The Meaningfulness of Whistle-Blowing Legislations: The Case of Manitoba

A Political Hot Potato that Feels Like an Ice Cube
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What is Whistle-Blowing?

- There is no universally-accepted definition.
- Where whistleblower protection laws exist, the definition and coverage varies somewhat.
- In general terms whistle-blowing refers to the honest and good faith disclosure of serious wrongdoing in an organization to an authority that is able to take steps to investigate and to remedy problems.
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The Act of Whistle-Blowing

- Must be done voluntarily and be motivated totally or predominantly by “the public interest”

- It differs from “leaks” which may involve policy disagreements and often are done anonymously so that the “leaker” avoids personal consequences.

- Disclosure rules can cover both internal and external disclosure.

- Some types of unauthorized, external disclosure have been declared a justifiable and protected activity by the courts, for example, when there is a threat to public health, safety or security.

Source: Paul Thomas, 2010
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**Reason for Whistle-Blowing Laws**

- Whistle-blowing provisions are designed to facilitate regulation and enforcement of laws by encouraging employees to report evidence essential for industry regulation and the prosecution of corporate wrongdoers.

- Why Whistle Blowing is acceptable:

- Lord Denning, who wrote that an employee may disclose “any misconduct of such a nature that it ought in the public interest to be disclosed to others.”
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The Concept of Whistle-Blowing

- A whistle-blower is one who sounds the alert on scandal, danger, malpractice, or corruption within an organization. Only a few individuals are courageous enough to raise such issues. A major obstruction for the revelation of such corruption by the public has often been recognized as the absence of protection from resultant reprisal.

International experience suggests that such people who disclose and/or raise issues are generally vulnerable for victimization, mostly in their employment. Whilst there is a growing consensus that legal protection of WHISTLE-BLOWERS must be encouraged, most often such legal protection revolves around guarantees against resultant victimization and dismissal from employment. In Manitoba there exists an underwhelming lack of usage by employees of this needed legal protection of Whistle-Blowers.
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The Politics of Whistle Blowing Legislation

• There was great political debate over the introduction of the Public Disclosure Act. One of the questions of this study is why there is no usage of the legislation. Other jurisdictions in Canada also find underutilization and great stormy debates related to the passing in of such legislations.

• This study will exam the attitudes of Civil Servants in Manitoba based on the political ranker to pass such legislation and the general underutilization once such legislation is passed.
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**History**

- Whistle-blower protection legislation first came into force in Canada at the federal level on September 15, 2004. Employers who use employment-related intimidation or retaliation against whistle-blowers now risk criminal liability as a result of the addition of section 425.1 to the *Criminal Code of Canada*.

- The first reading of The Manitoba Public Interest Disclosure Act was on October 25, 2005. The Act was passed on November 14, 2006.
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**Whistle-Blowing – Morally Ambiguous?**

- Whistle-blowing has classically been vilified. Former chairman of General Motors, James Roche once memorably noted that whistle blowing – scorned as part of a class of disloyalty including “industrial espionage” and “professional responsibility” – was but “another tactic for spreading disunity and creating conflict.”

- Out of the corporate world and into the public service, H.L. Laframboise, a former Assistant Deputy Minister with the Canadian federal government, maintains Roche’s disdain for whistle-blowers. “Vile wretches” according to Laframboise, are those “whose acts of whistle-blowing are more offensive to the community or to their peer groups than the acts on which they have blown the whistle.”
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**The Public Interest Disclosure Act would:**

- Apply to all departments of government, Crown corporations, the Workers Compensation Board, RHAs, child and family services agencies and authorities, and all independent offices of the legislative assembly.

- Provide protection to employees from reprisal. The legislation would empower the Manitoba Labour Board to determine whether there has been a reprisal against an employee for making a disclosure under the act and grant remedies including reinstatement. Anyone found to have taken a reprisal against an employee or found to have contravened other sections of the act could also face a fine of not more than $10,000.

- Protect whistle-blowers for disclosing the following wrongdoings: contraventions of federal or provincial legislation; acts or omissions that endanger public safety, public health or the environment; gross mismanagement including mismanagement of public funds or assets; and taking or counselling reprisal against an employee for making a disclosure.
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Legislation (con’t)

- Specify the procedures a whistle-blower should follow to disclose wrongdoings. An employee would be able to make a disclosure to his or her immediate supervisor, to the designated officer in the employee’s public sector organization or to the ombudsman. A public disclosure could also be made if the matter is of an imminent risk to public safety and to the public if the employee has first made a disclosure to the appropriate law enforcement agency or, in the case of a health-related matter, to the chief medical officer.

- Ensure employees have access to the ombudsman who would have responsibilities to investigate complaints. The ombudsman would be able to refer a matter to the auditor general if the ombudsman believes that a disclosure received would be more appropriately dealt with by that office. The ombudsman would make an annual report to the legislature on the operations of the Office of the Ombudsman under the act.

- Source: May 8, 2006 Government News Release
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- The *Public Interest Disclosure (Whistleblower Protection) Act* covering employees reporting wrongdoings in the public service is now in effect, said Finance Minister Greg Selinger in October of 2007. The Act covers:
  - Public sector bodies, or organizations that receive a substantial portion of their funding from the Manitoba government.
  - "Thousands more employees are now covered under this act, which is the broadest provincial legislation of its kind in Canada," said Greg Selinger. "The act calls for investigating disclosures using the principles of fairness and natural justice and also specifies time frames for action to be taken."
- Greg Selinger is now the Premier of Manitoba

http://www.hrmguide.net/canada/law/manitoba/whistleblowers.htm
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• The Public Interest Disclosure (Whistleblower Protection) Act protects whistleblowers who disclose perceived wrongdoings including:
  • contraventions of federal or provincial legislation;
  • acts or omissions that endanger public safety, public health or the environment;
  • gross mismanagement including gross mismanagement of public funds or assets; and
  • knowingly directing or counselling a person to commit a wrongdoing.

• It also protects employees from reprisal and empowers the Manitoba Labour Board to determine if there has been action taken against an employee for making a disclosure and provides remedies including reinstatement. Those found to have taken a reprisal against an employee or to have contravened other sections of the act could face a fine of up to $10,000.
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The Public Interest Disclosure (Whistleblower Protection) Act

- The legislation provides a process for disclosure that can involve the immediate supervisor or a designated officer in the employee’s organization or the Manitoba ombudsman. A public disclosure could also be made if the matter is urgent and constitutes imminent risk of substantial and specific danger to life, health or safety if the employee has first made a disclosure to the appropriate law enforcement agency or, in the case of a health-related matter, to the chief medical officer of health.

- The act also ensures employees have access to the Manitoba ombudsman who has responsibilities to investigate complaints. The ombudsman is able to refer a matter to the auditor general if appropriate. The ombudsman will make an annual report to the legislature.
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WHO QUALIFIES TO BE A WHISTLE-BLOWER?

- Most WB laws presume an employee-employer relationship.
- Debates over whether other people should be covered:
  - former employees?
  - temporary employees?
  - contractors and their employees?
  - consultants?
  - journalists?
  - citizens?

WHAT KINDS OF WRONGDOING ARE TYPICALLY COVERED BY WB LAWS?

- violations of law, regulations or rules
- abuse of authority
- gross mismanagement
- gross waste of funds
- substantial risk to public health and safety
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*The Public Interest Disclosure Act*

- To build on protections already in place under other Manitoba laws, *The Public Interest Disclosure (Whistleblower Protection) Act* has been passed into law. This law gives employees and others a clear process for disclosing concerns about significant and serious wrongdoing in the Manitoba public service, and provides protection from reprisal.

- This fact sheet provides information for any private sector employee who wishes to disclose information about a wrongdoing in a way that will provide the private sector employee with protection under the new law.
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History and Scope of Authority of the Public Disclosure Interest Act

- Unlikely in other provinces and federally in Manitoba the authority for the WB Act lies with the Manitoba Ombudsman.
- While filing a complaint, Employees/officers in the public service may file a complaint with the Labour Board regarding reprisal.
- Non-employees may provide information regarding wrongdoing to the Ombudsman.
- The Act establishes protection for contractors and private sector employees who provide information to the Ombudsman.
- Information regarding number and nature of disclosures to be reported annually.
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**Purpose**

- The purpose of this study is to do an attitudinal study of employees of the Manitoba Civil Service and public agencies in Manitoba.
- Manitoba has the Public Interest Disclosure (Whistle Blower) Act, our investigation is a review of the degree such protective legislation is regarded as such by each level of the civil service.
- Do employees at all levels view such protective legislations as protective, or is it just political window dressing to satisfy the public concerns about the government acting and being seen to be a reasonable employer?
- Is the political attitude of whistle blowing, which other studies (Thomas, 2008) show, viewed as a political hot potatoes shared by public sector employees? What is the actual utilization of whistle blowing legislation? Is there a meaningfulness to the legislation or is it just political window dressing?
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Purpose (Con’t)

- Our study will investigate how the current legislation could be made more effective in the opinion of the citizens it covers. What are the grass-roots perceptions of the application of the current legislation and what could be the application of improved legislation?

- Would more effective conflict resolution organization processes be of assistance to ensure positive results oriented business activity within the public sector, reducing the need for whistle blowing activity? What is the view of the Ombudsman’s department of the application of the legislation? Is it too cumbersome, is it meeting the intent it was set out for?
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**Purpose (Con’t)**

- The other aspect of the study is to utilize political theory as an evaluative tool concerning what role are whistle-blowers allowed to play within the political system and why they are an important element of it. Is the whistle-blower an invention of the myth of a civil socio-political system based on an ideology of fairness?

- As well, questions such as; Is there a different degree of social and political compliance in Manitoba compared to other provinces? What is the degree of fear in employees working for a civil sector employer? What is the level of bullying and harassment? Are the policy makers stating that there is a level of tolerance of dysfunctional behaviour by not having stricter laws of compliance?

- The general jurisprudential rule of the whistle blower privilege was developed to protect citizens who assist in running of public sector organization and to encourage others to do the same. The question is to what degree is this occurring and why or why not?
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**Methodology**

1. This study will be following the usual methodological processes, it shall be a blind study with strict confidentiality. The survey will include an introduction explaining the purpose of the study, duration, and incentive information.

2. Selection of participants will be on a random sampling basis among employees who volunteer to do the survey based on selecting different cohorts. Participants will of course be informed how their responses will be used: that they are confidential and anonymous. All this is explained twice on the consent form and an instruction form on the survey itself.
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**Survey Analysis**

- Some of the potentials questions to employees of the Manitoba Civil Service
- Default Section

**Which Ministry do you work in:** 

______________

1. How long have you worked with your current employer?

- Less than a year
- 1 to 5 years
- 6 to 10 years
- 11 to 20 years
- 21 to 30 years
- More than 30
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2. Please indicate your highest level of education:
   - High School Diploma
   - Community College Diploma
   - Undergraduate Degree
   - Graduate Degree
   - Other ______________________

3. How old are you?
   - 18 to 24
   - 25 to 34
   - 35 to 44
   - 45 to 54
   - 55 to 64
   - 65 to 70
   - 70+
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4. Did you know that The Public Interest Disclosure (Whistleblower Protection) Act, Whistle Blowing legislation is to protect employees from reappraisal; from government for broader public sector workers? Do you believe such an Act is needed?
   - Yes
   - No

5. The Public Disclosure Act provides for confidential disclosure by employees/officers to supervisor, designated officer or Ombudsman. Is this a factor that would encourage you to make a complaint under The Public Disclosure Act?
   - Yes
   - No
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6. The Public Disclosure Act provides for confidential disclosure by employees/officers to supervisor, designated officer or Ombudsman. Is this a factor that would encourage you to make a complaint under The Public Disclosure Act?

- Yes
- No
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7. Have you ever logged any informal complaint against your employer?
   • Yes
   • No

8. Have you ever logged any kind of formal complaint against your employer?
   • Yes
   • No

9. Are you a member of a Union at your workplace?
   • Yes
   • No
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IS BLOWING THE WHISTLE WORTH THE TROUBLE IN PUBLIC ORGANIZATIONS?

- It leads to the early identification of misconduct.

- Identification of weak systems or personal misconduct reduces the vulnerability of the organization to loss, criticism and even legal action.

- Improved focus on accountability and administrative justice by managers and staff improves morale.

- When wrongdoing is ignored, it doesn’t go away, rather it continues to leech productivity and commitment out of the organization.

*Source: Paul Thomas, 2010*
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**Theory-Literature Review**

- The organizational implications have rarely been considered. There is a basic dilemma for any organization. The whistle-blower may provide valuable information helpful in improving organizational effectiveness: Clinard (1983) cites data showing that the prevalence of illegal activity in organizations is associated with declining organizational performance.

- At the same time, condoning the challenge of the organization’s authority structure (specifically, the manager’s right to make decisions) may push the organization into chaos and anarchy. Heller (1983) has documented the decline in authority of organizations and their leaders and its effects: reduced loyalty, commitment, and task performance.

*Source: Organizational Dissidence: The Case of Whistle-Blowing, Janet P. Near and Marcia P. Miceli*
Whistle-Blowing has Institutional Civil Disobedience

- The concept of whistle blowing goes against the grain of most of organizational behaviour literature of how to great highly motivated, committed and loyal workplace.

- The concepts of whistle-blowing can create an inherent sense of organizational enforced cognitive dissonance, which could result in dysfunctional results for the an organization.

- Research shows that most whistle-blowing complaint processes are rarely used in Canada.
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**Conclusion**

**Whistle-Blowing has Institutional Civil Disobedience:**

....protests by citizens against the laws or actions of their government; and whistle blowing — disclosure by employees of illegal, immoral or questionable practices by their employees is a required feature of civil liberal democratic society. (Elliston 1982)

**Example of Anti-Democratic Behaviour**

Minister MacKay also employed the tried and true strategy of discounting Mr. Colvin by stating Mr. Colvin told us that his evidence was based on what the Taliban told him, what reports he’d read and what was second and third hand information.