

Whistleblowers Get Financial Compensation: The BCSC Debuts Its Whistleblower Program

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As of November 7, 2023, the British Columbia Securities Commission (BCSC) implemented a new Whistleblower program (the Whistleblower Program). Through the Whistleblower Program, the BCSC aims to incentivize individuals to report serious market misconduct in exchange for a notable monetary reward.

The program is specifically aimed at BC's growing investment markets by making it easier for people to qualify for the awards and receive a payout in a timely manner. Each award will range from \$1,000 to \$250,000; the quantum of each determined on the basis of: (i) how quickly the alleged misconduct was reported; (ii) how much the information contributed to an enforcement outcome; and (iii) the seriousness of the misconduct. More than one award can be offered to a single whistleblower, with the maximum payout set at \$500,000.

The Whistleblower Program addresses a wide range of misconduct, including insider tipping or trading, market manipulation, fraud, misrepresentation, and illegal distributions. It applies to misconduct that occurs inside and outside British Columbia that affects BC investors.

The BCSC also offers awards for information that enables an enforcement action, including:

- a halt trade order;
- formal allegations made in a Notice of Hearing;
- sanctions after a hearing;
- a settlement agreement;
- identification and location of assets of people who have been ordered to pay financial sanctions; and/or
- collection of outstanding amounts due from orders or settlement agreements.

To qualify for a financial award from the BCSC, the information offered up by the whistleblower must be original, voluntary, and not publicly available. The information must relate to someone else's misconduct and not the whistleblower's own conduct. In other words – no awards under the new program are available for what amounts to a confession. However, in those situations, they may qualify for credit for cooperation under a separate BCSC policy.

Whistleblowing tips can be made anonymously to the BCSC's Office of the Whistleblower (OWB), but an

informant must reveal their identity to the BCSC to receive a monetary award.

To submit the information, whistleblowers can use a special online portal operated by the OWB. There is also a phone line: 1-800-BCSC-TIPS. Subject to certain exceptions, the BCSC ensures the protection of the confidentiality of whistleblowers and their information. The exceptions include when disclosure is required by law or is necessary for a fair hearing.

Importantly, whistleblowers are protected from retaliation by employers and others by the *Securities Act*, RSBC 1996, c. 418. Retaliation includes anything from dismissal, demotion, harassment, or discrimination relating to a whistleblower's reporting to or cooperation with the BCSC.

Important Takeaways

The Whistleblower Program is another attempt by BC legislators to strengthen their powers, and reflects their ongoing efforts to try and crack down on white-collar crime in the province.

Businesses in British Columbia and businesses with BC investors should respond by reviewing and updating their internal policies and procedures as necessary to prevent, detect, and address misconduct and ensure alignment with the Whistleblower Program. Although this program is supposed to protect investors and promote confidence in the capital markets, it could cause challenges within businesses. The possibility of a large cash awards may tempt whistleblowers to bypass internal reporting channels and report directly to the OWB, which in effect, could undermine the effectiveness and credibility of internal mechanisms.

With the Whistleblower Program, the BCSC hopes to provide modernized ways to incentivize whistleblowers to report securities-related misconduct. Contact Carey Veinotte to discuss how this Program may impact you or your business.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.