

WHISTLEBLOWING ON EMPLOYERS

by SALLY RAMAGE®



The Public Disclosure Act 1998 protects individuals who make certain disclosures of information in the public interest. It protects them from victimisation.

It protects workers who are employees and also protects persons who

“ (a) work or worked for a person in circumstances in which –

- (i) he is or was introduced or supplied to do that work by a third person, and
- (ii) the term on which he is or was engaged to do the work are or were in practice substantially determined not by him but by the person for whom he works or worked by the third person or by both of them...”

This would not only apply to in-house accounts clerks in businesses but also to accounting technicians employed in accountants’ practices and to those who are self-employed accounting technicians.

There is compensation to be claimed if one were dismissed because of whistle-blowing. If a technician finds that a criminal offence has been committed or that a person has failed to comply with any legal obligation, and he or she reports it, it will be deemed to be a protected disclosure against which that technician has protection from dismissal. The disclosure qualifies for protection so long as “ the worker makes the disclosure in good faith, he reasonably believes that

the information disclosed and any allegations contained in it, are substantially true, and he does not make the disclosure for purposes of personal gain”, according to the Public Disclosure Act.

Under the Act , allegations may be raised through a variety of procedures some being, to the employer, to a prescribed person, to a legal advisor or to a Minister of the Crown.

One example of an obligation to whistle-blow is found in the Pensions Act 1995, which states in section 48 that “ (1) If the auditor or actuary of any occupational pension scheme has reasonable cause to believe that –

- (a) any duty relevant to the administration of the scheme imposed by any enactment or rule of law on the trustees or managers, the employer, any professional advisor or any prescribed person acting in connection with the scheme has not been or is not being complied with, and
- (b) the failure to comply is likely to be of material significance in the exercise by the Authority of any of their functions,

he must immediately give a written report of the matter to the Authority.”

So, in auditing, in a case where a sample check is done for deductions from members pay for pension contributions, if you were to discover that those contributions were not paid over in the statutory time limit, you would have a duty to whistle-blow so that the matter must be reported to OPRA. Audit firms must have procedures for technicians who discover such matters to have it actioned immediately and reported to OPRA.

There has been a recent case in the courts in 2002, RBG Resources PLC v Rastogi and others, in which it was decided that a senior employee owes a duty to “blow the whistle” on a major fraud

that was being perpetrated upon his employer by its directors. This duty to “blow the whistle” overrides his obligation of confidence.. The senior employee, the financial controller, was sued by the company RBG Resources PLC for breach of duty. The case came about as a result of 400 million US dollars having been siphoned off by the directors.

Auditors, too, owe a duty to report evidence of fraud and/or misconduct. The case of *SASEA Finance Ltd v KPMG* in 1999 made the decision that the nature and scope of the duty of auditors was such that they should blow the whistle on fraud discovered during the course of conducting an audit and that they should not wait until they have signed off the accounts but should blow the whistle immediately. *SASEA Finance Ltd* was a part of a group of companies which collapsed in 1992 in circumstances of a huge fraud carried out by one of its directors. *KPMG* was retained to prepare *SASEA*'s 1989 accounts and carried out this work in 1990, signing off the accounts in November 1990. The obvious reason why *KPMG* should have disclosed the fraud immediately was that the client might be spared further losses.

However, there is a down-side to whistle-blowing in that you as a technician could end up being sued for defamation. Defamation cases are extremely expensive to defend and there is no legal aid for the defence of a defamation case and if lost, a person could lose everything but the clothes on his back. If a defamation case against you is successful, there would be damages to be paid plus the cost of your own legal expenses plus the other side's expenses. Defamation is not covered by your professional indemnity insurance , so that is not a source of aid in a case such as this. Beware.

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