

## WHISTLEBLOWERS AND PUBLIC SERVICE GOVERNANCE

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Canada has witnessed no shortage of major corruption scandals; the following come readily to mind:

- Tainted Blood, in which about 60,000 Canadians were infected with hepatitis C, some of them fatally.
- The Gun Registry, in which a program with a budget of \$2 million spent \$1 billion without authorization or adequate reporting of cost overruns to Parliament.
- The Sponsorship Scandal, in which millions of dollars of public money were diverted illegally to government-favoured advertising agencies.

Other advanced democracies have adopted whistleblower protection partly as an anti-corruption strategy. The U.S. is the pioneer in the field, and took the first steps more than 30 years ago. The UK has had effective legislation in place for more than a decade, which covers its entire workforce. This includes a tribunal system that has processed more than 7,000 whistleblower cases.

The history of such legislation in Canada is one of foot-dragging by politicians and officials alike. Successive governments have promised whistleblower protection for years. We still have no legislation that works effectively and no agency that reliably protects public servants at any level of government, or in the private sector, or in any part of the country. In terms of protecting conscientious and courageous employees from reprisals, Canada is still largely a wasteland.

### **Westminster Governance**

Our Westminster system of government itself has a serious structural flaw in terms of modern best democratic practices. With the fused executive and legislative branches, our Executive Democracy encourages legislators to defer excessively to party leaders, whether prime ministers, premiers or opposition leaders. In turn, public servants in both national and provincial capitals answer to deputy ministers, not to the general public good or taxpayers. This institutional and cultural reality is a major reason why, among related governance problems, there has been so little development of effective whistleblower legislation across our country.

### **Four National Heroes**



#### **Joanna Gualtieri**

As a property specialist in the Dept. of Foreign Affairs and International Trade starting in 1992, lawyer Gualtieri exposed gross waste and extravagance in the procurement of accommodation for some of our diplomats abroad. In Tokyo, for example, government-owned residences valued up to \$18 million sat vacant while large sums were spent renting other accommodation senior diplomats preferred. She also discovered that luxury living in violation of

Treasury Board policy was the norm in the Americas. Rather than correct the policy breaches, managers retaliated, harassing her and eventually forcing her out of her job in 1995. Both times she attempted to return to her job, she faced the same hostile environment and refusal to allow her to do her work. In 1998, she left the department for good.

Despite acknowledgement in internal documents that her case had merit, the ministry publicly asserted that nothing wrong had been done. When Gualtieri sued, Justice Department lawyers used a range of tactics to drag out her suit for 12 years, forcing her, for example, to answer more than 10,500 pre-trial questions. The strategy was clearly to ruin her with massive legal bills and break her spirit. In the end, the government settled, virtually at the court house in early 2010, thus avoiding a public trial which would have exposed incompetence and waste. Gualtieri now has her life back, although she was harmed from the loss of almost twenty years in an unequal legal battle seeking to make an example of her as to what happens to public servants who fail to tow the management line. As part of the settlement, she is today subject to a gag order, preventing her from speaking about the misfeasance she put her career on the line to expose.

### **Brian McAdam**

A career immigration officer, McAdam learned in 1991 that our immigration office in Hong Kong might have been penetrated by organized crime, allowing criminals to immigrate to Canada. His exposure of corruption, missing blank visas, fake embassy stamps, reports about organized criminals known as Triads, penetration of top-secret files in the computer system, inappropriate gifts to staff, and revelations about Chinese party-state espionage activities were poorly investigated.



Rather than correct serious problems, senior managers instead turned on McAdam, eventually forcing him out of his 30 year government service. As well, they stalled, blocked and undermined subsequent inquiries into his allegations. Much evidence he provided to a joint RCMP-CSIS investigation was destroyed; CSIS top management shredded ‘Sidewinder’, the report confirming his concerns in 1997. The government ignored an Auditor General report corroborating McAdam’s concerns about the computer system, a serious rebuke by the RCMP Review Committee, other agencies intelligence reports, and one of the largest espionage probes ever done in the U.S.

### **Zabia Chamberlain**



In 2007 and 2008, Chamberlain, a manager at Human Resources and Skills Development Canada, experienced repeated sexual and aggressive harassment at the hands of the executive to whom she reported and an excessive workload from managers above him. Instead of disciplining the harasser and moving her, senior management opted to close ranks and deploy the familiar tools, “deny, delay, devalue and discriminate”, breaching workplace human rights and safety policies.

Chamberlain's doctors diagnosed severe post-traumatic injury and requested that she be relocated to a new organization and position. This was refused despite her strong 20-year job performance. A number of officials from her department and Treasury Board even asked her to remit an assault-form and sign a declaration that the harasser was a "third party", although he remains today in his position. Chamberlain brought her case to adjudication in the spring of 2009, asked for reassignment help and tried on her own to look for other positions. Her time before the Public Service Labour Relations Board will soon total 35 days without any resolution on the horizon (She is in hearing today). She has lost her two-decade career; yet the perpetrators of the harassment, breaches and stalling remain, highly-paid, in their public service jobs.



### **Sean Bruyey**

In 2005, former Air Force intelligence officer Bruyey realized there were serious flaws in a new proposal for injured soldiers. It would end the comprehensive life-long benefits provided to injured veterans and replace them with a one-time lump sum payment of much lower value. Not personally affected, Bruyey nonetheless became an outspoken critic. He also advocated the creation of a veterans' ombudsman. Veterans Affairs Dept. officials attempted to punish him by seeking to cut off treatment and benefits while distributing in briefing notes

distorted interpretations of his medical condition to persons who had no clear need to know. Bruyey had suffered from Post Traumatic Stress Disorder and other psychological and physical injuries as a result of his service in the 1991 Gulf war.

The briefing notes were given in their entirety or formed the basis of briefings given to cabinet ministers, staff in the prime minister's office, a parliamentary secretary, his Member of Parliament as well as to dozens of the most senior managers within Veterans Affairs Canada. The notes and associated briefings falsely suggested that Bruyey was mentally unstable. Bruyey has now received more than 20,000 pages of documents through Privacy Act requests, which were held by more than 400 departmental officials. The Department's own internal review determined that out of the 614 officials who accessed his computer based files, 54 "did not have a valid reason for access[ing]" those files.

The notoriety of the violations resulted in the Harper government issuing Bruyey, on October 26, 2010, one of only two official apologies given to Canadian individuals in more than twenty years. The Veterans Affairs media relations director has confirmed that not a single official involved appears to have been formally disciplined.

### **Conclusion**

These and many other cases share similar features: hostility towards honest employees whose work threatened to expose shoddy conduct; workplace reprisals; justice long denied by legal and procedural stratagems ; and oceans of tax dollars spent protecting alleged wrongdoers and pursuing truth tellers.

The House of Commons should give priority to improving the governance of our national public service. A logical first step would be to draw on the experience of countries such as the U.S. and U.K. to enact effective whistle blower legislation without further delay.

The complicated and costly whistle-blower system created by the Accountability Act has been a complete failure. Whistle-blowers are being persecuted just as fiercely under the Harper government as they were in the past. The Conservative promise to protect truth-tellers now looks like a cynical election campaign ploy. In order to show good faith, the government should immediately stop stalling on whistle-blower cases that are before the courts, and take steps now to strengthen this country's whistleblower protection legislation.

A recent media release by FAIR, the whistleblower NGO, ([FAIR Media Release](#), 29 June 2012)) noted that the Government whistleblower watchdog has failed to deliver after five years. "After five years of bureaucratic charades, taxpayers have essentially nothing to show for more than 30 million dollars spent on the Integrity Commissioner's office and the associated Tribunal," said David Hutton, executive director of FAIR. "Not a single wrongdoer has been sanctioned and not a single whistleblower has been protected. It is time for a root and branch reform of this law."

The new Integrity Commissioner Mario Dion has to date uncovered only one case of wrongdoing out of more than 320 complaints submitted over the past five years. The government has also failed to initiate the five-year review of the Whistleblower Act as legally required. The time for white horses and transparency promised in 2006 in the cause of better public service governance is long overdue.

Thank you.

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