointment as Chairperson of the Board of Defence Construction followed the open, transparent and merit-based appointment process that the Government of Canada introduced in 2016.

[13] Ms. Qualtrough also confirmed that neither she nor anyone in her office had ever had any communications with the former minister in question regarding Ms. Miller's appointment.

[14] Ms. Qualtrough explained that the appointment process is administered by the Privy Council Office, which establishes a selection committee whose members included a representative from the Privy Council Office, a representative from the Prime Minister's Office, a representative from Public Services and Procurement Canada, and a representative from Ms. Qualtrough's ministerial office.

[15] Ms. Qualtrough further explained that the selection committee is responsible for posting the notice of opportunity, reviewing all applications, shortlisting candidates for interviews, and recommending candidates to the relevant minister. After considering the candidates, the minister forwards their recommendation for the appointment to the Governor in Council, who then makes the appointment decision through an order in council.

[16] According to Ms. Qualtrough, it is her understanding that the selection committee followed this process in the case of the appointment of the Chairperson of the Board of Defence Construction. Ms. Qualtrough wrote that she had no role in the selection committee's process of identifying the highly qualified individuals that were recommended to her by the selection committee process.

[17] Ms. Qualtrough wrote that it was her role as minister to consider the merits of the candidates selected by the selection committee. Ms. Qualtrough then consulted the Board of Defence Construction as required by the *Financial Administration Act*. Taking into consideration

the information before her, Ms. Qualtrough made a recommendation to the Governor in Council. With respect to the appointment of the Chairperson of the Board of Defence Construction, the ultimate decision rested with the Governor in Council.

[18] On November 22, 2017, by way of order in council, the Governor in Council appointed Ms. Miller as Chairperson of the Board of Defence Construction.

CONCLUSION

[19] Based on the information I received from Ms. Qualtrough and in the absence of any information to support the allegation contained in the referral, I have no reason to believe that Ms. Qualtrough contravened any of her obligations under the Act when she recommended the appointment of Ms. Miller to the position of Chairperson of Defence Construction. I will, therefore, not initiate an examination under section 45 of the Act and consider the matter closed.

A handwritten signature in black ink, appearing to read 'Mario Dion', with a stylized, cursive script.

Mario Dion
Conflict of Interest and Ethics Commissioner

April 22, 2020