



Notes for Remarks
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***Whistleblowing as a
Tool for Fighting Corruption***

Both public and private sectors in Canada see whistleblowers simultaneously as heroes and blabbermouths whose ultimate fate is praise or reprisal, acclaimed for rendering a public service, or vilified for causing damage to reputations and well-being.

This strong ambivalence and uncertainty will remain entrenched until Canada develops a far superior pro-whistleblower culture, strong legislation with sanctions that have consequences and independent oversight.

This indeed is a timely discussion. As we speak, the City of Toronto is sending its first policy to City Council and drafting a bylaw on the subject, while the City of Montreal suffers the consequences of a whistleblower hotline without credibility on the one hand and policy that silences staff from whistle blowing on the other.

Our current culture acknowledges that whistle blowing increases the integrity and accountability of governments and protects the interests of stockholders and economies. So long as the finger is being pointed at someone else.

We call upon ordinary people to report wrong-doing, then look at them with suspicion and do not properly protect them from reprisal.

It takes enormous courage to complain in the public interest. There is little in it for people to do so. Lives have been ruined from the stories of Carne Ross who spoke out against the Iraq war in the UK and David Kelly who spoke out about the absence of weapons of mass destruction and subsequently ended his life to the complaints that were never addressed by the Federal Integrity Commissioner, Christiane Ouimet.

We are passive about encouraging blowing whistles -- as if we will tolerate the emergence of a whistleblower, but we don't really want to encourage it.

Do companies, banks, governments - our employers have policies, standards of conduct and obligations for addressing complaints by whistleblowers? Are there mechanisms to provide protection against isolation, harassment and reprisal for those who do come forward?

And what does our Canadian culture have to say about dealing with the particular problem which arises when the person guilty of wrong-doing is the same individual who has the responsibility to do something about it? Our current corporate and public sector culture usually wants to keep the reason for whistle blowing quiet at all costs.

We have a considerable amount of work to do if Canada is to develop a pro-whistleblower culture that does not simultaneously encourage false accusations and tattletale-ism.

The Environmental Commissioner of Ontario would say that whistle blowing is well entrenched in corporate culture, that there are good deterrents. I will leave those views to others with greater private sector experience.

As for the public sector, the rules may be easier to circumvent, reprisal may be easier to engage in within big government. Under the Provincial Civil Service Disclosure of Wrongdoing Regulations, the Nova Scotia Ombudsman has authority to investigate allegations of wrongdoing. There is talk of creating legislation.

Manitoba began its work on this front in 2007. Their Ombudsman supported 12 cases last year. The strength of the ombudsman route is that a test of meeting the wrongdoing threshold may fail but an ombudsman investigation of maladministration can proceed. The problem in Manitoba is that reprisal protection is not within the Ombudsman's purview but rather that of the Labour Board.

Saskatchewan is worth following. Its model will be stronger with legislation resting with the Ombudsman that carries both the investigative function and the reprisal protections.

I think it is true to say that the way to attack protections is to go after the law in order to avoid your obligations. That speaks to the importance of iron clad legislation.

Along with strong legislation, we must consider the need in both governments and corporations for an independent official. Independence is critical to improving the inherent conflict of interest in trying to advocate, investigate and create change in situations so often fraught with controversy.

Why not the independent office of a legislated ombudsman?

What if governments and the private sector alike had an independent legally-mandated Ombudsman-like official who could ensure that the right thing happens to whistleblowers who do the right thing?

An Ombudsman who could investigate to ensure an employer has taken appropriate sanctions against the person guilty of wrong-doing? Or conversely reassure the organization that it did nothing wrong in the first place.

Should we not require by law that wrongdoing be publicly acknowledged?

Could an Ombudsman ensure that adequate protection has been given to the whistleblower so that his/her life is not negatively impacted because of reporting wrong doing?

We cannot expect to have a culture change based on appeals to morality and ethics. It simply doesn't work. Misconduct can be exposed and whistleblowers protected when there is a combination of strong leadership, the will to do it, legislation and accompanying sanctions.

My premise is that in creating a culture where whistle blowing is considered to be ethical heroism, we must be assisted by a competent and proactive ombudsman/commissioner

who can investigate, who can provide protection, where public acknowledgment is given, where there are sanctions against persons who take reprisal action.

This topic is fundamentally about the abuse and misuse of power. In that context an ombudsman or similar institution can investigate, even without meeting the test of wrong doing. He or she may initiate on her Own Motion, an investigation of maladministration and in so doing the individual has a far better chance of protection from reprisal.

We must be alert for any attempts to vilify whistleblowers in the same way that we deal with hate crimes. We cannot expect people to voluntarily make themselves vulnerable unless we are prepared to lessen that vulnerability to zero.