

ONTARIO WHISTLEBLOWERS: OSC SOON OPEN FOR BUSINESS

Posted on May 12, 2016

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The new whistleblower office of the Ontario Securities Commission (OSC) is set to open this summer. As reported in prior bulletins, the OSC is prepared to make payments of up to \$5 million for whistleblowers who supply information which leads to successful prosecutions. This is likely to have implications for how Canadian listed companies deal with their employees.

In addition to soon having new rules and procedures for whistle blowing, the OSC also has a new Chair, Maureen Jensen. According to recent media reports, Jensen says that there have already been numerous calls from people asking the OSC for implementation details. It is unclear whether this means that there are a lot of complainants waiting for the financial awards to come, but that would not be at all surprising. Jensen has said that the program is expected to get final approval in June 2016.

The OSC's plans for the whistleblower office will likely be shaped by US experience over the past 5 years. In particular, the Securities and Exchange Commission (SEC) has, since 2011, operated a program from which the OSC regime is modeled.

As part of the release of its annual update on the program, the SEC's March 2016 report highlighted that more than \$30 million was paid during fiscal 2015 to a single overseas whistleblower. In the related press release, Sean McKessy, Chief of the SEC's Office of the Whistleblower, said that greater public awareness of the program and the large awards have helped the SEC to bring successful enforcement actions. The obvious message is that whistleblowing is a growth area from the perspective of regulators, so employees with potential complaints and the possibility of related awards are likely to be on the rise. This will likely lead to further risks and related management work for employers.

Employees operating in the Canadian markets will want to give close consideration to how these developments might impact their business. One consistent trend from the US has been a more concerted focus on codes of conduct and related internal audit and complaint procedures. Even though these processes cannot preclude employees or others from pursuing external complaints (since as a general rule, parties cannot "contract out of statutes"), there may be some benefit in terms of being able to understand and address issues prior to being subject to external scrutiny and sanction. In addition, there is likely to be at least some scope for variations with respect to penalties based on how the complainant/employee was dealt with prior to

relevant enforcement proceedings being undertaken. We anticipate having more detailed updates once relevant rules have been finalized and adopted.

by George Waggott

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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