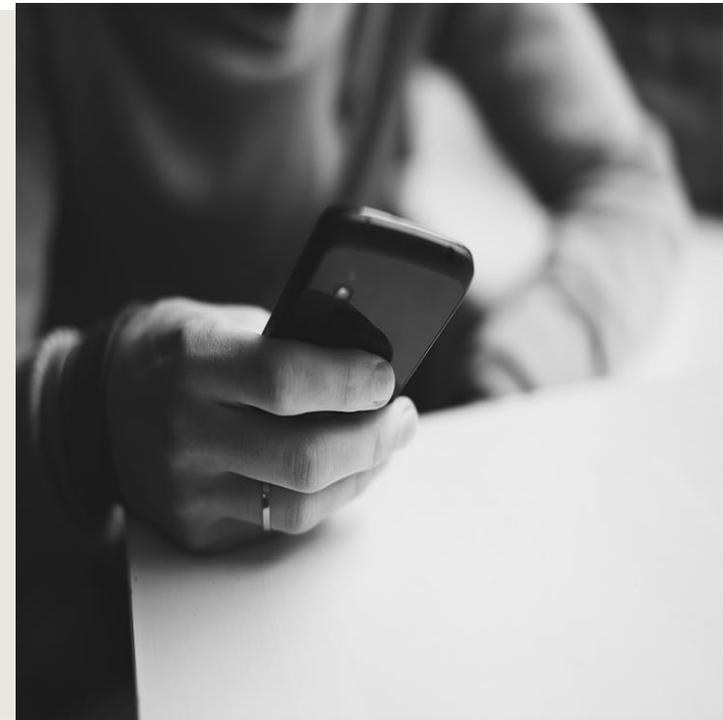




Whistleblowing as Ethical Practice: Consulting the Guide



EPAC WEBINAR ON WHISTLEBLOWING AND DISCLOSURE REGIMES

October 13, 2016

Sandy Boucher, Grant Thornton

Robert Shepherd, Carleton University

Administrative Matters

- » Welcome and Thanks
- » Voice and Written Messages
- » Presentation and Interaction Timing
- » Confidentiality
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Dr. Mary Gentile, Nov. 30

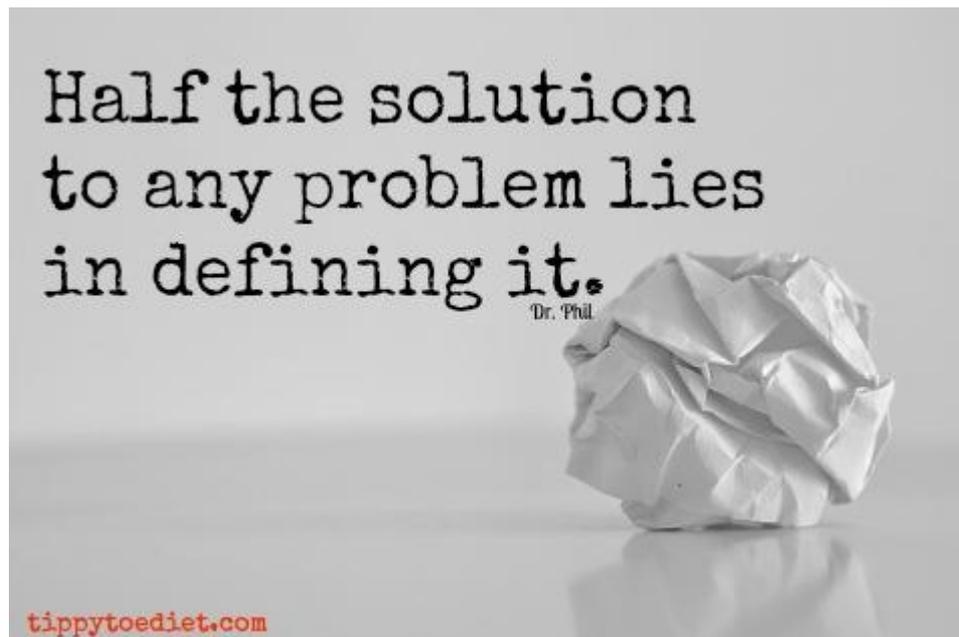


Overview



1. Problem Definition
2. Benefits of a Whistleblowing Regime
3. Desired Outcomes of a Whistleblowing Regime
4. Critical Elements of an Effective Regime
5. The Challenges of Implementation
6. Concluding Thoughts

Problem Definition



We all know what you do with messengers. . . .



Negative Perceptions

- » *Snitch, informer, stool pigeon, sneak, rat, grass, mole.*
- » In everyday life, people who “tell” on others are often described negatively as a *tattler, squealer, telltale*, or *Judas*.
- » A common social phenomenon, but often not in the best interests of all.
- » In most cases where a whistleblower reports wrongdoing, the negative behaviour is detrimental.



Common Myths

- » Whistleblowers are trouble makers who are out for their own gain
- » Whistleblowers are not team players and make reports for negative reasons, such as jealousy and revenge
- » Whistleblowers cannot be trusted, and their information is unreliable or inaccurate
- » Whistleblowers are often accused of having mental health issues
- » Whistleblowers manipulate reporting systems and use them for their own ends



A New View of Whistleblowers

- » Perceptions are changing
- » Whistleblowers are heroes preventing wrongdoing
- » Fighting for the “little guy”
- » Reflection of organizational social responsibility
- » Go with social media, or die by social media

- » Canadian-born, Alayne Fleischmann worked for JPMorgan as a transaction manager in New York. Her job was to review and find the red flags in home loans the bank wanted to purchase from a mortgage lender. She wrote a memo indicating that the loans cannot be securitized.
- » Instead of charging the banks, Justice settled with them for \$13B: \$7B tax deductible; \$4B consumer relief; \$2B penalty to banks. Fleischman returned to Canada in 2012 having received no support for doing her job.

Canadian whistleblower's testimony leads to multi-billion dollar settlement



Problem: Why Are Whistleblower Systems Not More Effective?

- » Social conditioning works against whistleblowers who are often viewed as being “outsiders” or not team players.
- » The perception regarding the **intentions** of whistleblowers themselves is only just beginning to change for the better.
- » Retaliation against them when they expose wrongdoing is still the norm.
- » Most **organizations do not understand the dynamics of whistleblowing or disclosing**, either generally or in their own organization.
- » A whistleblowing system will not be used and effective unless it is supported by **leadership** commitment, training and monitoring.
- » We need to look at ways in which a **greater understanding of these dynamics** can enable the more effective use of whistleblowers.

The Benefits



Canadian Standards Association Guideline



Sandy Boucher - 888 points

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Whistleblowing Guideline View Access in Sustainability

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Whistleblowing Systems: A Guide

The purpose of the Guide is to assist organizational leaders seeking to establish internal systems for handling reports of suspected wrongdoing, mismanagement and unethical conduct in their organizations. The Guide addresses the issues that experience has shown to be most critical in developing an effective whistleblowing system, including the challenge of protecting whistleblowers from reprisals that punish and silence them, and deter others from speaking out.

CSA Group acknowledges the support of Grant Thornton LLP, which allows for your access to Whistleblowing Systems: A Guide

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CLICK TO VIEW WHISTLEBLOWING SYSTEMS - A GUIDE IN ENGLISH OR FRENCH



ASK A QUESTION ABOUT THE WHISTLEBLOWING GUIDELINE

Type your question

Ask it

Structural Benefits

- » Wrongdoing can be identified, often earlier.
- » Management can shut down inappropriate activities.
- » Problems can be identified before they become serious or more serious.
- » A clear benefit in shortening the time to detection is that it reduces the damage done.
- » Bad actors can be identified and investigated and illicit activities stopped.
- » Other management programs are likely to be more effective.
- » A workplace free of fraud and wrongdoing will be more productive and employees will be more engaged.



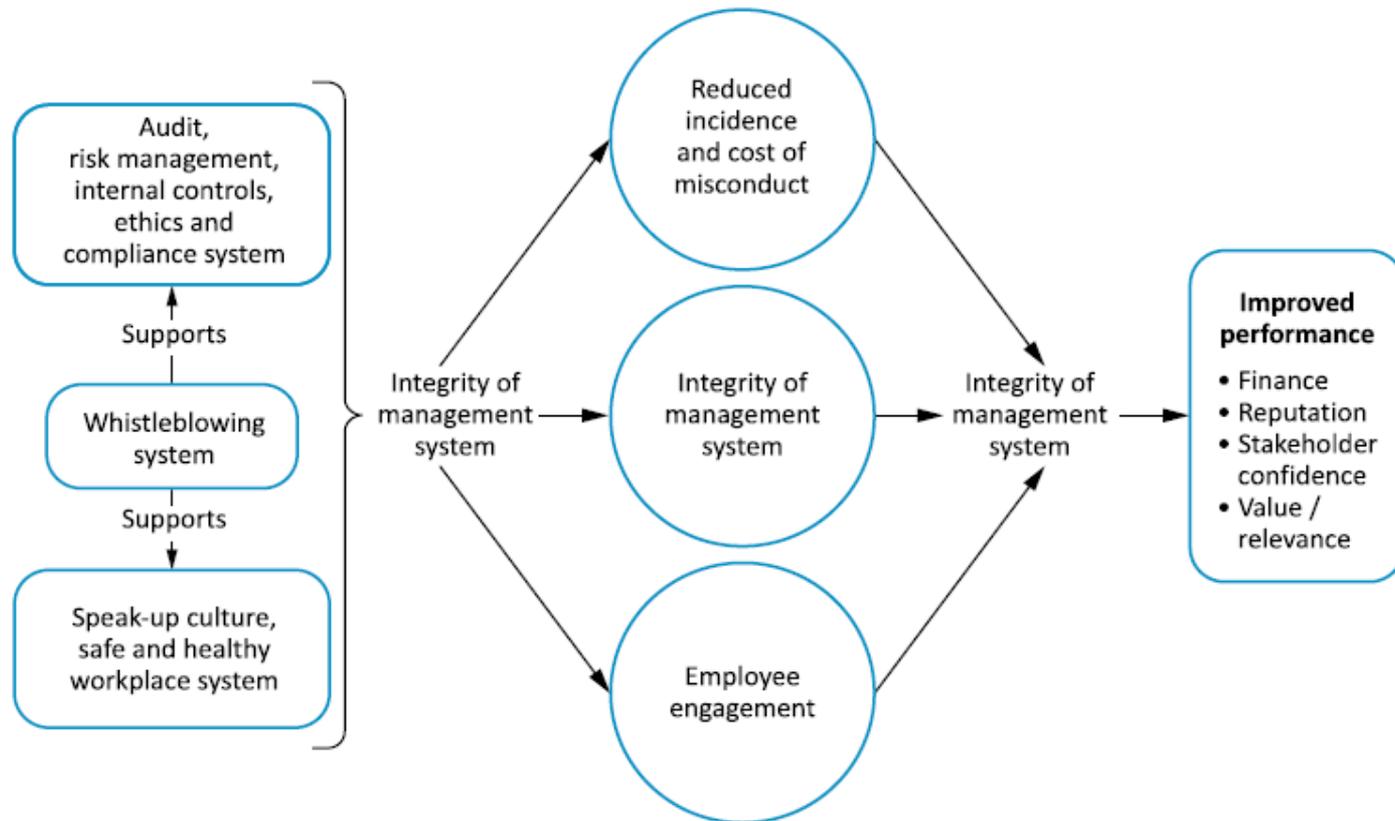
People Benefits

- » Acting on information demonstrates management is **serious** about handling problems
- » Increases the **confidence** of others to come forward in the future
- » Improves **morale** of all other workers. Seeing wrongdoing go unpunished demotivates people.
- » Fair and effective **remediation** sends a positive message.
- » A workplace where there is **trust**, including management, is more productive.
- » All of these things have been proved to promote improved **performance** and **reputation**, as well as confidence.

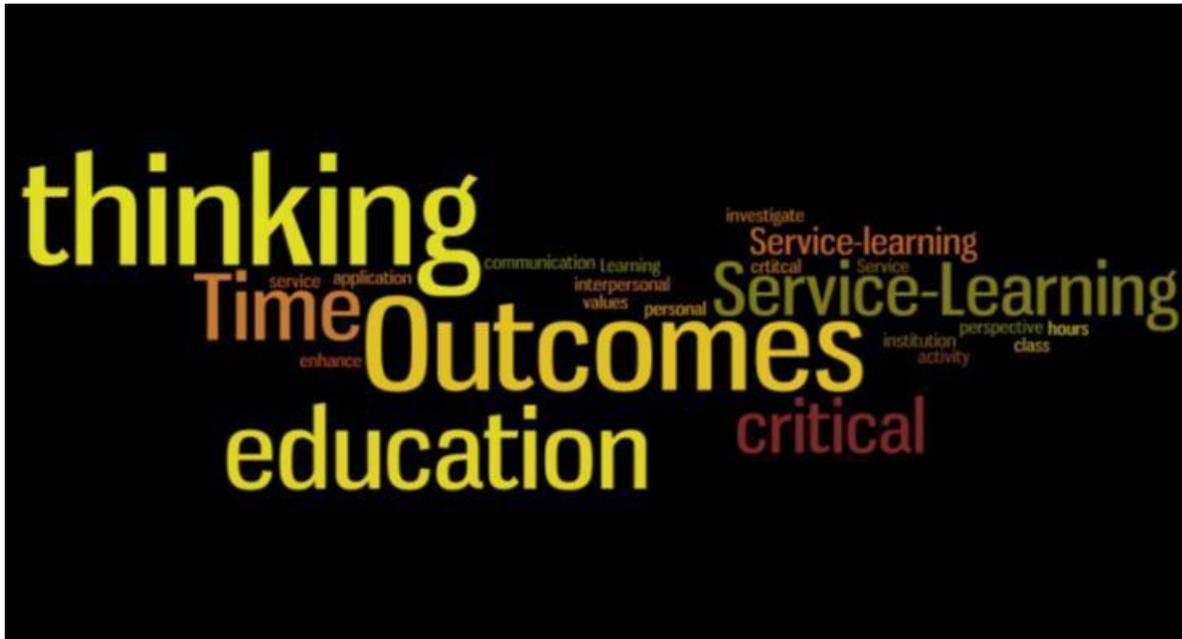


Understanding the Benefits of a Whistleblower System

Whistleblowing and its relationship to performance



Outcomes and Critical Elements



CSA Guideline – Desired Outcomes

The concepts behind the desired outcomes for a whistleblowers system are straightforward and the guide succinctly outlines them as follows;

- » Wrongdoing is addressed
- » Diminishing the potential for reprisal
- » Impartial investigation
- » Reprisals are investigated
- » Reprisals are remediated
- » Reporting is routine and relevant



CSA Guideline – Critical Elements

Built to suit the specific environment and requirements of the organization.
Three management elements and six system elements universally important.

1. The commitment of leadership to the system and its optimal operation.
2. Management must take their responsibilities seriously and be seen to do so.



CSA Guideline – Critical Elements

3. Effective management decision-making systems and structure to run the system
 - » Reporting and qualification of concerns
 - » Investigations of both suspected wrongdoing and alleged reprisals
 - » Corrective and preventive actions and accountability
 - » Protection and remedies for whistleblowers and witnesses
 - » Communication, education, and training
 - » Evaluation, reporting, and improvement of system performance



Rubber hits the road at implementation....



CSA Guideline – Implementing a Whistleblower System

- » Engage senior leadership and gain their support and commitment early.
- » Establish a sound governance structure:
 - » Transparency must be built into the design (e.g., documentation)
 - » Building confidence into the design is vital to success: fosters a speak up culture
 - » Determine who can use the system and what they can report
 - » Clearly establish the independence & integrity of the system and operations
 - » Oversight of operations, reports and investigations, problems and successes.

CSA Guideline – Implementing a Whistleblower System

Other elements that have proved effective are:

- » Development of channels for raising concerns, asking questions or seeking support.
- » Establishing clear anti-retaliation policies and procedures will bolster trust and support whistleblowers who suffer reprisals.
- » Once operating, the system must be continually monitored to ensure effective and impartial investigations of reports and retaliation complaints.



CSA Guideline – Implementing a Whistleblower System

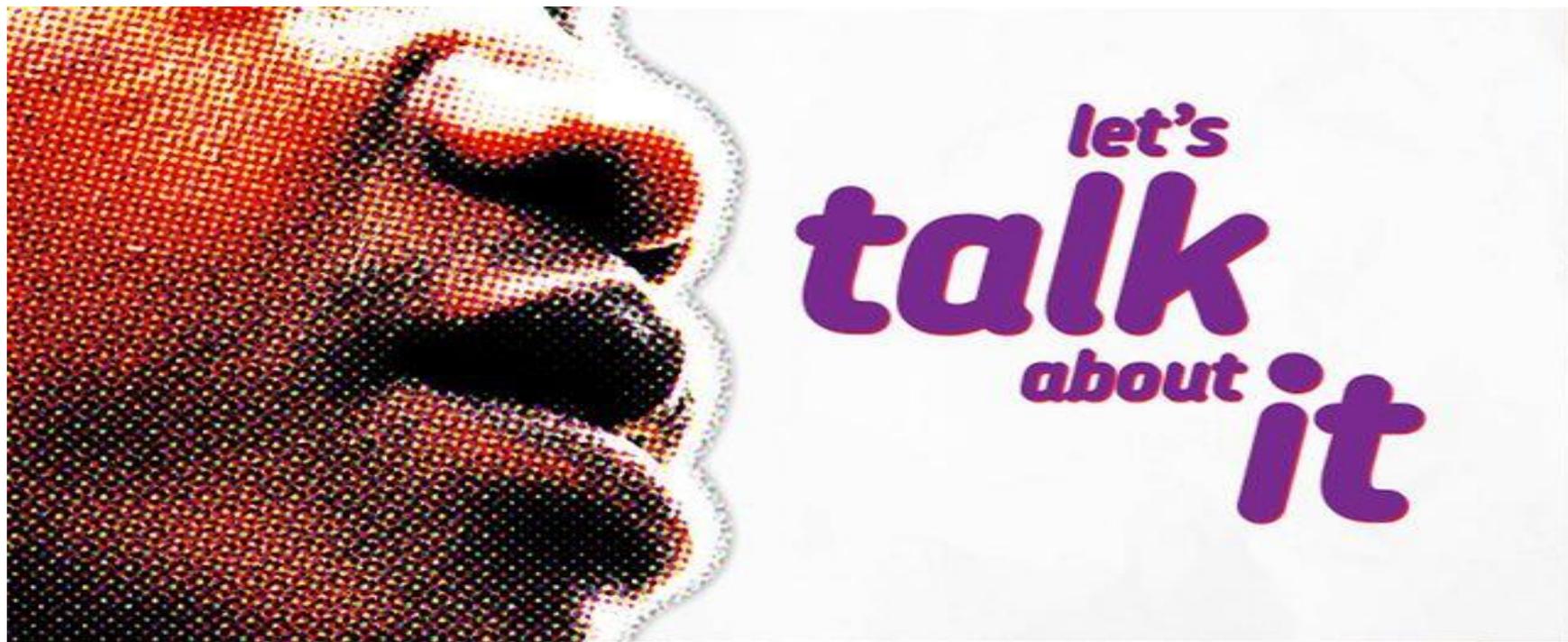
- » Ensure there is a system/protocol for following up on investigations. Vital for accountability, and measuring system success.
 - » A good system will have a plan for the protection of whistleblowers that make use of the system which may include remediation if they suffer harm.
 - » Information about the system must be properly communicated to all interested parties and
- » Training is required at various levels to ensure that staff understand the system and how to use it properly.



CSA Guideline – Monitoring

- » Establish protocols for reporting information and measurements to demonstrate effective operation & identify areas for improvement
- » Establish qualitative reports, & success indicators to determine whether performance targets are being met. Typical measurement categories include
 - a. Output indicators; number of cases addressed, processing times, number of investigations, and other outputs such as awareness and training events;
 - b. Satisfaction indicators; employee trust/ confidence in the system, ease of use, accessibility, satisfaction - process & outcomes (management and users)
 - c. Effectiveness indicators; year-on-year trends in frequency/severity of reported issues, degree to which cases addressed within expectations, outcomes on performance, costs, savings and reputational effects
 - d. Efficiency indicators; resources expended per case, management & program time invested per case, efficiency of training and awareness activities.

Some Cases to Discuss



Richard Colvin, 2009

Colvin was meticulous in recording the conditions of Afghan detainees, and observed many instances in which torture had taken place. Beginning in May 2006, he reported his observations in 17 emails and reports to his superiors in Afghanistan and in Ottawa, which were copied to 77 officials. “The NDS tortures people: that is what they do, and if we don’t want detainees tortured, we shouldn’t give them to the NDS.” Called to testify before the House of Commons in 2009 and called a “dupe” by Peter McKay.



Charbonneau Commission, 2011-15

Karen Duhamel, who worked for an engineering company, was intimidated, demoted, and eventually resigned.

Joseph Farinacci, a City of Montreal official responsible for real estate deals, was pressured and resigned when he could not stop a corrupt deal because senior public officials were involved.

François Beaudry was an engineer advising the deputy transport minister. He found evidence of high-level bid rigging and reported it to his superior, Jean-Paul Beaulieu. Mr. Beaudry testified that public construction in Montreal “was 100 percent controlled by the Italian Mafia.” Mr. Beaudry refused to approve cost overruns for a project at a traffic circle in Montreal. The payments were issued anyway, and he was transferred to another department.

Ken Pereira, Charbonneau, Nov. 2015

Ken Pereira was a labour leader who had reported FTQ Construction union executives regarding expense claims. He was offered the keys to a Mercedes in return for keeping quiet but refused. He was summoned to a meeting where he met “Raynald Desjardins, a mobster who was a former confidant of Vito Rizzuto, the godfather of the Montreal Mafia.” Scared for his life, Mr. Pereira went to the police and one union member was later convicted. The coming forward of Lino Zambito regarded as linked to the “bravery” of Pereira.



Charbonneau Commission Findings

- » The government must **do more to protect whistleblowers.**
- » The industry must stop corruption and corruptors that interfere with people who want to blow the whistle.
- » **All whistleblowers must be taken seriously** by anyone who they approach with their concerns.
- » It is recommended that the government adopt better processes and stronger measures to **ensure that whistleblowers are protected.**
- » It is also recommended that the issues of lobbying, lack of ethics, lack of protection for whistleblowers, lack of transparency, and management of public funds be addressed.

How Can We Improve Things?

1

Don't shoot the messenger.

Understand the whistleblower point of view.

3

Develop a speak-up culture.

Create a system that:

- ✓ Engenders employee trust
- ✓ Protects whistleblowers
- ✓ Reaps the rewards

2

4

Feedback



Please send comments to:
service@epac-apec.ca



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The annual general membership is less than the cost of two webinars (we plan on doing 4 per year)

ANNEXES

Download the Guide from CSA Group by creating an account at CSA Communities:

<https://community.csagroup.org>

Sylvie Therrien, 2013 - 16

Claiming she was forced by her employer to meet aggressive savings quotas aimed at reducing employment insurance benefits paid to some Canadians in 2013, the EI fraud investigator blew the whistle. And as a result, she lost her job with the federal public service. Leaked information to *Le Devoir*, that department expected unit to find savings of \$540k/year, and deny benefits to “fraudulent” EI applicants. Was fired from Service Canada for divulging information. Criticized for not complaining within the system. Still waiting to be cleared of allegations.

Employment insurance whistleblower still seeking justice three years later

Sylvie Therrien, a former EI fraud investigator who spoke out about being pressured to meet savings quotas by reducing payouts, says her decision has taken a huge toll.



Patricia Scott, 2015

Defunct provincial agency faced whistleblower complaint about financial problems

Injured worker who blew whistle says she suffered reprisals

By Vera-Lynn Kubinec, Katie Nicholson, CBC News | Posted: Jun 30, 2016 7:00 AM ET | Last Updated: Jun 30, 2016 12:46 PM ET



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A recent CBC news story detailed the case of Patricia Scott who blew the whistle on financial irregularities at the East Side Road Authority in Manitoba. Scott states that she was “punished by upper management because of her whistleblower complaint.” She was later seconded to a different position, her performance criticized, and her contract was not renewed. "I would characterize them [financial irregularities] as being of a serious nature," she said. "It wouldn't have passed audit anywhere."

Dr. Anny Sauvageau, June 2016

Alberta public interest commissioner dismisses whistleblower complaints from Dr. Anny Sauvageau

But former chief medical examiner Dr. Anny Sauvageau was treated unfairly, report says

By Jennie Russell, Charles Rusnell, CBC News | Posted: Jun 10, 2016 2:38 PM MT | Last Updated: Jun 10, 2016 2:38 PM MT



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Another recent CBC report details the plight of Dr. Anny Sauvageau who reported suspected mismanagement of public procurement contracts for transporting bodies for the chief medical examiner to funeral homes (i.e., ballooning costs). Her complaints were dismissed, but the process of investigation was suspect under the Public Interest Disclosure Act (e.g., justice lawyer present during interviews). Contract was not renewed due to “strained relationship.” Suing for wrongful dismissal.