



SUBMISSION TO THE CULLEN COMMISSION

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NOVEMBER 2020

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I. Introduction

This submission is presented to the Cullen Commission with the intention of providing information and advice on key issues relating to the creation of a corporate beneficial ownership registry in British Columbia. It is based on the author's previous research and publications¹ supplemented by more recent empirical studies and reports emanating from jurisdictions where beneficial ownership registries have been implemented such as the United Kingdom (UK) and European Union (EU) jurisdictions. The submission focusses on a number of policy and legal areas of concern to the Commission and many sections reference relevant questions from a discussion paper prepared for the British Columbia Consultation on a Public Beneficial Ownership Registry.² The topics covered include the following: key elements of a registry, the definition of beneficial ownership, sanctions for non-compliance, issues related to database design and data quality, public vs. restricted access, privacy issues regarding information publicly disclosed, and costs. The submission addresses issues relating to corporations only; partnerships and trusts are not included.

In policy discussions about increasing the transparency of corporations, it is worth recalling that corporations are creatures of statutes passed by legislatures, and therefore, their proliferation in our economy and society represents a deliberate public policy choice. Through incorporation, a company with a separate legal personality is created under the law, whereby the liability of those investing in the company is limited to the amount invested. Thus, the corporate form represents **a fundamental intervention** of the state into the free marketplace, altering potential risks, benefits, and liabilities of different stakeholders. Note that incorporation does not reduce risks, but rather, **displaces them**, tipping risks away from investors and reallocating them onto others in our economy, largely creditors, consumers, and governments. Many of the thousands of business bankruptcies that occur annually across Canada can be attributed to creditors not being paid for goods or services they have already provided.

Additionally, as is being examined carefully by the Cullen Commission, the corporate form is also regrettably associated with its abuse by criminals to anonymize their activities and hide from law enforcement. This submission argues that corporate beneficial ownership transparency will not only assist law enforcement in investigating money laundering, tax evasion and organized crime, but that much broader societal benefits will be gained in ensuring that all actors in the economy who encounter corporations will be able to have information about who owns and controls them.

¹ Mora Johnson, *Secret Entities: A legal analysis of the transparency of beneficial ownership in Canada* (2017), available at <https://static1.squarespace.com/static/5c4638563c3a53c04e226492/t/5c6c9f5cee6eb00cf07a72fd/1550622558640/secret-entities.pdf>; (2017) *Building a Transparent, Effective Beneficial Ownership Registry: Lessons Learned and Emerging Best Practices from Other Jurisdictions*, available at: <https://static1.squarespace.com/static/5c8938b492441bf93fdb536/t/5cc24633f9619ab923823b96/1556235835496/PWYP-Canada-CRBO-Policy-English.pdf> ; (2019) *A Public Beneficial Ownership Registry and the Canadian Privacy Regime: A Legal Analysis*, available at: <https://static1.squarespace.com/static/5c8938b492441bf93fdb536/t/5eac6dd026b8946d37f7dde2/1588358609932/endsnowwashing-public-beneficial-ownership-registry.pdf>

² *British Columbia Consultation on a Public Beneficial Ownership Registry*, available at: <https://engage.gov.bc.ca/app/uploads/sites/121/2020/01/386142-BCABO-Consultation-Documents-For-Release.pdf>

II. The misuse of corporate legal structures to facilitate money laundering and other crimes

An in-depth study of serious transnational financial crimes conducted by the World Bank showed that grand corruption, tax evasion, sanctions-busting, terrorist finance, and money laundering tend to involve companies and trusts that cannot be traced back to their real owners.³ This study, which reviewed over 200 cases of large-scale corruption and other crimes between 1980 and 2010, demonstrated the use of anonymous shell companies in almost 70% of such crimes.

Shell corporations have been favoured by criminals because, until recently, they could be used with anonymity in most jurisdictions. Without being able to determine who the beneficial owners (true owners) of companies are, law enforcement is impeded in its investigation of financial crimes.⁴

The Financial Action Task Force (FATF), the global anti-money laundering body, in 2014 recommended that “countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.”⁵

Some examples are provided below in which criminals used shell companies incorporated in Canadian jurisdictions to facilitate their crimes.

Use of Shell Corporations for Money Laundering: *R. v. Rosenfeld*⁶

Simon Rosenfeld was a lawyer convicted of two counts of laundering the proceeds of crime and one count of attempting to possess money obtained by crime. The Crown Prosecutor referred to the accused as a person “in the business of laundering the proceeds of large-scale, international criminal activity.” Rosenfeld encouraged an undercover police officer posing as a front man for a large Colombian drug operation to do his money laundering business in Canada, indicating that there was little police oversight. Rosenfeld agreed to launder large amounts of money that he understood to be the proceeds of the cartel's international cocaine trade for a fee of 8 per cent. He laundered these funds through a series of transactions and bank accounts in the names of shell corporations. The accused was convicted and was sentenced to three years' imprisonment and a fine of \$43,230. He appealed his conviction and the three-year prison sentence. The Crown also appealed the sentence. The Ontario Court of Appeal allowed the Crown's appeal and said that the sentence was inadequate. Rosenfeld's prison sentence was increased to 5 years.

³ Van der Does de Willebois, E., Halter, E., Harrison, R., Park, J.W. and Sharman, J. (2011) *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*. World Bank StAR Initiative, available at: <https://star.worldbank.org/sites/star/files/puppetmastersv1.pdf>

⁴ House of Commons Standing Committee on Finance, Evidence of Proceedings, February 26, 2018, see evidence from Joanne Crampton -- <http://www.ourcommons.ca/DocumentViewer/en/42-1/FINA/meeting-134/evidence>

⁵ FATF Guidance (2014) *Transparency and beneficial ownership*. See also, FATF Recommendations 24 and 25, found at <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>

⁶ [2009] 94 O.R. (3d) 641 (OntCA).

Use of Shell Corporation and Trusts for Fraud, Tax Evasion: *Homelife Romano Realty Ltd v Castelluzzo*⁷

Peter and Stella Castelluzzo worked as Real Estate Agents for Homelife Romano, a Real Estate Broker owned by Donato Romano. They speculated on properties and implemented schemes to evade taxes. When Homelife Romano sued Peter and Stella for some \$46,000 in defaulted loans, a great extent of their illegal actions came to light in court. The brokerage used an Ontario numbered corporation with shares held by a nominee as well as other trust arrangements to anonymously purchase houses from their clients with whom they had listed the properties as agents, a clear breach of their fiduciary duties as real estate agents and, according to the trial judge, conduct amounting to criminal fraud.⁸ As the contracts and agreements were entered into for illegal purposes, the trial judge declined to enforce them.⁹

Use of Shell Corporations for Tax Evasion, Fraud, Money Laundering: *Law Society of Upper Canada v Coles*¹⁰

A disciplinary hearing was held by the Law Society of Upper Canada for lawyer Alan Coles, who was accused of tax evasion and money laundering. Coles had set up a scheme involving numerous shell corporations in Canada and overseas, which exchanged false invoices and loans to give the impression of arms' length legitimate business transactions. Funds flowed through the shell corporations, overseas and back to Canada for the purposes of both evading the personal income taxes of his clients as well as fraudulently making use of a Canadian government tax credit for scientific research. The Discipline Committee estimated that he had assisted his clients in defrauding the Canadian Government of approximately \$30 million, and disbarred him.

Easy access to beneficial ownership information would have made it more difficult for the principals in these examples to commit criminal acts and would have made it easier for relevant tax authorities and law enforcement (and in some cases their clients) to investigate their activities.

⁷ *Homelife Romano Realty Ltd v. Castelluzzo*, [2004] 248, D.L.R. (4th) 349

⁸ *Ibid.*, at para 21.

⁹ *Ibid.*, at para 43.

¹⁰ *Law Society of Upper Canada Ontario Discipline Committee, re: Alan Herbert Coles*, 1997 CanLII 591 (ON LST)

III. Creating a public beneficial ownership registry in British Columbia

a. Key Elements of a Registry

Questions from BC Consultation on a Public Beneficial Ownership Registry:

1. How would the requirement to provide the information in your transparency register to government impact your operations?
2. Are there any steps that could be taken to streamline the process, including the uploading process?
3. Are there any types of BC private companies you think should be exempted from the requirement to upload information. If so, why?

Why create a registry of beneficial owners?

Because financial crimes often involve the use of shell corporations and other legal structures, it is critical for law enforcement and others to have access to beneficial ownership information of corporations and any other entities for which this information is collected.

Beneficial ownership registries have emerged as a leading policy tool in preventing, detecting, and investigating criminal activity relating to the misuse of these legal vehicles. The Financial Action Task Force (FATF) 2019 guide on *Best Practices on Beneficial Ownership for Legal Persons* concluded that a well-resourced and proactive **beneficial ownership registry** can prove effective in ensuring transparency by providing prompt access to information for competent authorities including law enforcement and tax authorities.¹¹

Systemic empirical study is still needed to fully assess the benefit of beneficial ownership registries, however, evidence of their usefulness is emerging from smaller studies where such registries are already employed, notably the United Kingdom (launched in 2016) and European Union jurisdictions.

For example, a U4 study published in 2020 highlighted a number of money laundering cases in which beneficial ownership registries helped law enforcement officials help track down criminals from other countries.¹² The same study demonstrated that beneficial ownership information was accessed frequently – at least weekly – by all law enforcement officials across the UK.¹³ Another study included an analysis of the impact of the extension of the United Kingdom’s beneficial ownership registry to Scottish Limited Partnerships (SLPs), legal entities associated with corruption, organized crime and tax evasion.¹⁴ This report found that including SLPs in the beneficial ownership registry decreased new registrations by 80% in the first year that SLP ownership was finally transparent.¹⁵

¹¹ FATF, *Best Practices on Beneficial Ownership for Legal Persons* (2019), available at <https://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf>

¹² Theo Van der Merwe, *Beneficial Ownership Registers: Progress to Date* (2020) U4, available at: <https://www.u4.no/publications/beneficial-ownership-registers-progress-to-date>, at p 12.

¹³ *Ibid* at p 12.

¹⁴ Global Witness (2018) *The Companies We Keep*, available at: <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/companies-we-keep/> at p 10.

¹⁵ *Ibid*.

Which companies should be included?

All B.C. corporations, with the exception of distributing corporations listed on a Canadian securities exchange, should be included in a beneficial ownership register. Any distributing corporation listed on a Canadian securities exchange and subject to National Instrument 55-104¹⁶ will already have its beneficial ownership information publicly available on the System for Electronic Disclosure of Insiders (SEDI)¹⁷, therefore its inclusion in a beneficial ownership registry will not be essential.

An additional public disclosure exception for beneficial owners could be provided for privacy reasons by application only (see below section g).

What information should be collected?

Governments need to determine what data elements should be maintained and collected by Registrars (even if not all is disclosed to all users). The FATF recommends that the following basic information be collected by governments at a minimum: the company name, proof of incorporation, legal form and status, the address of the registered office, basic regulating powers (for example, memorandum and articles of association), and list of directors. On beneficial ownership, the following data sets are important for collection, though not necessarily public disclosure: beneficial owner name, address, date of birth, nationality and country of residence; names of directors and senior officers, and the ownership and control interest of the beneficial owner. Information on the ownership, control and structure of the corporation is also critical.

It is also useful for due diligence purposes for registries to maintain and disclose historical data on companies, including inactive, dissolved, merged, struck off companies, as well as subsidiaries, parent companies and other affiliated entities, dates of changes in addresses, managers, or officers or beneficial owners.

Given risks presented by the legality of nominees, the FATF recommends that **nominee shareholders and directors be legally required to disclose the identity of their nominator and that this information should be included in the registry**. Otherwise, nominees will be mistakenly perceived as the beneficial owners, defeating the purpose of a beneficial ownership registry and allowing criminals to act anonymously.

How should information be collected?

Each corporation is already required to provide certain information upon incorporation plus an annual filing, which can be done electronically, along with updates as required between filings. Including additional questions and information requirements about beneficial ownership upon incorporation, at the time of annual corporate filings and mandatory updates in between annual filings would be the simplest way to request additional information. However, in order to understand the technical considerations of adding new beneficial ownership fields to an existing company register, the NGO Open

¹⁶ National Instrument 55-104 sets out Insider Reporting Requirements in Canadian securities exchanges, available at: https://www.osc.gov.on.ca/documents/en/Securities-Category5/rule_20160509_55-104_reporting-requirements-exemptions.pdf

¹⁷ <https://www.sedi.ca/sedi/>

Ownership¹⁸ recommends that existing systems (both digital and paper) that are involved in collecting storing and publishing company information should be mapped.¹⁹ Open Ownership notes:

There may be technical differences in the system requirements for a company register and a beneficial ownership register that require architectural changes. For example, a company register database may use a company-centric model (i.e. each record is a different company), whereas a beneficial ownership database should be capable of recording “statements” about how a person is related to a company (i.e. each record is a different statement about a person owning a particular company).²⁰

b. Definition of Beneficial Ownership

Questions from BC Consultation on a Public Beneficial Ownership Registry:

4. Should B.C. change the share ownership threshold from 25 per cent to 10 per cent for determining beneficial ownership?

The definition of beneficial owner includes a “control” arm and an “ownership” arm and typically includes shareholders and directors. A relatively open-ended definition of ownership and control is essential to ensuring that all beneficial owners are effectively captured, because the realities of who really owns and/or controls the corporation will vary according to the precise structure and setup.

For example, in undertaking a beneficial ownership analysis of corporations, shareholders can be considered “owners” although this is most accurate in small corporations with a very small number of shareholders. In more complex corporations, it is more accurate to say that shareholders enjoy a specific bundle of rights, which would typically include voting rights, rights to dividends and to a proportion of assets should the corporation dissolve. The larger a corporation, the greater the control that a Director is likely to exert over a corporation. This is particularly the case in widely-held corporations where larger numbers of shareholders often struggle to overcome collective action problems in exercising control. For these reasons, corporate directors should be included in the definition of beneficial ownership.

Many of the following documents may provide evidence of beneficial ownership information, if they set out ownership and/or control:

- Articles of incorporation
- Articles of Association
- Any Shareholder agreements

For example, a unanimous shareholder agreement may limit the powers of officers or directors, or may

¹⁸ Open Ownership is an NGO dedicated to helping stakeholders improve beneficial ownership transparency. In particular, it has been developing and promoting a Beneficial Ownership Data Standard (the Standard, or BODS in collaboration with dozens of international experts in company data and in technical standard-setting. According to its website, this will enable the resulting beneficial ownership data to be interoperable, more easily reused, and higher quality.

¹⁹ Open Ownership Systems Guide, available at <https://www.openownership.org/guide/systems/>

²⁰ *Ibid.*

give particular shareholders the power to appoint officers and directors.

When it comes to percentage of voting shares held in the definition, serious consideration should be given to reducing the current ownership threshold of 25% to 10%. There is a risk that an 11%-24% share could still be a significant share and allow for anonymous ownership or control by a criminal element. A 10% threshold would have the benefit of capturing information on a larger number of company owners and it is not clear if there are any compelling negative consequences.

Research from UK corporations suggests that for most companies, the compliance burden of collecting and reporting the required information at a 25% ownership threshold is surprisingly low. The NGO Global Witness' 2018 review of open data in the UK registry showed that the average number of beneficial owners for each company was 1.13.²¹ In a survey conducted for the U.K. Government in 2019, the most common number of beneficial owners reported was one (43%) followed by two (37%). Only 13% of businesses had three or more and only one in fifty had more than five beneficial owners (2%).²² Only 2% of businesses had difficulty identifying beneficial owners. When asked about the cost in staff time, the average cost reported was £102 and the median staff cost for all businesses was £42.²³

Thus, lowering the ownership threshold to 10% would increase the administrative burden for some companies, it would likely be so for larger companies and those with more complex structures, and much less likely for small or micro businesses.

c. Sanctions

Questions from BC Consultation on a Public Beneficial Ownership Registry:

13. Do you support the use of suspensions or dissolutions of the corporation by the Corporate Registrar to ensure accurate beneficial ownership information is provided? Why? Why not?
12. Do you support the use of administrative penalties to ensure compliance? If so, what range of penalties is appropriate in light of the anti-money laundering goals?

The FATF best practice guidelines on beneficial ownership recommend applying sanctions that are effective, proportionate, and dissuasive.

That said, any new regulation requires that those subject to the regulation receive adequate information, clear instructions and ample time to build compliance. Generally, the initial effort of the government should be to provide all necessary support to corporations to allow them to attain compliance. The importance of the new measures to fight crime and safeguard the economic system should be emphasized.

In any initial lead-in period, opportunities should be given to companies in non-compliance to move into compliance without penalty. For example, companies could be provided with warnings or requests to

²¹ Global Witness, *The Companies We Keep*, *supra* note 14 at p11.

²² *Review of the Implementation of the PSC Register*, Department for Business, Energy and Industry Strategy, March 2019, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822823/review-implementation-psc-register.pdf

²³ *Ibid.*, at p 21.

correct erroneous information along with clear information on how to comply. Companies engaging in good faith to correct errors or provide missing information should not be penalized in a lead-in period.

Even in a lead-in period, however, companies that refuse to come into compliance despite warnings and requests for corrections should be penalized. The range of sanctions should be flexible enough to be reasonable for those who carelessly make mistakes but severe enough to dissuade those with criminal intent. Administrative penalties should be available on a strict liability basis with a defence of due diligence available.

Suspensions and dissolutions should be additional penalties available to impose on companies which knowingly provide misleading information or refuse to comply. Indeed, the availability of such penalties may result in a high degree of compliance, and may act to deter criminals from choosing British Columbia as a jurisdiction in which to launder funds. For example, the 2019 FATF Report on Beneficial Ownership Best Practices notes that the Danish Business Authority had dissolved an estimated 7,500 Danish corporations which had failed to register beneficial ownership information in the public register by 2018. By 2019, 99.80% of entities covered by company laws under the authority of the Danish Business Authority had registered their beneficial ownership information.²⁴

d. Data Quality

Questions from BC Consultation on a Public Beneficial Ownership Registry:

10. What role should government play in making sure the beneficial ownership information is correctly reported?

A beneficial ownership registry is only as useful as the quality of data it contains. It is strongly recommended that the Government of British Columbia institute a high-quality registry from the outset rather than being in a situation in which poor data must be reviewed and strengthened.

The UK Registry, launched in 2016 was found to be deficient in data quality, which hampered its effectiveness and legitimacy. Financial institutions and other users complained that the data contained therein was not fit for due diligence purposes. In 2018, the NGO Global Witness had identified through an open data search over 7,300 cases in which ultimate beneficial owners were listed as foreign corporations in secrecy jurisdictions, clearly a violation of the regulations and a means of circumventing the transparency that was intended in the creation of the registry.²⁵

In September 2020, the UK Government announced a number of measures intended to strengthen its registry. Such lessons learned and best practices are included below, along with those recommended by experts and practitioners.

Information Submitted To Registries Must Be Validated and Verified

It is essential to require all directors and beneficial owners and third party filers (such as lawyers filing on behalf of clients) to provide identification information. This will, in future, be a feature of the UK system, announced in September 2020.

²⁴ FATF, *Best Practices on Beneficial Ownership for Legal Persons* (October 2019) *supra* note 11.

²⁵ Global Witness, *The Companies We Keep*, *supra* note 14 at p. 14.

Because legal entities are themselves the providers of the information that go into beneficial ownership registries, central registries administered by governments cannot be considered reliable sources of beneficial ownership information unless the information is verified for accuracy and identification (ID) is checked.²⁶

Verification of the information provided through reliable, independent source documents or data, as well as identification checks at the time of incorporation, and after changes, would greatly increase the reliability and utility of a beneficial ownership registry.

Open Ownership provides the following best practice suggestions:

“Verification is critical to generating high quality beneficial ownership information, but the term is used to mean many different types of checks and processes. Based on our research, we break down verification into three steps, to be taken together: authentication and authorisation, validation and truth verification. Understanding these steps can help design effective legislation.

- Authentication & authorisation - ensure the person submitting the information is who they say they are and that they are authorised to make the declaration
- Validation - ensure that the data submitted is a legitimate possible value
- “Truth” verification - identify potential mistakes and irregularities in the data, which may indicate that the statement made is not true, and publish the data openly so that others can also do so.”²⁷

Authentication and identity verification

Authentication and identity verification require that the person filing the information/making the declaration, as well as each beneficial owner and each director of each company must provide identification information.

In practice, a British Columbia beneficial ownership registry should be able to easily cross-check electronically the identities of filers, directors and beneficial owners who are BC residents by having them enter a driver’s licence number and/or other information which could confirm their identities. These steps could help ascertain that directors and beneficial owners are indeed real persons, link them to specific people already recorded in government systems as well as to specific identity documents which themselves may contain valuable information for law enforcement, such as current or previous residential addresses.

Filers, directors and beneficial owners for which an electronic cross-check is not available (for example, those in different jurisdictions) should be required to scan and upload a government-issued photo ID such as a provincial drivers licence or passport with the corporate or beneficial owner filing.²⁸

Validation

²⁶ Van der Does de Willebois et al, *Puppet Masters*, *supra* note 3 at page 99.

²⁷ Open Ownership Legal Guide, available at www.openownership.org/guide/legal

²⁸ See Fintrac ID standards, <https://www.fintrac-canafe.gc.ca/guidance-directives/client-clientele/Guide11/11-eng?wbdisable=true>

Data validation means using electric forms for information that will standardize or only accept certain values. For example, the UK registry now uses drop down menus to standardize certain responses, as well as place limits on allowable data validity, such as allowable dates of birth (for example, not accepting a date of birth in the future).

Truth Verification

As indicated, verifying the information provided by companies and filers will improve the data quality. What degree of verification is necessary and feasible? If, as suggested above, the names of beneficial owners and directors are electronically cross-checked and linked with existing records under government control (such as a driver's license database), then a significant verification threshold is already reached. If scanned passports or drivers licenses are provided, then a quick manual check by an employee in the Registry office to verify whether the names and dates of birth match between all listed beneficial owners and all ID documents provided will still be possible, although it will of course take a certain amount of time to process thousands of companies and their beneficial owners.

What about verification of other data points? It is suggested that Registrars with expertise in corporate law help provide a strong risk-analysis approach to verification. A highly skilled Registrar could discern on a spot check basis when there is a higher risk of money laundering, and where it might be necessary to go back to the corporation with more questions.

Additionally, Global Witness has suggested through its own review of the UK Registry open data, that automated tools can be developed that will red flag certain suspicious records, or at least where enhanced due diligence will be required by the Registrar.²⁹ Automated red flagging would enable a Registrar to focus limited resources on high risk companies. Global Witness provides some simple examples, suggesting that more sophisticated red-flagging programs could be developed. For example, the Global Witness tools red flagged the following:

- Company shares a beneficial owner, officer or registered postcode with a company suspected of having been involved in money laundering (7,848 were red flagged for this);
- Officers or beneficial owners are based in secrecy jurisdictions e.g. British Virgin Islands (140,409 were flagged for this)
- Company's beneficial owners function as beneficial owners for a large number of other companies (9,199 were flagged for this).³⁰

Red flags do not in themselves prove wrongdoing, but should serve as a starting point for further inquiry.³¹

Registrars should Have Adequate Regulatory Powers and Duties

If the traditional corporate registry is to be repurposed for anti-money laundering functions, the Registrar should have AML reporting obligations and access to sensitive risk assessment information about misuse of entities.

Registries Must Require Prompt Information Updates

²⁹ Global Witness, *the Companies We Keep*, supra note 14 at page 20-21.

³⁰ *Ibid.*

³¹ *Ibid.*

Typically, most registered entities submit statutory annual returns, however, many jurisdictions also require notice of updates within a certain time period, for example, within 14 or 30 days of changes. Unless there is a clear requirement that the Registrar be notified of any changes within a certain time period, there is a high risk that information in the registry will quickly become out of date.

Financial Institutions and other Designated Businesses and Professions Must Report Discrepancies and Inaccuracies to the Registrar

The *Proceeds of Crime (Money Laundering) and Terrorism Financing Act* (PCMLTFA) requires financial institutions and certain other entities to perform due diligence on clients and collect, *inter alia*, beneficial ownership information on them (see **Annex 1**).

When Financial institutions and other designated entities notice discrepancies between beneficial ownership information provided to them by clients and information contained in the beneficial ownership registry, they should be required to report such discrepancies to the Registrar. This has emerged as a best practice and is part of the reforms announced by the UK Government announced in September 2020.

Unique identifiers should be issued to all Directors and Beneficial Owners

If the database itself issues a unique identifier to each individual registered in the database, it will greatly improve the accuracy of data searches. For example, a user performing due diligence on a client with common first and last names such as “Jennifer Smith” might get a large number of beneficial owner and director hits for BC or multi-jurisdictional corporations, and not be 100% certain if they are all the same person, particularly if they share the same month and year of birth. A unique identifier randomly issued and not based on any other identification number and publicly disclosed, will allow searchers to know very quickly whether all Jennifer Smiths turning up in a search result are the same person.

Database Design Considerations

Ease of use and efficiency is greatly enhanced for all users if information in the registry is recorded digitally and if there is maximum flexibility in searching. Searchable fields should include, at a minimum, the names of beneficial owners, directors, agents, business address, company name, birth date, and unique identifier.

Certain examples illustrate the usefulness of maximum flexibility in searching. Banks may wish for due diligence purposes to conduct a name search and determine how many directorships a particular person has accepted. A high number of directorships may signal that the director is in fact a nominee director, standing in for a real person. Law enforcement may wish to search an address where suspicious activities might be taking place to see what other corporations are registered at the same address. In these ways, maximized searchability increases users’ ability to detect fraud.

The Open Government Partnership has emphasized the benefits of maximum interoperability of data to make it as usable as possible between law enforcement, tax officials and financial intelligence offices across different jurisdictions.³² Open Ownership has published a data standard template for publishing structured data about beneficial ownership in a format that can be read and understood by computer

³² Open Government Partnership Global Report, *Anti-Corruption Initiatives; Beneficial Ownership*, available at: https://www.opengovpartnership.org/wp-content/uploads/2019/05/Global-Report_Beneficial-Ownership.pdf

systems around the world.³³

e. Federal/Provincial Cooperation in Creating a Registry

Questions from BC Consultation on a Public Beneficial Ownership Registry:

5. Should a B.C. registry of beneficial ownership be linked with those in other Canadian jurisdictions?

There would be significant benefits to cross-cooperation across Canadian jurisdictions in creating beneficial ownership registries. For users of beneficial ownership registries, there would be great convenience in offering one-stop searchability rather than requiring users to search multiple databases individually. Additionally, the data obtained may be much more useful if multiple jurisdictions can be searched at once, for example, a name search pulling directors and beneficial owners from across Canadian provinces, that allows for data comparison.

Nonetheless, significant challenges would have to be overcome. Each federal, provincial and territorial government maintains its own registry for corporations and other entities under its jurisdiction. Every day, the registries under respective control of their governments are updated as thousands of businesses are created, dissolved, amalgamated, or have information changed such as business address or names of directors. Given the constant changing information in existing registries under control of provincial, territorial and federal governments, it would be difficult to create a new registry for beneficial owners without the full cooperation of all jurisdictions.

To create a “centralized” beneficial ownership registry, the simplest solution would be the creation of a portal with a search engine that could simultaneously search all registries of all willing jurisdictions in real time.

Searchability and Information Inconsistencies between Jurisdictions

As explained above, ease of use and efficiency is greatly enhanced for all types of users if there is maximum flexibility in searching. However, each jurisdiction gathers similar but not identical information from companies. When bringing together a number of different databases through one portal and search engine, there can be challenges in effectively matching up fields and ensuring consistency in search retrieval information. Data fields may not line up perfectly, or they may capture information differently. For example, dates may be captured inconsistently from province to province. Is 02/12/1997 December 2 or February 12, 1997? A search of all provinces’ records may bring up false matches. Some provinces gather director information, and some gather officer information. Because the registries are already in existence with millions of data sets already recorded, it would be complicated to create and apply consistent fields and data standards across jurisdictions for pre-existing information. If new beneficial ownership fields are created, it would be easier for these to have consistent fields and data standards across all jurisdictions with the cooperation of all.

As indicated earlier, Open Ownership has been developing a common data standard that if implemented widely, would allow for maximum data comparison and interoperability between jurisdictions around

³³ Open Ownership *Systems Guide*, available at: <https://www.openownership.org/guide/systems/>

the globe.³⁴ All Canadian jurisdictions, including British Columbia, should consider adopting a consistent global standard.

f. Access to Beneficial Ownership Information

Questions from BC Consultation on a Public Beneficial Ownership Registry:

6. How will publicly available beneficial ownership information impact your operations?

7. In your opinion, what degree of searching should the public have?

Which potential users would benefit from access to beneficial ownership information? There are a large number of stakeholder groups possessing a legitimate interest in access, which is why a number of jurisdictions, including the UK and European Union, have decided to make their registries public. Companies House, the UK government agency administering its beneficial ownership registry, reports that the free, public UK register **data was accessed 9.4 billion times** in the year leading up to September 2020.³⁵

Potential users fall into two broad categories: government agencies and non-government actors. A survey of the potential purposes for a beneficial ownership registry reveal that such purposes could be very wide-ranging. The following section, slightly condensed from an earlier report,³⁶ considers some of these rationales for collection and disclosure of beneficial ownership information, along with relevant government agencies and non-governmental actors with an interest in obtaining such information.

Criminal Law Detection and Enforcement

A key policy rationale for greater transparency in beneficial ownership information relates to preventing, detecting, and investigating criminal activity due to the misuse of these legal vehicles.

Beneficial ownership transparency would likely **deter** criminals from being attracted to a particular jurisdiction by making it more difficult to anonymously use corporate and other vehicles. Access to beneficial ownership information by financial institutions, law enforcement and Fintrac (see **Annex 1**) would make it easier to **detect** crimes than is currently the case, through suspicious ownership details or patterns. Lastly, the availability of such information to law enforcement would make it easier to **investigate** suspected crimes, including conducting investigations without tipping off the entities and their principals being investigated.

Regulation of Corporations

Federal, provincial and territorial Directors of Corporations or Registrars of Corporations would need access to beneficial ownership information for the purposes of implementing and enforcing corporate law statutes. These agencies are charged with overseeing the statutory compliance of corporations with

³⁴ Open Ownership Data Standard, <https://www.openownership.org/guide/data/>

³⁵ *Reforms to Companies House to clamp down on fraud and give businesses greater confidence in transactions*, September 2020, available at: <https://www.gov.uk/government/news/reforms-to-companies-house-to-clamp-down-on-fraud-and-give-businesses-greater-confidence-in-transactions>

³⁶ Johnson, Mora, (2019) *A Public Beneficial Ownership Registry and the Canadian Privacy Regime: A Legal Analysis*, *supra* note 1.

the relevant laws of the federal government or provinces, typically a *Business Corporations Act*. In order to ensure compliance with corporate beneficial ownership requirements, they need access to any information collected by companies, and will of course be responsible for any government registry collecting and publishing that information.

Tax Enforcement

The Canadian *Income Tax Act* already requires individuals to declare their beneficial ownership of certain types of property and assets (however, this information is kept confidential from other government agencies). It would be useful for the Canada Revenue Agency and provincial equivalents to have access to a beneficial ownership registry to cross-check certain individuals' tax declarations against corporate disclosures of beneficial ownership. Such access would facilitate investigations into tax evasion as CRA's criminal investigators face the same difficulty as police in identifying beneficial owners of corporations which infringe tax laws.

Transparency Related to Government Procurement

Federal, provincial, and territorial procurement policies frequently prohibit certain individuals and entities from bidding on government contracts, for example, if they have been convicted of corruption or fraud offences. Officials implementing government procurement would want access to a beneficial ownership registry to ensure that an entity bidding on government contracts is not simply disguising a disbarred corporation and/or beneficial owners through the creation of a new legal entity.

Consumer Protection

Provincial Consumer Protection agencies help protect the public through a number of services, including a complaints-receiving mechanism and a watchlist.³⁷ Such agencies may be interested in tracking whether a new corporation is merely an attempt by a beneficial owner to re-start business with a clean slate to avoid negative ratings.

Transparency in Political Financing

Elections Canada and provincial and municipal counterparts may wish to have access to beneficial ownership information. For example, where campaign financing laws restrict totals that individuals and corporations can donate to a political party, beneficial ownership information would help to determine whether individuals are breaking laws by donating through multiple legal entities.

Anti-Money Laundering and Anti-Fraud Due Diligence by Non-Governmental Actors

Financial Entities. As explained in more detail in *Annex 1*, financial entities, securities dealers, money services businesses, and life insurance companies, brokers and agents have statutory due diligence obligations to collect beneficial ownership information under the *PCMLTF Regulations*. The federal government requires this category of reporting entities to collect beneficial ownership information from certain clients, under the threat of sanction on the reporting entity for non-compliance. Because it is difficult to independently obtain and verify the identity of beneficial owners, these reporting entities currently expend considerable resources trying to collect and confirm such information. They would have a strong interest in gaining access to a corporation's beneficial ownership information through a central portal to save costs and reduce reputational and financial risk.

Designated Non-Financial Businesses and Professions (DNFBPs). At present, reporting entities with

³⁷ See, e.g., Ontario Consumer Beware List, <http://www.consumerbeware.mgs.gov.on.ca/catsct/start.do?lang=en>

obligations under the *PCMLTFA* and related regulations, such as accountants, real estate brokers and representatives, real estate promoters, BC notaries, casinos, and dealers in precious metals and stones, are exempted from the beneficial ownership identification and verification obligations, but this could change. The 2018 Report of the House of Commons Finance Committee on money laundering recommends expanding the list of reporting entities to include non-federally regulated mortgage lenders, high-value goods dealers, white label ATM operators, etc.³⁸ The Committee further recommends that the obligation to collect beneficial ownership information be extended to all reporting entities. Without access to public beneficial ownership information, such a requirement would be quite demanding, in costs, labour and time, for the individuals and small businesses captured in these categories.

Other professionals, such as lawyers, regularly conduct beneficial ownership due diligence on clients even without statutory requirements, pursuant to professional regulatory requirements or good practice. As DNFBPs, access to a beneficial ownership registry would ensure better financial and reputational risk management practice.

Transparency in Business Activities

Creditors. Existing creditors already have certain rights to access shareholder registry information under corporate law in Canada. However, accessing shareholder registries may not provide beneficial ownership information since registered shareholders may not be the same as beneficial owners (they may be nominees or banks holding investments in trust, for example). Additionally, the mechanism for creditors obtaining registered shareholder information is cumbersome and requires a formal request. Many creditors would appreciate having access to beneficial ownership information to assist their recovery of arrears, without incurring the costs, delay and inconvenience of having to seek such information in court.

Better Business Bureaux, other non-governmental watchdogs. Like consumer protection agencies, a number of private sector organizations provide a public service in monitoring, accepting complaints, and reporting on the performance of individual businesses. They may be interested in determining whether a new business in a category is actually incorporated by a beneficial owner of a previously poorly-rated business.

Businesses conducting due diligence on prospective customers or suppliers. Many of the thousands of business bankruptcies that occur annually across Canada can be attributed to creditors not being paid for goods or services they have already provided. Yet there is currently no way for a business to conduct beneficial ownership due diligence on a privately-held corporation with which it is considering doing business. Businesses would benefit from finding out if the beneficial owner of a potential business partner is a convicted fraudster, a person with a poor reputation, or perhaps, a longstanding competitor with dishonest intent.

Consumers. Many consumers prefer to buy from small, locally-owned businesses rather than those controlled by large domestic or foreign-owned corporations. Beneficial ownership transparency would enable consumers to make informed buying choices.

³⁸ House of Commons Standing Committee on Finance (November 2018) *Confronting Money Laundering: Moving Canada Forward*; <https://www.ourcommons.ca/DocumentViewer/en/42-1/FINA/report-24>

Public Interest: Journalists and Investigative NGOs

Journalists and Non-Governmental Organizations (NGOs), including those conducting research on alleged incidents of corruption, cronyism, and government patronage, have sought access to beneficial ownership registries in European jurisdictions pursuant to the “legitimate interest” provision in Anti-Money Laundering Directive 4³⁹. For example, NGOs and journalists may investigate whether bid-rigging of government contracts resulted in their issuance to entities with beneficial owners who are party donors. The NGO Global Witness has reported in certain countries about oil and gas concessions being granted to companies whose beneficial owners are in fact government officials or their relatives.⁴⁰ NGO OpenCorporates has reported on its data being used to investigate fraud relating to covid relief funds.⁴¹

Transparency Across Provincial and International Borders

It should be noted that, in our globalized world, many of the above-noted rationales apply across provincial and international borders. Criminals move proceeds of crime across the globe; police in other countries may be interested in the true owners of Canadian corporations, and vice versa. Canadians may fraternize businesses across borders; foreign and domestic companies bid on government contracts; tax officials may be interested in learning more about companies in other jurisdictions. Publicly available beneficial ownership information assists consumers, businesses, investigators, tax officials and law enforcement and others around the world access information expeditiously.

Tiered Access for Different Users

If beneficial ownership information should be provided to some, but not all stakeholders, a tiered access regime could be considered. In essence, a database would be set up that is password-protected; certain categories of users would be permitted to access certain categories of information in the registry. The UK registry has 2 tiers – the government tier which allow access to all information, and the public tier which restricts certain information such as day of birth. However, a tiered access system could be more sophisticated – allowing different stakeholder groups access to different levels of information. For example, government officials could access all information, banks and others with statutory due diligence obligations could access everything minus the most sensitive information, with public availability still more restricted.

The main drawback to a tiered access approach is that it becomes increasingly costly to create multiple tiers and password protections, funds that might be better used on higher value activities, such as verification and/or audits of the data to ensure higher quality.

g. Privacy Considerations in public registries

Questions from BC Consultation on a Public Beneficial Ownership Registry:

6. How will publicly available beneficial ownership information impact your operations?

³⁹ European Union, Directive on Money Laundering 2015/849 https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:JOL_2015_141_R_0003&from=EN

⁴⁰ For example, see Global Witness (2014) Congo’s Secret Sales, available at: <https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/congo-secret-sales/>

⁴¹ Open Corporates (2020), *Covid relief funds: How Open Corporates’ data helped expose exploitation of the US Paycheck Protection Program*, available at <https://blog.opencorporates.com/2020/10/29/covid-relief-funds-how-opencorporates-data-helped-expose-exploitation-of-the-us-paycheck-protection-program/>

7. In your opinion, what degree of searching should the public have?
8. Are there any reasons to limit/expand the availability of information on the registry beyond what is described above in Chart 2?
9. Are there other situations in which an individual's information should be obscured other than the scenarios described above?

Making beneficial ownership registries available for public searching would require publishing personal information about beneficial owners, which raises privacy concerns and considerations. In Canada, individual privacy rights are protected under section 7 and section 8 of the *Charter of Rights and Freedoms* and by a variety of federal and provincial privacy statutes.

A previously published report dedicated to privacy issues provides a more thorough analysis.⁴² In that report, the legal analysis concluded that under Charter jurisprudence, most of the beneficial ownership information on corporations likely to be collected and disclosed publicly would carry a low expectation of privacy. However, publishing information regarding an individual's citizenship or country of principal tax residency might be considered too sensitive for public disclosure as this information could lead to discrimination or arbitrary treatment based on race, colour, national or ethnic origin or even religion. This type of information carries a higher expectation of privacy and is more likely to be protected by the Charter.

The report also recommended a carve-out that public beneficial ownership registries allow for **publication exceptions by application** for those with legitimate privacy concerns.

There are many reasons why businesses would like to keep certain activities, investments, acquisitions and holdings confidential. Business confidentiality allows for firms to invest in new ventures and knowledge creation without any gains immediately being eroded by competitors. Canadian law recognizes the concept of commercial confidentiality and the imperative for Government to protect third party commercially confidential information in its possession.

Likewise, some individuals, due to fame or notoriety, wealth or the type of business in which they engage are more vulnerable to harassment, protests, attention and intrusion into their privacy, and potentially even fears of being targeted by criminals for extortion or kidnapping of their family members.

A reasonable policy response could include some form of exemption that could be made by application only, to be decided pursuant to an objective process on a case-by-case basis. Government registrars should clearly inform the public, corporations and their representatives about any such exemption. Privately-held corporations with legitimate business confidentiality rationales could be permitted to have their beneficial ownership information exempted from public disclosure for a specific time period, for example, one or two years, after which it would be made public. Applicants would be required to provide evidence to support a business confidentiality application.

For beneficial owners concerned about harassment or protesters, a longer lasting exemption could be

⁴² Mora Johnson, *A Public Beneficial Ownership Registry and the Canadian Privacy Regime: A Legal Analysis*, *supra* note 1.

contemplated, perhaps modelled on the U.K. exception (see **Annex 2**).

Data Management, Storage, Retention and Destruction Policies

Sensitive information such as home addresses, dates of birth, citizenship as well as scans of driver's licenses, passports or other forms of identification may be used to confirm the identity of beneficial owners of corporations. If the government were to create a beneficial ownership registry, these documents would need to be retained by the government and may be requested by tax authorities or law enforcement so long as the individuals in question remain beneficial owners. Understanding existing federal, provincial and territorial policies surrounding the management, retention, and destruction of personal information can help to identify and mitigate potential privacy risks associated with a public registry.

The *Privacy Act*⁴³ contains retention and disposal requirements for personal information retained by federal institutions. Usually, personal information that has been used for an administrative purpose is retained for two years after it has served its purpose to provide reasonable time for an individual to access their personal information. Under the *Act*, government institutions are also responsible for taking reasonable steps to ensure that personal information used for administrative purposes is kept accurate, up-to-date and as complete as possible. Disposal of personal information is conducted in accordance with the regulations and any directives or guidelines issues by the designated minister.

The provinces also have legislation that addresses how personal information collected and shared by government is protected and managed. For example, in Ontario, information (other than health information) collected and shared by the provincial government is protected under the *Freedom of Information and Protection of Privacy Act* (FIPPA).⁴⁴ This Act requires institutions, including provincial ministries, to implement reasonable measures to preserve records of information in accordance with any legislation that applies to the institution.

While the regulations to the *Privacy Act* require personal information to be retained for at least two years, there is no maximum retention period. When it comes to deciding how long to retain information, the Office of the Privacy Commissioner of Canada guidance says:

There is no "one size fits all" retention period. For some organizations, there is a legislative requirement to keep information for a certain amount of time. In other instances, there may be no legislative requirement, and an organization needs to determine the appropriate retention period.⁴⁵

In short, there are measures and laws in place at the federal, provincial and territorial levels to guide the safe management of personal information that may be collected through a beneficial ownership registry.

⁴³ R.S.C., 1985, c. P-21.

⁴⁴ R.S.O. 1990, c. F.31.

⁴⁵ Office of the Privacy Commissioner, *Personal Information Retention and Disposal: Principles and Best Practices*, 2014, available at: https://www.priv.gc.ca/en/privacy-topics/business-privacy/safeguards-and-breaches/safeguarding-personal-information/gd_rd_201406/

h. Costs

Question from BC Consultation on a Public Beneficial Ownership Registry:

11. If there were a cost to search the database, would that change the way you interact with the beneficial ownership database?

Creating a high-quality, verified beneficial ownership database will require significant investment by government. However, it should be noted that these costs are currently being borne by **other parties in the financial system in a highly inefficient manner**. The Clearing House Association, a US banking association, noted that FIs devote vast resources to activities that could easily be performed centrally by government or some other party. One example is the lack of an established reporting in the United States requirement for beneficial owners of corporations, forcing multiple firms to conduct due diligence and research such information on the same companies, when it should be readily available upon incorporation.⁴⁶ Banks interviewed by the World Bank StAR Initiative noted that much of their time and effort performing due diligence is spent on customer accounts that are clearly beyond all possible risk of money laundering, yet require due diligence to ensure “the paperwork is in order.”⁴⁷

A well-managed, verified beneficial ownership registry would **likely bring about significant aggregate efficiencies across the economy, even if it costs more for the government to implement**. It would also reduce costs and increase efficiencies within other parts of government, such as law enforcement and tax assessment.

A U4 Report claims that the UK Treasury Department reported that implementing beneficial ownership registers resulted in significant savings internal to the government.⁴⁸ In particular, it claims that cost in police time saved was twice as large as the combined cost to the public sector of running the database and the cost to the private sector of submitting the data.⁴⁹

It would be useful to explore the extent to which any increased costs of a verified registry could be recovered without compromising free and open access, for example, through increased corporate registration fees, or by charging an annual levy for for-profit users for due diligence purposes, such as banks and trust companies. It could be that once start-up costs are covered, the regular maintenance of the registry will be sufficiently low-cost to be able to offer the registry for free.

If the Government is committed to having user fees imposed for the beneficial ownership registry, then a sliding annual fee basis should be considered, applicable to for-profit businesses alone, calculated in accordance with the size of the corporation based on number of employees or annual revenues. NGOs, journalists, researchers, academics should be able to use the database for free, unlimited searches.

A possible example of a sliding annual fee scale for for-profit businesses is below:

⁴⁶ Clearing House Association, *A New Paradigm: Redesigning the U.S. AML/CFT Framework to Protect National Security and Aid Law Enforcement*, February 2017, pages 5 and 8, found at https://www.theclearinghouse.org/~media/TCH/Documents/TCH%20WEEKLY/2017/20170216_TCH_Report_AML_CFT_Framework_Redesign.pdf

⁴⁷ Van der Does de Willebois et al, *Puppet Masters*, supra note 3 at page 98.

⁴⁸ Theo Van der Merwe, U4, supra note 12.

⁴⁹ *Ibid.*, at p. 8

Example of Annual User Fee Scale for For-Profit Businesses		
Size of Business	Number of Employees	Annual User Fee (unlimited searches)
Micro	<10	\$ 100
Small	10-49	\$ 500
Medium	50-249	\$ 2,500
Large	250-2999	\$ 5,000
Very Large	3000+	\$ 10,000

If they must be imposed, annual fees should be low enough to avoid dis-incentivizing important uses, such as the conduct of due diligence by sole practitioner lawyers, for example, or sellers of luxury goods.

IV. Conclusions

Emerging studies and reports are providing evidence that beneficial ownership registries are an important tool for reducing the opacity of companies allowing law enforcement, tax officials, and financial intelligence agencies to identify true owners and track down criminals. They may also be invaluable for those conducting due diligence such as financial institutions and others with statutory or regulatory due diligence obligations.

It is critical, however, that beneficial ownership registries be well designed so that they are fit for purpose and serve all users' needs adequately. A registry that has outdated or unverified information may not be considered reliable by key users. If the Registry design and legislative authorities allows criminals to exploit loopholes to remain anonymous, the entire project will not succeed in meeting its public policy goals.

As lessons learned and best practices emerge from the UK as well as EU and other jurisdictions, British Columbia policymakers should be in a position to develop a world class beneficial ownership registry that succeeds in reducing this province's appeal as a safe landing place for the proceeds of crime. There will be numerous other spinoff benefits including a more transparent and stable commercial environment. The British Columbia Government's leadership in creating and resourcing the Cullen Commission to explore these questions demonstrates an important policy commitment which should be followed through and implemented rigorously.

V. Key Sources

British Columbia Government, Consultation on a Public Beneficial Ownership Registry (2020), available at:

<https://engage.gov.bc.ca/app/uploads/sites/121/2020/01/386142-BCABO-Consultation-Documents-For-Release.pdf>

Clearing House Association, *A New Paradigm: Redesigning the U.S. AML/CFT Framework to Protect National Security and Aid Law Enforcement*, February 2017, pages 5 and 8, found at

https://www.theclearinghouse.org/~media/TCH/Documents/TCH%20WEEKLY/2017/20170216_TCH_Report_AML_CFT_Framework_R redesign.pdf

FATF Guidance (2014) *Transparency and beneficial ownership*, available at: <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>

FATF Recommendations 24 and 25, available at <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>

FATF, (2019) *Best Practices on Beneficial Ownership for Legal Persons*, available at <https://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf>

Global Witness and Open Ownership (2017) *Learning the lessons from the UK's public beneficial ownership register*, available at <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/learning-lessons-uks-public-beneficial-ownership-register/>

Global Witness (2018) *The Companies We Keep*, available at: <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/companies-we-keep/>

Global Witness (2020) *Patchy Progress in setting up beneficial ownership registries in the EU*, available at <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/5amid-patchy-progress/>

House of Commons Standing Committee on Finance (November 2018) *Confronting Money Laundering: Moving Canada Forward*; <https://www.ourcommons.ca/DocumentViewer/en/42-1/FINA/report-24>

House of Commons, Standing Committee on Finance, Evidence of Proceedings, (February 26, 2018), see evidence from Joanne Crampton -- <http://www.ourcommons.ca/DocumentViewer/en/42-1/FINA/meeting-134/evidence>

Johnson, Mora, (2017) *Secret Entities: A legal analysis of the transparency of beneficial ownership in Canada*, available at: <https://static1.squarespace.com/static/5c4638563c3a53c04e226492/t/5c6c9f5cee6eb00cf07a72fd/1550622558640/secret-entities.pdf>;

Johnson, Mora, (2017) *Building a Transparent, Effective Beneficial Ownership Registry; Lessons Learned and Emerging Best Practices from Other Jurisdictions*, available at:
<https://static1.squarespace.com/static/5c8938b492441bf93fdb536/t/5cc24633f9619ab923823b96/1556235835496/PWYP-Canada-CRBO-Policy-English.pdf>

Johnson, Mora, (2019) *A Public Beneficial Ownership Registry and the Canadian Privacy Regime: A Legal Analysis*, available at:
<https://static1.squarespace.com/static/5c8938b492441bf93fdb536/t/5eac6dd026b8946d37f7dde2/1588358609932/endsnowwashing-public-beneficial-ownership-registry.pdf>

Open Government Partnership Global Report, *Anti-Corruption Initiatives; Beneficial Ownership*, available at:
https://www.opengovpartnership.org/wp-content/uploads/2019/05/Global-Report_Beneficial-Ownership.pdf

Open Ownership, Guide, available at: <https://www.openownership.org/guide/>

United Kingdom Government, Department for Business, Energy and Industry Strategy (March 2019), *Review of the Implementation of the PSC Register*, available at:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822823/review-implementation-psc-register.pdf

United Kingdom Government, Department for Business, Energy and Industry Strategy (September 2020), *Corporate Transparency and Register Reform; Government response to the consultation on options to enhance the role of Companies House and increase the transparency of UK corporate entities*, available at:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925059/corporate-transparency-register-reform-government-response.pdf

United Kingdom Government, Department for Business, Energy and Industry Strategy (September 2020) *Reforms to Companies House to clamp down on fraud and give businesses greater confidence in transactions* (press release), found at: <https://www.gov.uk/government/news/reforms-to-companies-house-to-clamp-down-on-fraud-and-give-businesses-greater-confidence-in-transactions>

United Kingdom Government, Department for Business, Energy and Industry Strategy (September 2019) *New Report estimates value of Companies House data at up to £3 billion per year* (press release), available at:
<https://www.gov.uk/government/news/new-report-estimates-value-of-companies-house-data-at-up-to-3-billion-per-year#:~:text=New%20research%20has%20estimated%20the,%C2%A33%20billion%20per%20year.&text=The%20report%20outlines%20the%20value,generate%20the%20greatest%20user%20value.>

Van der Does de Willebois, E., Halter, E., Harrison, R., Park, J.W. and Sharman, J. (2011) *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*. World Bank, STAR Initiative, available at: <https://star.worldbank.org/sites/star/files/puppetmastersv1.pdf>

Van der Merwe, Theo (2020) *Beneficial Ownership Registers: Progress to Date*, U4, available at:
<https://www.u4.no/publications/beneficial-ownership-registers-progress-to-date>

Annex 1: Proceeds of Crime (Money Laundering) and Terrorism Financing Act⁵⁰

The PCMLTFA also empowers the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) to supervise financial institutions and other entities' compliance with the Act and related regulations, as well as receive reports of suspicious transactions (and other reports) from them as mandated in the Act. FINTRAC makes disclosures to law enforcement when they suspect that financial transactions may relate to criminal activities. For both the supervisory functions as well as the law enforcement functions, it is important for FINTRAC to have access to a beneficial ownership registry.

Under section 11.1 of the *PCMLTF* Regulations to the Act, all financial entities, securities dealers, life insurance companies, brokers and agents and money services businesses are required to confirm the existence of an entity or trust, and must also collect beneficial ownership information and verify the identity of the beneficial ownership of that entity or trust. For all entities, including corporations, the names and addresses of all persons who own or control, directly or indirectly, 25 per cent or more of the entity must be collected. For trusts, the names and addresses of all trustees and all known beneficiaries and settlors of the trust must be collected. In all cases, information establishing the ownership, control, and structure of the entity must also be collected.⁵¹

⁵⁰ S.C. 2000, c. 17

⁵¹ *Ibid.*, Regulations s. 11.1, see <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2002-184/page-3.html#h-10>

Annex 2: Privacy Exemption (UK Example taken directly from the Companies House website)⁵²

Applying to restrict disclosure of private information from the UK Register of Persons of Significant Control (Beneficial Ownership Registry)

Published 16 September 2020

From:

[Companies House](#)

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What protection means

Most [information registered at Companies House](#) is available to the public.

Other personal details, such as your home address and full date of birth, are not published on the Companies House register.

This information is only shared with:

- credit reference agencies (CRAs)
- specified public authorities (SPAs) such as the police

You can apply to protect your personal details if you (or someone living with you) are at serious risk of

⁵² <https://www.gov.uk/guidance/applying-to-protect-your-personal-information-on-the-companies-house-register>

violence or intimidation because of your company or LLP's activities.

For example, you could be a director, LLP member or PSC that's:

- been targeted by activists
- licensed under the Animal (Scientific Procedures) Act 1986
- active in the defence industry
- an easily traceable supplier to (or partner of) one of these organisations

This is not a complete list. Each case will depend on your individual circumstances.

If possible, you should provide [evidence to support your application](#).

You cannot protect your home address where it's showing as the registered office of the company or LLP.

What protection is available

There are 2 types of protection. You can:

- protect your home address from CRAs - directors, LLP members and PSCs
- protect all your information - PSCs only

If you're a PSC, you can also make a combined application for both.

SPAs like the police will still be able to request the information.