

Ethical whistleblower?

BY MARC ROSEN, P.ENG.

The federal government introduced legislation on March 22 to protect and encourage “whistleblowers” in the public service and Crown corporations. The bill¹, an act to establish a procedure for the disclosure of wrongdoings in the public sector, including the protection of people who disclose the wrongdoings, is long overdue. The proposed bill is particularly important to members of professions in which upholding ethical standards is a requirement of licensure. The bill should thus provide some comfort to engineers who, through obligations under the code of ethics associated with licensing, become whistleblowers from time to time. The proposed law is consistent with calls made by some educators for higher ethical standards in engineering, technology and science.

The law would create a public service integrity commissioner, reporting to a minister. The proposed legislation protects public servants from being demoted, fired or otherwise disciplined for calling attention to corruption, mismanagement or other unethical behaviour.

An ironic weakness of the proposed legislation could be termed its “face-saving” factor. It appears to be directly motivated by the sponsorship scandal in which the Liberal government found itself embroiled. Despite this less-than-ideal motivation, the legislation is important and has many far-reaching and beneficial implications. Certainly, the legislation should contribute significantly to fixing some problems and preventing recurrences.

Some of the main benefits of the proposed bill are evident in several of its key elements:

- a statement of values—a code of conduct and a charter of guiding values would be created for public sector employees;
- a disclosure mechanism—each chief executive officer in the federal public sector would have to establish an internal disclosure mechanism and



A proposed federal law could have an impact on engineers and other professionals who are concerned that efforts to expose wrongdoing could be a career-limiting option.

- appoint a senior officer to receive disclosures;
- an investigation procedure—the senior officer who receives disclosures would investigate the complaint;
- protection from reprisal—public servants who feel they have suffered a reprisal could complain to the commissioner and, in some instances, to tribunals.

Because these help foster and support ethical behaviour, these four elements are highly desired in all engineering and other firms.

Ethics have value

Perhaps the most important benefits of the bill are that it sets a good example—an example many hope will lead to similar initiatives in other public and private sector organizations—and it creates a perception that ethical behaviour has value.

The proposed law is particularly welcome to university professors, especially those teaching courses on engineering ethics. Over the years, engineering educators have been continually bombarded with questions from students about how they should have responded to what they felt were unethical practices within companies where they held summer jobs or

internship or co-op placements. They even complain occasionally about possible unethical practices by faculty members. The students clearly recognize the dangers they face in their future careers by revealing such practices, and they are often disenchanted to learn that the protections are minimal or non-existent. As a result, students often conclude that the imperative to come forward and report unethical behaviour is a sham. Without protections, they argue, they wouldn't dare speak up and shouldn't be expected to do so.

This view was reinforced recently at a major engineering conference, in which several sessions were devoted to ethics in engineering. One participant in the conference was a professional engineer employed by the U.S. Department of Energy, who argued the very point made by engineering students. The engineer, who has a sterling reputation in the U.S. federal government, is described on his business card as “Safety Engineer and Prevailing Whistleblower.” He argued vehemently that whistleblower protection must be guaranteed by the appropriate agencies—be they licensing bodies, government agencies or others. This protection, he added, must be backed up by action if professional ethics is to be anything more than just talk.

The proposed federal law certainly helps overcome some of these problems, although many people, such as the Prevailing Whistleblower, believe associations like PEO need to do more to protect whistleblowers.

One could argue that such legislation shouldn't be necessary. It should go without saying that attacks on those who reveal inappropriate practices should not be allowed and should be punished. However, if explicit statements of protection are needed—and they apparently are, given past incidents of reprisals and the reluctance of those witnessing unethical behavior to come forward—then the proposed bill serves a useful purpose. Clear and explicit policies and values in any agency, be it public or private, combined with matching actions are often the best way to foster ethical behaviour.

It could even be argued that not protecting those who report inappropriate behavior is itself unethical. At the least, it is unconscionable to think that those who come forward are not protected.

Proper channels

Of course, this is not to suggest offering protection to would-be whistleblowers who behave unreasonably. Whistleblowing is too potentially damaging to be undertaken lightly or without full and careful thought. Appropriately, the proposed bill protects the responsible whistleblower who takes all possible steps to resolve and correct inappropriate activities before going outside the organization. Those who would go public with concerns before trying to resolve them via proper channels, thereby exploiting the safeguards offered legitimate whistleblowing, should not expect protection.

This bill supports the legitimate duty to report concept by recommending that a whistleblower complain to a supervisor before going to the new public service integrity commissioner. However, the bill also allows whistleblowers—under certain conditions—to speak through other channels. If, for example, the whistleblower believes another public servant is about to commit a serious offence under an act of Parliament, or is about to do something creating an imminent and serious danger

to life, he or she may “go public.” But it is unclear to what extent people who go outside established procedures, by talking to the media for example, would be protected compared with those who follow the approved disclosure mechanism. The role that a body like Professional Engineers Ontario could have in an ethical dispute involving engineers in the federal civil service is not clear from the proposed legislation. Certainly, however, the proposed law complements PEO's guide to responsible disclosure².

The proposed legislation does have its critics. Some say it is too restrictive in how whistleblowers are allowed to disclose. Others suggest it is too narrow in scope because it does not cover ministers' staff or bureaucrats involved in issues of national security, such as some members of CSIS, the RCMP and the armed forces. But despite these criticisms, the bill seems to be a step in the right direction.

Engineers generally can applaud the introduction of this legislation as a key

step in protecting ethical employees—be they engineers or others—as an example for others in the public and private sectors to follow. ❖

References

1. *An Act to Establish a Procedure for the Disclosure of Wrongdoings in the Public Sector, including the Protection of Persons who Disclose the Wrongdoings (Public Servants Disclosure Protection Act)*. Bill C-25, 37th Parliament, 3rd Session, House of Commons of Canada, First reading 22 March 2004.
2. *A Professional Engineer's Duty to Report: Responsible Disclosure of Conditions Affecting Public Safety*. Public Information Guide, Professional Engineers Ontario.

Marc A. Rosen P.Eng., teaches engineering ethics and is dean of engineering and applied science at the University of Ontario Institute of Technology in Oshawa. He is also president of the Canadian Society for Mechanical Engineering.