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**EXP01-16**

# Whistleblowing systems — A guide

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# *Standards Update Service*

*EXP01-16*

*February 2016*

**Title:** *Whistleblowing systems — A guide*

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*EXP01-16*  
***Whistleblowing systems — A guide***



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*Published in February 2016 by CSA Group  
A not-for-profit private sector organization  
178 Rexdale Boulevard, Toronto, Ontario, Canada M9W 1R3*

*To purchase standards and related publications, visit our Online Store at [shop.csa.ca](http://shop.csa.ca)  
or call toll-free 1-800-463-6727 or 416-747-4044.*

*ISBN 978-1-4883-0304-4*

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# Preface

This is the first edition of CSA EXP01, *Whistleblowing systems — A guide*. This Express Document is not a consensus publication; that is, it is not a Standard and it has not been formally reviewed or approved by a CSA Technical Committee.

CSA Group acknowledges that the development of this Express Document was made possible, in part, by the financial support of Grant Thornton LLP.

This Express Document was prepared and reviewed by the Whistleblowing Guideline Work Group.

**Notes:**

- 1) *Use of the singular does not exclude the plural (and vice versa) when the sense allows.*
- 2) *Although the intended primary application of this Document is stated in its Introduction, it is important to note that it remains the responsibility of the users of the Document to judge its suitability for their particular purpose.*
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# EXP01-16

## Whistleblowing systems — A guide

### 0 Introduction

#### 0.1 Purpose of the guide

The purpose of this guide is to assist organizational leaders seeking to establish internal systems for handling reports of suspected wrongdoing, mismanagement, and unethical conduct in their organization.

Reporting such suspicions is often called “whistleblowing”, and some international research suggests that reports from whistleblowers provide the most effective mechanism for detecting wrongdoing that can harm an organization.\* A recent study suggests a strong positive correlation between shareholder return and a “speak-up culture”, one in which people feel comfortable and safe raising their concerns and ideas for improvement in the workplace.† Whistleblowers are often a unique and indispensable resource for improving organizational effectiveness.

For reasons such as these, Canadian corporations, government departments and agencies, and non-profits are increasingly looking for proactive ways to encourage whistleblowing and make appropriate use of information obtained in this way.

This 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.

\* Mark Button, Jim Gee, and Graham Brooks, (2012). “Measuring the cost of fraud: an opportunity for the new competitive advantage”, *Journal of Financial Crime*, Vol. 19(1), 65-75.

† Abbott Martin, (2013). “Four Traits of Leading Compliance and Ethics Programs”. *Compliance and Ethics Leadership Council*. Available at <https://degreed.com/articles/four-traits-of-leading-compliance-and-ethics-programs?d=527290>

#### 0.2 Intended audience of the guide

This guide is intended for any type of organization in any sector. The aim is to provide guidance that is widely applicable and from which broad principles can be translated by management into mechanisms suitable for their particular organizational conditions.

The specific mechanisms selected by management will be influenced by factors such as the size of the organization, the legal or regulatory environment in which it operates, collective agreements, and accepted sector-specific norms.

#### 0.3 Terms and concepts

The following are the terms and general concepts that inform this guide:

- a) Reporting or raising a concern about suspected misconduct is called “blowing the whistle”. This may be done in writing or orally. Someone who takes this step is considered to be a “whistleblower”.
- b) The types of misconduct reported may range from ineptitude to mismanagement to illegality, unethical conduct, or any action that may result in harm to the organization, the public interest, or health, safety, and the environment, whether intentional or not.

- c) Whistleblowing means reporting concerns to people or entities who are believed to be in a position to take action. Such people or entities may include managers within the hierarchy up to and including top management, an audit committee, a hotline service engaged by the organization, or a person designated by the organization for this purpose. Simply discussing suspected wrongdoing with a peer is not blowing the whistle, unless that person is in a position to take action.
- d) Whistleblowers may be employees or others involved in an organization such as interns, temporary workers, probationers, volunteers, or subcontractors. However, a whistleblower may also be anyone who has relevant information, including suppliers, customer personnel, and ordinary citizens who may have a connection to the organization whether directly or indirectly.
- e) Disclosures are not the same as complaints. Whistleblowing is about trying to protect others from harm including harm to the organization, workforce, public, or environment. An individual who is complaining about personal matters, however legitimate, is not blowing the whistle.
- f) Those threatened by a whistleblower's disclosures may engage in retaliation or reprisals designed to punish, discredit, or silence the whistleblower and others involved to deter them from speaking out. These actions can take numerous forms, including work-related disciplinary measures, threats, isolation, harassment, punitive investigations, dismissal, legal action, public denunciation, and blacklisting. Credible threats of violence may also be made, especially, but not exclusively, if organized crime is involved.\*

The targets of reprisals may include the whistleblower and anyone whose suffering is likely to place additional pressure on the whistleblower (e.g., colleagues, friends, family).

Reprisals are often presented by those perpetrating them as legitimate actions taken against someone who is a “problem”, and who deserves such treatment by virtue of being dishonest, disloyal, motivated by malice, self-serving, or mentally unstable.

Reprisals may have life-changing consequences such as loss of career and livelihood, intense financial hardship, social isolation, and serious psychological injuries similar to PTSD. Families may break up under the strain of reprisals, many whistleblowers may suffer clinical depression, and a significant proportion may contemplate suicide at some point.†

- g) Whistleblowers may decide to “leak” information or blow the whistle externally under certain circumstances in order to have the suspected wrongdoing recognized and addressed. This may include reporting to the industry regulator, committees or members of a legislative assembly, or media. If the potential harm is serious and the organization has been hostile to whistleblowers or unresponsive to disclosures, the whistleblower may feel that he or she has no other option than reporting externally.

\* *Ken Pereira, a union leader who blew the whistle on corruption involving the unions and organized crime within the construction industry in Quebec, received death threats aimed at himself and his family. Information on Pereira available at <http://www.cbc.ca/news/canada/montreal/hells-angels-mob-ran-ftq-construction-winq-witness-says-1.1876930>*

† *K. Jean Lennane, (1993). “Whistleblowing: a health issue”, British Medical Journal, 307 (6905), 667-70. This study of the effects of reprisals on whistleblowers found that almost half of the subjects (17 of 35) had considered suicide.*

## 1 Canadian context

### 1.1 General

The purpose of Clause 1.1 is to explain the Canadian context and its effect on the design and operation of a whistleblowing system in Canada. Clauses 1.2 to 1.5 outline Canadian factors that should be considered.

## 1.2 Laws and regulations

There are relatively few laws and regulations in Canada that impose substantive whistleblowing-related requirements on private or public sector organizations, although this situation may change in the future since there is an international trend toward creating and strengthening such laws. It is worth noting that where laws and regulations do exist, these generally specify “what” is required but not “how” to accomplish it, which is the purpose of this guide.

Some laws related to health or safety in the workplace, including the *Canada Labour Code, Part II* (CLC Part II), state that workers shall report any situation that they believe to be a contravention of the Code [126 (1) j CLC Part II]. This duty may also be enshrined in some collective agreements or codes of conduct. Another aspect of such legislation is to limit the liability of health and safety committee members [135.1 (13) CLC Part II].

## 1.3 Industry standards or norms

Many organizations set out to meet their safety and quality obligations by means of established documented management systems, which typically depend upon prompt, accurate reporting of discrepancies by employees. Examples include safety management systems (SMSs) for aviation and railways, energy management systems (EMSs) for pipeline operations, and hazard analysis and critical control points (HACCPs) for food processing. In such industries, effective protection for whistleblowers is vital because the effectiveness of these systems depends on employees who believe they are able to raise concerns.

An example of another relevant standard is *Psychological health and safety in the workplace — Prevention, promotion, and guidance to staged implementation* (CAN/CSA-Z1003), which sets out best practices to ensure that the working environment supports mental well-being and avoids psychological harm to employees. Organizations implementing this standard are not only taking positive steps to improve their performance but are also creating the kind of workplace culture in which employees feel free to speak up, and do not tolerate the harassment and reprisals that whistleblowers often experience. Annex A describes this standard and the linkages between it and this guide.

## 1.4 Professional codes of practice

Many professions such as accounting, auditing, engineering, medicine, and academe place a duty of care on their members that requires them to adhere to certain standards of conduct, and to report situations that may be seen to undermine the integrity of their work or cause harm to others. Violations of these standards may result in sanctions administered by the professional body, up to and including being expelled from the profession.

These arrangements are designed to protect both the public good and the interests of the employer. Management often relies upon the integrity of these professionals to ensure that the organization operates safely, responsibly, and in compliance with the law.

If the organization relies upon such employees to protect its interests by exercising their duty of care, then it may be considered to have a reciprocal duty of care towards them in order to protect them from reprisals when they report violations. This would mean that an organization could expose itself to legal ramifications if, for example, it was shown to have been “wilfully blind” in allowing serious problems to go unaddressed after having been informed of them by a whistleblower.

## 1.5 External avenues for reporting

In Canada, where there are various oversight mechanisms, including the media, whistleblowers have numerous ways of reporting externally when internal mechanisms do not work to their satisfaction.

Possible avenues for external reports include regulatory agencies, lawmakers or parliamentary committees, ombudspersons, and media.

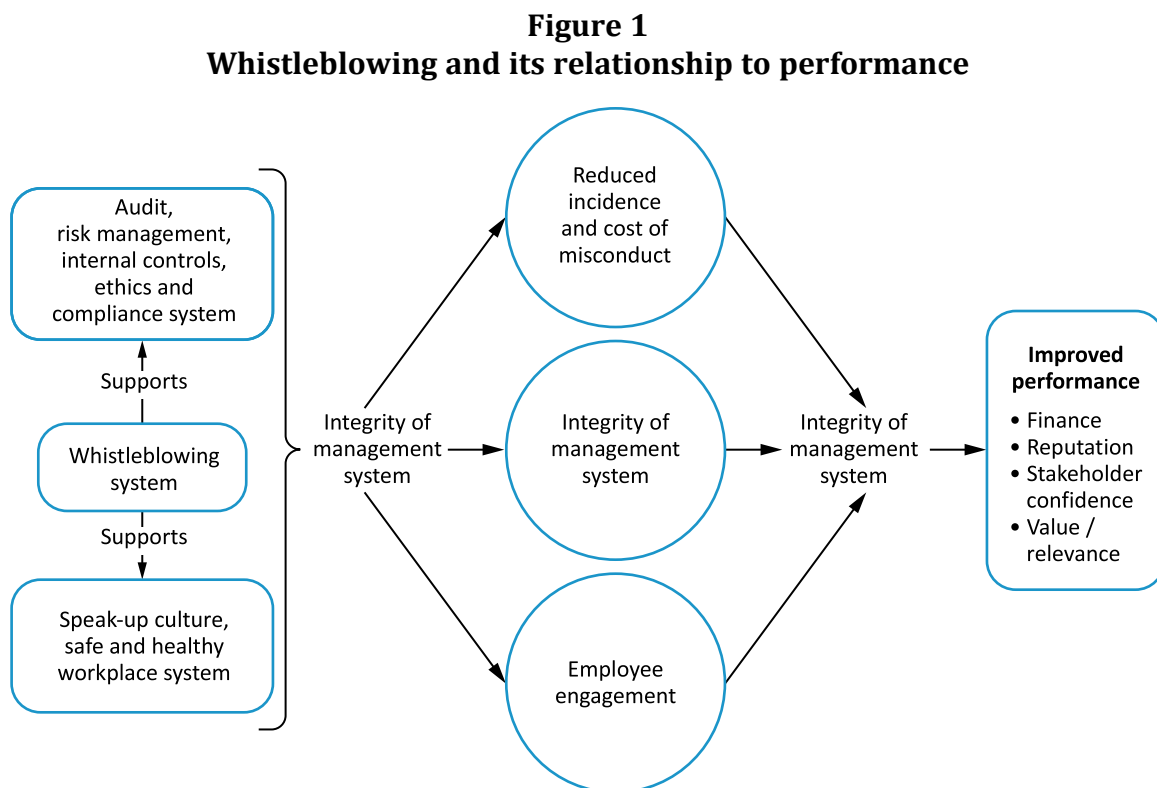
Although research shows that very few whistleblowers report externally, the effects on the organization when they do can be devastating, especially when the whistleblower has been repeatedly rebuffed and/or has suffered reprisals. Such actions are likely to be seen by the public and others as evidence of guilt, or an attempted “cover-up” by the organization.

Therefore, management should not assume that the internal whistleblowing system is the only way employees can report concerns: external reporting is always an option. Internal whistleblowing systems should be designed to be as effective and robust as possible thus ensuring that no individual who sees evidence of wrongdoing is driven by necessity (or lack of options) to report externally.

## 2 Benefits of a whistleblowing system

### 2.1 General

There are many benefits to be obtained by establishing an effective internal whistleblowing system. Figure 1 represents ways in which the whistleblowing system contributes to improved organizational performance.



### 2.2 Early detection and reduced costs of misconduct

Perhaps the most important benefit of a whistleblowing system is the potential for the early detection of harmful misconduct whether intentional or not, so that such conduct can be addressed and prevented. Even relatively minor misconduct that goes unchecked can develop into more serious and/or

widespread wrongdoing that may cause serious harm to the organization, its clients, the public, or the environment.

Harm to the organization may include financial loss, legal liabilities, reputational damage, or blacklisting.

### 2.3 Employee engagement/enfranchisement and well-being

Well-managed organizations understand the importance of employee engagement and enfranchisement, as well as morale, health, and safety. An effective whistleblowing system can help to reinforce a speak-up culture that serves to create employee trust and confidence in management. Research demonstrates a positive correlation between employees' comfort in speaking up and the financial performance of companies.\*

\* *Abbot Martin, op. cit., "For every 0.2 point increase in comfort speaking-up score, companies tend to see a five-percentage point increase in average 10 year total shareholder return".*

### 2.4 Safeguarding the integrity of the management system

Safeguarding the integrity of information and decision-making ensures that management decisions are based upon reality and the best interests of the organization, and are not circumvented by personal vested interests or schemes. In large organizations, the existence of channels for whistleblowing can help ensure that important information quickly reaches those who can act on it, without being delayed, distorted, or discredited by intervening layers of management. A whistleblowing system offers organizations the ability to ensure the free flow of information through safe and trusted channels.

### 2.5 Deterrence of misconduct and reprisals

Another important benefit of a whistleblowing system is its deterrent effect: it helps to prevent actions that may harm the organization or the public and reprisals that may silence whistleblowers.

### 2.6 Maintaining public trust and confidence

By enabling organizations to better monitor their own activities, internal whistleblowing systems can help protect the public, society at large, and the environment, and thus maintain public trust and confidence.

An effective whistleblowing system gives management additional assurance that they will learn about (and have the opportunity to correct) internal problems before they come to the attention of external agencies or the media with attendant reputational damage.

### 2.7 Compliance with legal requirements

Publicly traded Canadian companies are subject to domestic securities rules that require whistleblowing-related procedures (e.g., Canada's *National Instrument 52-110 – Audit Committees* and the Province of Ontario's *Bill 198, Keeping the Promise of a Strong Economy Act, 2002*).\* The audit committee of a reporting issuer, therefore, must establish procedures for the confidential, anonymous submission, by employees, of concerns regarding questionable accounting or auditing matters. Canadian companies may also be subject to foreign laws with similar requirements (e.g., the *Sarbanes-Oxley Act* (2002) and *Dodd-Frank Act* (2010) in the USA). Aiming for mere "check the box" compliance with such requirements may consume significant resources without resulting in any real operational benefit, while striving to build an effective system can deliver real benefits, with perhaps little or no additional effort.

\* For *National Instrument 52-110*, see [http://www.osc.gov.on.ca/documents/en/Securities-Category5/rule\\_20101210\\_52-110\\_unofficial-consolidated.pdf](http://www.osc.gov.on.ca/documents/en/Securities-Category5/rule_20101210_52-110_unofficial-consolidated.pdf). For *Bill 198, Keeping the Promise of a Strong Economy Act, 2002 (Budget Measures)*, see [https://www.osc.gov.on.ca/en/SecuritiesLaw\\_ar\\_20021115\\_bill-198.jsp](https://www.osc.gov.on.ca/en/SecuritiesLaw_ar_20021115_bill-198.jsp)

## 2.8 Perceived value and relevance

Being seen as a good “corporate citizen” by stakeholders has tangible benefits for organizations in terms of their perceived corporate value and relevance. For public sector organizations, the views of citizens and politicians may strongly influence their future mandate and funding. For organizations in the private sector, success is often highly dependent upon the perceptions of customers, shareholders, regulators, and other stakeholders.

## 3 Key planning considerations

### 3.1 General

Clause 3 sets out some of the key issues that should be considered when planning the development of a whistleblowing system. Consideration of the issues outlined in Clauses 3.2 to 3.11 should guide planners as they formulate the policies and frameworks required for their system.

### 3.2 Types of organizations that may benefit from a whistleblowing system

Although the size and complexity of the organization are major factors in a decision to employ a whistleblowing system, most organizations benefit from a system that has been designed and scaled to suit their needs. Some organizations and industries have mandatory requirements for such systems. It is also possible that the relevant profession, industry, or business sector offers a whistleblowing service, which may be suitable for an organization’s needs.

### 3.3 Aims of a whistleblowing system

Developing an effective whistleblowing system is a complex undertaking: gaining some understanding of the principal aims or goals to be served by such a system is a critical first step in the planning process. In terms of design aims, the system would ensure fairness and due process for all participants in the organization at all levels, including whistleblowers and those accused of wrongdoing. In addition, the system would be guided by effective and professional management in its routine operations. At the same time, a viable oversight process would be in place to ensure that the system is operating as expected.

A whistleblowing system can create and sustain cultural change by encouraging a “speak-up” culture. Cultural change may be evidenced by the reliable correction of problems and ongoing assurance that such problems do not recur. Another key aim of a whistleblowing system is that it reinforces a collective and individual sense of personal responsibility whereby one is held to account for wrongdoing and accepts the consequences for unwanted behaviours or actions. The system should operate in a way that promotes a sincere and concerted effort to recognize and prevent reprisals, and to afford remedies when these occur. Each of these aims is fundamental to a good result, and they form the basis of an informed discussion at the planning stage.

### 3.4 Outside expertise

Depending on their size, in-house expertise, and goals, organizations may want to consider hiring third-party experts to help with the implementation or review of a whistleblowing system. Although certain parts of a whistleblowing program will always remain in-house, organizations will need to consider whether they will engage an outside third party to establish and operate aspects of the whistleblowing program, such as reporting and investigative functions. There are third-party specialists in this field who offer turnkey solutions to complex situations where specific expertise is needed. Such solutions may be more cost-effective than in-house services that have to be maintained even when not in use. In

addition, many lawyers, risk-management consultants, and ethics and compliance experts offer advice and services to help organizations with tasks such as writing organizational policies or reviewing governance structures.

### 3.5 Management understanding of primary stakeholders

Many stakeholders may become involved with the system, including those who make reports, the subjects of those reports, witnesses, management, and the organization as a whole. A sound understanding of how these stakeholders may be affected by the system is crucial to its success. Taking into account the implications for each stakeholder group is key to developing a process that all parties will come to trust. The situations that can develop when significant reports are made can be complex and demanding, and demonstrating impartiality and fairness for all is fundamental to the success of the process. Consideration should be given to ensuring that the system balances compassion for the individuals affected with policies that are not only impartial and fair but also seen to be so.

It is particularly important to understand the perspective of potential whistleblowers. Without their input the whistleblowing system cannot operate. Even the most superficial due diligence by employees will reveal compelling reasons for them to act with great caution, and some may even decide to remain silent given the perceived risks to themselves and their loved ones. Unfortunately, these risks may not be not imaginary.

There is a substantial body of information, including research, experience-based literature, and well-publicized cases, that demonstrates, first, that the whistleblower is at serious risk of suffering reprisals, especially when whistleblowing situations are not properly addressed, and, second, that these reprisals, including harassment, threats, dismissal, and damage to personal and professional reputation, are often devastating and life-changing to the whistleblower.

There are various resources, such as books and support organizations, that whistleblowers can turn to for information and advice. These set out the risks to the whistleblower, provide guidance on how to mitigate these risks, and help individuals decide whether and how to proceed.

Managers involved in the creation of a whistleblowing system should also familiarize themselves with these resources. It may be helpful to examine how employees who tried to raise concerns within the organization have been treated in the past, as such cases may strongly influence employees' perceptions. It may be a challenge to convince employees to place confidence in the new whistleblowing system, but a sound place to start is to understand and empathize with the whistleblower's motives and circumstances.

### 3.6 Governance and administrative aspects of a whistleblowing system

Making decisions about the operational and governance aspects of a whistleblowing program is a key step. It is important to develop a program that is at arm's length from management and the executive cadre, and that is resourced appropriately. Establishing a program that meets these criteria will facilitate trust and credibility in the minds of potential whistleblowers.

The organization should establish a governance framework that designates responsibility for the program and determines the way in which it will be administered and managed. Many organizations create a direct or indirect relationship with the Board of Directors, the Audit Committee, or equivalent, while others develop an ethics or whistleblowing committee comprised of selected senior management or create a Chief Ethics Officer position. Organizations vary considerably in the means of overseeing the operations and day-to-day management of the whistleblowing program. Depending on the organization and its size, the selected internal governance arrangement for whistleblowing may take the form of



internal audits; legal, compliance, or human resources; ethics committees; ethics executives; or external bodies.

Regardless of governance arrangements, those running the system should be seen to have sufficient authority and resources to carry out its mandate.

### **3.7 Policies — In place and required**

It is common for organizations to find that they already have policies that have relevant sections and content for their planned whistleblowing system. Codes of conduct, occupational health and safety policies, and harassment policies are some common examples. Some of these policies exist because laws or regulations require them. The organization will usually revisit these policies to assess whether the implementation of a whistleblowing system requires any amendments to existing policies that may conflict with that system's purpose and operations. Organizations may have to add new sections to an existing policy that are specific to the new whistleblowing system such as a code of conduct, or they may have to craft a new policy. In most cases, organizations develop a specific policy for a whistleblowing system that contains not only the design and operation of the system but also information on topics such as anti-reprisal clauses, the investigation of reports, and how and when to make a report.

### **3.8 Relevant laws**

The legal framework in Canada regarding whistleblowers and their protection is referred to in several statutes targeted at specific individuals and offences. For the most part, there is no legal obligation for a person who is aware of wrongdoing to report it to authorities, although some professional bodies have statutory obligations to report certain categories of wrongdoing to authorities. It is recommended that organizations should have a clear understanding of the relevant laws in their jurisdictions when designing and implementing a whistleblowing system.

### **3.9 Type of system, users, and reports**

Each organization should consider its needs, legal and operational context, risk tolerance, and desired program scope to determine the type of system it requires. Specific questions to ask when creating the system include the following:

- a) Who can make reports? Many organizations limit system access to employees, but some also encourage reports from others who may have information about the organization's practices, such as suppliers, contractors, consultants, relatives or friends of employees, clients, and/or citizen groups. Determining the scope of the program is one of the first major decisions to be made. Since the goal is organizational health and integrity, the presumptive choice should be a system that is open to any reports related to the conduct of persons in the organization.
- b) What reporting methods should be offered? Reporting methods commonly offered include hotlines, drop boxes, online reporting, and regular mail. An organization's decision on the appropriateness of a method is often based on factors such as the extent to which employees are centralized or dispersed, and access to technology.
- c) What types of reports should the program receive? There can be wide variety in the types of reports organizations wish to receive. Organizations may include reports on topics as diverse as accounting irregularities, wrongful or faulty application of internal policies and procedures, unethical conduct, safety and environmental risks, abuses of authority, harassment, and reprisals.
- d) How sophisticated are the organization's needs? Organizations should evaluate their various systems to determine their security, language, case management, and program access needs. Some organizations, for example, work with diverse international operations that require extensive language capabilities. Some organizations have very strict data security protocols, while others

stipulate that data cannot leave Canada. Such sophisticated needs may have a bearing on the design and operation of the whistleblowing system.

### 3.10 Confidentiality and anonymity of reports

A whistleblowing system must include a commitment to confidentiality, which means that a whistleblower can raise a concern or make a report and a very limited number of people will know the whistleblower's identity. There are also confidentiality considerations concerning how much the whistleblower will learn about the results of an investigation, particularly if disciplinary action is taken against another employee. Any whistleblowing program or system must be based on a commitment to safeguard the identity of the whistleblower (to the greatest extent possible).

While confidentiality is a given, whistleblowing programs can also be developed where a whistleblower can make a report anonymously. One important consideration in the decision whether or not to accept anonymous reports is that not knowing the identity of the whistleblower makes protection from reprisal more difficult. However, anonymity within such a system can help potential whistleblowers feel more secure about coming forward, which can lead to greater use of the program.

Anonymous reports can create challenges in communicating with, or seeking additional information from, a whistleblower. To mitigate this design issue, a secure system can be established that allows communication between the anonymous whistleblower and the person receiving the report. Whistleblowing policies can make clear that anonymous reports are accepted, but ongoing communication between the whistleblower and the person receiving the report is often helpful to the investigation.

### 3.11 Ensuring the impartiality of investigations

Before designing a whistleblowing system, it is important that thought has been given to how and by whom such reports will be investigated. In cases where the organization does not possess the requisite expertise, outsourcing investigations is a common practice for various reasons, including the assurance of impartiality and the provision of solicitor-client privilege. Management and oversight of the investigations, and the investigations policy play an important role in creating an auditable and predictable process that stakeholders will understand. Additional details regarding the available options are outlined in Clause 6.

## 4 Desired outcomes of a whistleblowing system

### 4.1 General

The purpose of Clause 4 is to highlight key desired outcomes of implementing a whistleblowing system in the organization. These may help guide design and implementation decisions, and can be used after implementation to assess how well the system is working.

### 4.2 Wrongdoing is addressed

The primary outcome of a whistleblowing system is to ensure that any wrongdoing found is stopped, wrongdoers are appropriately disciplined to deter others, and steps are taken to prevent recurrences.

Studies show that the number one reason why people do not raise ethical concerns is because they fear nothing will be done.\* As a result, it is important that when unethical practices are identified, action is taken, and that this action is communicated, where privacy provisions are in force, to those affected.

It is also essential that disciplinary measures for wrongdoing are equitable and proportional to the seriousness of the offence, and are a result of due process, regardless of the wrongdoer's position in the organization.

\* *Ethics Resource Center, (2012). "2011 NBES Supplemental Research Report: Inside the Mind of the Whistleblower", p. 5. Available at [http://www.kkc.com/wp-content/uploads/2014/08/ERC\\_Inside-The-Mind-Of-A-Whistleblower.pdf](http://www.kkc.com/wp-content/uploads/2014/08/ERC_Inside-The-Mind-Of-A-Whistleblower.pdf)*

### 4.3 Diminishing the potential for reprisal

Whistleblowing systems should also be designed so that employees feel confident that they can report unethical behaviour and practices without suffering reprisal.

In order to achieve the benefits associated with having a strong speak-up culture, employees and other stakeholders should feel comfortable reaching out to someone within their organization to raise concerns or seek advice about ethical dilemmas. For the system to work, employees should not only have confidence in the system but also see raising concerns as their responsibility.

### 4.4 Impartial investigation

The whistleblowing system should ensure that concerns raised are properly and impartially investigated, regardless of the magnitude or locus of the suspected wrongdoing.

Strong speak-up cultures are supported by prompt, fair, and impartial investigation of suspected wrongdoing. Appropriate investigation is critical, especially where it may uncover practices and behaviours that would otherwise create risks for the organization.

In weak speak-up cultures, concerns about the conduct of influential people, for example, may not be given the consideration necessary to warrant investigation. In the worst-case scenarios, issues are ignored, delayed in red tape, or covered up, resulting in faulty or biased investigations. Such inequities serve only to weaken the legitimacy of whistleblowing systems and programs, and ultimately reduce employee confidence in them.

For this reason, it is essential that organizations put systems in place that support thorough investigation, regardless of how serious the allegation or how influential the person against whom the allegation is made.

### 4.5 Reprisals are investigated

A whistleblowing system should ensure that alleged reprisals are investigated with the same rigour and impartiality as suspected wrongdoing.

Organizations sometimes pay less attention to, and exercise less due process for, alleged reprisals than alleged wrongdoing. Investigating alleged reprisals is as important as investigating the alleged wrongdoing and should be given the same attention so as to support a healthy speak-up culture in the organization. Reprisals are not always confined to the original whistleblower; other actors may experience reprisals. Investigating reprisals should be complete, balanced, and fair. The benefit for the organization is that it sends the message that protecting people who come forward with important information is as important as the information on the wrongdoing itself.

### 4.6 Reprisals are remediated

In cases where those involved in whistleblowing suffer from reprisals, the whistleblowing system should ensure that they are provided with an appropriate remedy.

Whatever form they take, reprisals have a negative effect on an organization and its speak-up culture. They make open communication less likely and employee attrition more probable. They also weaken the ethical culture by reducing the probability that employees or others will report misconduct.

For these reasons, it is important that if a reprisal occurs, those who have been retaliated against are, to the greatest extent possible, restored to the situation they would have been in if no reprisal had occurred, and where this is not possible, appropriate and full compensation is provided. The purpose of such restoration and compensation is not only to assist the employee but also to restore confidence in management and in the credibility of the whistleblowing system.

#### **4.7 Reporting is routine and relevant**

The whistleblowing system design should ensure that there is regular reporting of information and measurements that demonstrate how well the system is working.

The most effective whistleblowing systems demonstrate they work through regular communication of relevant information and performance metrics, thus giving management confidence in the process and providing employees with reasons to trust the system. This is best accomplished by gathering, analyzing, and sharing selected information and measurements. There are several sources of information on performance, including lessons learned and best practices experiences.

## **5 Critical elements of a whistleblowing system**

### **5.1 General**

Clause 5 identifies the critical elements of a whistleblowing system and explains why each is necessary. Clause 6 explains how to go about creating these elements, implementing them, and integrating them into an effective system.

### **5.2 Leadership commitment**

Implementing a whistleblowing system is an intricate process: it involves setting up robust and transparent procedures that will engender the confidence of stakeholders and encourage them to report matters detrimental to the organization. Leaders should possess, and openly demonstrate, commitment to the whistleblowing system and to an impartial investigation of matters reported using the system, regardless of the identity of the whistleblower, the subject of the report, and the implications of the issues identified. Ideally, all stakeholders should perceive that management is committed to the system, and be prepared to follow appropriate procedures in the face of potential institutional resistance.

A strong and informed leadership commitment is required from the outset in order to design a system that has the highest potential to succeed. With such commitment, the system may enjoy active support and communication, and model ideal behaviours.

### **5.3 Management responsibilities**

Management can demonstrate their commitment to the whistleblowing system by fulfilling their responsibilities in the following areas:

- a) supporting and modelling the organization's values and ethics statement (e.g., welcoming rather than punishing the raising of concerns by employees);
- b) demonstrating their understanding of, and commitment to, the whistleblowing system by communicating with, and educating, stakeholders regarding its policy and procedures;

- c) ensuring that those responsible for implementing the system are assigned adequate resources and authority to deliver on their responsibilities;
- d) being an active participant in the whistleblowing system (for example, by providing oversight and monitoring);
- e) supporting the processes of impartial investigation of reports, determination of wrongdoing, and imposition of appropriate sanctions as required;
- f) ensuring that the confidentiality of the process is vigorously protected;
- g) ensuring that any reprisals against whistleblowers are remediated and those responsible are held to account to the fullest extent possible;
- h) supporting a process of remedial action regarding issues raised through reports;
- i) maintaining a regular monitoring and evaluation process to assess the effectiveness of the policy and its implementation, and making improvements as necessary; and
- j) ensuring that the results and outcomes of the whistleblowing system are reported appropriately.

#### **5.4 Management decision-making systems and structure**

Effective operation of a whistleblowing system requires a structure that, as much as practicable, is arm's length from senior management oversight and decision-making. This can be adapted, as necessary, for smaller organizations. The structure is especially important for ensuring that allegations of a serious nature are properly received and investigated, and that findings of misconduct lead to appropriate corrective action. Any whistleblowing program should be designed to protect the independence and impartiality of its internal processes, especially in "worst-case" situations where wrongdoers in powerful positions may be motivated to interfere with the process.

#### **5.5 Critical system elements**

##### **5.5.1 General**

The following may be thought of as sub-processes that should be considered when designing and implementing the overall whistleblowing system.

##### **5.5.2 Reporting and qualification of concerns**

The first step in addressing any reported concern is to capture the information accurately and to validate its substance (e.g., seriousness, legitimacy, availability of evidence). Common methods for receiving reports include the use of independent telephone lines, online reporting, and dedicated surface mail addresses. It is important that reports are brought directly to the attention of the whistleblowing system personnel and not routed to others who may be in a position to tamper with or delay the reports.

Typically some type of triage is conducted at this stage to determine how to proceed and the resources to assign to the issue. Some concerns can be handled with minimal resources, while others may require a full investigation by specialists with forensic skills.

##### **5.5.3 Investigations of both suspected wrongdoing and alleged reprisals**

Competent and impartial investigations are the essential core of any whistleblowing system. They often require skills and resources that the organization does not possess. Investigative work is a profession that requires specialist training and experience, and different situations may call for additional skills (e.g., conducting witness interviews, forensic accounting, software analysis, or examination of physical evidence).

## 5.6 Corrective and preventive actions and accountability

The effectiveness of the whistleblowing system is dependent upon appropriate action following investigations, such as

- a) corrective measures to rectify problems uncovered by the reports;
- b) proactive measures to prevent reoccurrence of such problems; and
- c) substantive decisions taken by management to hold wrongdoers accountable for their actions, including reprisals.

The credibility of the whistleblowing system is also dependent upon all potential users' perception that wrongdoing is dealt with appropriately. In this respect, it is important, for example, to avoid double standards whereby junior staff are dealt with more harshly than senior or influential people. As long as fairness and equity are maintained, there is a reasonable assurance and expectation that the whistleblowing system will be used.

## 5.7 Protection and remedies for whistleblowers and witnesses

In order for potential whistleblowers to have the confidence to come forward with a report, it is essential that the organization protect those who report wrongdoing and others who may also become subject to reprisals, including witnesses, investigators, and whistleblowing program staff, and any others who may be retaliated against.

Every effort should be taken to minimize the potential for reprisals, as challenging as this may be. Despite best efforts, it is often difficult to prevent reprisals. As such, it is important that the organization takes steps to provide after-the-fact remedies when all preventive efforts at reprisals fail. Committed organizations maintain policies that assist those who have suffered reprisals to achieve appropriate recovery and, when needed, provide care even after those affected have exited the organization.

## 5.8 Communication, education, and training

There are many moving parts in a whistleblowing system, and everyone has some responsibility for them. All stakeholders should understand how the system works and their own role within it, whether as a user (potential whistleblower), operator, or supporter. This understanding is accomplished through initial communications and education, and then through regular follow-up training and ongoing communications that refresh everyone's memory and bring awareness to newcomers.

## 5.9 Evaluation, reporting, and improvement of system performance

The mere existence of policies, procedures, and training activities, however well designed, does not ensure that the whistleblowing system will be effective or remain effective over time. It is important to establish a monitoring process for the system that will enable weaknesses to be identified and appropriate improvements to be made. This is typically achieved through a combination of regular reporting (including appropriate measurements of performance), and a periodic cycle of evaluation and improvement based on these reports.

# 6 Implementing a whistleblowing system

## 6.1 General

Clause 6 provides guidance regarding the practicalities of implementing a whistleblowing system, building on the broad guidance set out in earlier clauses. Clauses 6.2 to 6.4 outline steps to be taken in the design and implementation of the whistleblowing program or system.

## 6.2 Engage senior leadership and gain commitment

Creating a strong speak-up culture begins with ensuring an organization has the right tone at the top. As a first step, leadership should recognize the importance of creating an ethical culture. They should also ensure there are adequate resources, authority, and independence given to those tasked with operating the program.

For some organizations, where leadership commitment already exists, the role of the person(s) implementing the whistleblowing system is to codify existing values into formal systems, and then to assign and empower an individual to own and operate the whistleblowing system in order to maintain and improve it.

In other organizations, leadership may have to be shown how creating and fostering a speak-up culture generate value for the organization's economic performance. If this is the case, it may be useful to refer to earlier clauses of this guide that outline the benefits and expected outcomes of a speak-up culture.

## 6.3 Establish a governance structure

### 6.3.1 Foundation

Organizations committed to cultivating a speak-up culture should be clear about what they are asking people to speak up about. That is, it is important that the program or system provide direction on the scope or nature of reports it will receive. These typically include areas such as contravention of shared values, personal or systemic misconduct, violation of behavioural norms, and intentional errors in the application of rules, procedures, or guidelines. In large organizations, such examples of misconduct are usually codified in a formal code of conduct. Smaller organizations will typically employ simpler standards or informal codes of conduct.

All organizations, regardless of size, should take steps to ensure employees know

- a) about the types of issue that they can report;
- b) from whom to obtain advice and information about ethical behaviour; and
- c) to whom they can make a report.

### 6.3.2 Independence

Although it is relatively straightforward to establish a whistleblowing system that will address minor issues such as petty theft by low-ranking staff or employees, it is more challenging to create a system that will address worst-case situations such as serious misconduct that in some way implicates or threatens senior management. Given that it is these worst-case situations that can cause the most harm to an organization, a useful and effective whistleblowing system should operate to address these in a predictable and clear way. As such, the whistleblowing system should be functionally independent from the normal chain of command. Ultimately any system created by top management can be ignored or overridden by these same people. However, the design should make any such actions difficult and subject to oversight and accountability (ultimately to the board or equivalent body). Such systems can be modelled on internal or external audit functions where controls are in place to ensure independent processes are permitted to work accordingly.

### 6.3.3 Oversight

It is a widely accepted best practice for whistleblowing systems to have an arm's length oversight body that monitors their performance over time, and ensures that they are fulfilling their mandate and operating according to expected outcomes. This body should be afforded the authority and resources necessary to carry out this important role. This ensures that those operating the system are held to

account for their decisions, and that these decisions are reported transparently to staff, employees, and other parties as defined in the policy. Such a structure provides a degree of assurance that the system is meeting the expectations of its users.

## 6.4 Management decision-making systems and structure: Establishing a speak-up culture

### 6.4.1 Written policy

An organization requires a written policy that clearly establishes the components of a whistleblowing system. The policy should act as the main document articulating the organization's commitment to a speak-up culture and its expected outcomes. Although the specific content and degree of complexity of the policy document are dependent on the organization itself, the policy should perform the following at a minimum:

- a) commit the organization to meaningfully addressing reports of misconduct;
- b) commit the organization to the assurance that employees can and should speak up about misconduct;
- c) define the type of concerns that should be raised;
- d) list the people (positions) to whom a report can be made and the mechanisms of reporting;
- e) commit the organization to confidentiality (and anonymity as applicable); and
- f) commit the organization to non-reprisal for concerns honestly raised.

### 6.4.2 Channels for raising concerns

With respect to items (d) and (f) in Clause 6.4.1, the following considerations may be helpful. The policy should provide more than one channel or vehicle for staff and employees to raise concerns.

Organizations can make it clear that there are options available, which may include

- a) approaching a direct manager;
- b) approaching human resources and/or legal departments;
- c) approaching the ethics and/or compliance or audit department; and
- d) using a confidential/anonymous helpline (available via telephone and the web).

It is important that concerns raised through general channels be directed through the central whistleblowing system.

### 6.4.3 Non-reprisal policy

Maintaining a viable non-reprisal policy is important. Reprisals are one of the most significant barriers to developing a strong speak-up culture. For a whistleblowing system to be effective, it must clearly outline the organization's commitment to anyone who raises concerns. In addition, organizations should ensure that if reprisals do occur, the matter is addressed in an appropriate, decisive, and transparent way. In particular, handling a reprisal complaint early in the implementation of a whistleblowing system will demonstrate the organization's commitment to a strong speak-up culture. Providing a track record of positive decisions is a powerful way of demonstrating that organizations are serious about their policy commitments.

Additional policy issues may be spelled out such as a commitment to the confidentiality of the person making the report (should reporting not be anonymous) and the amount of information a person making a report is entitled to during the process.



## 6.4.4 Whistleblowing system elements

### 6.4.4.1 General

As raised in Clause 5.5 of this guide, the following system elements should be considered in the design of a whistleblowing system:

- a) reporting and qualification of concerns;
- b) investigations of both suspected wrongdoing and alleged reprisals;
- c) preventive and corrective actions, and accountability;
- d) protection and remedies for whistleblowers and witnesses;
- e) communication, education, and training; and
- f) evaluation, reporting, and improvement of system performance.

### 6.4.4.2 Reporting and qualification of concerns

A speak-up policy should be accompanied by written procedures, which may vary in detail depending on the size and complexity of the organization. For example, a larger organization may opt to use a third-party reporting mechanism with an online anonymous form, while a smaller organization may ask employees to send a description of their concerns to a designated person responsible for receiving reports.

The following is a list of issues that an organization could address in its internal procedures:

- a) how to make a report and how the organization will communicate with those submitting a report during the process;
- b) what to do if there is a belief that the person handling the report has a conflict of interest or if there is a belief that the matter should be moved to a higher level (where applicable); and
- c) what to do if one experiences reprisal for making a report honestly.

In order to assign resources and to investigate concerns raised by whistleblowers, it is critical to develop triage criteria regarding those concerns. These criteria will ensure that resources will be allocated according to priority areas.

### 6.4.4.3 Investigations of both suspected wrongdoing and alleged reprisals

#### 6.4.4.3.1 Enhancing the effectiveness of investigations

It is not the intent of this guide to provide a detailed model for internal investigations. Rather, it underlines key issues and best investigative practices that will enhance the effectiveness of investigations that stem from the whistleblowing system. The following are key considerations:

- a) The policy should demonstrate that management has the obligation and responsibility to address wrongful conduct within an organization, including reprisals against whistleblowers.
- b) Matters of conflict of interest should be spelled out in the policy on investigations. Those involved or potentially implicated in wrongdoing should not be involved in the determination of whether an investigation is necessary or how it is conducted. This is not to suggest that all investigations ought to be conducted externally or without management involvement.
- c) The purpose of an investigation is to determine the facts regarding alleged wrongdoing. An investigation may be conducted using internal resources, or it may be subcontracted to external specialists (lawyers, independent investigators) for reasons of expertise or preserving legal privilege and/or independence. Circumstances will determine the approach that is appropriate and effective.
- d) Investigations are context-based and should take into consideration the nature of the organization, its operating environment, and the nature and circumstances of the reportable offence.

- e) All investigations should be completed in an impartial and objective manner, and apply sufficient scrutiny to the allegations and the evidence with the greatest possible confidentiality.
- f) All investigations should be reasonable, consider the relevant evidence, and reach conclusions that are based on that evidence.

#### 6.4.4.3.2 Scope of the investigation

No two investigations are identical. As such, it is important to note that the size, nature, and complexity of the organization itself will have an effect on the design of the investigative process. In developing its investigative procedures, the organization should consider the following questions:

- a) Are the allegations of a serious nature, or do they involve senior employees, management, or directors?
- b) Do the allegations potentially involve matters that may become the subject of a criminal or regulatory investigation?
- c) Is the matter likely to result in litigation?
- d) Is there a need to involve external counsel?
- e) Is the alleged wrongdoing historical or ongoing? If it is ongoing, have steps been taken to curtail continuing exposure?
- f) Are there any potential constraints on the investigation, such as collective agreements, regulations, or industry requirements?
- g) Where might relevant evidence exist and what resources will be required to obtain it?
- h) Does the organization have personnel (in house) with the expertise and experience required to conduct the investigation?
- i) What other resources may be required to complete the investigation (e.g., specific technical expertise not available within the organization)?
- j) How long might it take to complete the investigation?
- k) What steps may need to be taken with respect to whistleblower protection during the investigation?

#### 6.4.4.4 Preventive and corrective actions, and accountability

Research shows that the main reason employees do not report misconduct is that they lack confidence the organization will act on their reports.\* It is essential that when misconduct is reported and substantiated, action is taken. On an organizational level, this action may involve policy or process change. If an individual is at fault, he or she should be held accountable.

Organizations must also make it clear that reprisals against whistleblowers or witnesses constitute serious misconduct. If an individual is found to have retaliated against someone who has raised an honest concern, that individual will face consequences up to and including possible termination.

There are three primary ways in which an organization can respond to a confirmation of wrongdoing:

- a) proactive measures to prevent reoccurrence of such problems — When a report is first received, it is sometimes clear that things have gone wrong or have not worked properly. In this situation, it is not necessary to await the final outcome of the investigation. Rather, the organization should take proactive steps to prevent reoccurrence of the problem and ensure that the situation does not get any worse pending a fuller response once the situation has been fully investigated and the facts determined.
- b) corrective measures to rectify problems uncovered by the report — Not all reports will relate to wrongdoing by individuals; they may also result in a finding that processes or systems are ineffective or worse. In such situations, it is important that the organization is seen to rectify the problem(s).

- c) substantive decisions taken by management to hold wrongdoers accountable —In instances where wrongdoing by one or more individuals is confirmed to have taken place, it is important that management is seen to address those individuals appropriately, taking into account privacy obligations if the complaint is disciplinary in nature. In making such decisions, adherence to principles of fairness and proportionality is critical.

\* *Ethics Resource Center (2011).*

#### **6.4.4.5 Protection and remedies for whistleblowers and witnesses**

##### **6.4.4.5.1 General**

Protecting whistleblowers is one of the most challenging aspects of a whistleblowing system. This part of the system can be thought of as having three layers of possible protection: confidentiality, preventive action, and after-the-fact remedies.

##### **6.4.4.5.2 Confidentiality**

Whistleblowing systems are designed to ensure an important level of confidentiality or anonymity for whistleblowers. “Confidentiality” means that a few designated individuals are aware of the identity of the whistleblower. “Anonymity” means that the identity of the whistleblower is unknown. It is important to note that confidentiality is the minimum standard for a successful whistleblowing system.

Modern technology has made it possible to establish a secure two-way communication channel while maintaining a whistleblower’s anonymity. For example, there are numerous “hotline” operators that offer such a service. These systems enable an ongoing conversation during which the organization can seek clarifications and additional information, provide reassurance to whistleblowers that action is being taken, and keep them informed of the process and eventual outcomes to the fullest extent possible.

Well-designed whistleblowing systems that protect confidentiality or anonymity do exist and are often successful, but there are instances where preserving confidentiality or anonymity is a challenge. For example, there may be few people with access to the information being disclosed or whistleblowers may have already left clues as to their identity by showing ongoing curiosity regarding the matter in question. In addition, the investigative process itself may incidentally point to the identity of the whistleblower in the course of gathering information related to the wrongdoing. Sometimes individuals in the organization focus on identifying the whistleblower rather than investigating the alleged wrongdoing. An organization must be aware of these and other possible challenges, and prioritize policies and processes that protect the identity of the whistleblower throughout the entire process. This includes designing an investigation plan that takes into account ways to protect confidentiality.

If despite best efforts, the confidentiality or anonymity of a whistleblower is not maintained in a particular process, the organization must then provide other layers of protection.

##### **6.4.4.5.3 Prevention**

If the identity of the whistleblower becomes apparent or suspected, then those who feel threatened by the allegations may set out to silence, discredit, and punish the whistleblower, and to deter others from coming forward as witnesses. Many reprisal techniques can be presented as legitimate human resources actions directed at a “problem” employee. Evidence to support this strategy can be created (e.g., manufactured complaints, false performance appraisals), witnesses can be intimidated to remain silent, and co-workers can be pressured to provide false, incriminating testimony.

One way of preventing or halting such reprisals is to “ring fence” the whistleblower (i.e., prevent any adverse actions until investigations are completed). Protecting whistleblowers from retaliation sends an important message: the organization is committed to investigating thoroughly and fairly, and applying due process.

#### **6.4.4.5.4 Remediation**

Prevention of reprisals may not be effective, or reprisals may already be under way by the time that the formal whistleblowing system is able to respond. In such cases, a third layer of protection may be used: remediation to restore the legitimate whistleblower. Some forms of remediation that an organization might consider include

- a) damages for emotional distress and loss of reputation;
- b) free counselling;
- c) compensation for legal fees and costs; and
- d) reinstatement or continuity of career progression.

#### **6.4.4.6 Communication, education, and training**

##### **6.4.4.6.1 Set the right tone at the top**

In order to create a viable speak-up culture, organizations should not only create its structural elements but also make stakeholders aware of it and reinforce it in their training activities. Ideally, the organization’s communications and training plans should integrate a speak-up culture into their activities. This begins with setting the right tone at the top levels of management.

Once the tone at the top is established and the appropriate processes have been instituted, expectations can be communicated. This can be achieved using a wide variety of tools and communication channels.

Employees are often skeptical of traditional top-down messaging. Instead, the whistleblowing system should begin to identify and remove barriers to speaking up. By using targeted senior management communications and real-life examples of speaking up, precedents are set quickly, thereby reinforcing key messages and building confidence early in the system’s life cycle.

##### **6.4.4.6.2 Engage middle managers**

Research shows that the majority of reportable ethical issues are raised with line management. For this reason, it is important that managers are trained in ways to recognize and address ethics and compliance issues, and to support a speak-up culture. Managers should be trained in the criteria or circumstances under which they should take a concern to someone with more authority and in how to avoid behaviour that could be perceived as reprisal. Such criteria are often contained in the overall whistleblowing policy.

##### **6.4.4.6.3 Recognize ethical behaviour**

Recognizing employees who raise concerns is one way to support and reinforce a culture of speaking-up. Examples include ethics awards for exemplary behaviour, performance bonuses, or management recognition at key meetings and events. Such recognition vehicles should be pursued, however, only with the expressed permission of the whistleblower.

## 6.4.4.7 Monitoring, evaluation, and improvement of system performance

### 6.4.4.7.1 Monitoring

It is important to establish protocols for reporting information and measurements that demonstrate how well the system is working and assist in identifying areas for improvement. In addition to qualitative reports, success indicators are also essential to determine whether performance targets are being met. Typical measurement categories include

- a) output indicators such as the numbers of cases addressed, processing times, number of investigations, and other outputs such as awareness and training events;
- b) satisfaction indicators such as employee trust and confidence in the system, ease of use, accessibility, and degree of satisfaction with process elements and outcomes on the part of management and users;
- c) effectiveness indicators such as year-over-year trends in the frequency/severity of reportable offences, degree to which cases have been addressed within system expectations, outcomes on performance, costs and savings to the organization, and reputational effects; and
- d) efficiency indicators such as resources expended per case, management and program time invested per case, and efficiency of training and awareness activities.

In determining monitoring indicators, management should discuss the objectives of their system and decide how they wish to measure and report system performance.

### 6.4.4.7.2 Evaluation and improvement

As with any management system, the whistleblowing system will require ongoing attention to confirm that it is working as planned and to improve its performance over time. This is typically accomplished by a system audit or evaluation, which is a periodic, scheduled review of the various reports and measurements produced by the system, and is typically carried out annually. The aim is to examine and assess information regarding the operation of the system, evaluate performance, identify systemic strengths and weaknesses, and take appropriate corrective action where required. These improvement actions are intended to recognize and “lock in” areas of strength so that these are not inadvertently lost, and to implement changes that improve weak process areas. Typically, management is expected to respond to the audit or evaluation recommendations and commit to changes where required. Management is often asked to examine and act upon lessons learned from systemic failures or successes.

## Annex A

# Whistleblowing systems — A guide and Psychological health *and* Safety in the workplace — Prevention, promotion, and guidance to staged implementation: Synergies, convergences, and opportunities

## A.1 Background

*Whistleblowing systems — A guide* (“the Guide”) emerged in the context of the relatively new CAN/CSA-Z1003-13/BNQ 9700-803/2013, *Psychological health and safety in the workplace — Prevention, promotion, and guidance to staged implementation* (“the Standard”).

Some of the potentially important synergies between the two initiatives are explored in this Annex.

The Standard outlines an occupational health and safety management system that is intended to be permanently integrated into the accountability structure of an organization. The purpose of the Standard is to bring about a workplace that allows no negligent, reckless, or intentional harm to the mental health of workers. It is based on scientific and legal evidence that demonstrates, among other things, the central role of “voice” in the construction and maintenance of psychological well-being at work (see the Standard, Clause A.2).

## A.2 Basic need: Voice

Voice, in the sense of perceived freedom to speak up without fear of retribution, can be seen as an essential element of psychological safety, and it was among the first dimensions of psychological safety to be scientifically examined (see Amy Edmondson’s work for example).\*

Operating rooms in hospitals were one of the first settings in which voice was examined. Voice might be thought of as whistleblowing at a surgical team level.

In the context of the Standard, the concept of voice evolved into the form of workers’ control or influence over their work and, as such, it was identified as one of 13 key risk factors that are known to influence mental health. However, the importance of voice is also reflected in at least two other factors to which the Standard refers: civility/respect and psychological support. In the shorter assessment survey referred to in the Standard (the SSIX or Stress Satisfaction Index), worker control or influence is one of six factors considered to be disproportionately important as a determinant of mental health. In this regard, the SSIX supports UK and European models of how stress influences mental health.

\* Amy Edmondson, (1999). “Psychological safety and learning behavior in work teams”, *Administrative Science Quarterly*, 44: 350-383.

## A.3 Basic need: A sense of justice

Perhaps even more importantly, voice in the Standard is directly related to the sense of justice (see particularly, the Standard, Clause A.2), which is described as a basic human need. When this need for justice is seriously thwarted for reasons within the control of the workplace, its frustration is seen as a risk to mental health. How much of a risk depends on many factors, among them the sensitivity of different individuals to injustice.\*

Within the construct of justice there are many dimensions, as is well known, but the one that seems to have the greatest impact on mental health is procedural justice (not, as one might think, distributive

justice).† That is to say, what appears to be the most upsetting is the belief that the process by which a decision has been reached is unfair. The belief that one has not been heard or that one's voice has been silenced or suppressed are all parts of the construct of procedural justice.

\* M. Vézina, (2010). "Santé mentale au travail: répondre à des besoins humains fondamentaux". In *Travail et santé*, Ed. Érès, 169-173.

† M. Kivimaki, M. Elovainio, et al., (2003). "Association between organizational inequity and incidence of psychiatric disorders in female employees". *Psychological Medicine*, 33 (2), 319-326.

T. Relis, (2006). "It's Not About the Money!": A Theory on Misconceptions of Plaintiffs' Litigation Aims". *University of Pittsburg Law Review*, Vol. 68, 701-746.

Tracey L. Meares and Tom R. Tyler, (2014). "Justice Sotomayor and the Jurisprudence of Procedural Justice". *The Yale Law Journal Forum*, Vol.123, 525-549.

T. R. Tyler, R. J. Boeckmann, H. J. Smith, and Y. J. Huo, (1997). *Social Justice in a Diverse Society*. Oxford: Westview Press (Perseus).

## A.4 The framework of the Standard

As a framework for the protection of these basic needs, the Standard sets out a management system for assessing and addressing risks to mental health that arise in whole or in part from certain ways in which work is organized and people are managed. As such, it is a "plan, do, check, act" process as applied to the protection of mental health. In this and many other respects it resembles the British PAS 1010\* that is used in conjunction with management standards developed in the UK over 10 years ago.†

However, unlike the approach of Britain, Australia, and many EU countries, the Canadian strategy has so far steered clear of attempting to regulate any aspect of the protection of mental health by legal means. In other countries, there is at least an attempt to regulate the assessment of psychosocial risks (including lack of voice) by requiring the use of surveys or other formal methods.

This situation shows signs of changing, however. The Canadian federal government's largest union, the Public Service Alliance of Canada (PSAC), has recently concluded a memorandum of understanding (MOU) with the Treasury Board to create a task force with a sweeping mandate to examine all policies, practices, and working conditions that could be contributing to stress and mental health claims. The review will be built around the Standard, which unions and executives alike have pressed the government to adopt. Whether or not the MOU will be recognized as forming a part of the collective agreement between the two parties remains to be determined, but the trend so far shows a growing appetite for regulation of the Standards' requirements.

Another development in the same direction is Ontario's declared intention to develop a code of practice dealing with harassment in the workplace that goes beyond the requirements of existing legislation. Codes are one step further up the ladder of regulation, and this development illustrates a growing intolerance with abuses in the workplace.

\* PAS means "publicly available specification". A PAS is a pre-Standard document developed under the authority of the British Standards Institution and designed to solicit further stakeholder input: <http://www.bsigroup.com/LocalFiles/en-GB/standards/bs0-pas0/BSI-PAS0-Principles-of-PAS-UK-EN.pdf>

† <http://www.hse.gov.uk/stress/standards/index.htm>

## A.5 The relationship to whistleblowing

Although the Standard does offer some insight into how voice may be recovered or reclaimed if it has been compromised or, indeed, never been achieved in any meaningful way, it does not delve very deeply into the subject. The Guide lends some real direction and substance to the recognition of the need for voice in specific circumstances, while the Standard may be seen as helping to create a fertile

environment for its implementation. In this sense, the Standard may be considered as a potentially useful and effective prerequisite to, or foundation for, the Guide.

The present Guide is consistent with the philosophy of the Standard in that it sees individual voice as a necessary but not sufficient condition for psychological safety. However, it also offers a paradigm of employment in which both the requirements and the limits of loyalty are explicated. In that important way it has the potential to push beyond what the Standard intimates to create a comprehensive model of employment in which voice is both a right and a duty. This development may enhance the effectiveness of both the Standard and the Guide.

For example, the Guide stands to gain by being aligned with a Standard that, when properly understood and implemented, can create a culture of psychological safety receptive to the view that there is both a right and a duty to speak up when issues of health, safety, integrity, honesty, or legality arise.

## A.6 Principles for creating a workplace culture of speaking up

That said, a central challenge for both the Standard and the Guide is to define a workplace culture in which the rights and duties of voice are prized. The concept of “a culture of speaking up” referred to in the Guide may be a helpful reference and starting point in this regard. Such a culture is designed not only to facilitate whistleblowing but also to create a context in which, on a daily basis, employees believe it is not only safe but desirable for them to speak up about concerns they may have and to expect that such concerns will be taken seriously by others. These “others” are not only decision makers in positions of authority but also fellow workers. In this way, a robust culture of speaking up may in some cases head off the isolation and shunning that some whistleblowers experience from their fellow workers.

For such a culture to be enabled it is necessary to return to what conditions of work facilitate “voice”. This is currently an active area of exploration by workplace management and staff and by consultants who support organizations attempting to implement the Standard.

Three principles form the foundation of a culture of speaking up or psychological safety. These are the “neighbour principles” derived from both social psychology and law. These principles can be articulated as three imperatives:

- a) Be aware of who is influenced by your words and actions and how they are influenced (“awareness”).
- b) Understand the legitimate needs, interests, motives, and points of view of others in your circles of influence (“understanding”).
- c) Act upon your awareness and understanding by being careful of others in your circles of influence and by not doing them foreseeable harm (“carefulness”).

Awareness, understanding, and carefulness, as described above, are grounded in the social psychological theory of emotional intelligence (EI). Although EI is often thought of as an individual trait, it has also been conceptualized as a group trait. “Group EI” is a term made popular by S.B. Wolff and his partners. Although there are more than three domains associated with EI, the research regarding EI is consistent with the original theory.

## A.7 Conclusion

There is a strong relationship between the creation of a psychologically safe and healthy workplace and the creation of a whistleblowing system, especially given that both involve establishing and reinforcing a culture that gives employees “voice”, as well as confidence that concerns will be handled in a just



manner. Any organization that intends to implement a whistleblowing system using the Guide would be well advised to also examine the Standard and vice versa.

## *Annex B*

# ***Understanding the whistleblower's point of view***

### **B.1 General**

Though an organization may have the intention to implement a fair and effective whistleblowing system, a whistleblower may have a different perspective on the process. This alternate perspective can have a significant impact on a whistleblower's actions and could lead a potential whistleblower to choose not to come forward or decide to reach out to external third parties. Because of this, organizations must understand the issues from a whistleblower's perspective.

### **B.2 Questions to consider before speaking up**

Before reporting wrongdoing through a formal reporting process, potential whistleblowers will usually consider the following questions when deciding whether and how to speak up:

- a) Does management seem genuinely committed to investigating concerns and preventing reprisals?
- b) Is the suspected wrongdoing such that management may wish to keep the wrongdoing hidden?
- c) Does the organization have a formal whistleblowing reporting process in place?
- d) Is this process endorsed by the union?
- e) Are there any bodies external to the company where I can report the wrongdoing?
- f) Will my identity be kept hidden?
- g) How has the organization responded to similar reports in the past?
- h) Is there a chance that I could lose my job for coming forward?
- i) Even if the organization is supportive, is there a chance that the wrongdoer or another person may retaliate?
- j) If so, is the organization committed to providing remedies for those who have suffered reprisals?

### **B.3 Assessing the fairness and rigour of the whistleblowing system**

After evaluating the organizational environment, a whistleblower may assess various aspects of the existing whistleblowing system and consider the following questions:

- a) Will there be an investigation and, if so, who will investigate?
- b) Will an investigation be conducted fairly?
- c) Will witnesses come forward or will they remain silent to protect themselves?
- d) What kind of evidence is required to support the complaint?
- e) If the wrongdoing is verified, will the problem be corrected?
- f) If reprisals occur, to whom will I report them?
- g) Who will investigate alleged reprisals?
- h) Can the union assist with the process?



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