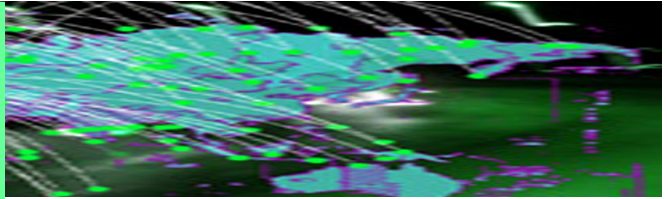


# WHISTLE-BLOWING



Whistle-blowing is the reporting by a current or former employee of a public institution/organization of alleged wrongdoing or misconduct that may threaten the operations or governance of that public institution/organization.

Whistle-blowing can be *internal*, when the allegation of wrongdoing is made within the organization itself Or it can be *external*, when the allegation is made in entities outside the organization, including legislators, the news media, or a government office dedicated to investigating allegations of wrongdoing. Some governments require or encourage employees to exhaust all available internal remedies before taking their allegations outside the organization.

Since the term whistle-blowing has invidious connotations of “squealing” or “snitching” on one’s colleagues, some governments have begun to use the term “disclosure of wrongdoing” as an alternative to “whistle-blowing.” The whistle-blower then becomes the “discloser.” The hope is that disclosure will increasingly be viewed as the normal and responsible course of action for public employees who know about, or suspect, wrongdoing.

Whistle-blowers serve an important role in maintaining the integrity of public institutions and can face negative consequences for their disclosures. Therefore the [protection of whistle-blowers](#) is now widely viewed as a useful mechanism for preventing and discouraging unethical or corrupt conduct. Still, whistle-blowing and the statues which surround it, are often more complicated than is commonly understood. Public leadership in particular should recognize that while whistle-blowing is a key element in controlling wrongdoing, it requires a measured approach.

## How Widespread is Whistle-Blower Protection?

The protection of public employees who disclose wrongdoing is much more common in developed countries than in developing ones. Countries like Australia, Canada, New Zealand, the United Kingdom and the United States provide statutory protection for public employees who reveal wrongdoing. The purpose of this legislation is to provide a formal and effective system whereby government wrongdoing can be reported and remedied, while the rights of those persons making the allegations and those against whom the allegations are made are protected.

International organizations have begun to encourage countries around the world to provide disclosure protection for public employees. For example, the 1997 Inter- American Convention against Corruption requires members of the Organization of American States to consider adopting measures “to create, maintain and strengthen “systems” for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with their Constitutions and the basic principles of their legal systems.” The 2005 United Nations Convention against Corruption *require* signatories to protect employees who, in good faith, report suspected corruption.

## What Kinds of Wrongdoings Justify Disclosure?

The categories of wrongdoing that should be disclosed are similar from one country to another. Most countries list the following concerns:

- violation of a law, rule or regulation;
- misuse of public funds;
- abuse of authority;
- gross mismanagement;
- endangering the health or safety of an individual, and
- damaging the environment.



### Encouraging Disclosure with Protecting the Accused

Although it is desirable for public employees to disclose wrongdoing in government, it is essential to ensure that none of those accused of wrongdoing suffers as a result of being falsely accused. Thus, the [protection-of-disclosure statutes](#) in some countries provide penalties for public employees who make frivolous or vexatious allegations.

### Protecting Anonymity with Protecting the Accused

Public employees are highly unlikely to disclose wrongdoing if they are not confident that their anonymity will be adequately protected. Governments cannot, however, provide an ironclad guarantee of anonymity. If a disclosure case reaches the courts, for example, the accused person may, under the principles of natural justice, have the right to know the identity of his or her accuser.

### Encouraging Disclosure while Discouraging Reprisal

The main obstacle to public employees' disclosure of wrongdoing is fear of reprisal. If the organization's senior management or the employee against whom the allegation is made learns the identity of the person who has made the allegation, that person may suffer reprisal. Disclosers are often subjected to ostracism, discrimination and even dismissal. Most disclosure regimes provide penalties against officials who take retaliatory action against disclosers.

### A Strong Disclosure Regime

Canada's 2006 Public Servants Disclosure Protection Act is one of the strongest disclosure statutes in the world. A Public Sector Integrity Officer investigates allegations from both public servants and members of the public and recommends remedial action where appropriate. The act covers virtually all public sector employees. There are strict rules on maintaining the confidentiality of those persons making allegations. Public servants can appeal against reprisals, and disciplinary penalties are provided for those who take reprisals. The integrity officer can refuse to deal with allegations that are not made in good faith.

Experience to date in countries with statutory disclosure protection regimes is that only a small number of disclosures are made and that most of these allegations are concerned with relatively minor matters rather than with instances of serious wrongdoing. Yet, serious wrongdoing continues to be revealed by other means, notably by the news media. Thus, the adoption of a disclosure statute cannot ensure that cases of significant illegal or unethical conduct will be reported. It is clear, however, that a weak disclosure regime will not be effective. A persuasive case can be made for a regime that is strong enough to ensure that public employees will feel comfortable reporting wrongdoing.

### International Conventions

- Council of Europe Criminal Law Convention on Corruption
- Council of Europe Civil Law Convention on Corruption
- Organization of American States, Inter-American Convention against Corruption
- United Nations Convention against Corruption

These conventions can be found at <http://www.u4.no/themes/conventions/intro.cfm>.

### Readings

Alford, C. Fred. *Whistleblowers: Broken Lives and Organizational Power*. Ithaca, New York: Cornell University Press, 2001.

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