

## Employers beware: Whistleblowing employees are now protected!

On September 15, 2004, sections 2 to 8 of federal Bill C-13, namely Chapter 3 of the Statutes of Canada 2004, came into force. On the heels of the Enron and Martha Stewart affairs, among others, Bill C-13 amends the **Criminal Code** as regards capital markets fraud and insider trading.

However, the Bill also introduces **a new criminal offence targeting employers in general**, although this was done with little fanfare: henceforth, employers may not impose or even threaten disciplinary measures or reprisals against an employee who provides information with respect to an offence committed by his employer or who reports his employer for a violation of federal or provincial legislation which the employee suspects the employer to have committed or be committing.

The following is the new **Criminal Code** provision regarding such offences:

**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.

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(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.

Prior to September 15, 2004, whistleblowing by an employee could easily constitute grounds for dismissal or demotion, particularly if the employee's whistleblowing was an act of vengeance or blackmail against the employer. For example, until now, an employee dismissed after having reported his employer for a violation of tax legislation (including employment insurance legislation) had few recourses. Henceforth, an employer who punishes such an employee will be liable to a maximum sentence of 5 years in prison.

Moreover, a whistleblowing employee will be protected even if he has not disclosed the commission of a genuine offence by his employer: it is merely sufficient if *he believes* an offence has been or is being committed by an officer, director, agent or employee of the company in which he is employed. Furthermore, it is not even necessary for the whistleblower to have been disciplined or dismissed: the **threat of disciplinary measures or reprisals** itself is an offence.

This is, therefore, a very broad offence whose potential consequences are meant to deter employers whose reflex would be to get rid of an employee who is about to provide "sensitive" information to a civil servant or agent in a regulatory organization.

Should you find yourself in such a situation, please do not hesitate to consult us!



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