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**WHISTLEBLOWING:
RESPONSIBILITY AND ACCOUNTABILITY
Does responsibility and accountability really exist in Canada?**

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Thesis submitted to the Faculty of Philosophy, Saint Paul University, in partial fulfillment of the requirements for the degree of Master of Arts in Public Ethics

Ottawa, Canada
May 2010

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Your file *Votre référence*
ISBN: 978-0-494-75194-7
Our file *Notre référence*
ISBN: 978-0-494-75194-7

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Acknowledgements

To Daryl, my brilliant husband, partner and inspiration, thank you for gently persisting in guiding and reminding me to always be true to myself. This accomplishment belongs to you also.

To Dad for always telling me to do the right thing and,

To Mom for always making sure I trusted myself when it came to doing that.

A special thank you goes to Professor Clinton Archibald for your patience, leadership and support throughout this process. You have made it possible for me to pull it all together and I am very grateful. To Professor Gregory Walters and Professor Roger Blanchette who brought out the passion in learning again for me, thank you. To the many friends and colleagues like Michelle Ballow, Laura Milsom and Jessie MacNeil who helped me along the way. Michelle, you were especially helpful with your editing comments and reality checks, which were so very much appreciated and needed. Last but certainly not least, thank you to my family whose support, understanding and help in making sure I completed this thesis has been amazing.

Part I

Introduction

In this thesis, I will be discussing whistleblowing in Canada. I will be looking at the legislation and policies that cover whistleblowing in Canada and in the Public Service of Canada. I will be reviewing the whistleblowing process and the parties involved. I will also attempt to find out if, in the end, the authorities who are designated responsible and accountable are so and if not, why not.

Should employees be blowing the whistle on other colleagues and authorities? Are authorities stepping up? Are employees stepping up? Is anyone being held accountable? Given the nature of the Public Service, is there any possible reason for which authorities do not or should not necessarily need to be accountable to whistleblowers and if so, what could be a valid rationale for not being accountable?

I will present my research in four parts. In the first part I will discuss Alan Gewirth's "Professional Ethics: The Separatist Thesis" document. Gewirth's paper discusses the question of whether professionals may have

valid excuses to justify putting moral limits when attaining the valued end that constitutes a service to a client.¹

I will compare Gewirth's "Separatist Thesis" to the authorities in the Public Service. The authorities I am referring to are the Ministers, Deputy Ministers and Assistant Deputy Ministers in the Public Service. I will look at whether the authorities at the Public Service do sometimes have valid reasons for seemingly ignoring or not addressing either the concerns of wrongdoing being brought to their attention or the results of an investigation into wrongdoing. Do some of the authorities in the Public Service not address wrongdoing and do they believe they have justifiable reasons, like the professionals who believe that they have special rights in Gewirth's "Separatist Thesis"? Are they above and beyond the rules and regulations by virtue of their status or profession? Does this mean that authorities can be absolved from dealing with the findings of wrongdoing? Is there no one to whom they would need to justify this *de facto* philosophy of the "Separatist Thesis"?

I intend to demonstrate that authorities of the Public Service should be accountable and responsible towards not only whistleblowers but also to the information they, the whistleblowers, bring forward. When a whistleblower brings forward allegations, there appears to be a pattern of discrediting the

¹ Alan Gewirth, "Professional Ethics: The Separatist Thesis," *Ethics*, Vol. 96, No. 2 (Jan., 1986): 282-300. <http://links.jstor.org/sici?sici=0014-1704%28198601%2996%3A2%3C282%3APETST%3E2.0.CO%3B2-4> (accessed January 26, 2008).

whistleblower and being so focused on that that the actual allegations sometimes get ignored. The Richard Colvin case currently being reviewed is a good example of this.²

Even the reasoning of the “Separatist Thesis”, which I agree with Gewirth is flawed, does not justify a lack of accountability and responsibility; in particular when it comes to the Public Service because in the Public Service, we are not only talking about the well being of the public servants but also what concerns the public interest.

I will also briefly discuss some of the aspects that Alan Gewirth discusses in his book entitled *Human Rights: Essays on Justification and Applications*.

In the second part of my research, I will discuss the Public Service and public servants, the Public Sector Integrity Commission (PSIC), the legislation, organizational policies and codes pertaining to whistleblowing in Canada, to the definition of whistleblowing and to the process. Lastly in this section, I will look at some of the possible consequences of whistleblowing.

I have chosen to look at the Public Service of Canada in particular as it is one of the biggest organizations in Canada and because its employees are

² “Richard Colvin’s catch-22,” *The Globe and Mail*, <http://www.theglobeandmail.com/news/politics/ottawa-notebook/richard-colvins-catch-22/article1533670/> (accessed April 18, 2010).

protected by fairly new whistleblower legislation. In fact, according to the Federal Accountability Initiative for Reform (FAIR), John Baird, who, two years ago was the President of the Treasury Board, referred to the new *Public Servants Disclosure Protection Act* (PSDPA) as the Mount Everest of whistleblowing legislation.³

In the third part of my research I will discuss responsibility, accountability and the duty of loyalty that employees who become public servants must abide by. It should be noted, though, that it is not unusual for any organization to expect some form of loyalty from its employees. I will also discuss authorities, and, last but, not least, retaliation.

The notion of responsibility can be seen as a duty, an obligation or possibly a burden. In the whistleblowing process, the authorities are the ones responsible for ensuring that wrongdoing is looked into and if needed, addressed. But is this responsibility of authorities seen more as a burden than anything else? If so, why is that? If authorities do not do the right thing, are they accountable to anyone and who would that be? What exactly would the end mean to the authorities and what would doing the right thing entail? These are the key guiding research questions that I intend to explore in this thesis.

³ “Five Things Canada’s Public Sector Integrity Commissioner’s Office Should Do Right Now,” *Federal Accountability Initiative for Reform (FAIR)*, <http://fairwhistleblower.ca/content/five-things-canadas-public-sector-integrity-commissioners-office-should-do> (accessed November 22, 2009).

I will also discuss retaliation, or reprisals, a consequence most often seen as a punishment for having disclosed wrongdoing. Employees and authorities have expressed concern about the consequences of being a whistleblower. The law is supposed to protect employees from retaliation. Is that working, if so, how, and if not, why not?

In the final part of my research I will present my conclusion and recommendations. I will explain how I reached my conclusion and what I believe to be some of the important elements of the whistleblowing system in Canada. My conclusion will be drawn from the research and from the facts that I have gathered. Finally, I will make some recommendations and discuss the risks that I believe need to be addressed in order to do the right, ethical and deliberate good thing. If the legislators are attempting to protect whistleblowers that come forward in good faith and who have important facts to share for the interest of not only the public but the good of the Public Service, then shouldn't the authorities be listening, or are they already?

a. Alan Gewirth: “Professional Ethics: The Separatist Thesis”

Alan Gewirth’s paper on “Professional Ethics: The Separatist Thesis” discusses the question of whether professionals may have valid excuses to justify putting moral limits when attaining the valued end that constitutes a service to a client.⁴ Gewirth says that:

“... professionals, by virtue of their expertise and their consequent roles, have rights and duties that are unique to themselves and that may hence be not only different from, but even contrary to, the rights and duties that are found in other segments of morality.”⁵

Can we compare this to the authorities at the Public Service? If they ignore either the allegations of wrongdoing or the results of the investigation, can they be justified because they feel that they, like the professionals who believe that they have special rights, are above certain criteria by virtue of their status or profession? Does this mean that the authorities can be absolved from dealing with the findings of wrongdoing? Is there no one to whom they would need to justify this *de facto* philosophy of the “Separatist Thesis”? Who is actually responsible for ensuring that policies to protect employees and the public interest are upheld?

⁴ Gewirth, “Professional Ethics,” 282-300.

⁵ Gewirth, “Professional Ethics,” 282-300.

In his paper on “Professional Ethics: The Separatist Thesis”, Gewirth says that: “the professional’s rights may justifiably infringe certain of the moral rights of his clients or of other persons.”⁶ This leads us to believe that there may be justification for a Minister in the Public Service, or someone acting in his or her power, to override the evidence gathered in a wrongdoing investigation and, to justify, by his or her own means, not addressing a problem. Who is the Public Service attempting to protect with policies to do the right thing and to look good? In the end, is the public servant being protected or is this all a plan to look like the authorities are doing the right thing? Although it is an employee’s right to make a complaint, are they discouraged from doing so? Are the authorities trying to help and is it successful?

Gewirth further states that:

“The separatist thesis is invoked, however, in transactions between professionals and their clients or other affected persons where this or some other general moral requirement of rights is not fulfilled, so that a moral right of the client or of someone else is infringed.”⁷

When is it ever permissible to ignore a moral requirement? There will at times be a need to balance certain requirements and to make a difficult

⁶ Gewirth, “Professional Ethics,” 282-300.

⁷ Gewirth, “Professional Ethics,” 282-300.

choice between more than one moral requirement; but when only one choice can be made, which requirement supercedes the others? What is the moral requirement for doing the right thing and can it ever be ignored? When an employee's moral rights are violated and they make a complaint in the present process, are they being heard and treated with fairness and respect? Where does an employee's right as a whistleblower come in?

The "Separatist Thesis" also maintains that professionals who invoke the "Separatist Thesis" claim that their actions are justified because of the end results. Does that mean that the Public Service could invoke the "Separatist Thesis" and also benefit from this thesis because the end justifies the means? In other words, does the invocation of the "Separatist Thesis" function as an "ideology", where ideology means obfuscation for gain? We would have to explore what the meaning of the end is for the Public Service.

The end usually means that something has reached completion and that the goal has been attained. Whether all parties agree that completion has been reached can be questioned, as can the means that were used. What happens when an authority decides that there is completion and that the means used to get there were acceptable? Is there room for debate?

For the Public Service, the end could mean several things. It could mean that authorities believe they have addressed the wrongdoing brought

forward. It could also mean that the authorities feel they have valid reasons for either having addressed or not addressed the concerns; but at the end of the day, have the matters been dealt with or not and who gets to decide? Another question would be that of who gets to decide how to appropriately address something? Do the authorities have to answer to anyone? Are all concerns of wrongdoing being reviewed or is there simply an illusion that all problems in the workplace are being effectively managed?⁸ Does having a strong whistleblowing policy and process in place mean that the Public Service is doing its part and that that is enough? Does having a strong system of reporting wrongdoing in place justify the fact that no matter what the findings may be, they may not get addressed? Is it permissible for the Public Service, the authorities, to say that what's good for them as an organization is better than the well being of their employees?

The "Separatist Thesis" also claims to have a type of moral autonomy.⁹ There are three components to the claim. First, the claim states that there has to be a valued service provided by the professional. The valued service of the Public Service can be that they have a policy and legislation that edict that wrongdoing in the workplace must be reported and addressed.

Second, the claim states that some of the actions that might be taken may, in and of themselves, be morally wrong in that they lack "a necessary

⁸ Gewirth, "Professional Ethics," 282-300.

⁹ Gewirth, "Professional Ethics," 282-300.

condition of moral justification.”¹⁰ This second claim can be compared to the decision made by the Public Service should they *not* address or even review allegations of wrongdoing. Consequently, it could mean that the actions taken to review the allegations were questionable. The argument appears to rest on a separatist’s trumping the legal compliance, with a moral high ground. This, in turn, begs the question of the relationship between law and morality. Therefore, although there are policies and legislations in place, this end requires that there may be some morally wrong steps taken.

Third, the final claim says that, no matter what, the actions are justified because they are a means to an end. If we agree that the goal of the authorities with respect to whistleblowing is to protect the employees and the public interest, could there ever be justification that the means to reach the end be immoral or illegal? Does an organization protect itself or its employees? Does the Public Service protect itself, thereby its authorities, its employees or the public interest? As Alan Gewirth notes, the “Separatist Thesis” is “a version of the general doctrine that the end justifies the means.”¹¹

Gewirth also discusses the difference between a *violation* and an *infringement* of rights.¹² He states that according to the *Separatist Thesis*, moral rights of a person can sometimes be infringed. Sometimes, Gewirth

¹⁰ Gewirth, “Professional Ethics,” 282-300.

¹¹ Gewirth, “Professional Ethics,” 282-300.

¹² Gewirth, “Professional Ethics,” 282-300.

says, you can justify the infringement of a right if there is a battle between moral rights and having to decide what the *best* thing would be to do.

Gewirth gives the example of a murderer asking someone to tell them where their next victim is. He says that this would be an acceptable infringement: to lie in order to prevent a murder.

In the case of the Public Service, a justification for infringing a right could be made in the following example. If someone is found guilty of wrongdoing but possesses a valid, unique skill that the Public Service needs to accomplish an important task for the good of the public, should s/he be kept as an employee without consequence or should s/he be disciplined and possibly have their employment terminated? Does the Public Service have an obligation to balance the best interest of the employer with that of the public and the employee?

As well, Gewirth examines the difference between what he calls “ordinary ethics” versus the “Separatist Thesis”.¹³ He says that to refer to something as ordinary ethics is too simple and does not adequately describe the many types of ethics and dilemmas that one can have. He adds that it cannot be compared to professional ethics. Rather, Gewirth states that you have to find out “whether it may justifiably override or infringe moral rights

¹³ Gewirth, “Professional Ethics,” 282-300.

that are based on a rationally justified ethics,” which he refers to as rational ethics.¹⁴

The concept behind rational ethics is moral rights, says Gewirth, specifically freedom and well being. Freedom is seen as a choice whereas well being consists of various conditions and abilities that one must have.¹⁵

Gewirth then discusses his *Principle of Generic Consistency* (PGC), which is the supreme and most general principle of all morality because it applies to all actual or prospective agents and because it requires that each such agent have the generic rights of action. In the PGC, besides having an obligation to never interfere with freedom and well being, there is also an obligation to help people, as needed, with certain aspects of freedom or well being. These positive duties, those that require action, can involve rules. They can consist in duties to *allow* people to have their freedom and well being and when necessary, duties to *assist* people in freedom and well being. As for well being, Gewirth says that: “positive duties often require a framework of institutional rules.”¹⁶

If we look at these rules in the face of the Public Service, does not a Minister, the highest possible power responsible for a particular organization in the Public Service, have the obligation, a positive duty, to act to ensure that

¹⁴ Gewirth, “Professional Ethics,” 282-300.

¹⁵ Gewirth, “Professional Ethics,” 282-300.

¹⁶ Gewirth, “Professional Ethics,” 282-300.

her or his employees are working in a healthy work environment where the well being for everyone is respected and safeguarded? Or, does s/he simply assume that all is well unless someone makes a disclosure or complaint? The latter would imply that the onus of making a complaint is on the employee and that there is no responsibility to monitor the work environment to prevent any wrongdoing.

Given that an employee is not always knowledgeable, able, or even wanting to make a complaint, one should not assume that no complaint means everything is fine. Therefore, if a professional were to use the “Separatist Thesis” to infringe on the moral rights of a person and to ultimately do what they believe to be the right thing, could that also be like saying that the Public Service does not really have to justify what they do?

Gewirth’s PGC says that there are three main criteria to rationalize such infringements. The first is that a violation can only be committed if it is to prevent the violation of another one. Can the Public Service justify infringement on employee rights in order to prevent the violation of another?

The second criterion is that of “the degrees of necessity for action.”¹⁷ Could the Public Service use this as a valid excuse for the protection of certain information or privacy matters that might have to take precedence over the rights of a complainant, thus infringing the rights of another?

¹⁷ Gewirth, “Professional Ethics,” 282-300.

Nonetheless, it should not be an infringement to the extent that should there be substantiated wrongdoings, these substantiated wrongdoings could not be addressed. As is later stated in this thesis, an employee who has disclosed wrongdoing should never become victimized by the process and findings.

All the same, Gewirth states that none of these criteria are required for professionals to carry out their specific roles. In fact, he says a third criterion would have to apply, that of a justified infringement as a result of rules of an institution. Thus if an infringement can be justified by the policies and procedures of an institution, it might be justified.¹⁸ Gewirth compares a profession to an institution as he says they both have some ethical code. There is a difference, though, Gewirth says, between whether institutional ethics are based on morally justified rules or whether they are simply rules made to profit one and hinder another. For example, the institution of slavery and suttee are two of the institutions that are morally unjustifiable. So the institutional rules have to be based on some sort of ethical framework.

Certainly the Public Service is considered a morally justified institution. It portends to have many strong rules and regulations about what is appropriate behaviour in the workplace. Is it always carrying out these procedures though? Are the rights of an employee supposed to be protected? Is the Public Service conducting itself in a moral manner?

¹⁸ Gewirth, "Professional Ethics," 282-300.

Gewirth says that as long as the rules of an institution “conform to the PGC either procedurally or instrumentally,” it can be acceptable and does respect the right to freedom, as one voluntarily participates in the rules and regulations of an institution.¹⁹ An example of this in the Public Service would be that for procedural fairness, one is considered for a position based on merit and non-partisanship. So everyone knows that this is the process and they agree to it when becoming an employee of this particular organization. The notion of freedom, says Gewirth, is the important part of being a free agent thereby allowing you to apply for a position and to be able to join an association, for instance.

Gewirth continues to maintain that there is a problem with the “Separatist Thesis”. In particular, is it always sufficient to have rules and roles of a morally justified institution as justification of an infringement of a rationally grounded moral right? In referring back to the third criterion for the justified infringement of moral rights, it is particularly interesting to note: “...the kinds of infringements of the right to freedom that are embodied in political obligation: the obligation to obey the laws of a morally justified government.”²⁰ We should add the policies to the above statement if we were to refer to the Public Service so that it would read: “...the obligation to obey the laws and *policies* of a morally...” The Public Service therefore has many policies and the question remains: are they applied when a complainant

¹⁹ Gewirth, “Professional Ethics,” 282-300.

²⁰ Gewirth, “Professional Ethics,” 282-300.

comes forward and are they applied when the findings reveal wrongdoing?
Are these the actions of a morally justified government?

This is where Gewirth states that a third level of institution justification, that of infringing a right to freedom because of political obligation of a morally justified government must be applied and that it must conform to the right conditions of the PGC. It must:

“...refrain from interfering with persons’ freedom and well being and also, where needed, duties to assist persons to have various components of freedom or well being.”²¹

Because of this, Gewirth says the “Separatist Thesis” fails.

The bottom line becomes the lack of interference of freedom and well being. Is the Public Service acting in a way that promotes well being and freedom? Is it failing in the light of the Public Service? If authorities are not being accountable and failing to assist employees who have come forward, are they living by Gewirth’s PGC?

With respect to the External and Internal Instrumentalism that Gewirth discusses in his paper, it is important to my comparison to the Public Service to note that Gewirth says that even if the *Public Interest* is used to

²¹ Gewirth, “Professional Ethics,” 282-300.

authorize an infringement, this must be used in the “system of rights that are guaranteed equally for all” so that everyone is protected and not just the mass of people.²² In other words, even the basic rights of one must be considered and not disregarded. So when we look at the Public Service, are the rights of individuals being respected or violated? And if these rights are being infringed or violated, could the Public Service say it was for the sake of the public interest? Can they legitimately ignore their *own* policies, rules and regulations to protect their *own* employees?

In addition, Gewirth says that the general principle of rational morality must consider the rights of all people.²³ So is the justification of doing what is right for the public interest at stake even if only one employee is wrong?

Gewirth maintains that the general principle of rational morality is not upheld with the “Separatist Thesis” as they professionals who want to claim it do not include equal freedom, dignity and well being. In addition to the Public Service stating that a healthy work environment is a priority, they also include freedom, dignity and well being in their policies. Are these notions being upheld? If not, then the distinctive characteristics of Gewirth’s concept of moral ends are not respected.

²² Gewirth, “Professional Ethics,” 282-300.

²³ Gewirth, “Professional Ethics,” 282-300.

b. **Alan Gewirth: *Human Rights: Essays on Justification and Applications***

According to Gewirth, in *Human Rights: Essays on Justification and Applications*, the idea of obligations and what men ought to do is based on what is inherently rational.²⁴ He says that:

“...moral obligations must be self-imposed; that the only legitimate way to indicate the content of one’s moral obligations is to say that one ought to do what one thinks right (subjective obligation), not what is right (objective obligation); that what one ought to do, including whether one ought to by a law, must be determined by one’s own conscience.”²⁵

Consequently, when it comes to doing the right thing, Gewirth says that one has to be guided by one’s own conscience: “that if transactions are to be morally right, then their recipients must participate in them voluntarily.”²⁶ He also states that moral obligations must be self-imposed and that people should do what *they* think is the right thing to do. Would this then lead us to think that people do not need rules to do the right thing? Does everyone agree to what the right thing is?

²⁴ Alan Gewirth, *Human Rights Thesis on Justification and Application* (Chicago: The University of Chicago Press, 1982), 270.

²⁵ Gewirth, *Human Rights Thesis*, 270.

²⁶ Gewirth, *Human Rights Thesis*, 271.

In *Human Rights*, Gewirth also discusses his *Principle of Categorical Consistency* (PCC). According to the PCC, Gewirth says there are three basic moral obligations that man must follow and they include freedom, welfare and justice. With respect to freedom, one must refrain from influencing other people. As for welfare, one should not harm others, and regarding justice, one should be objective especially when freedom and welfare are concerned.²⁷

In keeping with Gewirth's PCC, doing what is right has to do with moral obligations toward another person whether the other person agrees with it or not; one has the obligation to do the right thing, no matter what it seems. An effort to influence others would entail violation of freedom.

Gewirth says that refraining can be too negative a concept and sometimes you need to do something in order to do the right thing. So what exactly does that mean and how does one know? Should an employee in the Public Service reveal wrongdoing or should they simply do nothing? What is the right thing to do? Gewirth goes on to say that a moral obligation can be like following the law because the law, he says, is a good thing that does good. This would therefore mean that one should follow the policies and codes that the Public Service as a whole is responsible for. Are there consequences, however, to following the law, policies and codes and to doing the right thing in speaking out? Was the intent of the law to produce negative

²⁷ Gewirth, *Human Rights Thesis*, 269.

consequences for whistleblowers or was it to protect them? If you speak out, is that doing the right thing or, do you protect yourself, keep quiet, thus avoiding any career jeopardizing consequences for yourself. Protecting you, the employee, may be the right thing to do.

This brings me to two questions. First of all, does this mean that keeping quiet would also be justified for the authorities that know or suspect that there might be wrongdoing? Secondly, if the law is to do good, as per Gewirth, then are the policies and legislation in the Public Service working and if not, why not?

With respect to the first question, should an authority have the choice of keeping quiet if s/he suspects or knows about wrongdoing? I guess the answer would lie somewhere in the fact that according to Gewirth, the obligation to do the right thing is inherent and therefore should come naturally. Accordingly, if an authority is doing the right thing for the sake of the employee, it might be justified. However, if the authority is not doing the right thing for fear of his or her own career or person being negatively impacted, thereby putting someone else at risk, that is not the right thing to do.

As for the policies, codes and legislation that the Public Service must abide by, if one reads them it would appear quite obvious that the intent of

the writings is to protect employees who allege wrongdoing. In reality, are the policies being applied? Are they being followed with good faith and with the intent to do the right thing? Or, were the policies and legislations written in a way to protect authorities? Are there too many loopholes in the policies and legislation? Is the legislation of whistleblowing simply too young and like other new laws, it has not yet been able to address all of the complexities involved within and around it?

PART II

In this section, I will look at some definitions of whistleblowing. I will examine the Public Service, the rules and regulations that govern it and some of the expectations of public servants. I will also review the Public Sector Integrity Commission (PSIC), its mandate and some of the concerns being raised about the process. I will briefly review some of the legislation, policies and codes and I will discuss the process of whistleblowing in the Public Service and the possible consequences of coming forward with allegations of wrongdoing.

a. Whistleblowing Defined and the Process

“There is no law, no system, no set of regulations which can more effectively hold governments to account than the conscience of man. Opposition parties, the public and the press rely on individuals, not systems, to tell us what those who rule over us would like us not to know. We call them “whistleblowers” because, like referees, they seek to keep the players in our political system in check.”²⁸

One of the many definitions of whistleblowing is: “the attempt by an employee or former employee of an organization to disclose what he or she believes to be wrongdoing in or by the organization.”²⁹

Whistleblower Canada says:

“...that the generally accepted term “whistleblower” applies to those individuals who disclose information about something they believe to be harmful to the public’s interest, occurring in business or in government. It includes disclosure to authorities within the organization or to outside agencies or to the media.”³⁰

²⁸ “Our Freedoms Under Threat,” *The Independent*, November 29, 2008, <http://www.independent.co.uk/opinion/leading-articles/leading-article-our-freedoms-under-threat-1040269.html> (accessed November 2009).

²⁹ Gene G. James, “In Defense of Whistle Blowing,” in *Ethical Issues in Professional Life*, ed. Joan C. Callahan, 315-339 (NY: Oxford University Press, 1988).

³⁰ “If you have witnessed wrongdoing, here are some of the questions you may be asking yourself,” <http://www.whistleblowercanada.com/2.html> (accessed January 15, 2010).

David Hutton, Executive Director of Federal Accountability Initiative for Reform (FAIR), says that whistleblowers, according to those who work in the field, “include any employee who speaks up about wrongdoing – whether internally or externally, privately or publicly.”³¹

In an interview that I had with David Hutton of FAIR, he said that:

“Most people who report wrongdoing are not trying to make trouble; rather, they find themselves cornered and sometimes feeling that they have no choice. These are hard working people, honest and diligent, who are being forced to chose between their bosses’ instructions and their personal and professional ethics.”

I agree with Mr. Hutton’s definition of whistleblowing. I believe that all disclosures, whether internal or external can be acts of whistleblowing. I will add, though, that as per Paul G. Thomas, only including employees and past employees eliminates a wide range of people, like contractors and consultants. These latter groups deal with the ins and outs of Public Service dealings on a regular basis and that it would be interesting to see what would happen should a contractor or consultant report wrongdoing.³²

³¹ “Protecting Whistleblowers who Protect the Public Interest,” *Federal Accountability Initiative for Reform (FAIR)*, <http://fairwhistleblower.ca/> (accessed August 10, 2009).

³² Paul G. Thomas, “Debating a whistle-blower protection act for employees of the government of Canada.” *Canadian Public Administration* 48, 2 (Summer 2005): 147-184

When one speaks to professionals in the field, most whistleblowers come forward to disclose information for moral reasons. They are coming forward in good faith and many of them feel they had no choice but to divulge information.

There are many types of disclosures in the workplace. For example, conflict of interest, financial abuse, human rights violations, abuse of authority and any concerns of wrongdoing affecting the many laws, codes and policies of and connected to the Public Service.

When a Public Service employee feels that there is wrongdoing taking place in the workplace, or that is affecting the workplace, s/he has to decide whether they want to disclose (report, whistleblow) this information or not. There are different ways an employee can disclose information. They can bring it to their superior and move up the chain of command accordingly. They can speak with their bargaining agent or contact someone within the Ethics and Values office or speak to their Harassment Coordinator, or, amongst others, to Human Resources personnel.

If one should decide to come forward to any of the above noted offices, some of the comments received from employees has been that one might question the efficiency, experience, knowledge and *raison d'être* of

these offices and its advisors. For example, what is their training, what is their mandate and do they have any authority to ensure that wrongdoing is addressed or do they only have the ability to make recommendations like the Public Sector Integrity Commission? Some of the above noted offices do not even have the authority to recommend investigations which leads to another question, that of who does the investigation, a Public Service employee or an outside, neutral body. For the purposes of neutrality and objectivity, the latter is primordial. As you can see, there are no clear steps for employees and this only adds to the confusion and stress that an employee who is aware of wrongdoing has to deal with.

Nevertheless, before an employee comes forward s/he faces a dilemma. The dilemma is a) whether to come forward at all, b) who to come forward to, c) how much or how little to tell and d) what can the consequences of coming forward be and are they worth it?

Given that *The Policy on Prevention and Resolution of Harassment in the Workplace* of the Treasury Board Canada (herein referred to as The Policy) states an employee is *encouraged* to come forward, this creates the first part of an employee's dilemma.³³ The Policy says you are encouraged to but what exactly does that mean? If you do come forward, you may suffer limiting consequences to your career but if you do not come forward then you are not really abiding by the Policy. It has also been reported that an

³³ "Policy on Prevention and Resolution of Harassment."

employee who does not come forward with important information of wrongdoing can suffer consequences for *not* having come forward.

Internal disclosure is nonetheless sometimes addressed in the Public Service and some employees have stated that the process worked for them. The problem seems to be when disclosure gets ignored or denied and that an employee persists in their disclosure of wrongdoing, making someone look bad.

The Public Servants Disclosure Protection Act, in the Preamble, states:

“Public Servants owe a duty of loyalty to their employer and enjoy the right to freedom of expression as guaranteed by the *Canadian Charter of Rights and Freedoms* and that this Act strives to achieve an appropriate balance between those two important principles.”³⁴

The discussion then becomes one of whether employees have the right to express themselves and raise concerns of wrongdoing. If they do so, they should not feel threatened and there should always be a place for employees to turn to, where they feel safe in disclosing what they honestly believe to be wrongdoing. It should be stated, though, that employees are not

³⁴ “Public Servants Disclosure Protection Act,” *Public Sector Integrity Canada*, <http://www.psic-ispc.gc.ca/doc.php?did=52&lang=eng> (accessed August 6, 2009).

completely banned from doing so, however, if they do follow the proper chain of command and no one is listening, it would appear that that's when the problems start. If they persist, is that when they become disloyal to their employer? Whistleblowers believe they are doing the right thing and that it is their only choice; to take it to someone who will listen and correct the wrongdoing.

Whistleblower Canada says you should:

“Think carefully about whether you want to go public with your concerns or remain an anonymous source. Each strategy has implications: the decision depends on the quantity and quality of your evidence, your ability to camouflage your knowledge of key facts, the risks you are willing to assume and your willingness to endure intensive public scrutiny.”³⁵

b. The Public Service and Public Servants

The Public Service of Canada is comprised of employees referred to as public servants. Their mandate is to gear towards excellence, to serve the Canadian public and to protect their interest and safety.

³⁵ “If you have witnessed wrongdoing.”

What does it take for someone to be a good public servant? Janos Bertok says the following about values and public servants:

“Values are the foundations of both societies and organizations entrusted with serving the public interest. In a very simplified way, ethics is about judging what is wrong and what is right. Ethics is not just about temptation, it is about handling dilemmas. Public Servants in multipurpose organizations regularly face competing or even conflicting objectives and tasks in their daily work. The right choice of values is fundamental for public servants in pursuing their objectives. Political and performance objectives define “what” public servants are expected to achieve; values and ethics guide them on “how” to achieve agreed objectives.”³⁶

This would suggest that employees of the Public Service, including authorities, are expected to get the job done but to get it done in an ethical manner. It would also imply that employees are expected to follow the rules and regulations, the ones telling them to report wrongdoing. If they do so, however, will they be treated in an ethical manner with respect and without retaliation or rather, are employees being punished for coming forward?

³⁶ Janos Bertok, “Going Forward – Changing the Climate” (National Ethics Symposium Proceedings, Ottawa, ON, 2004).

Ethics have also been discussed by Denis Desautels in his paper “The Concern for Ethics.”³⁷ He says that ethics are a fundamental value that always have and always will be important. He adds, though, that it is a value in constant evolution and that it must be maintained. With education and public debate, Desautels continues, we can sensitize society to what an ethical dimension is and to reinforce our capacity to recognize the ethical aspect in our decisions and in our actions. Ethics, says Desautels is not a new value, but the bar is being raised higher and higher.

Desautels also states that the evolution and importance that ethics has taken over the last few years is evident in Public Service institutions. This would be evidenced by all of the new codes for values and ethics, by establishing bodies to guide and rule on the practices of values and ethics in the workplace and by trying to resolve and address problems before they become insurmountable. Desautels says that it is important to maintain a balance between educating and sensitizing versus punishing; he stresses that you must maintain a “positive and motivated workplace environment.”³⁸

How does one do that? How do you “enforce” the codes without consequences? Do we really expect everyone to behave appropriately and to do the right thing?

³⁷ Denis Desautels, “The Concern for ethics: new forces, new expectations, new standards” (National Ethics Symposium Proceedings, Ottawa, ON, 2004).

³⁸ Desautels, “The Concern for ethics: new forces, new expectations, new standards.”

Janos Bertok says that in the Public Service, two approaches are used. The first is “compliance-based ethics management” where everything is by the book including consequences and the second is called “integrity-based ethics management”. He says that when corruption is at risk, then compliance based is crucial. However, he adds, support, guidance and incentives are what particularly motivate people to do the right thing. Bertok states that prevention is being seen more and more as the key factor in establishing good ethical behaviour for employees and authorities.³⁹

According to Sheila Fraser, Office of the Auditor General of Canada, The *Tait Report* of 2000 is considered the starting point for the formalization of values and ethics in the Public Service.⁴⁰ It discussed three focal points, the first being how to enforce responsibility for ethical behaviour, the second was that parliamentarians, ergo authorities, need to lead by example and the third was that the scope of ministerial authority had to be clear.

If the bar is therefore being raised for ethical behaviour and prevention, education and sensitization are vital elements in accomplishing this, how does the Public Service promote it? What part do employees and authorities have?

³⁹ Bertok, “Going Forward – Changing the Climate.”

⁴⁰ Sheila Fraser, “Modern Public Management, Prudence and Probity” (National Ethics Symposium Proceedings, Ottawa, ON, 2004).

And what of the notion of the public interest? According to Elaine Tordres:

“To be a public servant is to be perpetually divided. On the one hand, you work for the government of the day; on the other you work for the public at large.”⁴¹

For that reason, does acting in the public interest mean that an authority can decide whether the public interest, morale and confidence could be wounded if wrongdoing was reported? One of the employees interviewed for this thesis strongly suggested that the public has a right and a need to know what is behind government closed doors.

c. The Public Sector Integrity Commission (PSIC)

Following the passing of the *Public Servants Disclosure Protection Act* in 2007, the Public Sector Integrity Commission’s office was put into place. Its mandate is:

“to establish a safe, confidential mechanism for public servants or members of the public to disclose potential wrongdoing in the public

⁴¹ Elaine Tordres, “The Ethical Dimension in Public Service,” *Canadian Public Administration* 34 (1991): 14-15.

sector. The Office also protects public servants from reprisal for making such disclosures or participating in investigations.”⁴²

The Public Sector Integrity Commissioner has said that the public interest is paramount and that their office will be guided by it in all cases.

If we look at the statistics for the Public Sector Integrity Commission, none of the disclosures filed in 2007-2008 show any wrongdoing.⁴³ Neither do the statistics for 2008-2009.⁴⁴ We do not, however, know why no disclosures are founded but in discussing with professionals who work in these areas, they will tell you that even if it would appear, after investigation, that there are substantiated wrongdoing cases, these findings seem to somehow go away. What exactly does that mean?

The intent of the Public Sector Integrity Commission is to help employees bring wrongdoing in the workplace to the attention of authorities. Its power is restricted to making recommendations to deputies and then to provide a report to the Minister. The Public Sector Integrity Commission does not have the authority to enforce correction. It falls to the Minister to decide on any action. In fact, this is some of the most significant criticism

⁴² “Our Vision, Our Mission, Our Values,” *Public Sector Integrity Office*, <http://www.psic-ispc.gc.ca/doc.php?did=53&lang=eng> (accessed November 21, 2009).

⁴³ “Annual Report 2007-2008,” *Office of the Public Sector Integrity Commissioner*, <http://www.psic-ispc.gc.ca/doc.php?sid=39&lang=eng> (accessed August 15, 2009).

⁴⁴ “Annual Report 2008-2009,” *Office of the Public Sector Integrity Commissioner*, <http://www.psic-ispc.gc.ca/doc.php?sid=68&lang=eng> (accessed August 15, 2009).

made with respect to the Public Sector Integrity Commission office: It has no real authority or teeth.

In gathering information concerning the experience of employees who have gone to the Public Sector Integrity Commission offices, one of the concerns mentioned by one of the people who attended these offices to disclose wrongdoing was with the Public Sector Integrity Commission “Informal Case Resolution process.” When allegations of wrongdoing are kept confidential, this particular employee expressed concern that if things are not made known to the public, things would not change and what's more, the public, he feels, has the right to know about allegations of wrongdoing in the Public Service. Another question that comes to mind is whether the Public Sector Integrity Commission office is trying to assimilate their “Informal Case Resolution Process” to that of the Informal Conflict Management System (ICMS) established in 2006.⁴⁵ The concerns reported with this is that in order to resolve or attempt to resolve conflict, you have to have an expertise in the field. In addition, not all types of resolution are appropriate for matters that whistleblowers are dealing with; for example, you can rarely have a successful mediation when there is an unequal balance of power between parties.

⁴⁵ “Getting to know Information Conflict Management Systems (ICSM) better,” *Treasury Board of Canada Secretariat*, <http://www.tbs-sct.gc.ca/gui/confplus-eng.asp> (accessed August 10, 2009).

Some users have reported feeling on the defensive while attending the Public Sector Integrity Commission offices and in particular feeling that they were being treated like suspects for coming forward. It would be interesting to look into the possible “stigma” attached to attending the Public Sector Integrity Commission’s offices in another large research project.

Furthermore, in some of the interviews I conducted with some Public Service employees who went to the Public Sector Integrity Commission for help, all of them reported that they felt that they were being screened out versus being screened in. In other words, they were given the impression that they were being told everything the Public Sector Integrity Commission *could not* do versus what they *could* do; one employee described it as feeling like they couldn’t get rid of her quick enough.

One of the other questions that one of the interviewees had was that if nothing is being published or recorded, how can change come about? The employee stated that a band-aid approach to addressing each case individually and not openly reporting on significant consequences for the wrongdoer, allows other morally and ethically corrupt wrongdoers to operate with impunity and thereby reinforces to those unjustly wronged that no one person or system will protect them. The consequences for the wrongdoer, this employee adds, should be at least as severe as the consequences for the whistleblower.

Still another employee who was interviewed who had been to the Public Sector Integrity Commission offices reported that The Commissioner stated their office wants to avoid “shutting down institutions”. This employee took that to mean that there was a desire from the Public Sector Integrity Commission to minimize disruption to organizations under investigation. Some, the employee stated, would see this as code for “do not worry, we are not going to cause problems,” since any findings of wrongdoing must be reported to Parliament, undoubtedly leading to possible harsh scrutiny of the institution’s department in question.

Another of the employees interviewed said that the initial investigator he saw was quite good. The investigator appeared interested, asked a lot of questions and even mentioned that attitudes need to be changed in order for positive overall behaviour to take place. This employee felt that there might be some hope in getting some help. This investigator told the employee that he would speak with his boss at the Public Sector Integrity Commission and get back to him. It seems, though, that once the investigator spoke to his boss, the investigator had a different attitude and this employee felt he was becoming a target versus a concerned employee reporting wrongdoing.

d. Legislation, Organizational Policies and Codes

The *Public Servants Disclosure Protection Act* (PSDPA) came into force on April 15, 2007. It replaced the *Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace*.⁴⁶

The *Public Servants Disclosure Protection Act* claims to be an effective method for disclosure of wrongdoing and protection from reprisals. There have been a lot of heated debates about why this law was finally passed. For example, some people say it was only put into place to appease the public as the question of a whistleblowing law has been around for many years. Some say that this government put it into place because they truly believe that whistleblowers should be protected. Still, others say that the government passed it to make themselves look good.

Further to the *Values and Ethics Code for the Public Service* (the Code): “public servants contribute in a fundamental way to good government, to democracy and to Canadian society.”⁴⁷ In this Code, the role of the Public Service is: “to assist the Government of Canada to provide for peace, order and good government”.⁴⁸

⁴⁶ “Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace – Archived,” *Treasury Board of Canada Secretariat*, http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/tb_851/idicww-diicft-eng.asp (accessed August 10, 2009).

⁴⁷ “Values and Ethics Code for the Public Service,” *Treasury Board of Canada Secretariat*, http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve-eng.asp (accessed November 22, 2009).

⁴⁸ “Values and Ethics Code for the Public Service 2007.”

Public servants are therefore guided by a set of rules and regulations that is supposed to help the Government. Public servants are expected to be loyal and to implement ministerial decisions and they are to support ministerial accountability to the public. Moreover, public servants:

“... should constantly renew their commitment to service Canadians by continually improving the quality of service, by adapting to changing needs through innovation, and by improving the efficiency and effectiveness of government programs and services offered...”⁴⁹

In the Public Service, it is stated that all employees are encouraged to act professionally and respectfully and are *encouraged*, managers being *obliged*, to address all acts of wrongdoing in the workplace: potential, assumed or real.⁵⁰ Why is it then that more often than not, employees who do report wrongdoing in the workplace state they are often treated with suspicion? They report being viewed as traitors and disloyal employees. Even worse, it has been said that employees at certain levels are told, in a tacit yet unmistakable way, that if they want to move up in their careers, they had better not be seen as a complainer or they will not go far.

⁴⁹ “Values and Ethics Code for the Public Service.”

⁵⁰ “Policy on Prevention and Resolution of Harassment in the Workplace,” *Treasury Board of Canada Secretariat*,” <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12414§ion=text> (accessed January 15, 2010).

How does one become a good public servant versus a good ethical/moral public servant? Is it the same thing, why or why not? The Public Service has all of these policies, guides and laws that state they support, recognize and uphold “doing the right thing”. In practice, though, is that what’s really going on? Is it that their policies and laws surrounding disclosure do not really have teeth? Is it that authorities do not have the proper tools to effectively deal with wrongdoing? Do we need to ensure that authorities have the support needed to do this?

In order for the authorities to address wrongdoing or the allegations of, the policies, codes and legislation must be clear. For management to follow these rules is one thing but we have to keep in mind, as was previously mentioned in this thesis that *how* this is done is crucial. One’s attitude is important, are we making employees feel comfortable about coming forward or are we putting them in a no win situation? You should come forward but when you do be ready to feel unwelcome.

The manager who is open to listening to an employee and who is open to looking into the concerns being brought forward is to be commended. Nonetheless, are these managers the norm or is it that most of them would rather not have to deal with problems? Further, do we need to define what kind of problems they are? There seems to be some belief from professionals in the field that managers may have the most difficulty dealing with

unacceptable behaviour especially if the behaviours are demonstrated from someone who is doing a really good job. Can we justify the inappropriate behaviour because the employee is a really good one and the authorities need her/him? If management is not addressing wrongdoing in the workplace therefore not letting their superiors know about it, then how can our Ministers and Deputy Ministers be made accountable?

Hence, are managers doing a good job, do they want to do a good job and do they have the tools to do so? Is it that some of them really do not know how to proceed? Is help and support available to them or, is it that they do not have the time, do not care, do not think they have to deal with it and simply do not want to know?

When we examine the legislation that governs the Public Service, it would appear that whistleblowing protection for Public Service employees has moved forward; the intent of the law being to protect employees who wish to reveal wrongdoing in the workplace. In addition, legislation has purportedly been created to protect whistleblowers from retaliation. In spite of this, when you talk to employees and professionals working in the field, whistleblowers are still not protected and nothing has changed. Rather, they argue that things have become worse.

The notion of public interest is also something you frequently see in policies and codes within the Public Service. For example, public servants are expected to make decisions in the public interest. Also, any conflict arising has to be resolved in favour of the public interest.⁵¹ Some authors would say that public servants have an even bigger obligation to protect the public's interest as they have more information about the Public Service.⁵² Janos Bertok says that “values are the foundations of both societies and organizations entrusted with serving the public interest.”⁵³

It would appear that for all intents and purposes, the Public Service has set out a lot of positive guidelines for appropriate ethical behaviour towards the Canadian public. Do these guides, though, actually help make the workplace an ethical one and are guides enough to ensure that public servants, including the authorities, are behaving at all times in an ethical manner consequently doing the right thing? Several authors have claimed that you need more than rules and regulations to make change. You need to promote, encourage and motivate people to do the right thing and to lead by example.

⁵¹ “Values and Ethics Code for the Public Service.”

⁵² Ann Chaplin, “Is There a Duty to Blow the Whistle? Public Servants and the Public Interest” (National Ethics Symposium Proceedings, Ottawa, ON, 2004).

⁵³ Bertok, “Going Forward – Changing the Climate.”

e. Consequences

Both David Hutton of FAIR (Federal Accountability Initiative for Reform) and Allan Cutler, President, Canadians for Accountability, say that there is a typical pattern of consequences for whistleblowers once they have divulged their allegations. This would include being labeled as a disloyal employee and a troublemaker for having come forward.

It has been stated that a whistleblower eventually becomes ostracized because he will be seen as “a problem” and management will then start treating him like he’s a *persona non grata*. Other employees will become afraid of being associated with the whistleblower because of what appears to be happening to him. With time, the whistleblower becomes unable to do his job either because of the pressure going on around him and his health will have been affected or because he will be prevented by his management team in one way or another from doing his job. He will be scrutinized and every possible method of finding fault with this employee will be used. This then leads to the employee being accused of having performance problems thus providing the employer with cause to discipline him. This employee will typically end up on sick leave, be terminated or suspended. It is important to note here that most of these employees have had clean, positive performance evaluations for many, many years with the Public Service. Given the treatment the whistleblower now receives for having come forward, their

physical, mental and psychological health is usually affected and they often go off on medical leave. The actual reason for whistleblowing often gets ignored or somehow disappears. When questioned about the wrongdoing, one is told that it is “under review” or that it was “taken care of.” All that other employees know is that so and so reported wrongdoing and now he’s gone.

An example of the consequences of whistleblowing can be seen with Richard Colvin, a senior Canadian diplomat with the Department of Foreign Affairs and International Trade. He claims to have advised several very senior bureaucrats about allegations that Canada was handing detainees over to Afghan custody where they were being tortured and abused. Mr. Colvin alleges that his superiors tried to prevent him from speaking out about this.

Canadians for Accountability state that it is predictable that the government is attacking the whistleblower and that now, the government will try and dig up anything they can to attack Richard Colvin’s credibility and use it against him. “All of this has happened before, and all this will happen again. It’s the nature of the beast,” says Allan Cutler “Mr. Colvin’s career is definitely over,” he adds.⁵⁴

⁵⁴ “Canadians for Accountability,” *Integrity, Courage, Resolve*, <http://www.canadians4accountability.org/> (accessed August 6, 2009).

Nonetheless, I reiterate that the Public Service encourages, one could argue *obliges* their employees to report wrongdoing.⁵⁵ When employees come forward, however, they are not often well received. In fact, they are more often than not ignored, discouraged, or somehow punished for having come forward. Many employees have complained to their union or employee representatives that whistleblowing can be detrimental to their careers. Whistleblowers have even reported being told that if they come forward with their allegations, their career could be over.

The question remains, will an employee be punished simply for coming forward? Allan Cutler says that the goal is always to kill the messenger; the actual message is never listened to.

In the information that I have gathered for this thesis, the same story repeats itself: consequences for a whistleblower can be quite severe. The wrongdoer, however, does not usually suffer consequences it seems. One employee who has gone to the Public Sector Integrity Commissioner Office and who has asked to remain anonymous, stated the following during an interview I had with him:

“... wrongdoers who act within the framework of a power structure which protects them already, receive substantial benefits and rewards for the wrongdoing including power, prestige, financial gain and

⁵⁵ “Policy on Prevention and Resolution of Harassment.”

security. The whistleblower that is fired as a reprisal loses all. Allowing the wrongdoer to continue within the organization in such a situation shows other wrongdoers that a minor reprimand or no consequence will not affect that which is most cherished by them...: security, power and the accompanying prestige. Other potential wrongdoers therefore face no repercussions and therefore have every incentive to risk initiating and continuing wrongdoing.”

Another employee that came forward with wrongdoing in the Public Service questioned whether the Authorities in the Public Service realize that by getting rid of employees who are brave enough to come forward and reveal wrongdoing, if these employees are punished and dismissed, the employer is now depriving itself of qualified and experienced employees.

In addition, would an employee not be inspired to do more if the consequences of revealing wrongdoing were rewarded and made to add to the quality of a work environment by promoting a culture of ethical behaviour?

Whistleblower Canada says you should speak to your family or close friends before taking any irreversible steps such as whistleblowing. Since the family and close friends can be affected, they should be forewarned and

consulted. Also, it might be important to get support from potential allies, such as elected officials, journalists and activists.⁵⁶

⁵⁶ “If you have witnessed wrongdoing.”

PART III

In this section I will examine the notions of responsibility and accountability. I will discuss the duty of loyalty that employees are expected to abide by in the Public Service and I will look at the authorities that are responsible for employees and general functioning of the workplace. Finally, I will discuss retaliation, or better known as reprisals in the Public Service, the protection of it and whether the law that purportedly protects it actually does.

a. Responsibility

When we talk about responsibility we are talking about a duty, an obligation or even a burden. In the whistleblowing process, Ministers are the ones responsible for ensuring that wrongdoing is looked into and if needed, addressed.

It is important to mention, however, that Ministers need to be informed of what is going on in their departments for them to act accordingly. This said, the chain of command that leads up to the Ministers, the ultimate authorities, needs to be functionally effective. There needs to be trust all along this chain of command. The Minister needs to ensure that his “management team” is being responsible about dealing with disclosures.

In the Public Service, the *Values and Ethics Code* states that:

“Ministers are responsible for preserving public confidence in the integrity of management and operations within their departments and for maintaining the tradition of political neutrality of the Public Service and its continuing ability to provide professional, candid and frank advice.”⁵⁷

⁵⁷ “Values and Ethics Code.”

Deputy heads and senior managers, who report to Ministers, must demonstrate the values of the Public Service; in fact the Code mentions that they must act at all times “with both the spirit and the specific requirements of this Code.”⁵⁸ The Code provides an entire list of obligations for Deputy Heads and amongst some of them is the duty to inform employees of the Code, to discuss the Code and to help employees who may have concerns. The Code specifies that Deputy Heads can delegate responsibilities but they are ultimately accountable for all that surrounds the Code.

Nevertheless, it seems that there are no clear directives and provisions for the priority that ethics should have in the Public Service. Denis Beauchamp, in his article “Attempting to Give Priority to Ethics in Government: Canada’s New Public Sector Ethics” says that he agrees with the Auditor General of Canada who said that the “Tait Report” was right when it said that the responsibility of Ministers must be clear.⁵⁹

The Report of the Auditor General of 2003 stated that clear accountability was needed so that ethical standards could be maintained. In Chapter two of this Report, it was stated that ministerial and deputy ministerial responsibility and accountability still remained unclear. The Privy Council, however, said it was clear.

⁵⁸ “Values and Ethics Code.”

⁵⁹ Denis Beauchamp, “Attempting to Give Priority to Ethics in Government: Canada’s New Public Sector Ethics” (National Ethics Symposium Proceedings, Ottawa, ON, 2004).

Alan Gilmore, in his article “Managing Public Trust in Government” says that changing this system would be difficult and that our present system “allows the government to sidestep the issue of identifying who caused the problem.”⁶⁰ In other words, since Ministers and Deputy Ministers are ever changing, if a disclosure occurred during one Minister’s term but came to head while that same Minister was long gone, would the new Minister be accountable? Or, would the disclosure simply be dismissed stating it was no longer relevant because the parties involved are no longer around?

The following sums up what I believe to be the best explanation for responsibility:

“The honor of the civil servant is vested in his ability to executive conscientiously the order of the superior authority, exactly as if the order agreed with his own conviction ... The honor of the political leader ... however, lies precisely in an exclusive personal responsibility for what he does, a responsibility he cannot and must not reject or transfer.”⁶¹

In Dennis F. Thompson’s book *Restoring Responsibility, Ethics in Government, Business, and Healthcare*, he discusses institutional

⁶⁰ Alan Gilmore, “Managing Public Trust in Government” (National Ethics Symposium Proceedings, Ottawa, ON, 2004).

⁶¹ Dennis F. Thompson, *Restoring Responsibility: Ethics in Government, Business and Healthcare* (New York: Cambridge University Press, 2005) 13.

responsibility and restoring distrust. He says that the allocation of responsibility in a multiple-monitor system, which I would say the Public Service is, has to be carefully done. Although there are multiple layers of responsibility sharing, so to speak, every level of authority, he says, should have a very specific responsibility for overseeing other overseers.⁶² In other words, we should all have a healthy dose of distrust so that we are all ensuring effectiveness. He gives the example of a company where each level is not questioning the other; assuming that each one has its specific expertise and is being responsible for their part of it. Unfortunately, because no one is “checking up” on the other one, there could be problems along the way that will not get addressed. Thompson says that stronger bodies are needed to ensure that every step of the process is being carefully monitored and that there is someone who is responsible for each level.

What we do not need, Mr. Thompson states are more rules and regulations. The last thing one needs is more forms and reports that are arbitrarily forced upon people. This, he says would run against a healthy ethics of oversight.

⁶² Thompson, *Restoring Responsibility*, 262.

b. Authorities and Accountability

Being accountable for something means that you have to answer to someone about something. Do authorities see accountability as a responsibility or as a burden and depending on the answer, could this explain some of their actions or alleged non-actions with respect to whistleblowers in Canada?

The federal government of Canada's first major event concerning ethics and values was subsequent to the "Tait Report" of 1996. In 2000, a study was conducted and three main areas became key areas. The first question was with respect to how to enforce responsibility for ethical conduct? The second issue was to re-establish a code of conduct so that parliamentarians could lead by example; the first had failed. The third area discussed the fact that ministerial accountability had to be clear.

Sheila Fraser, in her paper "Modern Public Management, Prudence and Probity" discusses the three main reasons why we have accountability and why it is needed. She says that in the first place, accountability is a control against abuse of power. It "legitimizes the government's right to govern."⁶³ Secondly, Ms. Fraser states accountability ensures activities are carried out as intended and thirdly, to learn what works and what doesn't work thereby improving conduct.

⁶³ Fraser, "Modern Public Management."

Accountability was formerly defined as: "... the obligation to answer for a responsibility conferred."⁶⁴ Further to some debate about what accountability should be and how to better describe what needs to happen, the following definition became the norm:

"Accountability is a relationship based on obligations to demonstrate, review and take responsibility for performance, both the results achieved in light of agreed expectations, and the means used."⁶⁵

Fraser also discusses the fact that too many rules can hamper discretion, flexibility and innovation. This would be in line with what Denis Desautels said in his paper, "The Concern for Ethics," in that there must be a balance between rules and regulations and wanting to do the right thing.

In 2006, the *Federal Accountability Act*, Bill C-2, came into force. It claimed it would make the government more accountable. Amongst many other elements of this Act, it stated it would:

"... strengthen the role of the Ethics Commissioner by introducing a new *Conflict of Interest Act* and granting powers to the new Conflict of Interest and Ethics Commissioner to enforce it."⁶⁶

⁶⁴ Fraser, "Modern Public Management."

⁶⁵ Fraser, "Modern Public Management."

Furthermore, this Act would:

“...provide real protection to whistleblowers who disclose government wrongdoing by introducing specific penalties for offences, granting powers to the new Public Sector Integrity Commission, creating a Public Servants Disclosure Protection Tribunal to consider cases of reprisal, providing public-sector employees with access to legal counsel and continuing to ensure they have adequate access to the courts, and providing a \$1,000 reward to public-service employees who have the courage to expose wrongdoing in the workplace;”⁶⁷

In addition to the information noted above about this new Act, deputy ministers and deputy heads of departments would now become the new accounting officers. It is stated, though, that: “Ministers, and they are alone, are accountable to Parliament for all actions of the executive including management.”⁶⁸

⁶⁶ “Federal Accountability Act,” *Government of Canada*, <http://www.faa-lfi.gc.ca/docs/ap-pa/ap-pa00-eng.asp> (accessed October 28, 2009).

⁶⁷ “Federal Accountability Act.”

⁶⁸ “Accounting Officers: Guidance on Roles, Responsibilities and Appearances Before Parliamentary Committees 2007,” *Privy Council Office*, <http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=ao-adc/2007/ao-adc-eng.htm> (accessed January 5, 2010).

Consequently, Ministers are still accountable for their departments and for the activities in it. Deputy Ministers are responsible for the *Policy on the Prevention and Resolution of Harassment in the Workplace*. Ministers and Deputy Ministers, though, depend on their management teams to advise them and keep them informed of any reported wrongdoing.

With respect to strengthening the role of the Public Sector Integrity Commission and granting them more powers, if people are not comfortable using their services, then a stronger role and better powers will not make any difference in the end. Furthermore, if none of the disclosures brought forward show wrongdoing, one might be discouraged from going forward. One only has to speak to employees who have seen their colleagues disclose wrongdoing; not to mention the ones we see in the media who despite all the best intentions and words from legislators, still get punished for coming forward.

As for giving more protection to whistleblowers, protection is not only what is in writing but in *how* things are handled. This could be part of why people do not seem to want to come forward. Courage might be rewarded but no rewards have ever knowingly been made so would that indicate that all disclosures are false?

What seems to be of great concern with the authorities in the Public Service is that they often report not having the time to deal with these things; rather, they have deadlines and other more important things to deal with. This suggests that the authorities do not realize the importance of ensuring that people are working in healthy, respectful work environments where wrongdoing is not tolerated, ignored or condoned or, is it that it is at the bottom of their priorities. Or, is it that the authorities do not know what is going on with respect to wrongdoing? Is wrongdoing not reported to the ultimate authority, the Minister, for fear of disturbing them?

Employees who are respected in the workplace produce more and produce it more effectively. The authorities in the Public Service, though, do not necessarily appear to understand or believe that. It possibly has to do with the workload that they are expected to produce and they may believe there is a valid reason for not having time to address it. That being said, something has to be done to ensure that someone is addressing it and that retaliation and wrongdoing is not ignored just because authorities are busy. It should also be noted that the importance of a healthy workplace goes a long way and the attitude of authorities towards this needs to change. What is admirable is an authority, and his management team, that admits s/he does not know how to handle and deal with allegations of wrongdoing in the workplace but who admits that and asks for help in dealing with the situation. People should not be expected to be experts in everything but they should

know when to reach out to ensure *something* gets done. There is an entire group of experts at hand in the Public Service for authorities and their management teams to consult with. Such groups, amongst others, include the Values and Ethics Offices and the Informal Conflict Management Services.

So, in the end, is there ever any possible justification for not addressing, fixing and resolving wrongdoing in the workplace?

It would appear that for authorities, the notion of “in the end” would mean whatever makes them look good so that they have no problems in the workplace and that they fulfill their mandate to strive towards excellence. Most importantly, I believe that in the end means that they can continue with their day-to-day business. Does having a strong whistleblowing policy and process in place mean that the Public Service is doing their part and that that is enough? Is it OK for the Public Service to say that what is good for them as an organization is better than the well being of their employees?

David Hutton of “Federal Accountability Initiative for Reform” (FAIR), during an interview I had with him, says that Canadians are somewhat naïve and that we have a system in which Machiavellian tactics are routinely used. In other words, authorities will do whatever is needed to get the end result, that of it being what’s best for them; the end justifies the means. Mr. Hutton adds that with partisan appointments (which carry a debt of obligation to whomever made the appointment) and oversight committees

that have little power, the system of checks and balances is very weak. He says that people need to understand the dark side; that there is a symbiotic relationship between incompetence and corruption – between abuse of power for self-interest and failure to perform. He says Canadians need to pierce the veil a little bit and understand what's really going on.

Allan Cutler, President of Canadians for Accountability feels that Deputy Ministers should be stopping corruption but they do not. He adds that their career is more important than protecting employees. Mr. Cutler says that whistleblowers always have some element of abusive management whereas not all-abusive management has whistleblowers.

c. The Duty of Loyalty

Despite what some people believe, whistleblowers are not simply disgruntled employees. Rather, they are people who truly believe that some damage has been done and that some suffering has taken place. As a whistleblower, you have to deal with your own moral compass. If you believe you have evidence of wrongdoing, you have to decide what to do with it, if anything at all.

As an employer, would you not want to know if there was wrongdoing in your organization? Wouldn't revealing wrongdoing be the ultimate loyalty to your boss? Surely one would think that a smart, confident authority wants to know if there is any wrongdoing so that it can be corrected. How can you improve if wrongdoing is not recognized and addressed?

What do you do when, as an employee, you have evidence of wrongdoing and your boss tells you to hide it, ignore it or that s/he's dealing with it? What about when everything you've seen leads you to believe that your organization will not do anything about the wrongdoing and you believe that in doing the right thing, you have to disclose? Do you go to the media? Do you keep quiet?

In addition, what do you do with a manager who will not report wrongdoing to his manager, then moving up the chain of command to ensure that the Deputy Ministers and Ministers know of the disclosures of wrongdoing? If a Minister does not know of allegations, is s/he in a position to correct it? What can we do to ensure that the management teams who report to Ministers are themselves kept accountable?

It seems though that, as a Public Service employee, if you make waves, you will be used as an example for other colleagues to know better

and to keep quiet. When exactly did being a good guy, ergo a good employee who wants what's best for the organization, become a bad thing? Is it not good business to encourage whistleblowing so you can move forward and correct it? Wouldn't authorities want to know what's going on so that they can look good, learn from any mistakes and then do the right thing thus making them look really good?

What about the freedom of expression as guaranteed by the Canadian *Charter of Rights and Freedoms* as stated in the *Public Servants Disclosure Protection Act*? Additionally, who is the deciding body that determines what an appropriate balance between loyalty and freedom of expression is?

In the Public Service, the duty of Loyalty is reflected in the *Values and Ethics Code for the Public Service*. Several cases of the duty of loyalty have gone to court and the Supreme Court of Canada has ruled that, in summary:

- i. “the duty of loyalty encompasses a duty to refrain from public criticism of the Government of Canada,
- ii. that failure to observe the duty of loyalty can result in disciplinary action, including dismissal,
- iii. that the duty of loyalty is not absolute and public criticism may be justified in certain circumstances,

- iv. that in determining whether criticism is justified or not, the duty of loyalty must be balanced with other interests such as the freedom of expression and finally
- v. in three situations in which there can be an exception to the duty of loyalty.

The three exceptions are:

- a. that the government is engaged in illegal acts,
- b. that government policies jeopardize life, health or safety and
- c. that the public servant's criticism has no impact on his or her ability to perform their duties.”⁶⁹

A public servant is therefore obliged to be loyal to their employer. The question becomes how to define loyalty? The duty of loyalty, a key aspect of any employee-employer relationship, is particularly strong in the Public Service as many employees are sworn to an oath of loyalty and to an oath of secrecy. Public servants, however, are just that: public servants thereby having a responsibility to the public. So if you are disclosing because of something that affects the public, would that not be an act of loyalty to the people you serve?

⁶⁹ “Duty of Loyalty,” *Treasury Board of Canada Secretariat*, <http://www.tbs-sct.gc.ca/rp/icg01-eng.asp> (accessed October 25, 2009).

The duty of loyalty can tear an employee apart. Doing the right thing competes with the fear of retaliation, referred to as reprisals in the Public Service documentation. The concern of retaliation appears to be so high that you cannot blame an employee for wanting to keep quiet; no matter what the policies, codes and laws say. An employee finds himself in a no-win situation: follow the procedures and do the right thing, thereby taking a risk of losing your job or, keep quiet knowing fully well that wrongdoing that can have tremendous consequences is taking place? What is the right thing to do? Given that there is apparently no neutral, safe body presently in place, an employee is understandably divided.

Authorities have a clear preference for internal versus external whistleblowing; internal whistleblowing suggests you are being loyal to your organization whereas external whistleblowing suggests disloyalty. To whistleblow internally, though, means that you are seeking remedy from the same people who may be allowing the wrongdoing, are a part of it, or at the very least are ignoring it. Internal disclosure mechanisms limit a whistleblower, as there is no chance for appeal. Once one internal body feels there is no basis for wrongdoing, the whistleblower becomes subject to reprisals. In addition, if transparency is so important to the Public Service authorities, then why would there be a problem disclosing wrongdoing to any party the whistleblower feels most comfortable with?

David Hutton of the Federal Accountability Initiative for Reform (FAIR) says that the Public Service expects total loyalty so there is absolute fury, directed at the whistleblower, when they do not respect that. Public servants are expected to follow orders and not question even when the orders seem questionable, unethical or even illegal. The driving force behind this, continues Mr. Hutton, is that authorities don't want to hear bad news. They don't want to hear that they've dropped the ball or that they have to address a problem.

d. Reprisals

“Whistleblowers are born out of those who have been deeply hurt by having done the right thing and then having been chastised for it.”⁷⁰ This quote from Leanne Jones in her Prime Time Crime exclusive of October 9, 2006, is a reflection of retaliation for whistleblowers.

Whether you call it retaliation, reprisals or punishments, all terms used for the apparently inevitable outcome for a whistleblower are negative.

⁷⁰ Leanne Jones, “The Whistleblowers Bill and the Dragon Slayers of FAIR,” *Prime Time Crime* (October 9, 2006): 1. <http://www.primetimecrime.com/contributing/2006/20061009Jones.htm> (accessed August 12, 2009).

In the Leanne Jones exclusive, she quotes Allan Cutler, President, Canadians for Accountability, a proclaimed whistleblower by Mr. Gomery in his “Gomery Report”, who is discussing Bill C-2 and reprisals:

“...the bill still leaves the burden of proof for reprisals on the whistleblower. The burden of proof following a whistleblowing incident should be on management. All management has to do under the new bill would be to claim the incident is unrelated. The burden of proving they are linked therefore falls on the whistleblower. It was my case, it will still be the case and it is impossible to prove reprisals if you do not have access to the information and documents that led up to the situation. If the events are close in time, the burden of proof must be on management. They must prove they are unrelated, not prove they are related.”⁷¹

Additionally, Mr. Cutler noted that the time for a whistleblower to file a complaint of reprisal is too limited and not very realistic.

Tom Devine, Legal Director of “Government Accountability Project”, a United States group that promotes accountability, says that whistleblowing legislation in the United States “highlights the false promises that such laws hold for disclosers.” He states that the existing laws, which can be somewhat compared to Canadian legislation:

⁷¹ Jones, “The Whistleblowers Bill,” 3.

“... is largely symbolic and therefore counterproductive. Employees had risked retaliation thinking they had genuine protection, when in reality there was no realistic prospect they could maintain their careers.”⁷²

David Hutton of Federal Accountability Initiative and Reform (FAIR) says that:

“Reprisals are carried out in part because the accused think they’re absolutely in the right and that the whistleblower is totally wrong. Reprisals typically involve a combination of demonizing the whistleblower and rationalizing what the whistleblower is trying to draw the attention to.”

David Hutton also made the following comments concerning reprisals for whistleblowers:

“Nearly all these individuals (whistleblowers) suffer vicious and calculated reprisals, designed to silence, discredit, isolate and crush them – professionally, financially and emotionally. Since I started working with FAIR I’ve been astonished at the consistency of these

⁷² “Government Accountability Project (G.A.P.),” <http://www.whistleblower.org/> (accessed August 6, 2009).

reprisals: almost as if there were a step-by-step procedure written down that every organization follows... This phenomenon is like an organizational “immune system” which, having identified a “threat”, kicks in automatically to destroy the target. It is perhaps not even necessary for anyone to give an explicit order for the reprisals to start – although in most cases it is clear that certain individuals (those accused of wrongdoing) have orchestrated the process.”⁷³

In an interview that I conducted with a Public Service employee who has used the Public Sector Integrity Commissioner’s office and who has asked to remain anonymous, the following were her comments with respect to a newscast showing the debate on Richard Colvin’s allegations:

“I was struck by one of the MPs who is part of the investigation as she said she was extremely skeptical of the guy (Richard Colvin) because he was the only one to come forward. So does this mean he is obviously lying? The other MP was angry because he (Richard Colvin) went outside “the family”. Clearly he tried to do what he needed to, but hit a wall. It seems a textbook case of how we ask all the wrong questions when something like this happens.”

⁷³ “Protecting Whistleblowers.”

Gene G. James, in his article “In Defense of Whistleblowing” discusses some factors to consider in whistleblowing. Amongst them is the following:

“Anticipate and document retaliation: Although it is not as certain as Newton’s law of motion that for every action there is an equal reaction, whistleblowers whose identities are known can expect retaliation. Thus whether you decide to work within the organization or go outside, document every step with letters, records, tape recordings of meetings, and so forth. Unless you do this, you may find that regulatory agencies and the courts are of no help.”⁷⁴

Clearly, reprisals are a reality that whistleblowers are dealing with. Whether you lose your job, your health, your self-respect and dignity, there are obviously many losses associated with whistleblowing. Why do people do it? What motivates one person to do it whereas another, with the same information, may not? When speaking to people who have whistleblown, most say they would do it again, but not all. Some people report feeling they had no ethical choice but to do, what for them was the right thing to do. Yet others, who feared too many losses, chose to keep silent. Still, some who wanted to keep quiet found themselves in a whirlwind of disclosure from no choice of their own. Information was revealed and they were forced to be a part of the course of action.

⁷⁴ James, “In Defense of Whistle Blowing,” 320.

A process like whistleblowing that has no political commitment can be compared to the Rape Law Reform in Canada of 1983. Although the law changed and the criminal code now included “of a sexual nature” into assault, not much changed. This meant that sexual assault was recognized as an assault now and it purportedly gave more power to alleged victims of sexual assault who came forward. Unfortunately, although the law had changed, not unlike new whistleblowing legislation, and the burden of proof was supposed to be less biased, several of the professionals working in the field did not have the proper training, guidelines and attitude to actually put into place, or give this new law teeth. For example, police officers, judges and defense attorneys were for the most part in the early 1980s still from what is referred to as the “old school” or as is sometimes pejoratively referred to as “the old boys club”. The attitude of this old school way and old boys club was that the victim must have done something to deserve being assaulted, or, there must be something wrong with them; they must have some kind of mental imbalance and of course, what is the victim’s real motive, intimating of course that the victim is not being honest nor is she behaving in good faith.

If we use the above analogy of the amendments of assault to include “of a sexual nature” to whistleblowers and authorities, the whistleblowers become the alleged victims of sexual assault and the authorities become the old school partisans that belong to an old boys club, which can be compared

to management. It doesn't matter if there are as many females as there are males in the group; it is the attitudes that are the underlying problem.

So we have new laws in whistleblowing and plenty of policies and codes to tell us what to do, however, if the *intent* of the decision-makers is not up to par, then we still have a long way to go.

We can also compare whistleblowers to women who years ago, if going through a custody battle, were not trusted or listened to by the courts. Their allegations were dismissed as lies of vengeance. A whistleblower is given the same consideration, no matter what their motives might be, and it would appear that the motives are well founded; they are not listened to or given any credibility. Women were often accused of being emotional and irrational. Whistleblowers often end up on sick leave due to the process and then they are blamed for being a victim of the retaliation and treatment that has made them ill.

How do you protect someone from reprisals? "Be loyal to doing the right thing", says Frank Serpico and uphold the highest virtue.⁷⁵ Training and sensitization are also important but leading by example is probably the best way to make a point.

⁷⁵ "The Informant," *Anyone Can Whistle*, <http://www.livestream.com/theinformant>, (accessed February 17, 2010).

PART IV

In this section I will articulate my conclusion, which is that very little accountability and responsibility exists in the whistleblowing system in Canada.

I will also discuss some recommendations that I argue must be put into effect to make positive change and to help produce an ethical whistleblowing system that could be advantageous to both whistleblowers and authorities. In addition, I will discuss some of the risks that the Public Service is taking by not implementing a strong, safe and respected whistleblowing program.

Conclusion

The whistleblowing system in Canada is not working because it does not allow for people to come forward in a safe, protected and open environment. Those that do come forward are not protected, albeit stated that they will be.

Further to Alan Gewirth's the "The Separatist Thesis", the Public Service of Canada is, for all intents and purposes, a morally justified institution. However, are the actions of the Public Service those of a morally justified government? The findings reveal that when a complainant comes forward with wrongdoing; their allegations are not listened to, rather, the one divulging the information becomes a target or sometimes simply chooses to leave that work environment.

As per the criterion of degrees of necessity for action in Alan Gewirth's "The Separatist Thesis", no one's rights must be infringed for "The Separatist Thesis" to be upheld. That is not the case with professionals who stand by this thesis, nor is it with the Public Service. No matter what the reason, if only one person, usually the one who has disclosed, is adversely affected in any way including their health, then the criteria have not been met.

Is the justification of doing what is right for the public interest at stake even if only one employee is wrong? I would think that the answer to that question is yes. However, there must be a consequence for the employee who has violated the codes, as well as protection and redress for the employee who was a victim. Recognizing and acknowledging the wrongdoing must happen. There must also be follow-up to ensure that the guilty party is monitored, and that there is assurance that this violation will never happen again.

I agree with Alan Gewirth's conclusion that "The Separatist Thesis" does not work. The Public Service as an employer cannot invoke "The Separatist Thesis" as an excuse for why they do not follow their own institutional policies; I uphold Gewirth's assertion that "The Separatist Thesis" in general does not work, but in particular for the Public Service.

Ultimately, Denis Desautels in his paper "The Concern for Ethics" says it well:

"We cannot afford to put in place a system which would rely unduly on disclosure (or whistleblowing) rather than on a culture which promotes and rewards *right doing*."⁷⁶

⁷⁶ Desautels, "The concern for ethics."

In *Human Rights: Essays on Justification and Applications*, Alan Gewirth says that the criteria needed to criticize an institution are threefold:

“... first, that the institution does no good, or does harm, or does more harm than good; second, that even if the institution does good, it is at others’ expense, or is wrongly discriminatory, so that the goods which the institution fosters or the harms which it removes are distributed unjustly or unfairly; third, that even if the institution does good and distributes that good fairly, still the institution and its obligations were imposed on the persons subject to them without those persons’ consenting or participating in the decision.”⁷⁷

If we were to compare these three criteria to the Public Sector Integrity Commission (PSIC), I think it is fair to say that there is harm being done, as people are not able to disclose in a safe environment where their concerns will be listened to and in addition, they will suffer reprisals. Secondly, in the first part, one has to ask is the Public Sector Integrity Commission doing good? It does not appear to be doing anything except denying wrongdoing and no good is being done. They are supposed to be allowing, possibly helping, public servants disclosure but the fact that they do exist might make one think that there is the semblance of trying to help whistleblowers. Thirdly, if the Commission does not allow someone to disclose in a safe, neutral environment and it concludes that there is no

⁷⁷ Gewirth, *Human Rights Thesis*, 266.

wrongdoing; I think it would be fair to question their efficacy. It is impossible to say if they are willfully discriminating against employees and more research in this area would have to be done.

Nevertheless, there needs to be someone taking responsibility who does not report to Government but to a separate institution like the Courts. There must be a third party neutral, not only the appearance of one, who monitors the whistleblowing system.

Some of the questions that I have asked throughout my thesis include, are employees being punished for coming forward? Given the information I have gathered, yes. One only has to look to the media and try and cut through the sensationalism to see that someone came forward, in good faith for the most part, to reveal wrongdoing. That person thought s/he was doing the right thing; what was expected of him or her as good public servants. The employee who comes forward suffers retaliation, sometimes at a great cost to their career and to his or her health.

Having strong whistleblowing legislation and policies in place does not necessarily mean that the Public Service is doing its part and that that is enough. The legislation is not strong and the policies are not always abided by. It would be naïve at this point in time to hold that everybody will do the right thing especially when wrongdoing is of no or very little consequence

and where the risk of corruption is so high. We need to continue enforcing codes with consequences, but we must start working on prevention and changing the cultural attitude so that doing the right thing becomes the norm and doing the wrong thing becomes an anomaly.

Wrongdoing should always be reported. We have to move from the stigma that the admission of wrongdoing makes us lesser people but instead to recognize that bad things happen and that we learn and grow by correcting them. Therefore, acting in the public interest should not mean that an authority could decide whether the public interest, morale and confidence could be wounded if wrongdoing was reported. In the end there is never any justification for not addressing, fixing and resolving wrongdoing in the workplace.

How things get reported is a process that has to be reviewed. If the whole concept of reporting wrongdoing were welcomed and encouraged versus begrudged, then it would make it easier for wrongdoing to be dealt with as part of every day business. Employees would be inspired to do more if the consequences of revealing wrongdoing were rewards and if a culture of ethical behaviour were the norm.

With respect to the Public Sector Integrity Commission (PSIC), it is difficult to see evidence of positive results. Their intent may not be to be

ineffective but in the end, it is highly irregular for such a large organization as the Public Service not to have any reported wrongdoing in the workplace.

The employees that do come forward absolutely believe that they are doing the right thing. So for them, feeling comfortable or not about coming forward is not something that will stop them. It would seem obvious, though, given the information gathered, that whistleblowers, once coming forward are not welcomed.

Being a good public servant is tantamount to being a moral public servant. Doing the right thing should be the same when it comes to addressing inappropriate behaviour. One difficulty, amongst others, is that the policies, legislation and codes do not seem to have teeth. The authorities are not compelled to address the issues, as there seems to be a hope that if it is ignored, it will eventually go away; which is indeed what happens sometimes. Despite the guides and policies in place, they do not help make the workplace an ethical one and they are not enough to ensure that public servants, including the authorities, are behaving at all times in an ethical manner consequently doing the right thing. Protection is not only what is in writing but in how things are handled.

As for balancing the duty of loyalty with the *Charter of Rights and Freedoms*, employees should be allowed to speak out about their concerns

and observations about the workplace. Nonetheless, when an employee does speak out it always should be done in a respectful, justified manner. There should be a balance of respect between employer and employee.

Consequently, the employee has a duty to respect his or her employer and attempt to work with the employer in resolving wrongdoing. But, what does the employee who has attempted to do this do if s/he is being ignored or even worse, if they are already feeling some kind of reprisal for having simply expressed concerns? There should not be a struggle for an employee to choose between duty of loyalty to your organization and to that of the Public Service, it should be one and the same.

If an employee believes, in good faith, that wrongdoing is occurring then s/he should have the opportunity to speak to a manager, an authority that s/he trusts will do the right thing. Unfortunately, as has been discovered, authorities do not always respond in kind so what is an employee supposed to do? Given the present circumstances I do not think an employee who feels the need to disclose or who finds themselves having no choice but to disclose will have any alternative but to take their information elsewhere. Ideally, whistleblowing and wanting to correct wrongdoing would be interpreted as positive actions, the dilemma of having to choose between the duty of loyalty and speaking out would never be an issue.

When it comes to whistleblowing, authorities seem to see accountability as a burden. But do our authorities have all the proper tools to manage? It would not appear so. First of all, I think it needs to be mentioned that not all authorities can be painted with the same brush. There are some people in senior positions who do very much care about doing the right thing and who will go to great lengths to ensure that employees do indeed work in a respectful and healthy environment. It is unfortunately the authorities that do not seem to care or want to hide behind the proverbial veil of denial that are the ones that regrettably stand out. All authorities need to be made accountable to the welfare of all employees of the Public Service.

There are authorities that are not stepping up. These are the ones who attack the whistleblower, who deny any wrongdoing (before even looking into the allegations) and who target the whistleblower as a troublemaker that must be destroyed.

Amongst all of the information that I have collected for this thesis is the fact that authorities do not always reach out for support. There are ways of supporting authorities to help them deal with their responsibilities; however, these services that could help are under-utilized and sometimes simply ignored.

Transparency is important to the Public Service; therefore, disclosing wrongdoing to any party the whistleblower feels most comfortable with should be an acceptable and supported practice.

An employee who has evidence of wrongdoing should not be told by his boss to hide it, ignore it and keep quiet about it. If you have given your organization the information to deal with allegations of wrongdoing and they do not act, then your only option is to go externally. This is not the only time though that you have that option. For other reasons, including an authority that is never available, when everything you have seen leads you to believe that your organization will not do anything about the allegations, you may not have a choice but to go externally in the first place. But again, if no one is willfully committing wrongdoing, authorities should be more than willing to correct it. It should be considered good business to encourage whistleblowing.

If authorities cannot keep up with their duties of protecting employees against wrongdoing in the workplace then they should speak up. If they truly cannot fulfill their obligations to be the overseers of an ethical work environment, amongst other obligations, then that must be addressed. Whistleblowers and other innocent employees should not pay the price for authorities not being able to, in good faith, keep up with their obligations.

The Public Service should not get to say that what's good for them as an organization is better than the well being of their employees.

Further, a complete investigation should be conducted to determine what other duties authorities are having difficulties meeting. Some of the experts in the field of disclosures have reported that authorities seem to find time for everything else. This would then confirm the fact that wrongdoing in the workplace has to be seen to be just as important as every other priority that an authority has. In addition, the present minister should be accountable for wrongdoing that occurred during a previous minister's term.

We have a patchwork of laws and policies that are simply not working because they lack sincerity. Protections are just on paper, there is very little chance of going to court and if you do, chances of winning are stacked against you.

I do not believe that for the Public Service, the end justifies the means. The *means* usually means at the expense of an employee, and thus, there is no excuse not to at least try and address wrongdoing in the workplace.

Recommendations

In this particular section, I will list the recommendations that I believe are needed to make the whistleblowing system a positive one.

I believe that Gewirth says it well in the following:

“...even when the rights require positive assistance from other persons, their point is not to reinforce or increase dependence but rather to give support that enables persons to be agents, that is, to control their own lives and effectively pursue and sustain their own purposes without being subjected to domination and harm from others.”⁷⁸

Maria Barrados, in her discussion entitled “Enhancing Values and Ethics in the Federal Public Service” says that making a change is challenging. She says that you have to try and get people to buy into the values of the Public Service and then you have to know how to put them in action. She says that some of the questions would be in how to assess fair and transparent staffing processes, what and who would establish a standard of performance that would be good enough.⁷⁹

⁷⁸ Gewirth, “Professional Ethics,” 288.

⁷⁹ Maria Barrados, “Enhancing Values and Ethics in the Federal Public Service: The Role of the Public Service of Canada in Ensuring a Fair, Efficient and Non-Partisan Public Service” (National Ethics Symposium Proceedings, Ottawa, ON, 2004).

Ms. Barrados also mentioned that the Public Service Commission was working on providing training and guidance to managers in this area. They cite best practices used from Canada and elsewhere.

I would have to agree that change is challenging and I would also add that it can be a very slow process. Nonetheless, we have to start somewhere and I think it is important that we continue to strive because although it may not seem like it, I believe things will get better for whistleblowers. By continuing with the mission to do the right thing, things will improve. In an interview that I conducted with Allan Cutler, President of Canadians for Accountability, he said:

“Continue fighting. Seems like you’re working with a small shovel but baby steps. I’m a realist, I don’t expect to exceed in my lifetime but it’ll be a better place for my kids. You have to keep going after it.”

Janos Bertok, in his presentation “Going Forward – Changing the Climate”, says that governments usually take two approaches when trying to improve the ethical climate. In other words, you do what you are told by your supervisor, by the rules and regulations and if you do not there will be consequences to pay. He refers to this as “compliance-based ethics

management.” But, Bertok continues, to have complete success you not only need the compliance-based ethics management approach but you also need to maintain integrity. Although regulations and control are essential, he says, especially in areas where corruption is a risk, you need to have some kind of incentive and guidance to promote an ethical environment where people strive to do the right thing.

In all of this conversation about how to manage inappropriate behaviours, the element of prevention is sometimes lost on us. Bertok says that prevention is a less expensive process in the long run and it will have a more positive impact on Public Service culture and therefore the relationship between public servants and the Canadian public.

The challenges in implementing and enforcing standards in a work environment are also something Bertok discusses. He says that one known fact is that keeping a workplace ethical and non-corrupt is a constant endeavor that needs continuous scrutiny.⁸⁰

“... ethics must become a culture within organizations rather than a set of rules. For that to happen, this culture must be based on shared values and be promoted in words and in deeds by the leaders of an organization. We can also state that developing an ethics culture, just like governance practices require sustained efforts over a long period

⁸⁰ Bertok, “Going Forward – Changing the Climate.”

of time if an organization wishes to affirm that it is an integral part of their culture. It does not happen overnight but when it is real, it ensures even through changes in leadership.”⁸¹

I agree with Bertok and I would add that in order for us to change a culture, whistleblowing matters have to become a priority, as much of a priority as anything else. That way, it is given the same importance as everything else and the message to everyone will be that it matters.

“We have to give ourselves the tools to reinforce our capacity to make the right ethical judgments and ensure that the changes that this wave is bringing are truly lasting changes.”⁸²

As for the onus of preventative action to be put with the department heads, I fully agree; however, the department heads need to be trained to understand what that is. I reiterate, attitudes need to be changed, whistleblowing has to be a priority and there needs to be some sensitization towards the entire issue for this to happen. Also, some department heads may very well want to do the right thing, but they do not know what that is anymore so they depend on others to do it and if their management team is not dealing with the problem and does not inform the department heads, then

⁸¹ Desautels, “The Concern for ethics.”

⁸² Desautels, “The Concern for ethics.”

that in and of itself depicts a whole other set of problems that must be corrected for the entire system to be effective and to flow.

Ministers and Deputy Ministers must attend all training with respect to Values and Ethics and Human Rights in the workplace. They must also adhere to all policies. They must conduct themselves in a manner that is reflective of what their policies and codes say and lead by example. They must be responsible for their respective department's disclosures of wrongdoing.

All senior management must be given the proper tools to ensure that they understand how to deal with conflict and that they have the necessary support to do so. If employees are treated with respect then they will be happier thereby generate a better more productive workforce.

The Public Sector Integrity Commission, PSIC, will only improve when:

- ✓ more employees are aware it exists,
- ✓ when better information to employees about what wrongdoing is is shared,
- ✓ when there are less fears of reprisal,
- ✓ when there is more trust that confidentiality and neutrality will be respected,

- ✓ when their office location is at an arm's length facility,
- ✓ when concerns of better effectiveness are ensured,
- ✓ when they do not report to parliament and finally,
- ✓ when there is an attitude of welcoming versus suspicion.

As one of the employees who had been to the Public Sector Integrity Commission office and as who requested anonymity said:

“An oversight agency just as a police and a court of law must be seen as independent. Collaboration for the purposes of keeping wrongdoing hidden from public view is wrong and counterproductive to good government which requires constant vigilance, innovation and openness.”

How do we support whistleblowers? We need solidarity, advocacy groups and any association that supports whistleblowing to stick together. Whistleblowers need to get vindicated by the public and then hopefully, by their organization.

We need to provide restitution to whistleblowers and this can include their lost income, their jobs, their financial losses and any expenses that may have occurred because of their disclosure.

Paul G. Thomas in his article “Debating a whistle-blower protection act for employees of the government of Canada” says that for laws to be effective in whistleblowing you need to have specific conditions for justifiable whistleblowing and in what way protection is afforded to whistleblowers. In addition, he also discusses cultural and “attitudinal” changes. Nothing will change, he says, unless they do.⁸³

In addition, Mr. Thomas states that:

“The worth of a law would be less in the immediate impact of promoting an increase in the number of cases of wrongdoing exposed and more in signaling a shift in the official attitude towards whistleblowers. No longer would they be seen as disloyal informants betraying a trust; instead they would be seen as conscientious public servants revealing the truth.”⁸⁴

Unfortunately, we have found out in Canada that laws on whistleblowing and on accountability have not helped whistleblowers. They are still seen and treated as troublemakers. Establishing a law about whistleblowing is recognition of some importance towards this matter but it

⁸³ Thomas, “Debating a whistle-blower protection act,” 17.

⁸⁴ Thomas, “Debating a whistle-blower protection act,” 17.

has done nothing to change attitudes. Some would argue that it has only flamed the fire.

In order to have an effective whistleblowing process, Mr. Thomas states that there would have to be “valid and reliable evidence on a number of dimensions:”⁸⁵ He lists the following criteria as needed:

- ✓ the number and type of cases of wrongdoings that are reported by employees and the number of cases that go unreported;
- ✓ the various reasons and their relative frequency for why employees are reluctant or unwilling to come forward with disclosures of wrongdoing;
- ✓ whether the administrative policy is perceived to, and does in fact, create confidential and safe channels to communicate about wrongdoing;
- ✓ how accessible, fair, balanced and complete the procedures are for dealing with disclosures;
- ✓ whether there is, in fact, protection against reprisal for employees who engage in good-faith disclosure; and
- ✓ how often wrongdoing is corrected and whether systems/procedures are put in place to prevent its recurrence.”⁸⁶

⁸⁵ Thomas, “Debating a whistle-blower protection act,” 20.

⁸⁶ Thomas, “Debating a whistle-blower protection act,” 20.

Although Mr. Thomas does admit that these criteria do not answer all questions and that they are risky at best in that they could jeopardize the elements needed to be successful, it would appear that the biggest problem here is the lack of trust. This suggested methodology will not work because there is no trust amongst the parties and in order to establish trust, you have to start with changing the attitudes and the culture.

With respect to the Public Service Unions, Mr. Thomas states:

“In the case of the public-sector unions, they want the additional guarantee that complaints about reprisals will be eligible for adjudication and arbitration under collective bargaining legislation and that any negative action taken or threatened against a whistleblower during a five-year period after a disclosure will be deemed a reprisal unless the employer can prove otherwise.”⁸⁷

I concur that their union representatives should protect whistleblowers but I do not agree with the statutes of limitation with respect to reprisals. Retaliation can happen for many years and if you are a young whistleblower who blows the whistle at the beginning of your career, you can pay the price for many years to come. The time to report retaliation must be unlimited. Even if it is years later, all you need is for one person to remember you as a whistleblower, ergo the fink, and retaliation can occur.

⁸⁷ Thomas, “Debating a whistle-blower protection act,” 25.

“Everyone agrees that education to promote ethical behaviour, to prevent wrongdoing, and to allow for responsible dissent within public-sector organizations should be emphasized over the enforcement of rules to encourage and to protect whistleblowers.”⁸⁸

The Federal Accountability Initiative for Reform (FAIR), has established the following five essentials for whistleblower protection:

1. “full free speech rights,
2. right to disclose all illegality and misconduct,
3. no harassment of any kind,
4. forum for adjudication, with realistic burden of proof and appropriate remedies,
5. mandatory corrective action.”⁸⁹

Of particular importance is number 5 that says:

“Employees remain silent for two key reasons: one, they have no faith that anything will change; and two, fear of reprisal. In order to promote true accountability, persons who engage in harassment against an employee must be held personally responsible. As well,

⁸⁸ Thomas, “Debating a whistle-blower protection act,” 37.

⁸⁹ “The Five Essentials,” *Federal Accountability Initiative for Reform (FAIR)*, http://fairwhistleblower.ca/wblaws/five_essentials.html (accessed January 5, 2010).”

ministers must be required to take remedial action on the wrongdoing.”⁹⁰

Along with the help of many organizations around the world including Canadians for Accountability and Federal Accountability Initiative for Reform (FAIR), Transparency International has generated a comprehensive international list of recommendations that need to take place with respect to disclosure procedures, protection, enforcement and legislative structure, operation and review.⁹¹ Their list is lengthy but thorough. In light of the expertise involved in making this list, I am humbled. To say that not only do I agree with it, but am quite impressed with it, is a great understatement. For the sake of my own recommendations, which I am about to summarize, I have been able to get my ideas through my research and through the organizations and authors mentioned throughout my thesis. My recommendations are:

- ✓ to empower whistleblowers who disclose in good-faith,
- ✓ to focus on prevention,
- ✓ to focus on changing cultures and attitudes,
- ✓ to demystify the notion of whistleblowing to authorities,
- ✓ to provide fair and transparent staffing processes to public servants,

⁹⁰ “The Five Essentials.”

⁹¹ “Towards greater protection of whistleblowers,” *Transparency International*.
http://www.transparency.org/global_priorities/other_thematic_issues/towards_greater_protection_of_whistleblowers (accessed January 5, 2010).

- ✓ to provide training and sensitization for all employees, management and authorities throughout the Public Service,
- ✓ to build and then promote trust amongst all parties,
- ✓ to build incentives and guidance to promote an ethical environment where people strive to do the right thing,
- ✓ that ethical behaviour becomes the norm versus having to abide by rules,
- ✓ to prioritize whistleblowing matters and make them as important as the rest of an authority's agenda,
- ✓ that all employees, management and authorities have the necessary tools and support available to them to deal with conflict,
- ✓ that restitution for whistleblowers be made available,
- ✓ that protection always be made available to whistleblowers,
- ✓ that whistleblowing becomes seen as a positive versus a negative,
- ✓ that authorities lead by example,
- ✓ that legislation be changed to allow for all of the recommendations made by Transparency International, FAIR and all organizations trying to do the right thing,
- ✓ that employees, managers and authorities be held personally responsible for any wrongdoing,
- ✓ that an overseeing body responsible for whistleblowing matters be established: this body would have to maintain an arm's length approach, be completely independent and not report to parliament.

The officers in this particular body would have to be fair, open and provide a safe environment for whistleblowers to go,

- ✓ to maintain integrity throughout,
- ✓ to continuously scrutinize the above.

It should be noted that although the above recommendations include improving the whistleblowing system in its entirety, responsibility and accountability would not happen unless the entire system changes. I say that because as long as whistleblowing is seen in a negative light and as long as the culture and attitudinal changes are not made by authorities, all management levels and public servants, authorities will not assume any responsibility and for those who want to take responsibility, but need support, they will continue to lack the necessary tools to do the right thing.

If the above recommendations are not followed, corruption will continue to grow. No one will come forward and people will work in an atmosphere of fear, wrongdoing will be openly ignored and condoned.

Unless whistleblowing becomes part of the culture and becomes a normal process, employees will not want to come forward and organizations will continue to be unprepared to handle disclosures. Leadership is the key here. Pending our authorities showing us the way by behaving appropriately, the culture will not change. Employees emulate authorities and most hope to

become one some day so until our authorities start showing us what true ethical behaviour is, the ill-faith of whistleblowers will continue.

“...being ethical means doing the right thing even when the culture of an organization may prefer silence. And if those who carry out what they know are improper orders cite the consequences for their careers as justification for their complicity; they too need to seriously re-evaluate the importance of always placing public interest ahead of personal interests.”⁹²

Authorities need to promote doing the *right* thing versus reacting badly to someone saying someone did a *wrong* thing.

⁹² Brian Grainger, “Due Diligence, Transparency and the Public Interest: A Preliminary Analysis of Two Recent Failures in Canadian Good Governance” (National Ethics Symposium Proceedings, Ottawa, ON, 2004).

Bibliography

- “Accounting Officers: Guidance on Roles, Responsibilities and Appearances Before Parliamentary Committees 2007.” *Privy Council Office*. <http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=ao-adc/2007/ao-adc-eng.htm> (accessed January 5, 2010).
- “Annual Report 2007-2008.” *Office of the Public Sector Integrity Commissioner*. <http://www.psic-isp.gc.ca/doc.php?sid=39&lang=eng> (accessed August 15, 2009).
- “Annual Report 2008-2009.” *Office of the Public Sector Integrity Commissioner*. <http://www.psic-isp.gc.ca/doc.php?sid=68&lang=eng> (accessed August 15, 2009).
- Barrados, Maria. “Enhancing Values and Ethics in the Federal Public Service: The Role of the Public Service of Canada in Ensuring a Fair, Efficient and Non-Partisan Public Service.” National Ethics Symposium Proceedings, Ottawa, ON, 2004.
- Barrados, Maria. “Whistleblowing and Bill C-11.” <http://www.psc-cfp.gc.ca/spch-disc/2005/2005-02-08-eng.htm>.
- Beauchamp, Denis. “Attempting to Give Priority to Ethics in Government: Canada’s New Public Sector Ethics.” National Ethics Symposium Proceedings, Ottawa, ON, 2004.
- Bertok, Janos. “Going Forward – Changing the Climate.” National Ethics Symposium Proceedings, Ottawa, ON, 2004.
- Canadians for Accountability.” *Integrity, Courage, Resolve*. <http://www.canadians4accountability.org/> (accessed August 6, 2009).
- Chaplin, Ann. “Is There a Duty to Blow the Whistle? Public Servants and the Public Interest.” National Ethics Symposium Proceedings, Ottawa, ON, 2004.
- Desautels, Denis. “The concern for ethics: new forces, new expectations, new standards.” National Ethics Symposium Proceedings, Ottawa, ON, 2004.
- “Duty of Loyalty.” *Treasury Board of Canada Secretariat*. <http://www.tbs-sct.gc.ca/rp/icg01-eng.asp> (accessed October 25, 2009).

- “Federal Accountability Act.” *Government of Canada*. <http://www.faa-lfi.gc.ca/docs/ap-pa/ap-pa00-eng.asp> (accessed October 28, 2009).
- “Five Things Canada’s Public Sector Integrity Commissioner’s Office Should Do Right Now.” *Federal Accountability Initiative for Reform (FAIR)*, <http://fairwhistleblower.ca/content/five-things-canadas-public-sector-integrity-commissioners-office-should-do> (accessed November 22, 2009).
- Fraser, Sheila. “Modern Public Management, Prudence and Probity.” National Ethics Symposium Proceedings, Ottawa, ON, 2004.
- “Getting to know Information Conflict Management Systems (ICSM) better.” *Treasury Board of Canada Secretariat*. <http://www.tbs-sct.gc.ca/gui/conflplus-eng.asp> (accessed August 10, 2009).
- Gewirth, Alan. *Human Rights: Essays on Justification and Application*. Chicago: The University of Chicago Press, 1982.
- Gewirth, Alan. *The Community of Rights*. Chicago: The University of Chicago Press, 1996.
- Gewirth, Alan. “Professional Ethics: The Separatist Thesis.” *Ethics*, Vol. 96, No. 2 (Jan., 1986): 282-300. <http://links.jstor.org/sici?sici=0014-1704%28198601%2996%3A2%3C282%3APETST%3E2.0.CO%3B2-4> (accessed January 26, 2008).
- Gilmore, Alan. “Managing Public Trust in Government.” National Ethics Symposium Proceedings, Ottawa, ON, 2004.
- “Government Accountability Project (G.A.P.)” <http://www.whistleblower.org/> (accessed August 6, 2009).
- Grainger, Brian. “Due Diligence, Transparency and the Public Interest: A Preliminary Analysis of Two Recent Failures in Canadian Good Governance.” National Ethics Symposium Proceedings, Ottawa, ON, 2004.
- “If you have witnessed wrongdoing, here are some of the questions you may be asking yourself.” *Whistleblower Canada*. <http://www.whistleblowerCanada.com/2.html> (accessed January 15, 2010).
- James, Gene G. “In Defense of Whistle Blowing.” In *Ethical Issues in Professional Life*, edited by Joan C. Callahan, 315-339. New York: Oxford University Press, 1988.

- Jones, Leanne. "The Whistleblowers Bill and the Dragon Slayers of FAIR." *Prime Time Crime* (October 9, 2006). <http://www.primetimecrime.com/contributing/2006/20061009Jones.htm> (accessed August 12, 2009).
- "Our Vision, Our Mission, Our Values." *Public Sector Integrity Canada*. <http://www.psic-ispc.gc.ca/doc.php?did=53&lang=eng> (accessed November 21, 2009).
- "Overview of the Public Servants Disclosure Protection Act." *Treasury Board of Canada Secretariat*. <http://www.tbs-sct.gc.ca/ve/oaal-eng.asp> (accessed August 6, 2009).
- "Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace – Archived." *Treasury Board of Canada Secretariat*. http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/tb_851/idicww-diicft-eng.asp (accessed August 10, 2009).
- "Policy on Prevention and Resolution of Harassment in the Workplace." *Treasury Board of Canada Secretariat*. <http://publiservice-tbs-sct-gc.ca/pol/doc-eng.aspx?id=12414§ion=text> (accessed January 15, 2010).
- "Protecting Whistleblowers who Protect the Public Interest." *Federal Accountability Initiative for Reform (FAIR)*. <http://fairwhistleblower.ca/> (accessed August 10, 2009).
- "Public Servants Disclosure Protection Act." *Public Sector Integrity Canada*. <http://www.psic.ispc.gc.ca/doc/php?did=52&lang=eng> (accessed August 6, 2009).
- "Recommended draft principles for whistleblowing legislation." *Transparency International*. http://www.transparency.org/global_priorities/other_thematic_issues/towards_greater_protection_of_whistleblowers/enhancing_whistleblower_protection_in_the_european_union (accessed February 12, 2010).
- "Richard Colvin's catch-22." *The Globe and Mail*, <http://www.theglobeandmail.com/news/politics/ottawa-notebook/richard-colvins-catch-22/article1533670/> (accessed April 18, 2010).
- "The Five Essentials." *Federal Accountability Initiative for Reform (FAIR)*. http://fairwhistleblower.ca/wblaws/five_essentials.html (accessed January 5, 2010).

- “The Informant.” *Anyone Can Whistle*. <http://www.livestream.com/theinformant>, (accessed February 17, 2010).
- Thomas, Paul G. “Debating a whistle-blower protection act for employees of the government of Canada.” *Canadian Public Administration* 48, 2 (Summer 2005): 147-184.
- Thompson, Dennis F. *Political Ethics and Public Office*. Cambridge, MA: Harvard University Press, 1987.
- Thompson, Dennis F. *Restoring Responsibility: Ethics in Government, Business, and Healthcare*. New York: Cambridge University Press, 2005.
- Tordres, Elaine. “The Ethical Dimension in Public Service.” *Canadian Public Administration* 34, 25 (1991): 14-15.
- “Towards greater protection of whistleblowers.” *Transparency International*. http://www.transparency.org/global_priorities/other_thematic_issues/towards_greater_protection_of_whistleblowers (accessed January 5, 2010).
- “Values and Ethics Code for the Public Service.” *Treasury Board of Canada Secretariat*. http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve-eng.asp (accessed November 22, 2009).