

ALBERTA SECURITIES COMMISSION INTRODUCES NEW WHISTLEBLOWER POLICY

Posted on December 6, 2018

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On November 19, 2018, the Alberta Securities Commission (“**ASC**”) announced the creation of its new whistleblower program (the “**Program**”) and the Office of the Whistleblower (“**OWB**”) through ASC Policy 15-602 - Whistleblower Program (the “**Policy**”) along with amendments to the Securities Act (Alberta) (the “**Act**”).

The Program is designed to encourage employees (broadly defined) or “whistleblowers” to report potential breaches of Alberta securities laws and to provide such individuals enhanced protections in doing so.

Unlike the program introduced by the Ontario Securities Commission’s program (see our previous bulletins [Carrying the Tune: OSC Whistleblower Program Coming Soon](#) and [Ontario's Whistleblower Regime: Civil Cause of Action for Reprisals Now Possible](#)), the ASC does not offer financial compensation to whistleblowers. However, where whistleblowers are themselves involved in securities misconduct, the Policy provides that, in certain circumstances, whistleblowers may be provided “credit for co-operation” in enforcement proceedings.

Mechanisms for Reporting

The Program creates a simple reporting process for whistleblowers, which under the Program can include employees, directors or contractors of a company. The whistleblower can report a tip by submitting a standard form directly through email, mail or in person, or through their lawyer. Whistleblowers can also call the OWB through a dedicated toll-free number to ask questions about the Program. The ASC encourages, but does not require, that tips be disclosed to an employer through internal processes before being submitted to the OWB. The OWB will review all tips, although not all tips will result in investigations. The Policy provides further detail of what information to include in a tip.

Whistleblower Protection

Anonymous tips will be accepted by the OWB; however, the Policy notes that tips submitted anonymously may limit the ability of the ASC to thoroughly investigate. Where whistleblowers choose to identify themselves, the

Program creates a number of protection mechanisms.

Under the Program, a whistleblower's identity is confidential and cannot be compelled from the ASC under the *Freedom of Information and Protection of Privacy Act* (Alberta). However, the identity of the whistleblower may not be confidential in certain circumstances, including where the ASC, or a court, determines that disclosure is necessary to show that a person has not contravened securities laws. Such disclosure will only be to those people that are deemed necessary in the circumstances.

The Program provides for protection from reprisal by an employer and extends to prohibit reprisals against family members of a whistleblower. The protection also applies to a reprisal where a person has expressed an intention to disclose wrongdoing to the ASC. Where a whistleblower is subject to a reprisal by their employer, the Act establishes a statutory right of action against the company and any other employee of the company that directed the reprisal. The Program also permits the ASC to take enforcement action and impose sanctions where an employer has taken retaliatory action against an employee or their family.

Whistleblowers will also be protected against contractual clauses or corporate policies that directly or indirectly attempt to prohibit the reporting of potential securities misconduct to the ASC, as new provisions in the Act render such clauses unenforceable. Employers should seek legal advice before attempting to implement such clauses or before implementation of internal whistleblower policies.

In addition, the Act prohibits obstructing an employee from acting as a whistleblower, seeking advice about acting as a whistleblower or assisting with investigations or proceedings of the ASC and also renders contractual provisions and policies that attempt to prohibit such actions by an employee as unenforceable.

Conclusion

The Program has been implemented to make reporting easier for whistleblowers, and new legislative provisions have been enacted to strengthen confidentiality, prohibit reprisals, and provide a civil right of action in the event a reprisal does occur.

The Program provides significant protections for whistleblowers; however, it remains to be seen whether the ASC's whistleblower program will be more effective than those of other jurisdictions (such as Ontario or the United States) where financial incentives for whistleblowers have been provided.

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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