

The Don Garrett case – an independent analysis

Disclaimer

This document is a ‘best effort’ attempt to summarize information from documents and telephone logs provided by Don Garrett to David Hutton. It is not claimed to be a definitive statement of the facts: these should be determined by an independent investigation of PSIC’s handling of this case, by a body that has the authority and resources to do this.

Background

In 2008 Don Garrett, the owner of a general contracting firm, was awarded a contract to replace toilets and sinks in cells at Kent Institution a Federal Prison in Agassiz, BC. During the project Garrett and his employees were heavily exposed to asbestos fibres from old gaskets in valves that required extensive filing and scraping to remove. Garrett subsequently discovered that the gaskets were 95% chrysotile asbestos.

White asbestos is a deadly substance that causes mesothelioma, a lung cancer that can develop many years after the smallest exposure, but then kills 92% of its victims within 3 years of diagnosis. This substance is so dangerous that it has been effectively banned in Canada as a building material since 1978. There are extensive precautions required by law for any work carried out on older buildings, including surveys to determine where dangerous substances like asbestos are present, and the use of approved safe working procedures. In some situations (e.g. where there are asbestos fibres in the air) ‘hazmat’ clothing is needed to protect workers adequately.

Kent Prison had been the subject of a comprehensive Asbestos Containing Materials (ACM) survey in 2004, and the results documented in a 190 page report which lists numerous hazards – including the specific gaskets Garrett worked on. However, Garrett alleges that Public Works (PWGSC), the federal department responsible for construction and maintenance at Kent Prison, failed to disclose the existence of this report, neglected to carry out its legal duty to inform potential contractors of the existence of the hazards, and did not respond properly to Garrett’s repeated written requests for information about potential work site hazards.

These actions led to the exposure of an unknown number of people – Garrett and his employees, other employees, guards and inmates – to a known carcinogenic substance. Since this incident Garrett reports that he has uncovered further information suggesting that there may have been a long-standing pattern of concealment by PWGSC of Hazardous Materials information from other contractors, employees and WorkSafe BC inspectors. His experience may not be an isolated incident.

In March 2011, after more than two years of fruitless attempts to have his concerns properly addressed by PWGSC and the other agencies involved, Garrett submitted a disclosure of wrongdoing to the Public Sector Integrity Commissioner (PSIC), Mr. Mario Dion. PSIC is the federal watchdog agency charged with protecting whistleblowers and investigating their reports of alleged government wrongdoing.

In April 2013 Mr. Dion wrote to Garrett indicating that he had found no wrongdoing. In May 2014 Mr. Garrett asked David Hutton to examine his case files, with a view to mounting some form of challenge to Dion's decision.

PSIC's handling of the case

A review of the information provided suggests the following shortcomings in PSIC's handling of the Garrett case:

1. There were long unexplained delays when little or no work seemed to be done on the file. It seems that bursts of activity occurred only after media coverage of the case.
2. There was a lack of continuity in the investigation, which ultimately involved three different investigators. The timeline of events also suggests that there was likely no communication between the second and third investigators, in order to conduct a proper briefing and handover of the substantial work done thus far.
3. Only the second investigator appears to have done significant, focused work on the file. This included sending 29 detailed written questions (Appendix 4) to Mr. Garrett in preparation for an upcoming interview with him. But Mr. Dion chose not to renew her contract, effectively removing her from the case before she could complete the project. In effect Dion seems to have harmed his own investigation in mid-stream by disposing of the services of an experienced, competent investigator who had spent three months apparently working diligently on this case,
4. PSIC then effectively abandoned the investigation by failing to follow up with Mr. Garrett on the 29 questions that had been created specifically for his interview. A substantial body of information that had already been identified as relevant and important was ignored.
5. Mr. Garrett was repeatedly promised that he would be interviewed but this never happened and no explanation for this was ever given. PSIC appears to have excluded him from the process with a disregard that amounted to contempt.
6. Throughout most of the process PSIC failed to keep Mr. Garrett informed of the status and priority of its investigation, failing to contact him for long periods and responding to his increasingly distressed requests for information with non-answers and meaningless assurances.
7. At one point PSIC told Mr. Garrett that he could not be interviewed because (he was told) PSIC's mandate does not allow it to discuss, interview or conduct investigations into the private sector. In other words PSIC said it could not speak to the whistleblower – even though Garrett was the sole complainant, a key witness and the holder of a mass of important documentary evidence. When Garrett questioned this interpretation of the law, he was given vague, shifting and conflicting explanations regarding unspecified 'limitations' on PSIC's communications with him. This behaviour seemed to Garrett like an attempt by PSIC to justify ignoring him and refusing to receive the evidence he wanted to provide.
8. PSIC delayed for long periods the process of obtaining testimony from others, risking further depletion of the limited pool of available witnesses. It could be argued that this lack of urgency amounted to negligence because any witness who left the public service would immediately become unavailable to the

- investigator. In fact one important witness suggested by Garrett at the outset proved to be unavailable because, although performing work for the government, he was a contract employee rather than a public sector employee.
9. PSIC failed to interview several key witnesses. PSIC gave Garrett assurances that key witnesses – such as guards who had also been exposed to asbestos at the same facility, and members of the health and safety committee – would be interviewed. But Garrett learned that PSIC had neither contacted nor interviewed these people, whose names and contact information he had provided.
 10. Throughout the entire process (until the decision letter was sent) PSIC failed to inform Mr. Garrett of the existence of a vital piece of evidence, whose mere existence overwhelmingly supported his allegation of wrongdoing: the 2004 ACM assessment of the Kent Prison. This 190 page report – which Garrett was never shown or told about, and which should have been referenced or included in the tender package – clearly identified the specific asbestos hazards that he, his workers and others were exposed to. It could be argued that, by acting in this manner, PSIC did nothing about apparent wrongdoing by PWGSC – the withholding of this vital information from those who could be exposed to asbestos and other hazards.
 11. PSIC also failed to disclose the existence of the ACM Survey report from at least one interviewee (a WorkSafe BC employee), leading her to make an uninformed and inaccurate statement in a telephone conversation about whether the presence of asbestos could have been known about in advance. This statement, which the investigator should have known to be false, was quoted in Mr. Dion's final decision on the case and used to support a finding of no wrongdoing. Dion's decision letter was issued just two working days after this conversation.
 12. The available information suggests that, instead of obtaining direct evidence by interviewing people identified by Garrett as key witnesses, PSIC chose to accept assurances by other agencies that there was no problem – although these agencies were in conflict because any wrongdoing found would reflect badly on them. In other words, rather than attempting to determine the facts, PSIC seems to have simply accepted at face value the word of those potentially implicated in the alleged wrongdoing – and in any subsequent attempts to cover-up.
 13. Mr. Dion's three-page decision letter (Appendix 3) contains numerous errors and false, irrelevant or inappropriate statements, casting serious doubt on the competency and integrity of the work leading up to this decision.
 14. PSIC denied Mr. Garrett any opportunity to learn about, comment on or challenge Mr. Dion's findings before these were finalized in the decision letter. Garrett was therefore unable to challenge any of the errors and false information contained in this letter. He was apparently ignored by PSIC and shut out of the process right to the end.

Conclusions

Although it is not in dispute that Garrett and his crew were unnecessarily exposed to a known carcinogenic asbestos hazard, PSIC found no fault or error on the part of PWGSC or any of the other agencies involved. PSIC's 'investigation' seemed to consist largely of accepting at face value assurances from these agencies regarding their own

blameless actions, even when these accounts are contradicted by the documentary evidence. And in spite of the onerous legal responsibilities placed on these agencies to prevent such life-threatening incidents, in PSIC's final report it remains a mystery how this serious incident happened – only that no government official is to blame, and 'processes worked as intended'.

This is not a trivial matter. With this unsatisfactory outcome from an apparently flawed investigation, not only are Garrett and his employees left without any recourse or remedy. With no cause identified or corrective action recommended by PSIC the practices that led to this incident remain unchanged. In future, more people are likely to suffer from entirely preventable exposures like this.

It is imperative that a thorough, competent and impartial investigation be carried out by a body with the resources and authority to do this, examining not only Mr. Garrett's original disclosure of wrongdoing, but PSIC's conduct in the handling of his case.

David Hutton
May 26, 2014

<p>Note: the original report has been edited to conceal the identity of investigators and a witness.</p>

Information sources

In order to organize and analyze the information provided by Mr. Garrett the following two documents were created:

- a timeline of events involving PSIC following the disclosure of wrongdoing (Appendix 1)
- a list of apparent shortcomings in the final decision letter from Mario Dion (Appendix 2)

The following two important letters from PSIC are also included for easy reference:

- Mr. Dion's final letter to Mr. Garrett in which he provides his decision (that there was no wrongdoing) and the rationale for this (Appendix 3)
- An earlier letter to Mr. Garrett, written by the second investigator, setting out 29 questions that she wanted answered by him during an upcoming scheduled interview (Appendix 4).

Appendix 1: Timeline of events related to the PSIC investigation

Date	Event	Comment
28 March 2011	Disclosure of wrongdoing to PSIC.	Start of the PSIC process.
29 March 2011	Acknowledgement by PSIC.	
5 and 9 August 2011	First (telephone) communications with [Investigator 1].	Four months into the process.
18 August 2011	Garrett agrees to send [Investigator 1] a summary of health and safety related problems (a document previously sent to Office of Procurement Ombudsman).	
23 August 2011	[Investigator 1] indicates (by telephone) that he is unlikely to get to the file for at least 30 days because of a backlog of work.	
4 October 2011	Letter from Dion to Garrett stating that PSIC will investigate only certain health and safety related matters. Mr. Dion advises Garrett that” Should you wish to discuss further or if you have any questions in the meantime, please do not hesitate to contact [Investigator 1]”	Six months into the process. This letter promises an ‘expeditious’ investigation.
21 & 28 October 2011	[Investigator 1] advises Garrett that he cannot ask Garrett questions or discuss the case because Garrett is not a public sector employee.	
26 October 2011	Garrett sends an email to [Investigator 1] naming as witnesses two guards from the Health and Safety committee who can provide further information about health and safety issues at the Kent Institution.	
28 and 28 October 2011	Garrett asks about the status of the investigation and tells [Investigator 1] that the guards are keen to speak with him. [Investigator 1] reiterates that he cannot discuss the investigation with Garrett.	
22 October 2012	An article by Allan Cutler about the Garrett case and PSIC is published in the Hill Times.	

29 March 2012	Email sent from Garrett to [Investigator 1] asking for status of investigation and a date when he will receive findings.	12 Months into the process.
29 March 2012	Email from [Investigator 1] to Garrett, indicating a target date of 30 June 2012 (not guaranteed) to complete the investigation.	
8 August 2012	Email sent from Garrett to Dion per his letter of October 4, 2011, asking for a date when he will receive the findings.	16 months into the process. Garrett questioned whether the investigation was being conducted 'expeditiously'.
17 August 2012	Letter from Dion to Garrett confirming that they have been 'working diligently' on the investigation and has gathered 'significant information from various sources'. The investigator is still [Investigator 1].	Garrett knows that the guards have not been contacted or interviewed, and has no information to suggest that [Investigator 1] has done any significant work.
27 August 2012	Email from Garrett to Dion protesting at length of time taken and [Investigator 1]'s refusal to interview him.	
5 September 2012	Letter from Dion to Garrett: 1) cannot give any estimated date now for completion of investigation; 2) vague statement about 'some limitations' on obtaining information outside the public sector.	
22 October 2012	A second article by Allan Cutler referring to Garrett's case appears in Hill Times.	19 months into the process.
	New investigator appointed – [Investigator 2] – and calls Garrett. She again references limitations regarding information that she 'can communicate via email'. [Investigator 2] is highly qualified, with 25 years of experience with [EMPLOYER REDACTED].	[Investigator 2] was a contractor with PSIC under standing offer [DETAILS REDACTED]
20 November 2012	[Investigator 2] advises Garrett that she will come to BC to interview him mid Dec.	
26 November 2012	Letter from [Investigator 2] to Garrett, with 29 detailed questions for him to prepare for prior to the interview.	The planned interview never took place, nor any discussion of the 29 questions.

14 December 2012	[Investigator 2] advises Garrett that his interview will be delayed to early January 2013.	
4 February 2013	Email from Garrett to [Investigator 2], asking for status of investigation. This email was apparently not read, so Garrett phoned the PSIC office asking to speak to [Investigator 2] and was advised that she no longer worked there.	A month after their promised interview Garrett learns for the first time that [Investigator 2] is no longer working for PSIC: her contract has expired.
26 February 2013	Email from Garrett to Dion, noting the departure of [Investigator 2] and requesting the status of the investigation.	21 months into the process.
27 February 2013	Email from Dion indicating that [Investigator 2] left 'last month' and file 'now has to be reassigned to one of the remaining investigators'. Dion assures Garrett that his case will be given 'all the attention it deserves'.	Dion does not inform Garrett when an assignment will be made or who the new investigator will be. Given the history, it seems to Garrett that Dion does not consider that his case deserves much attention.
28 March 2013	The third investigator, [Investigator 3], calls a WorkSafe BC employee [Worksafe BC witness] to discuss whether anyone could have known in advance about the asbestos, and gets an apparently off-the-cuff response: that "it could not have been known beforehand", and that "we don't expect PWGSC to conduct intrusive investigations to detect asbestos in gaskets."	This conversation has the appearance of a leading line of questioning, which was likely to elicit an incorrect answer, since the [Worksafe BC witness] was unaware of the 2004 ACM survey report and its content. But [Investigator 3] did know about the report and what it contained, and therefore should also have known that the answer he had elicited from the [Worksafe BC witness] was incorrect. The [Worksafe BC witness] also may not have realized that her remarks during a telephone conversation would be taken as Worksafe BC's formal position in an important matter concerning the potentially fatal exposure to asbestos of several people.

2 April 2013	<p>Dion's final decision letter to Garrett indicating that he believes that other organizations (PWGSC, WorkSafe BC, Health Canada and HRSDC) have dealt with the issues appropriately and therefore no wrongdoing was found.</p> <p>The letter is dated two working days after [Investigator 3]'s telephone call to [Worksafe BC witness], and quotes her uniformed remark as evidence that there was no wrongdoing.</p> <p>The letter from Dion (Appendix 3) contains numerous errors and false, irrelevant or inappropriate statements.</p>	<p>End of the PSIC process after 24 months.</p> <p>This decision comes more than 2 years after the original disclosure.</p> <p>This the first time (after the final decision was rendered) that the identity of the third investigator was revealed to Garrett.</p> <p>There was never any communication between the investigator – [Investigator 3] – and Garrett.</p> <p>In this letter Garrett learns for the first time about the existence of the 2004 ACM survey.</p>
25 April 2013	CBC piece by Julie Ireton (article + radio and TV news broadcast)	
8 August 2013	Garrett submits access to information request to Public Works to obtain 'Hazardous Materials Investigation Reports'.	Garrett still did not know the content of the 2004 ACM survey.
9 December 2013	Garrett obtains records through access to information including the 190-page Asbestos Containing Materials (ACM) assessment survey conducted in 2004. This specifically identified the asbestos gaskets and vinyl asbestos floor tiles that he and others had been exposed to.	<p>This is the report that was not provided to Garrett and others by various parties including PSIC.</p> <p>Contrary to what the decision letter claims, this report was apparently never shown to Garrett or [Worksafe BC witness].</p> <p>Before starting work Garrett had requested PWGSC several times, in writing, to provide any reports of hazardous materials in his work areas.</p>
27 January 2014	Health Canada responds to ATIP that no records were located as referenced in Dion's April 2, 2013 report.	It appears that certain statements in Dion's decision letter were not supported by any formal communication with Health Canada.

18 February 2014	[Worksafe BC witness] sends an email to [NAME REDACTED], from Labour Canada, HRSDC to draw attention to how she was inappropriately quoted in Dion’s April 2, 2014 letter to Garrett. She states that when asked about the Garrett case she did not know that there had been a detailed ACM survey in 2004.	[Worksafe BC witness] goes on record that she was essentially misled by [Investigator 3] into making a false statement.
20 February 2014	[Worksafe BC witness] states that “In 2009 when I visited the Kent institution the 2004 Survey was not shared with me by PWGSC”.	[Worksafe BC witness] goes on record that PWGSC did not share the 2004 survey with her. This is suggestive of an ongoing pattern of concealment by PWGSC of the 2004 ACM survey.

Appendix 2: Shortcomings in Mr. Dion's decision letter

Mr. Dion's three-page decision letter dated April 2, 2014 seems a slipshod and unconvincing piece of work, with numerous errors and shortcomings. At its heart it does not address substantively the heart of Mr. Garrett's allegation – that important information about a deadly hazard was not shared with him – but simply dismisses this claim in one brief sentence, with no explanation of what evidence was obtained to arrive at such a conclusion.

The following are examples of errors and false, irrelevant or inappropriate statements in the letter.

1. Para 2 names as one of the alleged wrongdoers a Ms. Megan Shannon Martin, PWGSC regional asbestos coordinator. This is false. Mr. Garrett made no such allegation, and indeed had never heard of this person and did not know before receipt of this letter that such a position existed at PWGSC.
2. **Para 5 states that the ACM survey was 'shared with contractors prior to conducting their work'. PSIC does not indicate what evidence it found to support this conclusion. Mr. Garrett insists – and the contract documentation indicates – that he was never shown this survey or even informed of its existence: he was shown only a few small excerpts, which did not relate to the gaskets he was to work on, and without any indication of the source or authority of the information.**
3. Para 5 is also misleading because it is not sufficient merely to share this information with contractors prior to *conducting their work* – the Labour Code and Worksafe BC regulations require that the ACM survey be disclosed to prospective contractors *as part of the tender documentation*. Such disclosure is obviously necessary to alert bidders to additional project requirements related to health and safety, but the records seem to indicate that this was not done.
4. Para 5 also states: “*WorkSafe BC stated that it would have been unreasonable to expect PWGSC to conduct intrusive investigations to detect and test every item containing asbestos, including gaskets.*” As already noted, this misleading statement was obtained by PSIC during a telephone conversation in which important and relevant information was not disclosed to the WorkSafe BC employee quoted – namely that a comprehensive ACM survey had been conducted in 2004 which identified the specific hazards encountered.
5. Para 6 states: ‘*when concerns were brought to the attention of PWGSC, they took measures to conduct the required tests and analysis to ensure the health and safety of persons present on the worksite.*’ Whether this statement is correct or not, it is largely irrelevant because it deals with PWGSC's actions *after* the asbestos exposure took place. It does not shed light on whether there was wrongdoing by PWGSC in its actions or inaction *leading up to* the asbestos exposure.

6. Para 7 contains a lengthy series of generalities about ‘these types of projects’, and concludes that in this case ‘*overall the processes worked as intended*’. Again, this paragraph does not address the specifics of Garrett’s allegations, and it puts forward a conclusion that seems both questionable and irrelevant.
7. Paras 8 and 9 refer to refusal to work incidents that took place prior to Mr. Garrett’s contract which may be relevant because they seem to suggest an ongoing pattern of concealment of workplace hazards by PWGSC. But this paragraph suggests that instead of obtaining direct evidence by interviewing people identified by Garrett, PSIC simply accepted at face value assurances from the agencies potentially implicated in the alleged wrongdoing.
8. Para 13. In the final paragraph of the letter Garrett learned for the first time that a new investigator ([Investigator 3]) had been assigned. Mr. Dion invites Garrett to contact [Investigator 3] with any questions that he may have. This paragraph seems both disingenuous and insulting. Far from being open to answering Garrett’s questions, [Investigator 3] had apparently drafted the decision letter without identifying himself or contacting Garrett at any point in the process.

Appendix 3: Mr. Dion's decision letter

The letter from Mr. Dion setting out his final decision (with paragraph numbers added).

Public Sector
Integrity Commissioner



Commissaire
à l'intégrité du secteur public

Ottawa, Canada K1P 5Y7

PROTECTED B

April 2, 2013

Mr. Don Garrett
21349 Landstrom Road
Hope, British Columbia
V0X 1L3

**Decision into Disclosure of Wrongdoing
PSIC File 2010-D-1346**

Dear Mr. Garrett:

1. This letter is in response to the disclosure of wrongdoing you filed with this Office, pursuant to the *Public Servants Disclosure Protection Act*, S.C., 2005, c.46, (the "Act"), on March 28, 2011, against officials with the Department of Public Works and Government Services Canada (PWGSC). This is to inform you that my Office has now completed the investigation into the above-noted disclosure of wrongdoing. The subject-matter of this investigation concerned the conduct of various officials at PWGSC Western Region, with respect to a renovation project at the Kent Institution in British Columbia between 2008 and 2010.

2. In the disclosure of wrongdoing, you alleged that the following persons:

- Ms. Megan Shannon Martin, Regional Asbestos Coordinator;
- Mr. Michael Cuccione, Project Officer;
- Mr. Norm Paul, Senior Maintenance Management Specialist;
- Mr. Stuart Leslie, Senior Project Manager;
- Mr. Daryl Sinclair, Project Manager;
- Mr. Alain Trepanier, Regional Director General; and
- Ms. Donna Fung, Supply Team Leader

committed wrongdoing as defined in section 8 of the *Act*, namely:

- Possible contraventions of the BC Occupational Health and Safety Regulations, made under the BC *Workers Compensation Act (WCA)*; contrary to paragraph 8 (a) of the *Act*; and

1

- Acts or omissions creating a substantial and specific risk to the life, health or safety of persons, contrary to paragraph 8 (d) of the Act.

3. My Office has completed a thorough investigation which included a review of all relevant documentation, including expert reports from WorkSafeBC, an asbestos survey conducted on behalf of PWGSC at the Kent institution, documentation from PWGSC and HRSDC, as well as a review of applicable legislations and discussions with you. This Office also consulted a specialist in the field of health and safety in the province of British Columbia.
4. WorkSafeBC, the organization in charge of enforcing the WCA, confirmed that this provincial legislation does not apply to federal entities and/or employees. That being said, PWGSC is subject to the general obligation of section 124 of the Canada Labour Code, Part II, which stipulates that *"employers have a general obligation or duty to ensure that the health and safety of every person employed by the employer is protected while they are working."*
5. The Asbestos Containing Material survey conducted by PWGSC in 2004 catalogued, in a reasonable manner, all the items containing asbestos. This was shared with contractors prior to conducting their work. WorkSafeBC stated that it would have been unreasonable to expect PWGSC to conduct intrusive investigations to detect and test every item containing asbestos, including gaskets.
6. The investigation also found that when concerns were brought to the attention of PWGSC, they took measures to conduct the required tests and analysis to ensure the health and safety of persons present on the worksite.
7. During the course of the investigation, witnesses and an Occupational Hygiene Officer from WorkSafeBC informed us that these type of projects involve numerous participants and that the health and safety regulations are there to prevent injuries and, if necessary, make recommendations to ensure of the health and safety of workers. The numerous events and concerns during this construction project triggered a number of processes, which are not uncommon according to WorkSafeBC, and resulted in discussions between parties to find solutions and propose recommendations. Overall, the processes worked as intended.
8. You informed us of some employees invoking a refusal to work as per section 128 of the Canada Labour Code, Part II. In this situation, HRSDC as well as Health Canada confirmed that there was no danger for the employees on the site and no appeal of this decision was filed.
9. Invoking a refusal to work as per section 128 of the Labour Code does not necessarily mean that there was a danger to the health and safety of

employees. It means that an employee perceived a potential risk, at that time, and felt that if he continued with his work, his health or safety could be in danger. This process allows for a suspension of the work in order to allow an inspector to conduct an assessment of the situation and to determine if there is indeed a danger for the employees. In this situation, HRSDC as well as Health Canada confirmed that there was no danger for the employees on the site and no appeal of this decision was filed.

10. I believe that the concerns and issues raised by you and/or any other parties involved in this construction project were appropriately dealt with by the proper organizations (WorkSafeBC and HRSDC) responsible for enforcing the WCA and the Canada Labour Code of Canada, Part II.
11. For these reasons, I conclude that the allegations that the above-mentioned individuals committed wrongdoing by contravening the WCA as well as creating a substantial and specific risk to the life, health or safety of persons, contrary to paragraphs 8 (a) and (d) of the Act, are unfounded.
12. This concludes our investigation and our file will be closed accordingly. I would like to thank you for bringing these matters to our attention and for assisting my Office in understanding this particular subject-matter during our investigation.
13. Should you have any questions, please do not hesitate to contact [REDACTED] Investigator, at 613-946-2060.

Sincerely,


Mario Dion
Commissioner

Appendix 4: The 29 questions that Garrett was not allowed to answer

The following is the letter sent to Garrett in preparation for an interview planned for December 2012.

Office of the Public Sector
Integrity Commissioner
of Canada



Commissariat à l'intégrité
du secteur public
du Canada

Ottawa, Canada K1P 5Y7

PROTECTED B

November 26, 2012

Mr. Don Garrett
21349 Landstrom Road
Hope, British Columbia
V0X 1L3

**Re: Notice of Investigation into Disclosure of Wrongdoing
PSIC File 2010-D-1346**

Dear Mr. Garrett,

Further to our conversation of November 20, 2012, please find enclosed the questions that we discussed pertaining to the disclosure of wrongdoing you filed with this Office, pursuant to the *Public Servants Disclosure Protection Act*, S.C., 2005, c.46, (the "Act"), on March 28, 2011, against officials with the Department of Public Works and Government Services Canada (PWGSC). As the Investigator on this matter, as assigned by the Office of the Public Sector Integrity Commission, the Commissioner has directed me to investigate your allegations concerning various activities that could constitute wrongdoing as defined in section 8 of the *Public Servants Disclosure Protection Act* (the "Act") namely:

- Possible contraventions of the BC Occupational Health and Safety Regulations, made under the BC *Workers Compensation Act*; contrary to paragraph 8.(a) of the *Act*; and
- Acts or omissions creating a substantial and specific risk to the life, health or safety of persons, contrary to paragraph 8.(d) of the *Act*.

In accordance with paragraph 24.(1)(f) of the *Act*, we will not be investigating your additional allegations concerning Breach of Contract, as jurisdiction for claims against the Crown arising out of a contract resides with the Federal Court pursuant to section 17.(2)(b) of the *Federal Courts Act*.

We will also not be investigating your allegations of corruption or collusion concerning your contract, as I have been informed that PWGSC has an investigation ongoing into these allegations, but are awaiting further information from you in order to fully investigate the issues.

1/5

I have compiled a number of questions regarding the circumstances surrounding your allegation that you and other persons were exposed to airborne chrysotile asbestos while performing renovations at Kent Institution in 2009. As requested by you on November 23, 2012, I have included the questions in this correspondence so that you may take the opportunity to locate supporting documentation in anticipation of a telephone interview to take place in the near future.

Please be advised that the Public Servants Disclosure Protection Act requires us to protect to the extent possible, the identity of all persons involved in the disclosure process, including that of persons making disclosures, witnesses and persons against whom allegations have been made.

I cannot offer an absolute guarantee of confidentiality as there could be situations where we would be legally required to disclose information, for example if there are court proceedings or in the course of any future subsequent proceedings. However, I want to assure you that we conduct our investigation as confidentially as possible.

Furthermore, information obtained in the course of an investigation conducted by this Office is permanently exempt from any kind of requests for information under the Access to Information Act or Privacy Act. Also, you should know that if a report is subsequently prepared, your name will not be mentioned in that report.

Your cooperation in reviewing and providing comment and / or supporting documentation to the following questions is greatly appreciated:

1. My records indicate that on October 16, 2008, you signed the Invitation to Tender and attached bid. The solicitation closed on October 17, 2008. In your initial bid you offered to perform and complete the work for \$1,280,000.00 but on October 17, 2008 you submitted a Revision to Tender deducting \$800,892.00 (excluding GST/HST) from the initial tender. What prompted this change?
2. My records indicate that on October 23, 2008, D Fung signed Contract E0276-084171/001/PWY in the amount of \$479,108. Is this correct? Can you provide me with a copy of this contract?
3. The description of work with respect to this contract, at the initial time of signing was limited to replacing cell porcelain toilets and lavatories with stainless steel fixtures at Kent Institution in Agassiz, B.C. Is this correct?
4. Was there anything in the statement of work that spoke to the issue of asbestos abatement?
5. As a construction contractor, how many years experience do you have in the industry?
6. Had you ever experienced or been involved in asbestos abatement work?

2/5

7. Was the issue of asbestos at Kent institution discussed at the pre-tender site visit? If so, by / with whom?
8. Was the issue of asbestos at Kent institution discussed in the start-up meeting? Is so, with whom?
9. Was the issue of asbestos at Kent institution discussed at any of the subsequent site visits that you conducted for measurements or other purposes prior to starting the work? If so, with whom?
10. Was a primary contractor identified at the start-up meeting or were you, because you were the only "contractor" at this meeting, deemed the primary contractor for the purposes of this project?
11. In the "Start-Up Minutes" it reflects that you were deemed "superintendent" (pursuant to general "buyandsell" procurement guidelines) as the "designate contractor "superintendent" on site. Is this correct??
12. Who was the Departmental Representative designated by PWGSC for the purposes of this project? (This would be the person who was authorized to issue notices, instructions and directions to you and to accept from you any notices, orders or other communication relating to the work.)
13. Who was responsible for completing the Notice of Project? Was this done? If so, when and to whom was it submitted?
14. Did you submit a safety plan? On what information did you base your plan?
15. You indicated that work did not immediately commence upon awarding of the contract. Did you provide a phasing bar chart and schedule showing your anticipated progress stages and final completion of the work within the time period required within the 10 working days? (General Instructions – R.0204081.001- September 2008). When did you commence work?
16. Where in Kent Institution were you scheduled to conduct the work? Please advise of all locations and the specific work. Did you provide a record of the phases? Did this change following the discovery of asbestos?
17. How many trades people did you employ for the purposes of this project?
18. Do you have a record of when (what dates) they were on site and who may have been exposed to asbestos? Dates and locations within the institution would be helpful.

3/5

19. Who else at Kent Institution may have been subjected to this exposure of asbestos during this time period?
20. When and how did the issue of asbestos at Kent Institution first come to your attention? Did you already have knowledge of some asbestos somewhere or was it brought to your attention by someone or how did you find it? (Essentially, what were the circumstances?)
21. How long had you been on site by that point (when the asbestos came to your attention) and what extent of work did you have completed?
22. On April 1, 2009, a "Contemplated Change Notice" was prepared and signed by Daryl Sinclair. On April 6, 2009 you submitted a quote to Mr. Cuccione for:
- Change caulking for toilets
 - Additional anchoring for lavatories
 - Toilet floor mounts
23. The change order was signed by Daryl Sinclair on April 7, 2009 and Alvin Thompson on April 17, 2009 in the amount of \$45,567.92. What were the circumstances that led to this contemplated change order and was anything in this change order related to the issue of asbestos or suspect asbestos in the floor tiles, gaskets or anywhere else in Kent Institution?
24. On June 5, 2009, a "Contemplated Change Notice" was prepared and signed by Daryl Sinclair. You provided a quote to Mr. Cuccione via email in the amount of \$7,440.00 on June 22, 2009. The change order was signed by Daryl Sinclair on June 9, 2009 and an indiscernible name on June 9, 2009 in the amount of \$7,440.00. The change order was related to supply labour and equipment to hammer drill holes through a concrete wall for additional lavatory mounting. What were the circumstances that led to this contemplated change order and was anything in this change order related to the issue of asbestos or suspect asbestos in the floor tiles, gaskets or anywhere else in Kent Institution?
25. On July 6, 2009, a "Contemplated Change Notice" was prepared and signed by Daryl Sinclair. A quote was provided by Chilliwack Flooring (Mark Niebergal) in the amount of \$64,216.36 + GST on July 17, 2009. The change order was signed by Daryl Sinclair on July 20, 2009 and Alvin Thompson on July 20, 2009 in the amount of \$73,848.81. This particular change order speaks to the removal of existing asbestos bearing floor tiles beneath toilets in 160 cells, using appropriate WorkSafe BC asbestos abatement procedures and replacement with non-asbestos bearing vinyl floor tiles. You sent an e-mail to Mr. Cuccione on July 7, 2009 advising that Chilliwack Floors and the abatement contractor would provide the insurance certificates and security clearances for this work. What led to the issuance of this change order?

4/5

26. On September 3, 2009, a "Contemplated Change Notice" was prepared and signed by Daryl Sinclair. On September 14, 2009 you provided a quote to Mr. Cuccione and indicated in your correspondence to him that there was a suspension notice and stop work order on June 19, 2009. Please tell me about the circumstances that led up to this suspension notice and stop work order.

The change order was signed by Daryl Sinclair on February 11, 2010 and Donna Fung on February 17, 2010, approved in the amount of \$24,467.35 for:

- *Toilet flush valve repair (3,063.71)*
- *Toilet wax seals (to replace neoprene seal specified) (2,651.00)*
- *Abatement of AC Gaskets in Toilet Flush Valve (12,075.00)*
- *Additional Caulking resulting from the ACM tile replacement (6,091.92)*
- *Additional freight for Acorn Option 3395 lavatory anchor drains (240.72)*
- *Metal work for repair and installation of toilets and flush valves (345.00)*

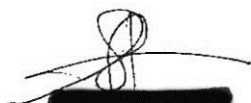
27. Were the abatement contractor (QMLP) and Chilliwack Floors separate contractors or subcontracted by you?

28. I understand that you were provided with pages 14-17 of the 2004 Asbestos Survey conducted at Kent Institution. I understand this was faxed to you on May 26, 2009 from Mr. Cuccione, I assume in response to your repeated requests for information regarding a hazardous assessment. Was this information related to the area you were conducting your work, and was the information sufficient to address your safety needs and the needs of your workers? Did you incorporate this information into your safety plan?

29. Since your reported exposure to asbestos at Kent Institution, what medical treatment have you sought and what further medical intervention do you require?

I look forward to the opportunity to discuss these questions with you at the earliest opportunity. I would respectfully request that you advise me as soon as the documentation has been assembled and you are prepared to partake in further discussion concerning this matter.

Sincerest regards,



Senior Investigator
Office of the Public Sector Integrity Commissioner