

August 7th 2020

**Written Submission for the Pre-Budget Consultations in Advance of the
Upcoming Federal Budget**

By: Publish What You Pay Canada and Transparency International Canada



About Publish What You Pay Canada (PWYP-Canada):

Publish What You Pay Canada is part of the global Publish What You Pay movement of civil society organizations working to make oil, gas and mineral governance open, accountable, sustainable, equitable and responsive to all people. As a movement, we envision a world where all people benefit from their natural resources, today and tomorrow. Launched in 2008, PWYP-Canada today numbers 15 members and realizes its work through advocacy, research and public outreach to promote and achieve enhanced disclosure of information about extractive industry projects.



About Transparency International Canada (TI-Canada):

TI-Canada is the Canadian chapter of Transparency International (TI). Founded in 1996, TI is the world's leading anti-corruption movement with over 100 chapters and contact points around the world and an international secretariat in Berlin. TI Canada was also founded in 1996 is the country's leading anti-corruption voice and thought leader with in-house and volunteer experts from a range of sectors in Canada.

List of Recommendations:

1. Canada's federal government establishes a publicly accessible, centralized, pan-Canadian beneficial ownership registry for private corporations.

Dear Honourable Members of Canada's Standing Committee on Finance,

On behalf of Publish What You Pay Canada and Transparency International Canada, we are pleased to make a submission as part of consultations in advance of Budget 2021.

As civil society organizations with mandates to fight corruption and advance transparency, we would like to present evidence based on recent international and domestic trends in support of a publicly accessible, pan-Canadian beneficial ownership registry. Our insights build upon the 2018 statutory review of the *Proceeds of Crime, Money Laundering and Terrorist Financing Act (PCMLTFA)*.

As Canada prepares for a post-COVID-19 economic recovery, we recommend that the Federal Government establish a publicly accessible registry in order to prevent corruption and fraud through government procurement contracts. Such a commitment advances Canada's May 2020 pledge with international partners to combat illicit offshore financial holdings and money laundering which siphons off trillions of dollars needed for rebuilding economies.¹

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Short-Summary of Canada's Problem with Money Laundering and Lack of Corporate Transparency

A risk assessment conducted by Canada's Finance Department in 2015 demonstrates that Canada faces very high threats of money laundering through fraud, bribery, piracy, counterfeiting, terrorist financing, and various types of smuggling and trafficking in which shell companies are used to facilitate the proceeds of crime.²

A 2016 evaluation by the Financial Action Task Force (FATF) scored Canada as partially compliant and non-compliant with respect to transparency of beneficial owners of legal persons and legal arrangements. The FATF provided a list of priority recommendations which includes ensuring that timely and accurate beneficial ownership information be made available to competent authorities and that financial institutions and designated non-financial business and professions (DNFBPs) verify beneficial ownership information.³ The FATF also specified that Canada should consider additional measures to supplement its existing framework.⁴

In his recent report, *Dirty Money – Part 2*, former deputy RCMP commissioner Dr. Peter German comments on the opaque ownership problem in Canada and notes, "taking legislative steps to make B.C. companies more transparent would make them less vulnerable to money laundering and other criminal activity."⁵ Other RCMP officers have also called for greater transparency. During the 2018 statutory review of the *PCMLTFA*, Assistant Commissioner

¹ <https://www.cbc.ca/news/politics/trudeau-un-summit-1.5587961>

² <https://www.canada.ca/en/department-finance/services/publications/assessment-inherent-risks-money-laundering-terrorist-financing.html>

³ <https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-canada-2016.html>

⁴ <https://www.slideshare.net/fatf-gafi/mutual-evaluation-of-canada>

⁵ <https://icclr.org/publications/dirty-money-report-part-2/> pg. 14

Joanne Crampton attested that despite success investigating criminal activity linked to organized crime, the RCMP has been hindered by challenges stemming from Canada's anti-money laundering regime. Among the challenges cited, she noted, "a lack of transparency around beneficial ownership information" and "a lack of specialized resources and training for investigators to undertake money laundering cases, which are often very complex in nature."⁶

Multilateral Bodies Call For Public Disclosure of Beneficial Owners During COVID-19

Public beneficial ownership registries are emerging as a priority in light of significant funds being disbursed to support economies as part of COVID-19 relief measures. In May 2020, the European Commission announced an action plan to fight money laundering and terrorist financing, and improved methodology to identify high-risk third countries. This has included a number of measures to actively monitor EU member states in implementing public beneficial ownership disclosure under the Fifth Anti-Money Laundering Directives (AMLD5).^{7,8} Further, in June 2020, the International Monetary Fund (IMF) required that members who are requesting emergency assistance, must publicly disclose beneficial ownership information on firms awarded government procurement contracts.⁹

Stronger International and Domestic Precedent for a Publicly Accessible Beneficial Ownership Registry

The international landscape has moved to more jurisdictions making commitments to establish publicly accessible beneficial ownership registries. As of January 2020, all EU member states are now required to implement publicly accessible registers of beneficial owners as AMLD5 has come into force.^{10,11} Additionally in 2020, the 52 members of the Extractive Industries Transparency Initiative (to which Canada is a funder and Board member), are required to publish beneficial ownership information of all contracting and producing extractives companies in their countries, with national registries being encouraged.¹² Furthermore, during the Open Government Partnership Summit in May 2019 in Ottawa, the UK announced it would seek to make public registers the global norm by the end of 2023.¹³ This summer, UK Overseas territories including Bermuda and the Cayman Islands have pledged to publicly disclose beneficial ownership information in registries.¹⁴ Outside the UK and EU, other jurisdictions such

⁶ <https://www.ourcommons.ca/DocumentViewer/en/42-1/FINA/meeting-134/evidence>

⁷ <https://www.klgates.com/commission-proposes-to-strengthen-eu-money-laundering-and-terrorist-financing-rules-05-14-2020/>

⁸ https://ec.europa.eu/commission/presscorner/detail/en/ganda_20_821

⁹ <https://www.imf.org/en/About/Factsheets/Sheets/2020/04/30/how-imf-covid19-financial-help-is-used>

¹⁰ https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_18_3429

¹¹ <https://www.innopay.com/en/news/amld5-has-come-force>

¹² <https://eiti.org/beneficial-ownership>

¹³ Refer to Federico More, "Registers of Beneficial Ownership," August 2019.

¹⁴ <https://www.accountancydaily.co/uk-overseas-territories-make-company-beneficial-ownership-details-public>

as Mexico, Indonesia, Ghana, Kenya, Nigeria, Armenia, and Norway have made commitments to establish publicly accessible beneficial ownership registries.¹⁵

Today, there is also a stronger domestic precedent for a publicly accessible registry. In March 2020, the Québec government announced it will make beneficial ownership information for private entities and commercial trusts publicly accessible and searchable by name in its provincial corporate registry.¹⁶ Furthermore, in May 2019, British Columbia successfully passed legislation under *The Land Owner Transparency Act* requiring public disclosure of beneficial owners of property and concluded a public consultation evaluating the merits of a public registry in April 2020.^{17,18}

Public Disclosure of Beneficial Ownership Information Boosts Information Quality, Creates Efficiencies for Law Enforcement, and Deters Illegal Activity

Independent observers help governments improve information quality in registries

In 2019, the civil society organization, Global Witness, noted there were 58,352 reports from the public regarding likely mistakes and discrepancies in the UK Persons of Significant Control (PSC) company register between July 2017 and March 2018.¹⁹ Additionally, after paywalls were removed from the PSC Register in 2015, the number of searches increased from six million to two billion.²⁰ This demonstrates that there is a high demand for beneficial ownership information, and that independent observers (public, journalists, civil society, academics, and others) can play an important role in improving the accuracy and quality of information in the registry.

Further, a public registry allows for in-depth analysis by independent observers. For example, analysis by civil society organizations and volunteer data scientists found multiple examples of potential non-compliance, including listing companies based in tax havens as beneficial owners. Other findings included politically exposed persons, people on the U.S. sanctions list, and disqualified directors being listed as beneficial owners.²¹ This research also showed data validation errors where there were 500 different spellings of 'British' and 10 beneficial owners listing their nationality as Cornish (a county in South West England).²²

¹⁵ Refer to "Countries fully committed to beneficial ownership transparency"
<https://www.openownership.org/map/>

¹⁶ Refer to Section B.7 "Strengthening corporate transparency"
http://www.budget.finances.gouv.qc.ca/budget/2020-2021/en/documents/Budget2021_AdditionalInfo.pdf

¹⁷ <https://www.nortonrosefulbright.com/en-ca/knowledge/publications/deee862a/british-columbia-land-owner-transparency-act-becomes-law>

¹⁸ <https://engage.gov.bc.ca/govtogetherbc/consultation/corporate-beneficial-ownership-registry-consultation/>

¹⁹ Global Witness, Getting the UK's House in Order, May 2019 pg. 3

²⁰ Ibid.

²¹ <https://www.openownership.org/uploads/learning-the-lessons.pdf> pg. 3

²² Ibid. pg. 8

Law enforcement notes that a public registry results in efficiencies for investigation

Law enforcement in the UK has provided insight noting the PSC Register has had a positive effect on their work and made locating PSC information more efficient.²³

“It was generally felt that the introduction of the register has not influenced the availability of information about beneficial owners of companies; however, it has made it quicker and easier to obtain such information. Therefore, the process of identifying and developing an understanding of individuals that control corporate entities and the corporate networks of which they form part has been made more efficient.”²⁴

Decline in incorporation of suspicious entities and arrests of criminals because of public registries

The UK Department for Business, Energy, and Industrial Strategy (BEIS) has reported that Scottish Limited Partnerships (SLPs) have been used to launder £80bn from Russia over four years.²⁵ SLPs had been linked to international criminal networks in Eastern Europe and had allegedly been used in arms deals.²⁶ After SLPs were required to disclose beneficial owners through the PSC Register, there was an 80% reduction in the number registered in 2018.²⁷

Public registries in other jurisdictions have noted use by civil society organizations, law enforcement, and competent authorities. For instance, civil society in the Czech Republic used Slovakia’s public registry to uncover that the Czech Prime Minister may have been in conflict with EU funding policies.²⁸ In Ukraine, data from the Ukrainian public registry led to an arrest of high-profile official who faked his death in 2018²⁹, and officials are using the registry to trace \$5.5 billion USD in assets that were stolen from its largest bank.³⁰

Public Registry Demonstrates Negligible Burden on UK Business

In 2019, survey findings from the PSC Register refer to testimonies from UK investment associations and business organizations attesting that the register had a negligible impact on

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822823/revi-ew-implementation-psc-register.pdf pg. 34

²⁴ Ibid.

²⁵ <https://www.bbc.com/news/uk-scotland-scotland-business-43935839>

²⁶ Ibid.

²⁷ Ibid.

²⁸ <https://www.theguardian.com/world/2018/sep/20/brussels-urged-to-investigate-czech-pm-over-business-empire>

²⁹ <https://time.com/5426008/ukraine-man-fake-death-rolls-royce/>

³⁰ <https://www.intellinews.com/ukraine-s-prosecutor-general-identifies-5-5bn-of-assets-bought-with-looted-privatbank-funds-151418>

their members.³¹ In the same survey, UK financial institutions suggested that the PSC register may likely increase investment in the country itself:

*“If you're operating in a jurisdiction where you see structures and processes in place that improve transparency around ownership that has to be attractive if you are a legitimate company or organisation... it can only be a benefit would be my view in attracting people in much the same way as a stable body of law. When you're looking at places to invest, a low corruption score is a great benefit.”*³²

It is important to note that business organizations, investment associations, and financial institutions expressed a desire for verified information in the PSC register because it would boost the quality of information and utility of the registry itself would increase.³³

Concluding Remarks

In our perspective, a pan-Canadian publicly accessible beneficial ownership registry is the strongest measure for Canada to address the deficiencies assessed by the FATF and to receive a compliant score. Canadian businesses can also realize reductions in compliance costs and improved due-diligence with a publicly accessible beneficial ownership registry.

There is currently no easy method for a business (particularly small businesses) to conduct due-diligence on the beneficial owners of a privately-held corporation with which it is considering doing business. Small businesses would benefit from finding out if the beneficial owner of a potential business partner is a convicted criminal, a person with a poor reputation, or a longstanding competitor with dishonest intent.

A publicly accessible registry of beneficial owners can help reduce the compliance burden on Canadian sectors covered under the PCMLTFA who are required to collect and maintain records of beneficial ownership information. Such a registry will also assist Designated Non-Financial Businesses and Professions, DNFBPs (e.g., casinos; accountants and accounting firms; dealers in precious metals and stones; British Columbia notaries; real estate brokers, developers, and sales representatives, etc.) who will need to identify beneficial ownership information from customers as of June 2021.³⁴

As a final consideration, when evaluating potential risks of publicly disclosing beneficial ownership information, we recommend that they be weighed against the comprehensive benefits of publicly disclosing such information in the public sphere. A report, *A Public Beneficial Ownership Registry And The Canadian Privacy Regime: A Legal Analysis* features arguments in

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822823/revi-ew-implementation-psc-register.pdf pg. 37

³² Ibid. pg. 38

³³ Ibid. pg. 37-39

³⁴ <http://gazette.gc.ca/rp-pr/p1/2020/2020-02-15/html/reg1-eng.html>

favour of Canada's public interest such as: criminal law detection and enforcement; tax enforcement; transparency related to government procurement; consumer protection; transparency in political financing; transparency in business activities; and finally, a strengthened anti-money laundering, anti-fraud, and anti-terrorist financing regime.³⁵

Should any committee members have any questions, please do not hesitate to contact us. For detailed technical recommendations regarding a pan-Canadian publicly accessible registry, please refer to our submission as part of federal consultations on a public beneficial ownership registry.³⁶

Yours sincerely,

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³⁵ Refer to *A Public Beneficial Ownership Registry And The Canadian Privacy Regime: A Legal Analysis*. pg. 11
<https://static1.squarespace.com/static/5c8938b492441bf93fdb536/t/5eac6dd026b8946d37f7dde2/1588358609932/endsnowwashing-public-beneficial-ownership-registry.pdf>

³⁶

https://static1.squarespace.com/static/5c8938b492441bf93fdb536/t/5ed1201aab1d9162b64d8273/1590763547243/Coalition_Federal+Consultation+Submission.pdf