

Transparency International Canada: Report on Whistleblower Protections in Canada

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For
Transparency International Canada**

Table of Contents

I. Introduction	2
I.1 General Contact Information	2
I.2 Scope & Purpose	2
I.3 Structure	2
II. An International Framework for Whistleblower Protections.....	2
II.1 Overview.....	2
II.2 Organization of American States (OAS)	3
II.3 United Nations Office on Drugs and Crime	4
II.4 G20	5
II.5 Transparency International	6
III. Canada's International Commitments regarding Whistleblower Protections	7
III.1 Overview	7
IV. Whistleblower Protections at the Provincial and Federal Levels.....	8
IV.1 Federal Laws in Canada.....	8
IV.2 Public Servants Disclosure Protection Act	9
IV.3 Provincial Laws in Canada	11
IV.4 Private Sector	12
IV.5 Observations	12
V. Whistleblower Protections in Other Countries.....	13
V.1 The United States.....	13
V.2 Australia	14
V.3 The United Kingdom	14
VI. Recommendations & Concluding Remarks	14
Appendix A: Transparency International's International Principles for Whistleblower Legislation	16
Appendix B: The Model Laws of the Organization of American States	19
Appendix C: G20 Compendium of Best Practices and Guiding Principles for Legislation	26

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Re: Whistleblower Protections in Canada
Date: April 2015

I. Introduction

I.1 General Contact Information: This report was prepared by Daniel Kim, an intern for Transparency International Canada (TI-Canada), in fulfillment of his internship with TI-Canada, which was sponsored by the Donner Civic Leadership Fund Fellowship. This internship was supervised by Paul Lalonde (paul.lalonde@dentons.com), Chair of the TI-Canada Legal Committee, and Mariana Prado (mariana.prado@utoronto.ca), Chair of the TI-Canada Education Committee, between June and August 2014. The relevant contact for the Donner Civic Leadership Fund Fellowship, which was administered by the Career Development Office of the University of Toronto Faculty of Law, was Jordana Laporte (jordana.laporte@utoronto.ca).

I.2 Scope & Purpose: This report was prepared for the TI-Canada Legal Committee to assist it in better understanding the state of whistleblower protection in Canada as compared to other jurisdictions and the extent to which different whistleblower protection mechanisms could effectively support the battle against corruption.

I.3 Structure: Section II of this report is an overview of the international standards that exist for whistleblower protections. Section III of this report highlights the international commitments Canada has made with respect to whistleblower protections. Section IV of this report covers the whistleblower protecting legislation that is currently in place in Canada, at both the provincial and federal levels. Section V of this report discusses countries that have adopted robust whistleblower protections and compares these protections with those that are available in Canada. Section VI provides recommendations and concluding remarks.

II. An International Framework for Whistleblower Protections

II.1 Overview: There is no single international gold standard for whistleblower protections. This section identifies and reviews recommendations by three international organizations, the Organization of American States, the United Nations Office on Drugs and Crime, and the G20, and the framework adopted by Transparency International. All four are in agreement that guidelines and standards should provide a flexible framework for countries to use and adapt to

their legal systems.¹ Moreover, the conventions outlined in this report share the following common themes with regard to whistleblower protections:

- 1) Clear scope and definition of whistleblower protections;
- 2) safe disclosure procedures;
- 3) protection from reprisals;
- 4) adequate relief and remedies;
- 5) a comprehensive legislative framework;
- 6) effective enforcement and corrective action.

II.2 Organization of American States (OAS): The Inter-American Convention against Corruption (IACAC) adopted in 1996 was the first international legal instrument that attempted to create and enhance mechanisms to combat corruption. The IACAC attempted to detect, punish, and prevent corruption using a process of reciprocal evaluation among the states referred to as the Mechanism for the Follow-up on the Implementation of the Inter-American Convention against Corruption (MESICIC). The OAS Committee of Experts uses a reciprocal evaluation approach referred to as “Rounds of Review” to report on the progress made by the signatories.²

Initially, the IACAC itself did not outline any explicit whistleblower protecting provisions. However, in 2013, the OAS approved the Model Laws to facilitate and promote the reporting of acts of corruption and, more specifically, the protection of whistleblowers and witnesses at the domestic level.³ The Model Laws were created from a broad participatory process led by the OAS Department of Legal Cooperation. This instrument is part of the OAS commitment to provide efficient and effective tools to support its signatories in the task of implementing the IACAC at the national level.

The Model Laws on whistleblower protections consists of fifty-six articles organized in nine chapters. The first four chapters describe who to protect and how to protect whistleblowers. The last five chapters describe logistical or supplementary mechanisms that should be in place for a robust set of whistleblower protecting laws. The nine chapters are as follows:

Chapter 1: General Considerations (highlights the relevant definitions as well as the proposed scope of whistleblower protecting laws).

Chapter 2: Facilitation and Incentives for Reporting Acts of Corruption (covers the proposed obligations of those reporting and those who are being reported to).

Chapter 3: Protection for Whistleblowers (reviews the different forms of protection that should be in place for whistleblowers).

¹ Transparency International, “International Principles for Whistleblower Legislation” (2013), online: Transparency International, <http://files.transparency.org/content/download/696/2991/file/2013_WhistleblowerPrinciples_EN.pdf>.

² Organization of American States Secretariat for Legal Affairs, *What is the MESICIC?*, online: Department of Legal Cooperation <http://www.oas.org/juridico/english/mesicic_intro_en.htm>.

³ Organization of American States Secretariat for Legal Affairs, *Model Laws*, online: Department of Legal Cooperation <http://www.oas.org/juridico/PDFs/model_law_reporting.pdf>.

Chapter 4: Protection for Witnesses of Acts of Corruption (draws a distinction between whistleblowers and those who have witnessed acts of corruption; moreover, this chapter reviews the types of protections that should be in place for the latter).

Chapter 5: Requesting and Granting Additional Protective Measures (covers the procedures and assessments for additional protective measures).

Chapter 6: Challenges (describes the basis on which interested parties should be able to challenge decisions by competent authorities).

Chapter 7: Liability for Nonperformance Duties (defines nonperformance of duties as well as the corresponding penalties that should be in place).

Chapter 8: Mechanisms for International Cooperation (covers the scope of international cooperation).

Chapter 9: Bases for the Creation and Operation of a Program to Protect Whistleblowers and Witnesses of Acts of Corruption (mandates that a program as well as budgetary resources should be put in place).

II.3 United Nations Office on Drugs and Crime: The United Nations Office on Drugs and Crime serves as the secretariat for the United Nations Convention against Corruption (UNCAC).⁴ Members of the Ad Hoc Committee for the Negotiation of the Convention against Corruption negotiated this multilateral convention between 2002 and 2003 and the Convention was adopted by the General Assembly in 2003.⁵ It comprises seventy-one articles, divided into eight chapters. Whistleblowing is covered in Chapter III (Criminalization and Law Enforcement), Article 33 of which reads as follows:

“Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.”⁶

Similar to the Model Laws developed by the OAS, the UNCAC provides for mutual assistance in the prevention of corruption. The convention applies to both public and private sectors.

The convention uses two channels to spur implementation. The first is an online self-assessment checklist that is not publicly available.⁷ The second is the UNCAC Implementation Review Group (started in July 2010), which is a peer review system that gives two signatory countries

⁴ United Nations Office on Drugs and Crime, *United Nations Convention against Corruption* (2004), online: United Nations Office on Drugs and Crime-Vienna, <http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf>.

⁵ United Nations Office on Drugs and Crime, *Background of the United Nations Convention against Corruption*, online: United Nations office on Drugs and Crime <<http://www.unodc.org/unodc/en/treaties/CAC/index.html>>.

⁶ United Nations Office on Drugs and Crime, *supra* note 4 at 26.

⁷ Transparency International, “Civil Society Organization Report” *UNCAC Implementation Review* (2013), online: Transparency International Canada Inc., <http://www.transparency.ca/9-Files/2013-New/20131219-UNCAC_Review_TI-Canada.pdf>.

the task of evaluating a randomly selected country within a six-month period. These two countries use the self-assessment checklist to provide feedback for the selected country on a particular set of chapters in the convention. Visits to the selected country are optional. Full reports from the assessments are not made public. However, an executive summary of the reports is made available. The implementation review group selects a particular set of chapters for review every five years.⁸

Canada was last reviewed in 2013. TI-Canada produced a report intended to contribute to the UNCAC implementation review process.⁹ In this report, TI-Canada indicated that articles 32 and 33 (witness and whistleblower protections) had only been implemented partially and enforcement was poor.¹⁰ TI-Canada made the following recommendation:

“Canada should ensure that there is adequate statutory protection for whistleblowers within both the public and private sectors. This requires the federal government to amend the Criminal Code and all levels of government to introduce more robust legislative protection for whistleblowers in the private sector. Similarly, all provinces and territories should have whistleblower protection statutes for both public and private sector employees. Following the Supreme Court of Canada’s ruling in *Merk v International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, LOCAL 771*, 2005 SCC 70, 260 DLR (4th) 385, legislation should ensure that whistleblowing employees are protected whether they choose to take their information “up the ladder” or outside the organization, directly to law enforcement officials.”¹¹

II.4 G20: At the 2013 Saint Petersburg Summit, the G20 leaders renewed their commitment to whistleblower protection laws, which was originally made in 2010. This commitment was operationalized when the G20 Anti-Corruption Working Group delegated to the OECD the task of preparing a compendium of best practices in an effort to keep the G20 countries accountable for implementing the following commitment:

“The G20 countries that do not already have whistleblower protections will enact and implement whistleblower protection rules... and also take specific actions suitable to the jurisdiction, to ensure that those reporting on corruption, including journalists, can exercise their function without fear of any harassment or threat or of private or government legal action for reporting in good faith.”¹²

⁸ United Nations Office on Drugs and Crime, *Resolutions and Decisions* (2009), online: United Nations Office on Drugs and Crime, <<https://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session3-resolutions.html>>.

⁹ Transparency International, *supra* note 7.

¹⁰ *Ibid* at iv.

¹¹ *Ibid* at v.

¹² G20, *G20 Anti-Corruption Action Plan 2013-2014*, online: <https://www.g20.org/sites/default/files/g20_resources/library/g20-anti-corruption-action-plan-2013-14.pdf>.

The original goal was for implementation to be complete by 2012.¹³ In May 2013, the OECD provided a framework for G20 countries to follow in the G20 Compendium of Best Practices and Guiding Principles for Legislation on the Protection of Whistleblowers (“The Framework”).¹⁴ In its framework, the OECD acknowledged that, the G20 countries have taken different approaches to the protection of whistleblowers in their respective jurisdictions and that there is no uniform method to establish whistleblower protection.¹⁵ Transparency International has called on G20 countries to pass and implement loophole-free whistleblowing legislation for all public and private sector employees by the end of 2014.

The Framework provides a reference for countries intending to establish, modify or complement whistleblower protection measures. The Framework does not claim to be a benchmark but rather a guide consisting of the following six principles:

- (1) Clear legislation and an effective institutional framework are in place to protect from discriminatory or disciplinary action employees who disclose in good faith and on reasonable grounds certain suspected acts of wrongdoing or corruption to competent authorities.
- (2) The legislation provides a clear definition of the scope of protected disclosures and of the persons afforded protection under the law.
- (3) The legislation ensures that the protection afforded to whistleblowers is robust and comprehensive.
- (4) The legislation clearly defines the procedures and prescribed channels for facilitating the reporting of suspected acts of corruption, and encourages the use of protective and easily accessible whistleblowing channels.
- (5) The legislation ensures that effective protection mechanisms are in place, including by entrusting a specific body that is accountable and empowered with the responsibility of receiving and investigating complaints of retaliation and/or improper investigation, and by providing for a full range of remedies.
- (6) Implementation of whistleblower protection legislation is supported by awareness-raising, communication, training and periodic evaluation of the effectiveness of the framework of protection.”¹⁶

II.5 Transparency International: Following its resolution on the protection of whistleblowers in 2009, Transparency International published in 2013 International Principles for Whistleblower Protection (The Principles).¹⁷ The Principles define whistleblowing as:

¹³ Transparency International, “Whistleblower Legislation” *G20 Position Paper* (2014), online: Transparency International <<http://www.transparency.ca/9-Files/2014-New/201405-TI-G20PositionPapers-WhistleblowerLegislation.pdf>>.

¹⁴ OECD, *Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation* (2013), online: OECD <<http://www.oecd.org/g20/topics/anti-corruption/48972967.pdf>>.

¹⁵ *Ibid* at 30.

¹⁶ *Ibid.*

¹⁷ Transparency International, *supra* note 1.

“The disclosure of information related to corrupt, illegal, fraudulent or hazardous activities being committed in or by public or private sector organizations (including perceived or potential wrongdoing) – which are of concern to or threaten the public interest – to individuals or entities believed to be able to effect action.”¹⁸

In addition, the Principles affirmed the need for whistleblower protection as follows:

“Protected individuals and disclosure – all employees and workers in the public and private sectors need: (1) Accessible and reliable channels to report wrongdoing, (2) Robust protection from all forms of retaliation, and (3) Mechanisms for disclosures that promote reform that correct legislative, policy or procedural inadequacies, and prevent future wrongdoing.”¹⁹

The Principles endorsed the idea that the right of citizens to blow the whistle is a natural extension of freedom of expression and is intertwined with the idea of transparency. Transparency International acknowledged that these Principles should be adapted to each country’s political, cultural and social context.

The Principles are divided into twenty-eight sections that are further structured into six chapters, as follows:

Chapter 1: Scope of the Application - reviews relevant definitions.

Chapter 2: Protection - covers various forms of protection such as confidentiality, liability, and anonymity.

Chapter 3: Disclosure Procedures - describes internal and external disclosure channels that should be in place.

Chapter 4: Relief and Participation - highlights remedies and rewards.

Chapter 5: Legislative Structure – outlines the type of legislation needed and the publication of relevant whistleblower data.

Chapter 6: Enforcement - covers the type of authority that should be in place as well as the scope of power required to penalize offenders.²⁰

The Principles are important consolidation of the essential elements for effective whistleblower protections. A detailed review of the Principles can be found in Appendix A.

¹⁸ *Ibid* at 4.

¹⁹ *Ibid*.

²⁰ *Ibid*.

III. Canada's International Commitments regarding Whistleblower Protections

III.1 Overview: The following table summarizes Canada's international commitments to the organizations and the conventions outlined above.

Organization	Year	International Commitment
OAS	1999	<p>Canada becomes a signatory to the Inter-American Convention against Corruption, which was ratified in 2000.²¹</p> <ul style="list-style-type: none"> The Organization of American States would later create MESICIC (the mechanism for follow-up on the implementation of the Inter-American Convention against Corruption).²²
	2013	OAS agrees on a set of Model Laws to facilitate and promote the reporting of acts of corruption as well as the protection of whistleblowers and witnesses. ²³
UNCAC	2004	<p>Canada becomes a signatory nation in the United Nations Convention against Corruption (UNCAC), which is ratified in 2007.²⁴</p> <ul style="list-style-type: none"> Section III of the convention (Criminalization and Law Enforcement) and more specifically, Article 33 laid the initial groundwork for subsequent whistleblower protections in the international community.²⁵ Canada was selected by the UNCAC Implementation Review Group to be peer reviewed by Iraq and Switzerland. A draft of this report was provided to the Government of Canada and the relevant Minister will decide if Canada will publish the full report.²⁶
G20	2010	At the 2010 G20 Seoul Summit, an Anti-Corruption Action Plan was adopted to combat corruption and implement whistleblower protection legislation by the end of 2012. ²⁷
	2013	At the G20 Summit in Saint Petersburg, G20 leaders confirmed their commitment to supporting the best practices in whistleblowing legislation. ²⁸

²¹ OAS, *supra* note 2.

²² *Ibid.*

²³ OAS, *supra* note 3.

²⁴ United Nations Office on Drugs and Crime, *supra* note 4..

²⁵ *Ibid.*

²⁶ Transparency International, *supra* note 7.

²⁷ G20, *supra* note 12.

²⁸ *Ibid* and in 2014, Transparency International released a G20 Position Paper urging G20 countries to uphold their commitment from the following summits: Saint Petersburg 2013, Seoul 2010, and Toronto 2010.

IV. Whistleblower Protections at the Provincial and Federal Levels

IV.1 Federal Laws in Canada: Since September 2004, subsection 425.1 of the Canadian Criminal Code has offered protection for whistleblowers in all jurisdictions in the private and public sectors, as follows:

Section 425.1

THREATS AND RETALIATION AGAINST EMPLOYEES

425.1 (1) No employer or person acting on behalf of an employer or in a position of authority in respect of an employee of the employer shall take a disciplinary measure against, demote, terminate or otherwise adversely affect the employment of such an employee, or threaten to do so,

- (a) with the intent to compel the employee to abstain from providing information to a person whose duties include the enforcement of federal or provincial law, respecting an offence that the employee believes has been or is being committed contrary to this or any other federal or provincial Act or regulation by the employer or an officer or employee of the employer or, if the employer is a corporation, by one or more of its directors; or
- (b) with the intent to retaliate against the employee because the employee has provided information referred to in paragraph (a) to a person whose duties include the enforcement of federal or provincial law.

PUNISHMENT

- (2) Any one who contravenes subsection (1) is guilty of
- (a) an indictable offence and liable to imprisonment for a term not exceeding five years; or
 - (b) an offence punishable on summary conviction.²⁹

Section 425.1 is a hybrid offence and if the Crown proceeds by indictment, the maximum penalty is five years.

This section aims to protect employees from employers attempting to take disciplinary action against an employee with the intent to convince the employee against providing information to a different individual whose duty encompasses enforcement of federal or provincial law.

IV.2 Public Servants Disclosure Protection Act: Since April 2007, Canada has also provided protection to whistleblowers in the federal public sector through the Public Servants Disclosure Protection Act (“PSDPA”).³⁰ PSDPA applies only to public sector employees. The PSDPA’s objective is to encourage public servants to come forward with information if they suspect wrongdoing in the workplace and to protect them from reprisal when they do so. The Act

²⁹ *Criminal Code*, RSC 2014, s. 425.1.

³⁰ *Public Servants Disclosure Protection Act*, SC 2005, c. 46.

requires federal public employers to create a code of conduct that provides protection for whistleblowers.

The PSDPA created two new agencies: (1) the Office of the Public Sector Integrity Commissioner and (2) the Public Servants Disclosure Protection Tribunal.³¹ Sections 12 and 13 of the PSDPA allow public sector employees to make disclosures to the Public Sector Integrity Commission as well as any supervisor in the organization.

In comparison to the Canadian Criminal Code, the whistleblowing legislation in the PSDPA is broader in the scope of wrongdoing that may be disclosed as well as the individual to whom the employee may make the disclosure.³² The disclosure regime provided by the PSDPA is for “anyone who has information that a public servant may have committed a wrongdoing within the meaning of section 8 of the Act.”³³

The individual must show that a wrongdoing within the meaning of section 8 of the Act has been committed:

WRONGDOINGS

8. This Act applies in respect of the following wrongdoings in or relating to the public sector:

- (a) A contravention of any Act of Parliament or of the legislature of a province, or of any regulations made under any such Act, other than a contravention of section 19 of this Act;
- (b) a misuse of public funds or a public asset;
- (c) a gross mismanagement in the public sector;
- (d) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of the duties or functions of a public servant;
- (e) a serious breach of a code of conduct established under section 5 or 6; and
- (f) knowingly directing or counseling a person to commit a wrongdoing set out in any of paragraphs (a) to (e).”³⁴

The Office of the Public Sector Integrity Commissioner has been the subject of criticism. Among other things, observers have assented that perpetrators can elude consequences under the system by seeking employment outside of the public sector. The Integrity Commissioner does not disclose identities of wrongdoers and, therefore, prospective employers cannot become aware of allegations against them of past misdeeds.³⁵

³¹ *Ibid.*

³² Cohen-Lyons Joseph. “Whistleblowing In The Public Sector: A Balance of Rights and Interests”, *Public Sector Digest*, (2012), 17.

³³ *Agnaou v. Canada (Attorney General)*, 2014 FC 86 at para. 21.

³⁴ *Public Servants Disclosure Protection Act*, *supra* note 30.

³⁵ Hutton, *supra* note 31.

One source states that within a seven-year period, the Public Sector Integrity Commissioner had sent only six out of 140 cases regarding reprisals to the Public Servant Disclosure Protection Tribunal (“the Tribunal”).³⁶ In these six accepted cases, the Public Sector Integrity Commissioner had declined to ask the Tribunal for disciplinary actions against the employers despite identifying specific acts of reprisal.³⁷ In the three years of Christiane Ouimet’s tenure as the Public Sector Integrity Commissioner from 2007 to 2010, no wrongdoing or reprisals were found among more than 200 complaints filed.³⁸ Joe Friday was appointed Public Sector Integrity Commissioner of Canada on March 27, 2015.

The table below compares data from the tribunal system in the United Kingdom and Canada.³⁹

	United Kingdom	Canada
Population Covered	30 Million	0.4 Million
Tribunal Years in Operation	14 years	6 years
Whistleblower Cases Referred to the Tribunal	15 000 cases	6 cases
Successful Remedies	600 cases	0 cases
Success Rate	27%	Not Applicable

These results may be driven by the fact that the burden of proof in Canada is on the employee, not the employer. In Canada, the whistleblower carries the burden of proof in establishing that the action taken against him or her was reprisal. In contrast, the United States and the United Kingdom place the onus on the employer to prove that their actions were not reprisals.⁴⁰ In the United Kingdom, 27% of reprisal claims were successful between 2000 and 2012.⁴¹ This suggests that reverse onus may be a more effective way of protecting employees from reprisals.

IV.3 Provincial Laws in Canada: Only six out of thirteen provinces and territories have legislation for the protection of public sector whistleblowers:

1. In 2006, Ontario adopted the Public Service of Ontario Act.⁴²
 - This Act “prohibits employers from reprising against a public servant who has made a protected disclosure or has, in good faith, cooperated in an investigation into a disclosure” and is “similar in scope and application to the PSDPA.”⁴³
2. In 2007, Manitoba adopted the Public Interest Disclosure Act.⁴⁴

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ Cohen-Lyons, *supra* note 32.

⁴⁰ Hutton, *supra* note 31.

⁴¹ *Ibid.*

⁴² *Public Service of Ontario Act*, RSO 2006.

⁴³ Yosie Saint-Cyr, *The State of Whistleblowing in Canada* (6 June 2013), online: Slaw Canada’s Online Legal Magazine <<http://www.slaw.ca/2013/06/06/the-state-of-whistleblowing-in-canada/>>.

- This act “offered a mechanism for the disclosure of wrongdoings in public service and includes provisions to protect whistleblowers”⁴⁵
- 3. In 2010, Nova Scotia adopted the Public Interest Disclosure of Wrongdoing Act.⁴⁶
- 4. In 2011, Saskatchewan adopted the Public Interest Disclosure Act.⁴⁷
- 5. In 2012, New Brunswick adopted the Public Interest Disclosure Act.⁴⁸
- 6. In 2012, Alberta adopted the Public Interest Disclosure Act.⁴⁹

A detailed comparative research on the relative effectiveness of these laws, some of which are very recent, is beyond the scope of this report. It seems that no such study has been conducted thus far, making it a potentially interesting topic for future research by TI-Canada or other organizations.

IV.4 Private Sector: The Federal Public Sector Integrity Commissioner cannot pursue investigations in the private sector and lacks appropriate powers to investigate reprisals. Saskatchewan and New Brunswick are the only provinces that have private sector protection for whistleblowers and these forms of protection fall under the Labour Standards Act and the Employment Standards Act, respectively.⁵⁰ The Criminal Code in Section 425.1 prohibits reprisals against whistleblowers, in both the private and public sector, who report directly to a law enforcement official. This protection was not initially thought to extend to those who blow the whistle internally.⁵¹ However, in *Merk v International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 77*, the Supreme Court of Canada extended this whistleblower protection provision to those who report wrongdoing internally.⁵²

IV.5 Observations: In comparing the international framework set out by the relevant international organizations to the current whistleblower protecting legislation in Canada, we note that Canada’s whistleblower protecting legislation is incomplete. We note that while Section 425.1 of the Canadian Criminal Code does explicitly provide for whistleblower protections by prohibiting retaliation, it does not provide all the features whistleblower protections advocated by organizations such as Transparency International. This was explored in further detail in TI-Canada’s contribution to the UNCAC review process, where TI-Canada emphasized, among other things, that:

- 1) The federal law fails to make the public interest a central consideration in whistleblower protections;

⁴⁴ *Public Interest Disclosure Act*, RSM 2007.

⁴⁵ Yosie Saint-Cyr, *supra* note 45.

⁴⁶ *Public Interest Disclosure of Wrongdoing Act*, RSNS 2010.

⁴⁷ *Public Interest Disclosure Act*, RSS 2011.

⁴⁸ *Public Interest Disclosure Act*, RSNB 2012.

⁴⁹ *Public Interest Disclosure Act*, RSA 2012.

⁵⁰ Yosie Saint-Cyr, *supra* note 45.

⁵¹ *Ibid.*

⁵² *Merk v International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, LOCAL 771*, 2005 SCC 70, 260 DLR (4th) 385. There have only been two cases since 2004 (the year that this provision was in effect).

- 2) Whistleblowers often have to bear their own legal costs, while accused wrongdoers will typically have access to the financial and legal resources of the organization;
- 3) The federal Public Sector Integrity Commissioner is prohibited from pursuing investigations that require investigating the private sector;
- 4) The federal Public Sector Integrity Commissioner lacks appropriate powers to investigate reprisals against whistleblowers;
- 5) Protection of whistleblowers in the private sector is limited, as the Criminal Code's theoretical deterrence of reprisals is not the same as effective protection for whistleblowers. Even assuming that this section of the Criminal Code was rigorously enforced, punishing those who commit reprisals may not redress the harm that whistleblowers suffer.⁵³

Moreover, the historical enforcement record of the Public Sector Integrity Commissioner appears to be undermining fair, transparent and rigorous whistleblower protections.

Finally, the following provinces and territories have no legislative protection for provincial public servants:

- 1) British Columbia,
- 2) Prince Edward Island,
- 3) Northwest Territories,
- 4) Yukon, Newfoundland and Labrador,
- 5) Nunavut, and
- 6) Quebec.

V. Whistleblower Protections in Other Countries

V.1 The United States: The US has a number of whistleblower protection laws at the federal and state level such as the Whistleblower Protection Enhancement Act⁵⁴ and the Dodd-Frank Act.⁵⁵ These two acts are commended for effectively targeting the private sector.⁵⁶ A single comprehensive whistleblower protection act has not been enacted due to constitutional limitations at play as well as the 'at will' principles of US employment law that give employers the power to terminate employees without reason.

This is not to say that the US has not found effective means of battling corruption. The US has been a leading proponent of *qui tam* legislation, which has been effective in battling fraud by government contractors. *Qui tam* rights, under the False Claims Act, allow private citizens to sue contractors on behalf of the United States Government and they can also receive a portion of the

⁵³ Transparency International, *supra* note 7 at 9.

⁵⁴ *Whistleblower Protection Enhancement Act of 2012*, c 23, s. 743.

⁵⁵ *Dodd-Frank Wall Street Reform and Consumer Protection Act*, H.R. 4173., 2010.

⁵⁶ David Hutton, "Shooting the Messenger: The Need for Effective Whistleblower Protection in Alberta" (2013), online: Parkland Institute, <http://parklandinstitute.ca/research/summary/shooting_the_messenger>.

penalties.⁵⁷ Since it was amended in 1986 and 2006, this Act has led to the recovery of \$35 billion.⁵⁸ Further empirical research is necessary to determine whether this type of legislation is effective in providing protection to whistleblowers. On the one hand, it gives whistleblowers power to take initiative and prosecute employers while also providing sufficient monetary incentive to lawyers who bring the claims. On the other hand, critics note that monetary compensation should not be the primary incentive driving whistleblowing.

V.2 Australia: All Australian states have whistleblower protection laws in the public sector. Australia has also been commended for its use of extensive research to identify best practices as well as subsequent implementation.⁵⁹ For example, the Australian Research Council funded a large comparative legal research project, from 2005 to 2008, on public interest whistleblowing in Australia. This study involved six universities, numerous international collaborators and fourteen partner organizations. The research concluded that there are areas in need of improvement in all jurisdictions and most public agencies. The priority areas of improvement ranged from a dedicated oversight agency for employee-reported wrongdoing to improved consultations for employees on the range of avenues available for reporting wrongdoing.⁶⁰

V.3 The United Kingdom: Considered one of the best jurisdictions for whistleblower protection, the United Kingdom has adopted a single disclosure regime for both the private and public sector.⁶¹ In 1996, Section 230(3) of the Employment Rights Act was groundbreaking because it protected whistleblowers in the public sector for functions that were outsourced to private contractors. Continuing its leadership in whistleblower protection, in 1998, the United Kingdom introduced the right for whistleblowers to seek reprisal remedies before an employment tribunal.⁶² This right was commended for its coverage of both private and public sectors. During this time, approximately 27% of anti-retaliation cases prevailed and while this number may seem low, it is a much higher figure compared to other jurisdictions.⁶³ In addition, the United Kingdom allows for wider public disclosure (e.g. the media) if internal company disclosure mechanisms are nonexistent.⁶⁴

VI. Recommendations & Concluding Remarks

The Transparency International Secretariat called for the implementation of whistleblower protecting legislation in the fight against corruption and has set out what it believes to be essential elements of effective whistleblower protections.⁶⁵ The following is a list of proposals

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ A.J. Brown, *Whistle-blowing in the Australian Public Sector: Enhancing the theory and Practice of Internal Witness Management in Public Sector Organisations*, (Australia: ANU E-Press, 2008).

⁶¹ Hutton, *supra* note 58.

⁶² *Employment Rights Act*, 1996 (UK), c 18.

⁶³ Hutton, *supra* note 31.

⁶⁴ Hutton, *supra* note 58.

⁶⁵ Transparency International, *supra* note 7.

to address the noted deficiencies in Canada's whistleblower protecting legislation. These proposals could be considered by TI-Canada as the basis for future policy recommendations and initiatives.

- 1. Reverse onus** - As it relates to reprisals in the public sector, the burden of proof should be on the employer to prove that their actions were not reprisals.
- 2. Single disclosure regime** - The advantages and feasibility of a single disclosure regime for both private and public sectors should be carefully considered.
- 3. Single competent authority** - Both private and public sector whistleblowers should have the right to seek remedies before a competent authority.
- 4. Monetary rewards** - The advantages and feasibility of *Qui Tam* legislation, to allow citizens to sue contractors on behalf of the government, should be carefully considered.
- 5. Legislative consistency** - All remaining provinces should enact whistleblower protection legislation for provincial public servants.
- 6. Increased transparency** – Greater transparency and access to specific case information should be adopted in relation to the federal Integrity Commissioner process and to whistleblower complaints processes of the provinces.

Appendix A: Transparency International's International Principles for Whistleblower Legislation

Chapter	Section	Additional Comments/Details
(1) Scope of the Application	(1) Broad definition of whistleblowing	The guideline provides a broad definition of whistleblowing as the disclosure of wrongdoing, including but not limited to corruption; criminal offences; breaches of legal obligation; miscarriages of justice; specific dangers to public health, safety or the environment; abuse of authority; unauthorized use of public funds or property; gross waste or mismanagement; conflict of interest; and acts to cover up any of these.
	(2) Broad definition of whistleblower	The guideline states that this definition should include any public or private sector employee or worker who discloses information under the definition of whistleblowing and is potentially at risk for retribution.
	(3) Threshold for whistleblower protection	The guideline states that protection should be granted to those who made disclosures based on a reasonable belief that the information was true.
(2) Protection	(4) Protection from retribution	The guideline defines retribution as all forms of retaliation, disadvantage or discrimination in relation to the whistleblowing. Types of harm can include dismissal, job sanctions, punitive transfers and threats of the above forms of retribution.
	(5) Preservation of confidentiality	The guideline states that the disclosure of the whistleblower's identity is prohibited without explicit consent.
	(6) Burden of proof on the employer	The guideline states that in order to avoid sanctions or penalties, an employer must clearly and convincingly demonstrate that any measures taken against an employee were in no sense connected with, or motivated by, a whistleblower's disclosure.
	(7) Knowingly false disclosures not protected	The guideline states that making a disclosure demonstrated to be knowingly false is subject to possible employment sanctions and civil liabilities.
	(8) Waiver of liability	The guideline states that disclosures made within the parameters of whistleblower legislation shall be immune from disciplinary proceedings and liability under criminal, civil and administrative laws, including those related to copyright and data protection, libel, and slander.

	(9) Right to refuse participation in wrongdoing	The guideline states that employees and workers have the right to decline to participate in corrupt, illegal or fraudulent acts. They are legally protected from any form of retribution or discrimination if they exercise this right.
	(10) Preservation of rights	The guideline states that any private agreement is void if it impedes whistleblower protections and rights.
	(11) Anonymity	The guideline states that full protection shall be granted to whistleblowers who have disclosed information anonymously and who subsequently have been identified without their explicit consent.
	(12) Personal protection	The guideline states that whistleblowers whose safety is at risk should be provided personal protection with adequate resources.
(3) Disclosure Procedures	(13) Reporting within the workplace	The guideline states that regulations should be highly visible and understandable; in addition, these subsequent investigations should be timely, independent, and thorough. Transparent, enforceable and timely mechanisms to follow up on retaliation complaints must be in place.
	(14) Reporting to regulators and authorities	The guideline states that if reporting at the workplace does not seem feasible, individuals should have the option to make disclosures to regulatory agencies independent of their organization. Alternative channels should include law enforcement and specialized agencies.
	(15) Reporting to external parties	The guideline states that in cases where there is urgent public or personal harm or consistently unaddressed wrongdoing that impacts public interest, whistleblowers should be protected for disclosures made to external parties (e.g. Media, civil society organizations, legal associations, trade unions or professional organizations).
	(16) Disclosure and advice tools	The guideline states that there should be a range of accessible disclosure channels including advice lines, hotlines, online portals, and compliance offices.
	(17) National security/official or military secrets	The guideline states that special procedures and safeguards for successful internal reporting that take into account the classified nature of the information may be created in order to prevent unnecessary external exposure. These disclosures should be made to internal bodies, autonomous oversight bodies that are institutionally separate from the security sector or to authorities that have

		corresponding security clearance. External disclosure is permitted in demonstrable cases of urgent matters in relation to the public interest, if internal disclosure could lead to personal harm and if the disclosure is unlikely to harm national security.
(4) Relief and Participation	(18) Full range of remedies	The guideline states that remedies must include direct, indirect, and future consequences of reprisals in order to make the individual whole. This may include relief, attorney fees, transfers and compensation for pain.
	(19) Fair hearing (genuine “day in court”)	The guideline states that individuals who believe their rights have been violated are entitled to a full and impartial hearing with a full right of appeal.
	(20) Whistleblower participation	The guideline states that individuals should have a meaningful opportunity to provide input to subsequent investigations.
	(21) Reward systems	The guideline states that, if appropriate within the nation’s context, whistleblowers may receive a portion of funds recovered or fines as a result of their participation.
(5) Legislative Structure	(22) Dedicated legislation	The guideline states that in an effort to guarantee clarity and application of the whistleblower framework, stand-alone legislation is preferable to any alternative.
	(23) Publication of data	The guideline states that the whistleblower complaint authority should publish data and information regarding the effectiveness of whistleblower laws and frameworks. This information should include the number of cases filed, the outcomes of the filed cases, compensation and recoveries, prevalence in the public and private sectors and finally the time elapsed to process cases.
	(24) Involvement of multiple actors	The guideline states that periodic review of related regulations should involve employee organizations, employee associations, civil society organizations and academia.
	(25) Whistleblower training	The guideline states that robust training should be provided to public sector agencies as well as public traded corporations.
(6) Enforcement	(26) Whistleblower complaints authority	The guideline states that an independent agency should receive and follow up complaints of reprisals and faulty investigations. This agency may recommend and forward relevant information to the relevant authorities while providing advice and

		support.
(27) Penalties for retaliation and interference		The guideline states that any act of reprisal for a whistleblower's disclosure shall be considered misconduct, and perpetrators of retaliation shall be subject to employment sanctions and civil penalties.
(28) Follow-up and reforms		The guideline states that whistleblower disclosures should be referred to the appropriate regulatory agency for a timely follow-up or reform.

Appendix B: The Model Laws of the Organization of American States

Chapter	Article	Additional details/comments
(1) General Considerations	Art. 1: Purpose of the law	This article describes the purpose of this text, which is to establish norms, procedures, and mechanisms to facilitate and encourage the reporting of acts of corruption that are liable for administrative or criminal investigation and to protect public officials and any person who, in good faith, reports or witnesses these acts.
	Art. 2: Definitions	This article reviews various definitions that are relevant to whistleblower protecting legislation such as “good faith whistleblower” and “family group”.
	Art. 3: Competence	This article states that complaints that are administrative in nature shall be forwarded to the relevant civil service agency whereas complaints that are criminal in nature shall be forwarded to the relevant public prosecutor.
	Art. 4: Exceptions to enforcement of the law	The article states that no protective measures will be provided to those who report in bad faith and those providing information obtained through the violation of fundamental rights.
	Art. 5: Dissemination commitment	The article states that public agencies can decide how to disseminate the contents of these laws but they must, in the least, publish these laws in prominent locations.
	Art. 6: Transparency, accountability, and confidentiality	This article briefly outlines the protection that should be put in place for documents or records that may potentially identify whistleblowers.
(2) Facilitation and Incentives for Reporting Acts of Corruption	Art. 7: Reporting	This article states that reporting wrongdoing entitles the whistleblower to the protections outlined in these laws.
	Art. 8: Reporting obligation	This article explicitly states that it is an obligation for an individual to report an act of corruption. A clause such as this was not included in Transparency

		International's International Guidelines for Whistleblower Legislation.
Art. 9: Anonymous Reporting		This article states that a whistleblower may file a report anonymously, in which case the authority shall assess and decide whether to process the report.
Art. 10: Administrative measures for facilitating the reporting of acts of corruption		<p>This article explicitly states the minimum requirements for the facilitation of reporting:</p> <ul style="list-style-type: none"> • Appointment of specialized officers for receiving and dealing with the reports. • Document processing and secure storage procedures • Provision of a request form in accordance with the model attached to this law. • Assignment of a specific secure telephone hotline for receiving the reports. • Creation of a specific secure e-mail account for dealing with the reports. • Arrangements for reports through intermediaries, without revealing the whistleblower's identity.
Art. 11: Confidentiality of the whistleblower's identity		This article states that anonymous reports shall be filed with a numerical code.
Art. 12: Reporting of acts of hostility or reprisals in the workplace		This article states that the authority receiving the initial reports should also receive any reports about reprisals in order to help ensure verification.
Art. 13: Complaint reported by a government contractor		This article states that government contractors should have the means to anonymously report wrongdoings.
Art. 14: Complaints against superiors		This article states that whistleblowing should not be construed as a failure to abide by contractual obligations or a breach of loyalty towards the authorities and institutions where he or she works.
Art. 15: Benefits for reporting acts of corruption		This article goes beyond the corresponding section in the Transparency International Guidelines for Whistleblower Legislation by providing conditions which the whistleblower must meet in order to be rewarded with benefits. Furthermore, this article states that the competent authority will determine a fair percentage for the whistleblower if it is found that they are entitled to benefits for reporting acts of corruption.
(3) Protection	Art. 16: Protection	This article states that protection must include

for Whistleblowers		physical and psychological integrity; moreover, this protection must extend to their family group, their property and working conditions.
	Art. 17: Basic protection measures	The article states that whistleblowers should have the following protective measures from authorities: (1) legal advice for matters related to the report and (2) confidentiality of identities.
	Art. 18: Additional protection measures	The article outlines additional personal protective measures such as police protection, change of residence or concealment of whereabouts, medical assistance, transfer of agency within the workplace, and paid leave.
	Art. 19: Application of whistleblower protective measures for witnesses of acts of corruption	This article states that competent authorities should have the power to extend protective measures to witnesses of corruption; moreover, the Transparency International Guidelines for Whistleblower Protection did not include this type of distinction.
(4) Protection for Witnesses of Acts of Corruption	Art. 20: Witness protection	This article states that witnesses of acts of corruption shall be designed to ensure their physical and/or psychological integrity, that of their family group and their property, conserve their working conditions and standard of living, as well as safeguard their businesses, which may be threatened as a result of their involvement in the proceedings proper to investigation of an act of corruption.
	Art. 21: Basic protective measures	This article states that all witnesses of acts of corruption shall be granted legal advice for matters related to their report and the confidentiality of their identities, without the competent authority having to issue any explanation of the grounds for them.
	Art. 22: Additional protection measures	This article states that the competent authorities should have the power to grant additional protective measures for witnesses of acts of corruption, based on their discretion.
(5) Requesting and Granting Additional Protective Measures	Art. 23: Application for protective measures	This article broadly defines the request for additional protective measures.
	Art. 24: Filing period for protection requests	This article states that the request for additional protective measures can be filed with or after the initial act of corruption.
	Art. 25: Requirements	This article states that the request for additional protection measures should include the identification of the reported act, identification of the perpetrators, a signed commitment, and a list of those considered beneficiaries.
	Art. 26: Resolution of	This article states that after receiving a request, the

	the authority responsible for granting protective measures	competent authority must respond within a specified period of time with the reason for their decision.
	Art. 27: Precautionary granting of protective measures	This article states that competent authorities may grant precautionary protective measures upon receipt of the given request.
	Art. 28: Assessing the relevance of the information	This article outlines conditions that should be considered relevant to the outcome such as the prevention of the act of corruption.
	Art. 29: Assessment of the degree of risk	This article states that any assessment of the extent of the risk posed to the whistleblower and/or witness of acts of corruption shall depend on the existence of manifestly or potentially dangerous conditions.
	Art. 30: Obligations of persons under protection	This article states that those who are under protection must cooperate with any relevant authority, behave appropriately to maintain protection, safeguard the operation of the program, and any other obligations that may be imposed.
	Art. 31: Letter of agreement on compliance with obligations	This article states that whistleblowers admitted to the program should sign a letter of agreement on compliance with obligations.
	Art. 32: Extraterritorial enforcement	This article states that, under certain conditions, the competent authority may grant protective measures applicable to foreign territories.
	Art. 33: Adjustments to protective measures	This article states that the competent authority may review and change the protective measures as it sees fit.
	Art. 34: Extension of additional measures	This article states that the competent authority may extend these protective measures as it sees fit.
	Art. 35: Transfer of jurisdiction	This article states that confidentiality should be maintained in the circumstance where the corresponding authority for the witness or whistleblower has changed.
(6) Challenges	Art. 36: Legal basis	Decisions by competent authorities may be challenged by anyone who demonstrates legitimate interest
	Art. 37: Remedies for challenges at administrative venues	The remedies for challenges at administrative venues are the following: <ol style="list-style-type: none"> (1) Reconsideration remedy, which shall be filed with the same authority that issued the ruling being challenged (2) Appeal remedy, which shall be filed with the body overseeing the authority that ruled on

		<p>the reconsideration remedy</p> <p>(3) Review remedy, to be used only exceptionally and filed with a third venue having national jurisdiction.</p> <p>This article states that a time limit is required for the resolution of challenges</p>
	Art. 38: Remedy for challenges at judicial venues	<p>This article explicitly states that a remedy of this kind should be classified as a remedy of complaint that should be filed with the body overseeing the authority that issued the ruling being challenged.</p>
(7) Liability for Nonperformance of Duties	Art. 39: Liability for nonperformance of duties	<p>This article states that noncompliance may give rise to administrative, civil, and criminal liability, as applicable.</p>
	Art. 40: Duties of public officials	<p>The article states that the following are duties of public officials in connection with the protection of whistleblowers:</p> <p>(1) To receive complaints, requests for protective measures, and/or challenge remedies promptly and conscientiously; (2) to convey documents received to the authority responsible for deciding or ruling thereon within the legal deadline; (3) to resolve matters placed before them, providing reasons; (4) to communicate, within the deadline prescribed by law, the grounds for recusal involved in a case of clear incompatibility; (5) to fulfill mandates issued by superiors promptly and diligently and relevant legislation; (6) to discharge their functions in strict compliance with the law; (7) to refrain from disseminating or allowing access to confidential information that might endanger the person of the whistleblower and/or witness, and, where applicable, his or her family group.</p>
	Art. 41: Administrative sanctions	<p>Administrative sanctions shall be further classified as minor and major:</p> <p>Minor sanctions include (a) admonishment, (b) suspension, (c) and fines of up to ten times the reference minimum wage.</p> <p>Major sanctions include (a) rescission of contract, (b) discharge or dismissal, (c) and disqualification from holding public office for up to 5 years.</p>
	Art. 42: Criteria for imposing sanctions	<p>Sanctions shall be imposed in consideration of the following criteria: (1) The harm caused to the whistleblower and/or witness; (2) extent to which procedures were contravened; (3) nature of the duties performed by the offender, together with his/her post and position in the hierarchy; (4) recidivism; (5)</p>

		intentionality of the action.
	Art. 43: Civil liability	This article states that noncompliance with obligation by officials shall give rise to civil liability, consisting of the payment of damages as determined by the competent judicial authority
	Art. 44: Criminal liability	This article states that criminal liability shall entail the imposition of a criminal penalty for the crime of failing to perform duties as determined by the authority with judicial competence.
(8) Mechanisms for International Cooperation	Art. 45: Scope	This article states that within the framework of the principle of reciprocity established by different provisions and instruments of public international law, consideration shall be given to the provision of mutual assistance for meeting the purposes of this law in cooperation and enforcement of judicial procedures.
	Art. 46: International Cooperation	This article states that rendering assistance to other states is allowed by the following protective measures: (1) Issuance of a new identity; (2) change of residence or concealment of whereabouts; (3) change of workplace or temporary relocation, as applicable; (4) others, as applicable.
	Art. 47: Termination of protective measures	This article states that authorities responsible for implementing protective measures for whistleblowers and witnesses of acts of corruption requested by another State may cease to do so when they are notified of an order of termination, the protected whistleblower and/or witness commits a crime, and the protected person(s) commits a breach of the peace that jeopardize the implementation of the protective measures.
	Art. 48: Judicial Procedures	This article states that if so requested, other States may: (1) Receive testimony and/or statements sought by the requesting country; (2) serve notification of resolutions; (3) conduct inspections or seizures; (4) transfer the protected whistleblower and/or witness to the country that granted the protective measure (transfers to other States may take place provided that the State that initially granted the protective measures so agrees); (5) provide copies of any documents necessary to throw light on the alleged facts that gave rise to the granting of protective measures; (6) any other action, provided that both states are in agreement thereon.
	Art. 49: Institution-building	This article states that broad mutual assistance may be provided through: (1) Mutual legal assistance; (2)

		mutual technical cooperation; (3) meetings to exchange experiences; (4) professional internships or stays in other similar entities.
	Art. 50: Requests for Assistance	This article states that requests for assistance must include the following information: (1) Description of the offense or administrative misdemeanor in question, and of the reasons for the granting of protective measures and for the request for assistance from the State on which the request is served; (2) exact description of the assistance sought and all the information necessary to comply with the request; (3) the threat level for the whistleblower or witness; (4) the conditions and needs of the whistleblower or witness, their professional background, their capacity to adapt, their criminal record, their psychological profile and responsibilities vis-à-vis third parties; (5) where appropriate, the number of people that will need to be relocated along with the whistleblower or witness.
	Art. 51: Confidentiality	This article states that rules regarding confidentiality still apply to these types of requests.
	Art. 52: Funding	This article states that the requesting state will be obligated to provide funding.
	Art. 53: Transfer of protected whistleblowers and witnesses detained in another state	This article states that transfers of whistleblowers and witnesses to whom protective measures have been granted and who are for any reason being detained in another State shall be governed by the rules for the transfer of persons contained in the Inter-American Convention on Mutual Assistance in Criminal Matters, the treaties to which the country is a party, and other provisions of international law.
(9) Bases for the Creation and Operation of a Program to Protect Whistleblowers and Witnesses of Acts of Corruption	Art. 54: Program to Protect Whistleblowers and Witnesses of Acts of Corruption	This article states that the implementation of the Model Laws requires a program to protect whistleblowers and witnesses of acts of corruption to serve as a specialized agency overseeing enforcement.
	Art. 55: Operational Capacity of the Program	This article states that sufficient budgetary resources should be allocated to implement a fully functioning whistleblower protection program.
	Art. 56: Coordination with international agencies	This article states that the relevant programs should maintain cooperation with international agencies in order to enhance its performance in the discharging of its duties and responsibilities.

Appendix C: G20 Compendium of Best Practices and Guiding Principles for Legislation

Principles	Examples of best practices in support of this principle:
<p>(1) Clear legislation and an effective institutional framework are in place to protect from discriminatory or disciplinary action employees who disclose in good faith and on reasonable grounds certain suspected acts of wrongdoing or corruption to competent authorities.</p>	<ul style="list-style-type: none"> • Enactment of dedicated legislation in order to ensure legal certainty and clarity, and to avoid a fragmented approach to establishing whistleblower protection; • Requirement or strong encouragement for companies to implement control measures to provide for and facilitate whistleblowing (e.g. through internal controls, ethics and compliance programmes, distinct anti-corruption programmes, fraud risk management, etc.).
<p>(2) The legislation provides a clear definition of the scope of protected disclosures and of the persons afforded protection under the law.</p>	<ul style="list-style-type: none"> • Protected disclosures include: a violation of law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; a substantial and specific danger to public health or safety; or types of wrongdoing that fall under the term “corruption”, as defined under domestic law(s); • Individuals are not afforded whistleblower protection for disclosures that are prohibited by domestic laws in the interest of national defense or the conduct of foreign affairs, unless the disclosures are made in the specific manner and to the specific entity/entities those domestic laws require; • Public and private sector employees are afforded protection, including not only permanent employees and public servants, but also consultants, contractors, temporary employees, former employees, volunteers, etc.; • Clear definition of “good faith” or

	<p>“reasonable belief”; although individuals are not afforded protection for deliberately-made false disclosures, protection is afforded to an individual who makes a disclosure based upon the individual’s reasonable belief that the information disclosed evidenced one of the identified conditions in the statute, even if the individual’s belief is incorrect.</p>
(3) The legislation ensures that the protection afforded to whistleblowers is robust and comprehensive.	<ul style="list-style-type: none"> • Due process for both parties (the whistleblower and the respondent), including, <i>inter alia</i>, the need for protecting confidentiality; • Protection from any form of discriminatory or retaliatory personnel action, including dismissal, suspension, or demotion; other disciplinary or corrective action; detail transfer, or reassignment; performance evaluation; decision concerning pay, benefits, awards, education or training; order to undergo medical test or examination; or any other significant change in duties, responsibilities, or working conditions; • Protection from failure to take personnel actions, such as selection, reinstatement, appointment, or promotion; • Protection from harassment, stigmatization, threats, and any other form of retaliatory action; • Protection from other forms of retaliatory conduct, including through waiver of liability/protection from criminal and civil liability, particularly against defamation and breach of confidentiality or official secrets laws; • Protection of identity through availability of anonymous reporting; • Clear indication that, upon a <i>prima facie</i> showing of whistleblower retaliation, the employer has the burden of proving that measures taken to the detriment of the whistleblower were motivated by reasons other than the

	<ul style="list-style-type: none"> • disclosure; • Protection against disclosures an individual reasonably believes reveal wrongdoing even if the whistleblower is incorrect”; • Protection of employees whom employers mistakenly believe to be whistleblowers.
(4) The legislation clearly defines the procedures and prescribed channels for facilitating the reporting of suspected acts of corruption, and encourages the use of protective and easily accessible whistleblowing channels.	<ul style="list-style-type: none"> • Provision of protection for disclosures made internally or externally; • Establishment of internal channels for reporting within the public sector; • Strong encouragement for companies to establish internal reporting channels; • Protection afforded to disclosures made directly to law enforcement authorities; • Specific channels and additional safeguards for dealing with national security or state secrets-related disclosures; • Allowing reporting to external channels, including to media, civil society organizations, etc.; • Incentives for whistleblowers to come forward, including through the expediency of the process, follow-up mechanisms, specific protection from whistleblower retaliation, etc.; • Positive reinforcements, including the possibility of financial rewards for whistleblowing; • Provision of information, advice and feedback to the whistleblower on action being taken in response to disclosures.
(5) The legislation ensures that effective protection mechanisms are in place, including by entrusting a specific body that is accountable and empowered with the responsibility of receiving and investigating complaints of retaliation and/or improper investigation, and by providing for a full range of remedies.	<ul style="list-style-type: none"> • Appointment of an accountable whistleblower complaints body responsible for investigating and prosecuting retaliatory, discriminatory, or disciplinary action taken against whistleblowers who have reported in good faith and on reasonable grounds suspected acts of corruption to competent authorities; • Rights of whistleblowers in court proceedings as an aggrieved party with an individual right of action, and to

	<ul style="list-style-type: none"> • have their “genuine day in court”; • Penalties for retaliation inflicted upon whistleblowers, whether this takes the form of disciplinary or discriminatory action, of civil or criminal penalties.
(6) Implementation of whistleblower protection legislation is supported by awareness-raising, communication, training and periodic evaluation of the effectiveness of the framework of protection.	<ul style="list-style-type: none"> • Promoting awareness of whistleblowing mechanisms, provide general advice, monitor and periodically review the effectiveness of the whistleblowing framework, collect and disseminate data, etc.; • Raising awareness with a view to changing cultural perceptions and public attitude towards whistleblowing, to be considered an act of loyalty to the organization; • Training within the public sector to ensure managers are adequately trained to receive reports, and to recognize and prevent occurrences of discriminatory and disciplinary action taken against whistleblowers; • Requirement in the law that employers post and keep posted notices informing employees of their rights in connection with protected disclosures.

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