You know how to whistle, don't you?

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Globe and Mail Update

POSTED AT 1:15 AM EST Friday, Mar. 5, 2004

Imagine: You are a director of the Prime Minister's Office. You believe the PM is acting in an unethical way. If you reveal what you are thinking to anyone, you will be ostracized and labelled as disloyal. The other members of the senior staff may “spin” against you. You may lose your job and your reputation. What can you do? Will there be any protection if you “blow the whistle”?

Or imagine you are a director of a large public company. You believe there is unethical behaviour. However, the other directors do not want to hear. The company is on the verge of acquiring a big contract that will feather everyone's nest, including the directors who own stock. If you speak out, employees might lose their jobs, the company may lose its reputation and the stock price may fall. What can you do? Will there be any protection if you “blow the whistle”?

Or you are a young woman of 17 with a summer job in a Canadian corporation. One afternoon, an executive grabs you inappropriately and makes suggestive comments. Your father works at the company and the executive is your father's boss. If you say anything, you and your father may lose your jobs. What can you do? Will there be any protection?

The witnessing of unethical, criminal and inappropriate behaviour can happen to anyone, whether you are a corporate director, a temporary employee or a public official.

Usually working within a particular corporate or government institution from which they may benefit financially, whistle-blowers realize that by exposing the truth, their institution may be greatly harmed. This is one reason why a number of warnings often precedes actually blowing the whistle.

Sherron Watkins, the Enron whistle-blower, tried many times to bring her concerns to corporate officials before the scandal became public. Cynthia Cooper, the internal auditor at WorldCom, became aware of unethical accounting when another executive informed her that $400-million was gone from his reserve. Ms. Cooper undertook a quiet investigation, and then headed to her audit committee.

Whatever the time span and the scenario, a decision must be taken. Thus begins the agony of the potential whistle-blower who wrestles with two opposing forces — the cost of speaking out versus the cost of silence.

Speaking out is perilous. Jeffrey Wigand, the insider who blew the whistle on tobacco companies, said whistle-blowers are viewed as pariahs: “We are ostracized by our peers, by the company, by society.” The consequences for the whistle-blower's family and loved
ones must be considered. Providing evidence to investigatory authorities may entail weeks of work in an atmosphere of fear and possibly danger. But the fear of losing one's job or reputation is not the only reason for silence.

Surveys of U.S. federal employees indicate that workers also remain silent because they feel nothing will be done. This may explain the fact, according to the recent report of the Auditor-General, that while 13 per cent of public servants who responded to a 2002 survey noted they had been aware of wrongdoing, 65 per cent of that 13 per cent had not disclosed the information.

Yet remaining silent creates its own hell. Anxiety may affect mental and emotional health. Questions remain unanswered. Will others be physically or financially hurt as a result of one's silence? Are there legal obligations to speak out? Clearly, there are no easy answers but there are several ways that we, as a society, can ameliorate these situations.

First, we need to create “safe havens” within our public and private institutions where concerned individuals can feel free to discuss ethical worries and observations. Such havens could be as simple as anonymous hotlines, or an effective ethics office designated by an organization to be the listening post. More broadly, they could encourage a work culture in which questions of conscience are welcome. At the same time, whistle-blowers must be made aware that due process will play a part in any investigation. Unsubstantiated rumours and malicious motivation will not be tolerated.

Steps to provide protection of public-service employees are already under way. The recent Report of the Working Group on Disclosure of Wrongdoing, set up at the request of the President of the Treasury Board, calls for a new “moral contract” between public servants and politicians and recommends a new independent agency headed by an Officer of Parliament.

However, the Canadian private sector must move quickly if it wants to avoid intrusive legislation, such as the U.S. Sarbanes-Oxley law, which, in addition to many state laws, ostensibly protects employees or contractors of publicly traded companies. The CIBC has recently felt the sting of this new U.S. legislation as it was required to spend $50-million for an “ethics” hotline as a result of a recent settlement with both Canadian and American regulators.

Most large Canadian companies have internal codes of ethics that generally outline an administrative process to follow if concerns arise over ethical practices. However, it is difficult to ascertain whether employees are really protected under them if they blow the whistle.

By contrast, both the U.S. and British corporate sectors have undertaken serious transformation, at least on paper. In 1998, the U.K. government introduced the Public Disclosure Act, wide-reaching legislation that covers employees in both the public and private sector. A British charity, Public Concern at Work, supports whistle-blowers.
In the United States, five national organizations are devoted to whistle-blowing. For example, PEER (Public Employees for Environmental Responsibility) focuses on environmental whistle-blowing, while two other organizations focus on drafting legislation to protect and sometimes to commercialize the act of whistle-blowing.

The U.S. False Claims Act, for example, was amended in 1986, to stipulate that whistle-blowers be rewarded with a percentage of the money that the government recovers under lawsuits against companies and individuals that defraud government — through medicare fraud, for example. Since the act was amended, the U.S. government has recovered more than $3.5-billion as a result.

But even legislation cannot always help a whistle-blower. British scientist Dr. David Kelly, who committed suicide after he was exposed as a whistle-blower, found no safety through any organization or law. Protection for whistle-blowers is not a stand-alone policy issue.

It presupposes a healthy democracy where ethical values are upheld, whether by a free press or through an independent judiciary, and where handling dissent in a responsible manner is paramount.

No one wants a nation of tattletales but somehow we must create the perception that those who speak out with moral motivations often provide valuable early warning signals about an impending crisis.

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