

Whistle Blowing in British Columbia: Nervous Reporting and Risky Reprisals

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“Almost every time you blow the whistle, you upset half the players and half the crowd..... You get more more criticism than praise, and have to accept that as part of the job.”

David Elleray, Premiership referee



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I Intro

The term “whistle blowing” has entered the lexicon of law, corporate governance and politics. For the purposes of this paper, “whistle blowing” refers to employees informing authorities of suspected wrong-doing by his or her employer. The analogy of whistle blowing is to an official on a playing field, such as a soccer referee, who can blow the whistle to point out an infraction and stop the action.

More recently the term “ethical reporter” has replaced the term “whistle blower” in academic circles.

What protections are currently available in British Columbia to encourage whistle blowers to come forward with information and to protect them from reprisals?

II Background

The issue of whistle blowing has garnered widespread attention in the United States and, to a lesser extent, Canada, over the past several years.

The interest in whistle blowing is largely due to a few prominent role models braving workplace reprisals to reveal illegalities, corruption or other internal malfeasance. In December 2002 Time magazine hailed three whistle blowers (employees of the FBI, Enron and WorldCom) as its Persons of the Year.¹

But if you take a second look at the various employees who have made headlines because of his or her whistle blowing, you see a much less glamorous picture.

¹ “Blowing the Whistle”, by Sheldon Gordon, *National CBA Magazine*, November 2004, p. 22

Former privacy commissioner George Radwanski might never have come to anyone's attention if not for an anonymous whistle blower who tipped off a House of Commons committee and prompted MPs to use their investigative powers.

Allan Cutler was the whistle blower who testified in March, 2004, about the sponsorship scandal in Ottawa. Allan Cutler testified that he was pushed out of his job after informing the head of the federal sponsorship program that improper commissions were being paid to ad agencies.

Joanna Gualtieri exposed \$2 billion in misspending at the Department of Foreign Affairs and International Trade's Bureau of Physical Resources. When Gualtieri raised concerns throughout the 1990s that the department was violating its own guidelines for procuring property for diplomats abroad, she was ridiculed, harassed and repeatedly prevented from doing her job. The government tried to re-assign her to more benign tasks, but she successfully fought to get her job back.

The stories are similar, and it is beyond doubt that for every vindicated whistle blower we hear about, there are dozens, probably hundreds, for which intimidation succeeds in discouraging employees from speaking up. Whistle blowers' jobs are made difficult or even lost.

Cutler himself says he would not have come forward were it not for Paul Martin's under-the-gun promise that whistle blowers in the sponsorship scandal would be protected.

So what protection exists for employees in British Columbia, and is it working?

III Legislation

A) Provincial Legislation & British Columbia Employees

For the most part, the only current legislative protection can be found in individual pieces of legislation aimed at protecting whistle blowers for taking action under that particular statute. The provisions, however, are often fairly limited in scope, targeting particular types of offences related to the specific purpose of the legislation. In addition, when employers contravene such provisions, the matter is usually dealt with by an administrative tribunal, and an employer would typically face a fine or may be required to reinstate or compensate the employee.

Provincial legislation in British Columbia concerning human rights, employment standards, labour relations, workers' compensation and occupational health and safety, and forest practices, provide protection against adverse employment consequences for anyone who reports a contravention under the legislation.

Two provinces – Saskatchewan and New Brunswick – offer redress to employees who have suffered workplace retaliation for complying with, or reporting violations of, any law.

The Saskatchewan *Labour Standards Act* prohibits an employer from discharging, threatening to discharge or discriminating against an employee who has reported or proposed to report to a “lawful authority” any activity that results or is likely to result in an offence pursuant to an act.

The New Brunswick *Employment Standards Act* states that an employer “shall not dismiss, suspend, lay off, penalize, discipline or discriminate against an employee” for giving “information or evidence against the employer with respect to the alleged violation of any provincial or federal Act or regulation by the employer while carrying on the employer’s business...”.

These laws protect public and private employees. However, there are only a handful of occasions where use has been made of the New Brunswick or Saskatchewan legislation.² Recently the Saskatchewan legislation was considered by the Saskatchewan Provincial Court, Court of Queen’s Bench and Court of Appeal: *Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771*, [2002] SJ No. 555 (Sask Prov Ct) (McMurty J.); [2003] SJ No. 15 (Sask QB) (Ball J.); [2003] SJ No. 640 (Sask CA) (Tallis, Cameron and Gerwing JJ.A.).

In *Merk* the former bookkeeper of a Regina union local brought a private prosecution under the legislation, after she was fired for allegedly revealing fraudulent expenses submitted by two officials of her local. The provincial court ruled against her, finding that in reporting the malfeasance to the president of the union, she failed to report to a “lawful authority” as required – but not defined – by the law.

The Court of Queen’s Bench overturned the ruling, finding that in the time between the local’s decision to fire Merk and her actual termination, she had also reported the malfeasance to the police, which constituted a “lawful authority”.

But, the Saskatchewan Court of Appeal, in a split decision last October, reversed the Queen’s Bench judgment and reinstated the lower-court ruling.

In April 2004 the Supreme Court of Canada confirmed it would hear the appeal of the appeal court’s decision: *Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771*, [2003] SCCA No. 543.

² “Blowing the Whistle”, by Sheldon Gordon, *National CBA Magazine*, November 2004, pp. 26-27

B) Federal Legislation & British Columbia Employees

- (i) The most intriguing federal response to whistle blowing is Bill C-13, *An Act to amend the Criminal Code (capital markets fraud and evidence gathering)*, S.C. 2004 c.3..

Most provisions in Bill C-13 came into force a few months ago, on September 15, 2004.

The provisions add section 425.1 to the *Criminal Code*.

Threats and retaliation against employees **425.1** (1) No employer or person acting on behalf of an employer or in a position of authority in respect of an employee of the employer shall take a disciplinary measure against, demote, terminate or otherwise adversely affect the employment of such an employee, or threaten to do so,

(a) with the intent to compel the employee to abstain from providing information to a person whose duties include the enforcement of federal or provincial law, respecting an offence that the employee believes has been or is being committed contrary to this or any other federal or provincial Act or regulation by the employer or an officer or employee of the employer or, if the employer is a corporation, by one or more of its directors; or

(b) with the intent to retaliate against the employee because the employee has provided information referred to in paragraph (a) to a person whose duties include the enforcement of federal or provincial law.

Punishment (2) Any one who contravenes subsection (1) is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) an offence punishable on summary conviction.

The amendment was described by the Government as follows:

SUMMARY

This enactment amends the *Criminal Code* by creating a new offence of prohibited insider trading and creating a new offence to prohibit threatening or retaliating against employees for disclosing unlawful conduct. The enactment increases the maximum penalties and codifies aggravating and non-mitigating sentencing factors for fraud and certain related offences and provides for concurrent jurisdiction for the Attorney General of Canada to prosecute those offences.

Section 425.1 is the first provision to apply in a comprehensive manner and to provide for criminal sanctions, including the possibility of imprisonment.

In essence, section 425.1 targets employers who discipline, demote, terminate or otherwise adversely affect the employment of employees, or threaten to do so, with intent to either:

- Silence or prevent the employee from providing information to government or law enforcement officials;
- Retaliate against the employee for providing information to government or law enforcement officials.

The penalty for violating the provisions of the Code related to whistle blowing carry a maximum penalty of 5 years imprisonment, in addition to any provincial or regulatory

sanctions under securities legislation – including imprisonment in a federal penitentiary.

For section 425.1 to apply, the information disclosed by the employee must relate to an offence that is contrary to provincial or federal law and which the employee honestly believes has been committed by his or her employer, a company officer, director or co-worker.

Under Bill C-13, an “employer” is defined broadly to include any person acting on behalf of an employer or in a position of authority in respect of an employee.

The scope of “information” in Bill C-13 is also wide and could include privileged information, information regularly accessible to the employee, and potentially, information that an employee has unlawfully accessed in order to disclose corporate corruption.

However, employees are only protected if they approach a person whose duties include law enforcement. They are not afforded protection if they contact a media source, or an outside agency, or advocacy group.

The bottom line is that employers cannot dismiss or discipline employees for blowing the whistle on unlawful corporate conduct; those who do may risk up to five years’ imprisonment.

(ii) The *Human Rights Act*, *Canada Labour Code*, *Competition Act*, the *Personal Information Protection and Electronic Documents Act*, and the *Canadian Environmental Protection Act* provide protection against adverse employment consequences for anyone who reports a contravention under that legislation.

(iii) Bill C-25, the *Public Servants Disclosure Protection Bill* was introduced in the House of Commons in March, 2004 and was intended to shield conscientious federal civil servants from employer retribution. The bill was introduced in response to the sponsorship scandal. The Bill died on the order paper when the federal election was called.

(iv) Bill C-11 (a revised version of Bill C-25) was introduced to the House of Commons in October, 2004. It was intended that Bill C-11 would establish a procedure for the disclosure of wrongdoings in the public sector, including the protection of persons who disclose the wrongdoings.

Crown Corporations are included under Bill C-11; they were not covered by Bill C-25.

The Bill is not yet in force. It is currently at the Committee Report stage (which is prior to the Second Reading).³

(v) Federal public servants (excluding Crown Corporation employees) are somewhat protected under the *Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace*.⁴ This Policy was introduced November 30, 2001.

Employees are to be protected from reprisal if, upon reasonable grounds, he or she believes that another person has committed a wrongdoing in the workplace, and he or she reports the wrongdoing.

³<http://www.parl.gc.ca/LEGISINFO/index.asp?Lang=E&Chamber=N&StartList=A&EndList=Z&Session=13&Type=0&Scope=I&query=4218&List=stat>, (accessed February 4, 2005).

⁴http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/tb_851/idicww-diicaft_e.asp, (accessed February 10, 2005).

Should employees feel they have been punished in some way due to the whistle blowing, they may make a report to a senior office or to the Public Service Integrity Office. The Integrity Office can make recommendations, but not formal rulings.

And at the end of the day, the Policy is just that – policy – opposed to a statute.

C) US Legislation

An American father and son duo created a website (www.whistleblowing.org) in 1998 offering “Whistleblowing Tip of the Day” and providing the free service of answering all questions about whistle blowing within 12 hours. To date the web site has received 289,032 hits.

Numerous non-profit, public interest organizations exist in the US (for example “US Government Accountability Project (GAP)⁵) to litigate whistle blower cases, and develops reforms of whistle blower laws.

We came across American websites dedicated entirely to “Choosing a Whistleblower Lawyer” and “Working With a Whistleblower Attorney”⁶.

More people blow the whistle in the United States than anywhere else in the world. Every day more than 1,000 people send e-mails to the Securities and Exchange Commission, and every month an average of 2,000 people contact the U.S. Department of Defense hotline. Most of these communications are made by whistleblowers.⁷

⁵<http://www.whistleblower.org/> (accessed February 5, 2005)

⁶ <http://www.peregrinos.us/index-3.htm> (accessed February 5, 2005)

⁷ “A Piercing Look at Whistleblowing”, by Roberta Ann Johnson, Ph.D., Executive Update Online, <http://www.gwsae.org/executiveupdate/2004/May/pierce.htm> (accessed February 15, 2005)

Not surprisingly, there are a number of laws in the United States aimed at protecting whistle blowers.

Many individual Acts exist, dealing with specific subject areas, such as occupational health and safety.

The *Whistleblowers Protection Act* (1989) protects all present and former federal employees, or applicants for federal employment. The Act does not include specific criteria that disclosures must satisfy before being protected under the Act. On the contrary, the statute indicates that any individual making a disclosure should be protected. There is no requirement in the Act for the person making the disclosure to report internally before making an external disclosure.⁸

The most recent and perhaps most significant legislation is the *Sarbanes Oxley Act* (2002). The Act pertains to securities laws. Under this Act an employee has an action for reinstatement and damages if he or she is subjected to reprisals for blowing the whistle.

It has been said that the *Sarbanes Oxley* legislation may reach as far as Canadian publicly traded companies doing business in the United States, or United States companies doing business in Canada.⁹

The Federal *False Claims Act*, formerly known as the *Informer's Act* or the *Lincoln Law*, was enacted during the height of the Civil War at the urging of United States President Abraham Lincoln. Dramatically increased government spending on military procurement led to widespread fraud by private contractors. The most glaring examples of fraud included: sawdust sold as munitions and transported to Union soldiers; supplies such as

⁸ "A Comparative International Analysis of Regimes for the Disclosure of Wrongdoing ("Whistleblowing")", Public Service Integrity Office, Research Series, http://www.integrity.gc.ca/publications/cia-aci/part2-us_e.php (accessed February 14, 2005)

⁹ "U.S. Whistleblower Law May Apply to Some Canadian Firms" by Luis Millan, *The Lawyers Weekly*, July 23, 2004, p. 7

horses and mules sold to units of the Union cavalry and then resold to other units; and unseaworthy ships freshly painted and delivered to the Navy as newly built.¹⁰

Although the roots of the *False Claims Act* go back as far as the America Civil War it remains one of the most valuable means available to private citizens in combating fraud against the government; The Act provides whistle blowers a percentage of the savings realized when inappropriate activity is ended by their disclosure. The percentage varies depending on certain factors such as whether or not the government intervened and the work contributed by the private citizen.¹¹

The whistle blower can receive between 15% and 30% of the recovery.¹²

D) UK Legislation

A suggestion was made by the British government that whistleblowers be included in the British Honours system for their good corporate citizenship.¹³ The British whistle blower protection law is said to be the most far-reaching in the world.

The United Kingdom's *Public Interest Disclosure Act* (the “*PIDA*”) focuses on protection and facilitation of disclosure in the public or private sector. The *PIDA* aims to protect the person making the disclosure from reprisal when disclosures meet the criteria for protection under the Act.

The related *Civil Service Code* specifically covers public sector employees and has a broader mandate than the *PIDA*.¹⁴

¹⁰ “The False Claims Act: A Consumer’s Tool to Combat Fraud Against the Government”, by Thomas Grande, *The Consumer Advocate*, Volume 6, Issue 6, November/ December 2000.

¹¹ “The World of Whistleblowers: Are They Sinners or Saints?”, by Jacqueline P. Taylor, <http://www.womenof.com/Articles/le020298.asp> (accessed February 15, 2005).

¹² Health & Safety Injury Lawyers Network, http://www.healthandsafetyinjurylawyers.com/qui_tam_whistle_blower/rewards.html (accessed February 15, 2005).

¹³ “Whistleblowing: Breaking the Silence of the Lambs”, by Rosella Melanson, first published in the *New Brunswick Telegraph Journal* May 2001, <http://personal.nbnet.nb.ca/rosellam/whistleblowing.html> (accessed February 15, 2005)

Procedurally there are strict requirements for a person making the disclosure to disclose via the internal mechanisms of their employer, before being able to be protected from reprisal.

An employee may award compensation based on the losses suffered by him or her for making the disclosure. If a person making the disclosure is unfairly dismissed, the person may apply for an interim order to keep his or her job.

A charity organization (a registered legal advice center) exists in the UK - Public Concern At Work - to provide free advice to employees about the rights of whistle blowers under the PIDA and Civil Service Code. The services of Public Concern At Work also include promoting, monitoring and reviewing whistle blowing law, quarterly publication of “The Whistleblower” newsletter, and staffing a “National Whistleblowing Helpline”.

E) Law Society of Upper Canada

In March, 2004, the Law Society of Upper Canada adopted new Rules of Professional Conduct that require corporate lawyers (in-house or external) to report to their superiors any evidence of company conduct that is “dishonest, fraudulent, criminal or illegal.” If action is not taken, the lawyer is obligated to pursue the matter up the corporate ladder – to the highest authority in the organization.

The Commentary accompanying the new Rules indicates that if the Company does not take action counsel must “withdraw from acting in the manner”. In some cases this would mean resigning from his or her position or relationship with the organization, and not merely withdrawing from acting in the particular matter.¹⁵

¹⁴“A Comparative International Analysis of Regimes for the Disclosure of Wrongdoing (“Whistleblowing”)”, *Public Service Integrity Office, Research Series*, http://www.integritas.gc.ca/publications/cia-aci/part2-uk_e.php (accessed February 14, 2005)

¹⁵ “Law Society of Upper Canada has New Rules on Whistle-Blowing for Lawyers”, by Felicia S. Folk, *Law Society of British Columbia Bencher’s Bulletin*, November – December, 2004, p. 18

Because of solicitor-client confidentiality, the lawyer could not report misconduct to a third party (unless required by law or by order of a tribunal, or if there is an “imminent risk” of death or serious bodily or psychological harm”).

Confidentiality also means that a lawyer who resigns over corporate misconduct would likely not be able to sue his or her ex-employer for constructive dismissal, for he or she would not be permitted to disclose the reasons why he or she resigned. An executive and general counsel of GPC International in Ottawa encouraged the Law Society to allow an exemption in this sort of situation; the law society did not agree.¹⁶

IV Common Law

Given the relative lack of legislative protections for whistle blowers in British Columbia, the question arises as to what other protections they might have.

A) Unionized Employees

Unionized employees can turn to their collective agreements and the right not to be dismissed other than for cause. Reinstatement of the employee into the workplace may be an option pursuant to the collective agreement.

B) Non-Unionized Employees

Employees in a non-unionized environment can rely upon the common law entitlement to receive reasonable notice of the termination of their employment or pay in lieu of reasonable notice.

The common law does not enable employees to get their jobs back.

(i) Conflicting Interests

¹⁶ “Blowing the Whistle”, by Sheldon Gordon, *National CBA Magazine*, November 2004, p. 29.

A common issue in wrongful dismissal actions brought on by whistle blowers, is how the court will deal with the delicate balance between two conflicting interests: employees owe their employer a duty of loyalty and fidelity which mandates that they not disclose confidential information; and at the same time, this duty conflicts with the public interest in the disclosure of illegal or corrupt activity.

It remains to be seen how section 425.1 of the Criminal Code will impact the outcome of these actions.

(ii) **Punitive and Aggravated Damages for Contravention of Whistle Blowing Statute**

The Supreme Court of Canada in *McKinley v. BC Tel* [2001] 2 SCR 161, set out that breach of a social policy statute, such as the *Human Rights Code*, in the course of a wrongful dismissal, may be a proper foundation for a plea of punitive damages and aggravated damages. At paragraph 89, the SCC said this:

As discussed, the appellant was correct to state that his hypertension constituted a disability in law. Thus, the failure to find him another position may create a *prima facie* case of discrimination, given the employer's duty to accommodate disabled employees to the point of undue hardship. See *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3, and *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868. Moreover, this discrimination may in turn give rise to a punitive damages award. See *Collinson v. William E. Coutts Co.*, [1995] B.C.J. No. 2766 (S.C.) (QL).

On this analogy, it is submitted, a provable allegation of contravention of an applicable whistle blower statute would found a plea for punitive damages, as did the age

discrimination claim under the Human Rights legislation in *Collinson*, cited within *McKinley*.

In a recent case, my office has considered this, and we have plead this in circumstances where an executive was dismissed and a severance agreement made with him which purported to discontinue payments in some circumstances where the executive may have involvement in civil or criminal investigations involving the employer. The executive was drawn into such investigations and the severance payments were discontinued.

Our Statement of Claim to recover the discontinued severance payments includes the following pleading:

The Plaintiff further claims punitive, exemplary and/or aggravated damages as a result of the Defendant's breach of the *Criminal Code of Canada*, RSC 1985, c. C-46, as amended, including the "whistle-blower" amendments including Section 425.1, and/or the Defendant's breach of public policy, by adversely affecting the Plaintiff in order to compel him to abstain from providing information to a person whose duties include enforcement of federal or provincial law, and by retaliating against the Plaintiff in respect of the same, and by other employment related intimidation.

This tracks the amendment to the *Criminal Code* and relies on the public policy behind the amendment. Since our case involves providing information to the RCM Police the amendment and policy seem squarely engaged.

It would seem that the net is cast widely at Section 425.1, with the use of undefined and broad language such as "retaliating" and "other employment related intimidation".

The Criminal Code section only would seem to afford protection where the whistle is blown to a law enforcement official. Thus no protection would flow to one who takes the course of blowing the whistle to senior officials within his or her employer.

The problem for a Plaintiff would be to find some legislation or tort to cover the issue of an employer's retaliatory response to a whistle blowing to an official within the employer as opposed to a law enforcement official.

(iii) **Various Damages Sought By Whistle Blower**

There is a case now before our Courts involving such a situation. The case of *Ferreira v. City of Richmond*, 2005 BCCA 66, involves an allegation by a unionized employee of harassment and intimidation resulting in personal injury in retaliation for reporting alleged wrongdoings to fellow employees within the employer.

Mr. Justice Smith, of the BC Court of Appeal, last week granted Leave to Appeal from the refusal of a jurisdictional challenge by the Employer and certain individuals.

The Court of Appeal included this summary of events in the Leave Reasons:

In the underlying action, Mr. Ferreira claims that he observed certain corrupt practices engaged in by his fellow employees and that his report of these matters to his superiors, characterized by counsel as "whistle-blowing", was not properly handled by the City. As a result, he claims that he was harassed and insulted by the individual appellants at his work to the extent that he suffered personal injury. In his statement of claim, he seeks punitive and compensatory damages against the individual appellants for "personal injury"; "intentional infliction of nervous shock and/or mental anguish and mental distress"; and "pain and suffering". He also seeks punitive damages against the City of Richmond. As well, he seeks compensatory damages based on vicarious

liability, "negligent supervision", breach of fiduciary duty, and breach of contract. (*Ferreira v. City of Richmond* 2005 BCCA 66, February 10, 2005 Reasons for granting Leave to Appeal (para 3))

At the Chambers Court level, the learned Justice Brown made these remarks about this aspect of the case:

While some of the complaints made by Mr. Ferreira may be within the *Human Rights Code*, not all of the complaints are covered by the *Human Rights Code*. For example, the threats to burn or kill Mr. Ferreira are actionable, independent of the *Human Rights Code*. Further, the essence of Mr. Ferreira's complaints is not that he was discriminated against for any of the matters covered by the *Human Rights Code*. He does not say that he was discriminated against based on his race, his sexual orientation or his place of origin. Rather, he says that these epithets were used as vehicles to harass him because he was a "whistle blower", that he raised issues of inappropriate conduct by other City employees and as a result was harassed by them. Therefore, an arbitrator could not cover the full scope of the claim by reference to the *Human Rights Code*. (*Ferreira v. City of Richmond* 2004 BCSC 1600, December 12, 2004 (para 29))

V Advising Clients

It would be prudent for counsel advising employers to recommend a review or establishment of policies, standards and procedures, including confidentiality policies and agreements, workplace conduct and behaviour, ethics and corporate governance, conflict of interest, kickbacks, whistle blowing, complaints and investigations, disciplinary and termination policies, as well as finance and accounting policies.

When drafting a code of conduct clearly indicate all conduct that is dishonest, fraudulent, or illicit in any way, and the consequences for breaching the policy.

Consider stringent confidentiality policies or agreements, and ensure that they do not prevent an employee from speaking to law enforcement authorities about a legitimate concern regarding potential corporate wrongdoing.

Urge your client to communicate expected moral behaviour to employees including upper and lower level management.

Provide channels for misconduct to be reported. This may minimize the likelihood than an employee will blow the whistle publicly.¹⁷ Companies such as Shell Canada and Royal Bank created an Ombudsperson to handle employee complaints of any kind. Other companies, such as Petro-Canada, set up a 1-800 phone line for employees to lodge complaints with a third-party monitor, who pass on the complaint (stripped of the employees' names) to a named delegate of the company.¹⁸

Protect the confidentiality and anonymity of all communications received by employees. Take them seriously and conduct proper investigations into the allegations before taking action. Collect all relevant documents and evidence. Ensure you document all steps and results of the investigation. If the investigation validates the complaint, report it to the police or the proper level of law enforcement.

Companies should inform employees that “they will not be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment, or otherwise, because of any lawful act done by an employee in the provision of information to superiors, or to appropriate government agencies, regarding conduct that the employee reasonably believes violates the

¹⁷ “Blowing the Whistle”, by Sheldon Gordon, *National CBA Magazine*, November 2004, p. 29.

¹⁸ “Blowing the Whistle”, by Sheldon Gordon, *National CBA Magazine*, November 2004, p. 28.

Company's code of business conduct or any applicable governmental laws, rules and regulations, or in assisting in an investigation of these types of violations."¹⁹.

When advising employees ask them to contemplate whether the wrongdoing is significant enough to risk potential reprisals.

VI CONCLUSION

At present in B.C. there is limited protection for an ethical reporter (whistle blower). There are specific statutes giving protection against retaliation but only if the statute is squarely engaged. Various sets of stronger legislation have come forward and failed. Other jurisdictions have seen it as important to provide broader protection. Some plaintiffs' counsel are bringing forward claims engaging common law principles in an attempt to fill the void. The novelty of the issue and recent advent of litigation has seen little in the way of case precedent to date. As the area is regulated in a patchwork it is difficult for employers' counsel to feel entirely secure in advising where ethical reporting is or may be a factor.

The issue arises with increasing frequency and regularity in employment law practice today, and it may well be left to the common law to develop and balance the complex interests, which inform this important area.

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¹⁹ "Petro-Canada Whistle Blower Protection Policy", <http://www.calflo.com/eng/investor/9334.htm>, (accessed February 5, 2005)