

Public Interest Disclosure (Whistleblower Protection) Act



FOR REFERENCE

Alberta Standing Commission on Resource Stewardship

by

Centre for Free Expression Whistleblowing Initiatives (CFEWI)

“whistleblowers are the neighbourhood watch of our society.”

Topics

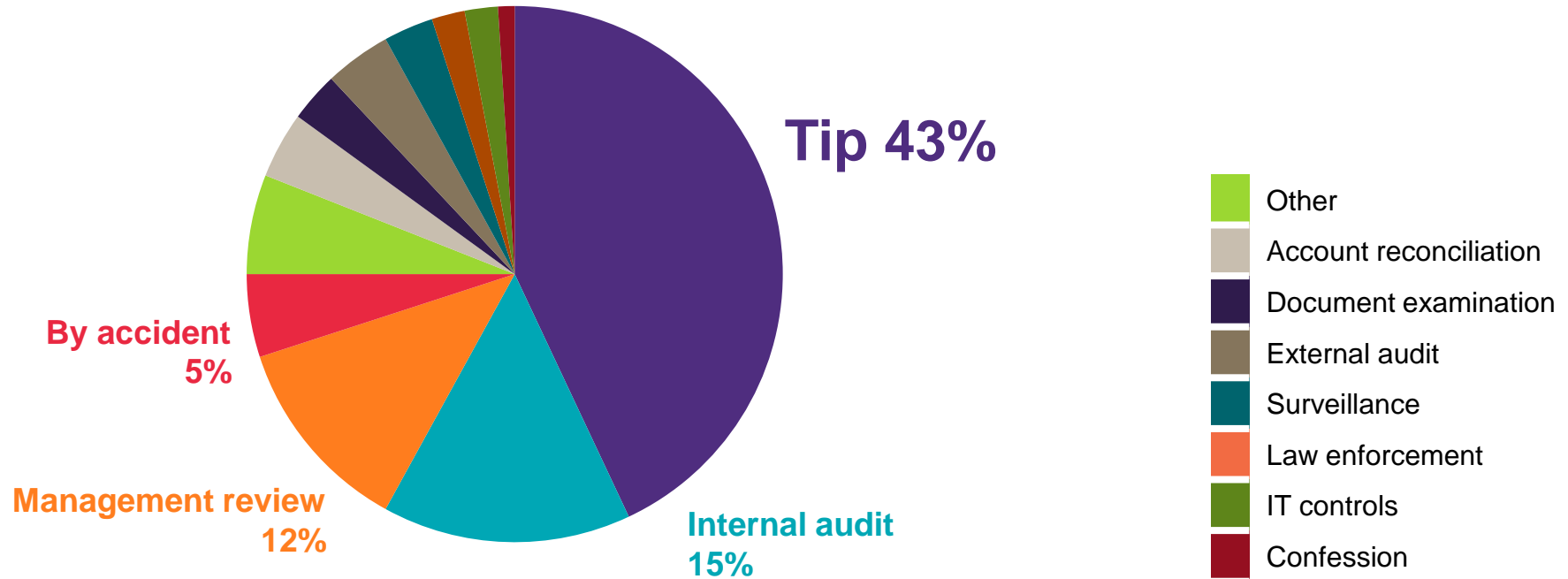


- Why protect whistleblowers?
- Whistleblowing – myths vs reality
- International best practices
- How do Canada and Alberta rate?

Why protect whistleblowers?

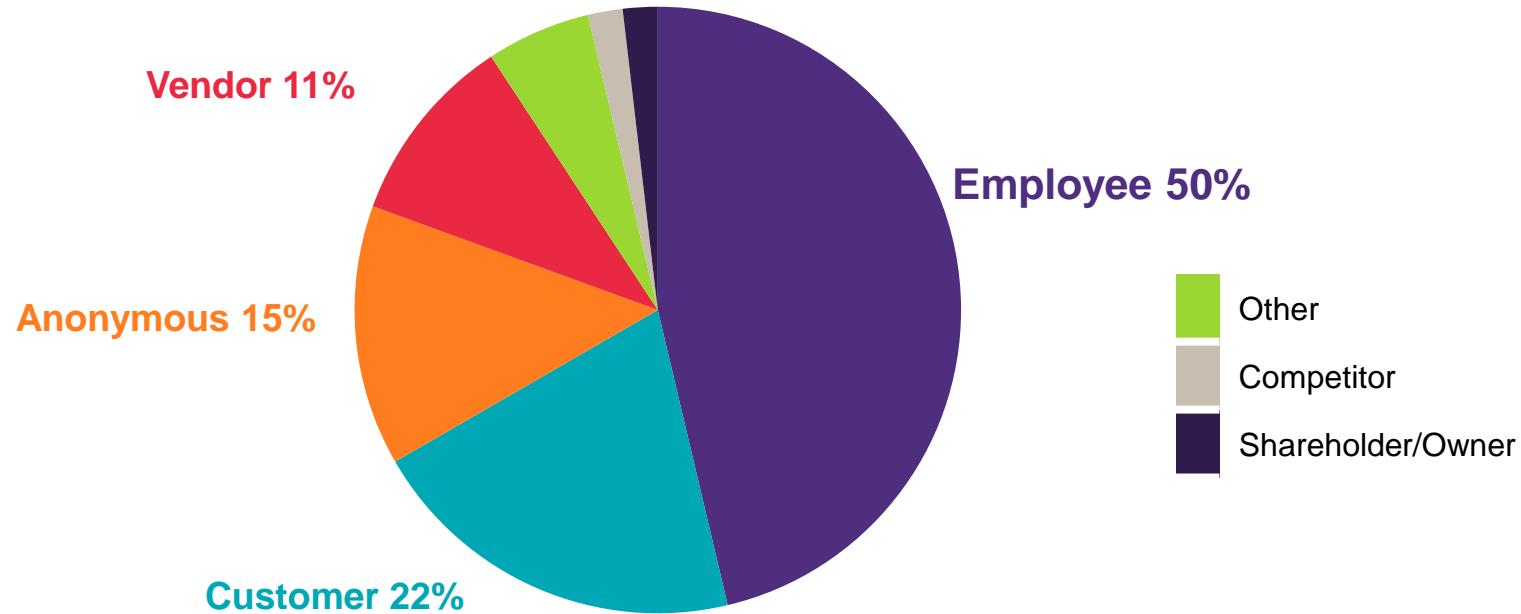
Because whistleblowers are the single most effective way for organizational leaders to learn about errors and wrongdoing that threaten the public interest

How is organizational wrongdoing detected?



Association of Certified Fraud Examiners Report to the Nation 2020

Who reports organizational wrongdoing?



Association of Certified Fraud Examiners Report to the Nation 2020

Whistleblowing: myths vs. reality

Research demonstrates that almost every commonly-held belief about whistleblowers is false

Belief

- Misfits or troublemakers, pursuing own interests
- Publicity seekers who rush straight to the media
- Present a threat to the organization
- Might become unpopular or at worst lose their job
- Anonymity invites abuses of the disclosure system
- They are protected by our laws

Reality

- High-performers who stumble across problems by doing their job properly, then act based on a sense of duty
- Only 1-2% ever approach the media, even when all else has failed
- Are striving to protect the organization from errors, incompetence, wrongdoing
- Most suffer reprisals: often devastating, career-ending, life-changing
- Abuse is rare: but the option of anonymity is an essential first line of protection
- In Canada few whistleblowers have ever been protected

Typical Consequences of Silencing Whistleblowers

- Senior leadership kept in the dark (but still responsible)
- Errors / wrongdoing continue & grow – unchecked
- Leaders become unwittingly complicit – commit themselves to positions that may later prove unethical / illegal / indefensible
- Negative impact on employee morale, engagement, trust in leadership → climate of fear → poor performance
- Eventually this becomes a major, visible problem for the organization

Long term consequences: dysfunctional operations, reputational damage, financial damage, loss of public trust...

International Best Practices

There is now a strong, international, evidence-based consensus regarding whistleblowing best practices

Adoption of National Whistleblower Protection Laws

1989 – The USA passes the first national whistleblower protection law

...

1998 – The UK becomes the second country to have such a law

...

2020 – 48 countries have such laws today

2021 – 62 countries (including all EU members) will have such laws

A fast-growing international trend

Some Best Practice Tools

- GAP's 20 Best Practices
 - The Government Accountability Project (Washington, DC) founded in 1977, remains the world's leading whistleblowing NGO
- European Union Directive on whistleblowing
 - A comprehensive set of requirements that all EU member countries must transpose into national laws, institutions and regulations by the end of 2021
- Evaluation Criteria for Protection of Whistleblowers
 - Developed by CFEWI, based on GAP and EU documents, plus Canada's unique experience

CFEWI Evaluation Criteria

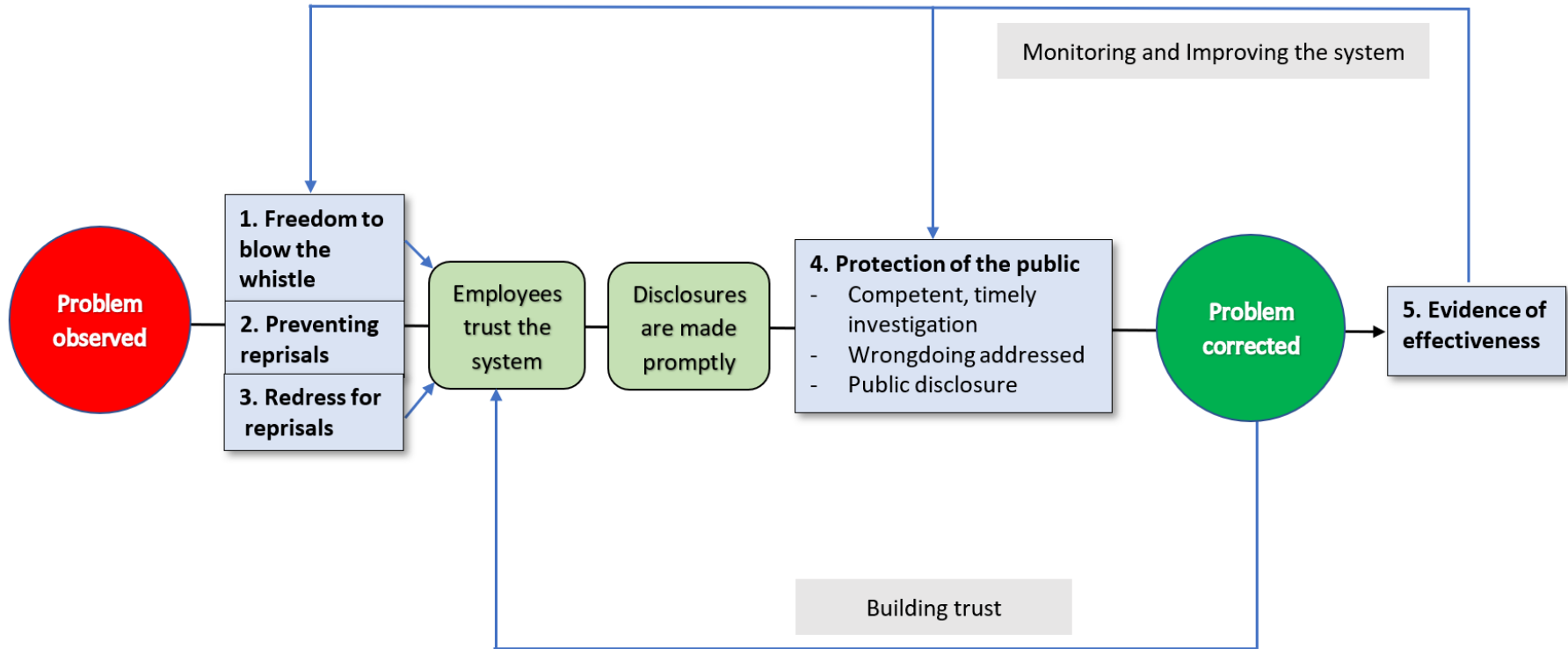
- Designed to be educational and accessible to non-specialists
- Incorporates a rating system

Categories

1. Freedom to blow the whistle
2. Preventing reprisals
3. Redress for reprisals
4. Protection of the public
5. Evidence of effectiveness

Employee trust drives the entire system

- Employee trust is a prerequisite for a flow of timely disclosures
- Trust is gained over time through positive user experiences and visible results



How do Canada and Alberta rate?

Canada is recognized internationally as having one of the worst national whistleblower laws of any modern democracy.

Regrettably, the provinces have generally followed the lead of the federal government.

Effectiveness of National Whistleblowing Laws

- A global project by GAP & IBA (International Bar Association)
- GAP's 20-point criteria system is used to analyze the effectiveness of each national law: what's on paper and how it works in practice
- Covers 48 nations + EU

Score (0-20)

Jurisdictions

18	Australia, EU countries (by 2021)
14-16	Ireland, New Zealand, USA ...
---	Most countries lie in an intermediate scoring band
0 – 1	Canada

Canada stands out as having one of the worst national whistleblowing laws (and implementation) of any modern democracy

Some weaknesses of Alberta's Whistleblowing Law

1. Freedom to blow the whistle

Limited scope of what can be reported, 'good faith' test of whistleblower's motive; lack of protection when disclosure is made to a supervisor or in the course of duties or not in writing...

2. Preventing reprisals

No duty to protect; no interim relief; no protection against spillover reprisals (e.g. against others) or unconventional reprisals (e.g. smears, blacklisting), no penalties for actual or attempted breaches of confidentiality...

3. Redress for reprisals

No reverse onus for proof of reprisals; limited avenues of appeal, Commissioner acts as gatekeeper to the Tribunal...

Some weaknesses of Alberta's Whistleblowing Law

4. Protection of the public

Corrective action not assured (no order powers); departmental Disclosure Officers lack power and independence; Commissioner lacks independence (due to appointment process); loopholes in Commissioner's ability to compel evidence; no means of public disclosure in emergencies or where investigation is refused or not progressing...

5. Evidence of effectiveness

No information regarding the fate of whistleblowers (e.g. satisfaction with the process, reprisals, career trajectory...)

No measurement of employees' awareness or trust in the process

Very little evidentiary basis for reviews e.g. by RS Committee

No requirement for evaluation against best practices

Conclusions

Alberta's whistleblower protection law needs to be significantly improved.

This process can be relatively straightforward and CFEWI stands ready to assist.

Some useful resources

- [CFE Whistleblowing Initiatives website](#)
- [A list of prominent Canadian whistleblowers](#)
- [The whistleblower's ordeal](#)
- [How wrongdoers operate](#)
- [What's wrong with the PSDPA \(federal law\)](#)
- [CFE Evaluation criteria for whistleblowing](#)
- [Don't Shoot the Messenger \(panel discussion\)](#)
- [Legal Protections for Whistleblowers: What Is Needed? \(panel discussion\)](#)
- [GAP's International Best Practices for Whistleblower Policies](#)
- [The EU Directive on Whistleblowing: Directive \(EU\) 2019/1937](#)