

Tories consider U.S.-style bounty for waste-busting whistleblowers

Kathryn May, The Ottawa Citizen
Published: Monday, March 13, 2006

The Conservatives are considering an American-style law that would pay a bounty to a whistleblower who sues a company that defrauds the federal government or wastes taxpayers' money.

Conservative MP Pierre Poilievre, who is overseeing the Harper government's whistleblower reforms, is meeting with U.S. legislators in Washington over the next several days to see if the U.S. False Claims Act can be adapted to Canada as part of the much-touted Federal Accountability Act.

Mr. Poliviere is the parliamentary secretary to Treasury Board President John Baird, who is in charge of drafting the act, which will be the first piece of legislation introduced when Parliament resumes.

Mr. Poilievre said the U.S. bill, which is variously known as Lincoln's Law, the Informer's Act or the Qui Tam Statute, warrants study for Canada because it has become a key tool in stamping out fraud and waste in federal spending and contracting.

"In the U.S., there is a growing sector of entrepreneurial waste-busters who see it in their self-interest to scrutinize all aspects of government spending to root out fraud and waste," said Mr. Poilievre, MP for Nepean-Carleton.

"That's a very good thing. Anything we can do to give Canadian citizens and public servants the incentive to stop waste and mismanagement before they get out of control."

The False Claims Act is considered the act that legitimized whistleblowers and dates back to the Civil War, when it was introduced to fight corruption in military spending.

The act, which was revised in 1986, effectively "deputizes" private citizens to help fight fraud by allowing anyone with information of wrongdoing to sue on behalf of the U.S. government.

If successful, whistleblowers can get up to 30 per cent of the money recovered or damages won by the government in fraud cases they expose.

Take a laboratory or hospital that bills Medicare. An employee or anyone who suspects a billing fraud can launch a lawsuit against the company in his name and on behalf of the government. The claim is filed in secret in court and the government, after reviewing the

evidence, has the option of joining the case as co-plaintiff. If not, the whistleblower can go alone.

Those found guilty have to reimburse three times the amount of the money they defrauded, plus foot the bill for civil fines of \$5,000 to \$10,000 for each false claim. The act also protects whistleblowers from dismissal and reprisal.

It is estimated the U.S. government recovered more than \$3.5 billion U.S. between 1986 and 2002 under the False Claims Act.

The idea of rewarding public servants who expose fraud and mismanagement is not new. Canada's Integrity Officer, Edward Keyserlingk, suggested rewards several years ago. Rather than offering bureaucrats a cut of money recovered, he suggested rewards such as promotions and citations to bureaucrats who came forward.

Ken Kernaghan, the political scientist at Brock University who headed the task force into whistleblowing, said the members unanimously rejected the idea of paying public servants who expose fraud because it appealed to a "base instinct" that could possibly lead to ill-founded allegations.

Most of the task force's recommendations were ultimately included in the Liberals' whistleblower act, C-11, which passed through the Senate days before the Martin government fell, but wasn't formally proclaimed.

"The upside was that it would uncover a few more things that would otherwise go undetected, but we generally thought this was not the right way to go," said Mr. Kernaghan. "This was not in tune with the kind of public service we wanted to see in the Canadian context."

But Mr. Poilievre said any law that offered rewards would carry built-in provisions to prevent frivolous complaints and other abuses. But he said the idea simply might not work for Canada.

"There may be problems or flaws with the proposal that I will learn about ... and perhaps it's not a perfect fit for the Canadian experience, so it's just under consideration," he said.

In Washington, Mr. Poilievre is meeting with Congressman Jim Sensenbrenner, who chairs the House Committee on the Judiciary, as well as officials from the Senate Homeland Security and Government Affairs Committee, to explore whether employees in security agencies should be excluded from whistleblower laws. He will also be briefed on the Bush administration's Notification and Federal Employee Anti-Discrimination and Retaliation Act -- known as the No Fear Act -- which came into force in 2003 to make departments more accountable for violations of anti-discrimination and whistleblower protection laws.

A monetary reward for whistleblowers is one of the six reforms Prime Minister Stephen Harper promised during the election campaign to beef up the Liberals' whistleblower bill.

Mr. Poilievre said the biggest weakness of C-11 is that it doesn't sufficiently protect

whistleblowers and gives the government the leeway to cover up a scandal by forbidding the release of any information about a whistleblower's disclosure for five years.

Other whistleblower reforms proposed by the Conservatives for the accountability act include:

- Give the Public Service Integrity Commissioner the power to enforce compliance with the act.
- Ensure all Canadians who report government wrongdoing are protected, not just public servants.
- Remove the government's ability to exempt Crown corporations and other bodies from the act.
- Require the prompt public disclosure of information revealed by whistleblowers, except where national security or the security of individuals is affected.
- Ensure that whistleblowers have access to the courts and that they are provided with adequate legal counsel.