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CARIBBEAN REGIONAL COMPLIANCE ASSOCIATION

Whistle Blowing

Jonathan Katan

Miller Simons O'Sullivan, Regent House West, Regent Village,
Providenciales, Turks and Caicos Islands.

jk@msslaw.tc



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What is a whistleblower ?

Whistleblower

(noun) a person who
makes public
disclosure
of corruption
or wrongdoing



What is whistleblowing?

- **Classic Definition of Whistleblowing:-**
- ***“The disclosure by organization members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action.”***

Near and Miceli, 'Organizational Dissidence: the Case of Whistle-Blowing' Journal of Business Ethics.

Who are organization members?



- **Employees**
- **Former employees**
- **Potential employees**
- **Contractors**
- **Interns**
- **Students**

What is wrongdoing?

- **A criminal offense**
- **A failure to comply with any legal obligation**
- **A miscarriage of justice**
- **Danger to the health and safety of any individual
[n.b. not necessarily a worker]**
- **Damage to the environment**
- **The deliberate concealment of information
tending to show any of the matters listed above**

Who may receive disclosures?

- **Supervisors/Managers**
- **Audit committees/external auditors**
- **Regulators**
- **Integrity Commissions**
- **Ministers**
- **Police**



Whistleblowers – Hero?

PERSONS OF THE YEAR
PERSONS OF THE YEAR 2002

By risking everything to blow the whistle at WorldCom, Enron and the FBI, **CYNTHIA COOPER, SHERRON WATKINS** and **COLEEN ROWLEY** reminded us of what American courage and American values are all about

WATKINS
Enron

ROWLEY
The FBI

COOPER
WorldCom

[READ THE STORY >>](#)

Or Zero?



Bell ringers – a different type of whistleblower



- 1. The disclosure by individuals who are not journalists or publishers (generally voluntarily and at their own initiative) of information about**
- 2. Perceived wrongdoing (including omissions) under the control of organisations**
- 3. Of which they are *not* members (including former members or job applicants), to**
- 4. Parties or entities that disclosers reasonably believe can stop the wrongdoing or can disseminate the information widely**

Why is whistleblowing important?



- **Article 33 of the UN Convention Against Corruption requires that State Parties to the Convention:-**
- ***“shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention”***



- **Article III.8 of the Inter-American Convention Against Corruption, the State Parties agree-**
- ***“...to consider the applicability of measures within their own institutional systems to create, maintain and strengthen...Systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with their Constitutions and the basic principals of their domestic legal systems.”***



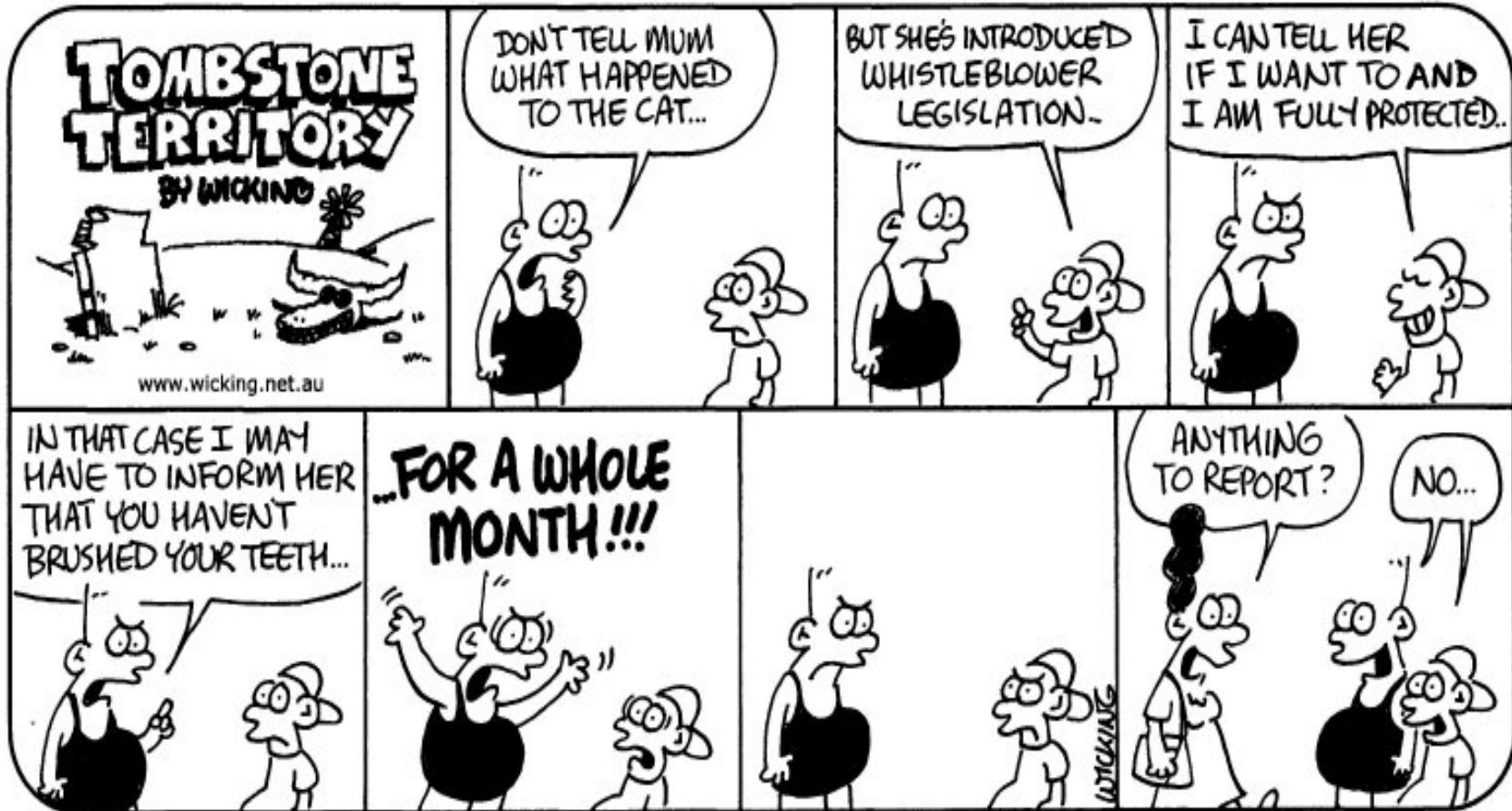
- ***“The UK Bribery Act and the US Dodd-Frank Act have contributed to a rapidly changing landscape for whistleblowing. It has long been recognised as one of the prime tools an organisation can use to foster a culture of transparency, understand its operations and identify unethical behaviour, but this has been brought into sharper focus by these developments....”***

- ***Indeed it is emerging as one of the most important tools in the anti-corruption arena. Many companies have started to revise their anti-bribery procedures in light of recent changes and they should certainly be checking that their whistleblower procedures are fit for purpose.”***

Chandrashekhar Krishnan, Former Executive Director of
Transparency International UK



The Law....



General legislation

- **Stand alone public interest disclosure legislation.**
- **Integrity Commission legislation**
- **Public service commission legislation**
- **Anti-Money Laundering and Prevention of Terrorism Financing Legislation**



APPENDIX 1

Name of Alleged Party of Improper Conduct	
Time and Place of Alleged Party of Improper Conduct	
Name of Witness	Name of Witness
Address of Witness	Address of Witness
Brief Description of Witness	Brief Description of Witness
Previous Disclosures Made (State about whom and to whom the disclosure was made)	
State whether still in employment (Where the disclosure is about the employer or fellow employees)	

I make this disclosure in good faith and in the public interest. I believe it to be true and accurate to the best of my knowledge and I know that I would be liable for prosecution if this disclosure contains any statement that I know to be false or misleading.

Signature of Person making Disclosure

Date

Name of Witness

Signature of Witness

Date

Employment law 1

- ***“The common law has never given workers a general right to disclose information about their employment. Even the revelation of non-confidential material could be regarded as undermining the implied duty of trust [and confidence] and give rise to an action for breach of contract. In relation to confidential information obtained in the course of employment the common law again provides protection against disclosure through express and implied terms.”***
- D Lewis, (2008) 82 J Bus Ethics 97.

- **Confidential Relations legislation?**
- **Human rights – constitutional right to free speech and/or not to speak?**

Employment Law 2

- **Protection against harassment /unfair dismissal legislation**
- **Internal code of conduct / stand alone or part of contract of employment**



Whistleblowers in your organisation



- **You**
- **All other employees/workers**
- **Contractors? Interns?**
- **Job applicants?**
- **Customers/clients?**

Legal protection for whistleblowers?



1. Internal disclosure-

- Employment contracts
- Code of conduct
- Legislation such as AML/Public Service legislation

2. External disclosure-

- Employment contracts
- Public Interest Disclosure Legislation
- Constitutional/free speech protection

Receivers of information in your organisation



- **You.**
- **Supervisors/managers**
- **The Board**
- **Audit Committee**
- **HR**
- **External Auditors**



Response to disclosure

- **Protection**
- **Support**
- **Action**
- **Reporting**

Why might the response not be supportive



- **Rationalisation:**
- *That in the circumstances the conduct is not so serious as to warrant a formal process*
- **Perception:**
- *A perception that the validity or accuracy of information in a disclosure is influenced by the perceived motive of the whistleblower*
- **Loyalty:**
- *Taking action on the disclosure might be disloyal to colleagues generally, friends in particular or even the organisation*

- **Complicity:**
 - *The recipient of the report, or persons above them, are either involved in the wrongdoing or have turned a blind eye to it in the past*
- **Personality:**
 - *Unwillingness to 'make a fuss' or take risks*
- **Futility:**
 - *That nothing will actually change as a result so no point in making report*

- **Fear:**
- *That disclosure will not be supported by other management or by political leaders, or career/job is at risk*
- **Reputation:**
- *An expectation that the disclosure will have a damage to their own reputation, of others or the organisation as a whole that outweighs the whistleblower's claims or interests*

Risks for the whistleblower

- **Loss of confidentiality/anonymity**
- **Harassment**
- **Loss of employment**
- **Reputational damage**
- **Litigation / stress**
- **Isolation / concern you won't be believed**
- **Physical assault**

Why blow the whistle?

- **Money**
- **Disgruntled Employee**
- **Busy body**
- **Publicity/media attention**
- **Because it is the right thing to do?**

The solution?

- **One size does not fit all**
- **Consider the nature and size of your organisation**
- **Consider the legislative environment your organisation operates in – domestic and international**
- **Consider ‘speak up’ program**

Essentials of speak up program



- 1. Commitment from the top down**
- 2. Develop a robust whistleblowing policy**
- 3. Design clear reporting mechanisms**
- 4. Embed the program – become part of organisation's culture**
- 5. Ensure good monitoring, evaluation and feedback in relation to system.**

Final thoughts

- **Whistle blowing continues to evolve**
- **A good whistleblowing/speak up program can assist your organisation in terms of good corporate governance and protect against commercial and reputational damage**
- **Will have to be done in the context of your local laws, but as long as policy is clear and part of employment contracts/code of conduct is likely to be legally compliant.**



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jk@msslaw.tc



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