Part VI
The Corporate Sector

Section 4(1)(iv) of my Terms of Reference requires me to make findings on the extent, growth, evolution, and methods of money laundering in the corporate sector, in particular, "the use of shell companies, trusts, securities and financial instruments for the purposes of money laundering."

In Chapter 23, I review the well-known money laundering risks associated with corporate and other legal arrangements, as well as first steps that have been taken toward greater beneficial ownership transparency in Canada. As I discuss below, there is a near consensus that a beneficial ownership registry is needed in British Columbia; the question is no longer whether the Province should implement such a registry, but *how* it should be done. The federal government has recently given a strong push to a national beneficial ownership transparency registry, even committing to its speedy implementation. In light of this pan-Canadian approach, which I strongly support, my focus in Chapter 24 is to describe the federal initiative and identify how the Province can best support a national beneficial ownership transparency registry.

Chapter 23
Money Laundering Risks Associated with Corporate and Other Legal Arrangements

There are well-accepted money laundering risks associated with corporations and other legal arrangements. These risks stem principally from the anonymity that such arrangements provide, in that they allow individuals to conduct transactions under the guise of a legal person and make it difficult or impossible to trace the activity back to the individual(s) behind the legal person. This kind of anonymity has clear benefits to criminals seeking to conceal their ill-gotten gains and introduce them into the formal financial system.

In this chapter, I discuss how money launderers use corporate structures to facilitate their laundering activities, how they can hide their involvement through anonymous shell companies, and how anonymizing their ownership presents challenges for law enforcement. I note that there are parallels to be drawn with the problems of anonymity and the resultant trend towards transparency in the real estate sector, which I address in Part IV of this Report. Given the unique and critical role that corporations and other legal arrangements play in a vast number of money laundering schemes, I feel it important to address these issues separately in this chapter.

I am encouraged that many countries are moving toward beneficial ownership registries, in which the true identities of beneficial owners must be disclosed and made accessible to competent authorities and, in many cases, the public. As I expand later in this chapter, both the federal government and several provinces have taken steps toward developing a beneficial ownership regime. In Chapter 24, I focus on the new federal initiative, which will permit a national registry, and offer my suggestions on what steps British Columbia might take as part of a pan-Canadian effort to require transparent corporate ownership.

When it comes to the development of a beneficial ownership regime, any one province can only do so much. While these types of registries have the potential to make it easier for law enforcement to trace the movement of suspect funds across provinces and internationally, these efforts will be much more effective if there is coordination at federal, provincial, and territorial levels, as well as coordination with foreign countries. For this reason, the federal government's announcement on March 22, 2022, that it would implement "a publicly accessible beneficial ownership registry by the end of 2023"[1] presents a real opportunity for the Province to participate in effective reform. While details of the federal registry remain to be determined, my emphasis in Part VI will be to position British Columbia to advocate for a pan-Canadian registry that is as effective as possible.

The Issue: Misuse of Legal Entities to Facilitate Money Laundering

Over the course of the Commission's hearings, I heard considerable evidence about how corporate and other legal arrangements are misused to facilitate criminal activity, including money laundering. It is important to recognize at the outset that corporate and other legal arrangements play an important and overwhelmingly legitimate role in the provincial and global economies. However, it is also important to recognize that such legal arrangements are essential to many money-laundering schemes. They are used to facilitate the movement of illicit proceeds into and out of the financial system, while concealing the owners of the proceeds and their criminal origins. They also serve to minimize the risk of detection, investigation, and prosecution for criminals. The fundamental policy challenge this presents is how to reduce the ease with which criminals exploit these legal structures and obtain benefit from them – which is largely a function of the anonymity they can afford – while safeguarding their legitimate functions and the rights of Canadians.

A key concept when considering the risks associated with corporations and other legal entities is that of "beneficial ownership." Put simply, a beneficial owner refers to the natural person who ultimately owns or controls a legal entity.[2] A beneficial owner can be contrasted with a legal owner, which refers to the person – natural *or* legal – who holds legal title to an asset. The beneficial and legal owner *can* be the same person, but are not always. Indeed, as I elaborate below, the legal owner of an entity such as a corporation is frequently *not* a natural person, and the beneficial owner may be difficult to determine due to multiple layers of legal title, nominees,[3] or other legal artifices. It is

1 Prime Minister of Canada, "Delivering for Canadians Now" (March 22, 2022), online: https://pm.gc.ca/en/news/news-releases/2022/03/22/delivering-canadians-now.

2 Exhibit 4, Overview Report: Financial Action Task Force, Appendix U, FATF and Egmont Group, *Concealment of Beneficial Ownership* (Paris: FATF, 2018) [FATF/Egmont Beneficial Ownership Report], para 27.

3 A nominee shareholder is "the registered owner of shares held for the benefit of another person." Legally, the nominee is responsible for the operation of the company and accepts legal obligations associated with the company directorship or ownership. However, nominees sometimes hold the position of a director or shareholder in name only, on behalf of someone else: Exhibit 4, Appendix U, FATF/Egmont Beneficial Ownership Report, pp 36–37, para 84.

this very phenomenon that causes much of the money laundering concern in relation to corporations and legal entities – not knowing who is ultimately directing or controlling a legal entity. Corporations and other legal arrangements such as trusts can be used to facilitate money laundering in numerous ways that span the full gamut of money laundering schemes and economic sectors. As Professor Stephen Schneider explained, the range of money laundering techniques and methods that corporate and other legal arrangements are used to facilitate is "almost unlimited" and implicated in every phase of the money laundering process, from placement through to layering and extraction.[4] This sentiment is echoed in studies by international bodies such as the Financial Action Task Force (FATF), which has concluded that legal persons are a "key feature" in schemes by criminals to obscure their true ownership and control of illicitly obtained assets.[5]

During the placement phase of money laundering, criminally controlled corporations – which are often "shell" or "shelf" companies," but may also involve otherwise legitimately operating "front businesses"[6] – can be used to claim illicit proceeds as legitimate revenue, sometimes commingled with legitimate income, which are then introduced into the financial system.[7] Robert Gilchrist, director general of Criminal Intelligence Service Canada, testified that, of 176 organized crime groups identified as being involved in money laundering in Canada, 28 percent were suspected of using private-sector businesses in this manner to hide and facilitate the laundering of their proceeds of crime – including by commingling legitimate and criminal proceeds, falsifying receipts and invoices, and using corporate accounts to purchase assets like real estate – and "further obscure the origin in ownership."[8] Similarly, a study by the World Bank that reviewed over 200 cases of large-scale corruption and other crimes (such as tax evasion, sanctions-busting, terrorist financing, and money laundering) between 1980 and 2010 found that anonymous shell companies were used in 70 percent of such crimes.[9]

During the layering stage of money laundering, illicit funds can be cycled between different entities and accounts that, while appearing to be unrelated and legitimate, are all controlled by the same individual or criminal network. Beneficial ownership can be further obfuscated through the use of complex legal ownership structures,

4 Evidence of S. Schneider, Transcript, May 26, 2020, p 16; Exhibit 6, Stephen Schneider, *Money Laundering in British Columbia: A Review of the Literature* (May 11, 2020), p 94. See Chapter 2 for a discussion of critiques of the traditional "three-stage" conception of money laundering.

5 See Exhibit 4, Appendix U, FATF/Egmont Beneficial Ownership Report. See also FATF, *Guidance on Transparency and Beneficial Ownership* (Paris: FATF, 2014), available online: https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf

6 A "shell company" is an incorporated company with "no independent operations, significant assets, or employees." A "shelf company" is an incorporated company with inactive shareholders, directors, and secretary that is left dormant for a longer period, even if a customer relationship has already been established, to give the appearance of legitimacy. A "front company" is a fully functioning company with the characteristics of a legitimate business, serving to disguise and obscure illicit financial activity: Exhibit 4, Appendix U, FATF/Egmont Beneficial Ownership Report, p 5.

7 See Exhibit 6, S. Schneider, *Money Laundering in British Columbia: A Review of the Literature*, pp 91–95.

8 Evidence of R. Gilchrist, Transcript, June 9, 2020, pp 53–54.

9 Exhibit 283, Submissions of Mora Johnson, November 2020, p 4.

bearer shares,[10] nominees, trusts, financing and loans, or other legal arrangements. These complex structures can be contrived to span multiple jurisdictions, further adding to the challenge for law enforcement of tracing ownership and assets and connecting them back to the predicate offence and offender. Journalist Oliver Bullough described how, once these structures are in place, dirty money can be bounced through "multiple bank accounts in multiple jurisdictions, each of them owned by a different corporate structure or registered again in different jurisdictions," thereby confusing "the picture so hugely that it becomes very, very hard to follow what's going on."[11] There is a fundamental asymmetry to this cat-and-mouse game, insofar as the cost to criminals to establish and maintain these legal contrivances is minimal, whereas the challenge to law enforcement in unravelling them is considerable.

This misuse of corporate and other legal arrangements is by no means a theoretical problem or one confined to other jurisdictions viewed as traditional secrecy havens. According to analysis by the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC),[12] roughly 70 percent of all money laundering cases in Canada involved the misuse of corporate legal entities, both to channel foreign proceeds of crime into or through Canada, as well as to launder domestically generated proceeds.[13] Typologies identified in FINTRAC's analysis included:

- foreign politically exposed persons[14] creating legal entities in Canada to facilitate the purchase of real estate and other assets with the proceeds of corruption;
- laundering criminal proceeds through shell companies in Canada and then wiring the funds to offshore jurisdictions; and
- using Canadian front companies to layer and legitimize unexplained sources of income and to commingle them with or mask them as profits of legitimate businesses.[15]

10 Bearer shares are "company shares that exist in certificate form and are legally owned by the person that has physical possession of the bearer share certificate at any given time. Ownership and control of bearer shares can be exchanged anonymously between parties by way of physical exchange alone, as no record of the exchange needs to be documented or reported": Exhibit 4, Appendix U, FATF/Egmont Beneficial Ownership Report, p 36, para 81.

11 Evidence of O. Bullough, Transcript, June 1, 2020, p 56.

12 Exhibit 4, Overview Report: Financial Action Task Force, Appendix N, FATF, *Anti–Money Laundering and Counter-Terrorist Financing Measures – Canada, Fourth Round Mutual Evaluation Report* (2016) [FATF Fourth Mutual Evaluation]. See Chapter 6 for a discussion of the mutual evaluation process. Mutual evaluations are essentially peer reviews in which FATF members evaluate other members' anti–money laundering and counterterrorist financing measures against FATF's 40 recommendations.

13 Exhibit 4, Appendix N, FATF Fourth Mutual Evaluation, pp 102–3, para 281.

14 See Chapter 3 for a more detailed discussion of politically exposed persons. Briefly, the term refers to persons who are or have been entrusted with a prominent public function, including heads of state, senior politicians, senior government staff, judicial or military officials, senior executives of state-owned corporations, and important political officials. Due to the nature of their positions, they are considered to be at a higher risk of becoming involved in bribery and corruption offences, which in turn gives rise to the need to launder the unlawful profits they receive.

15 Exhibit 4, Appendix N, FATF Fourth Mutual Evaluation, p 102.

Canada's 2015 national risk assessment[16] assessed the inherent money laundering vulnerability of legal entities in Canada (including corporations and trusts) to be "very high," as a direct consequence of the ease with which they can be created and used to conceal beneficial ownership and thus facilitate the disguise and conversion of illicit proceeds.[17] Graham Barrow, a specialist in identifying corporate ownership structures used in laundromat schemes, testified that he was able to identify, using the UK's publicly accessible beneficial ownership registry, a considerable number of Canadian legal entities – alongside those from Dominica, Seychelles, Marshall Islands, Nevis, and other traditional "secrecy" jurisdictions – combining to form highly complex and opaque control structures directly associated with global money laundering schemes.[18]

In its own extensive studies of the issue, the Financial Action Task Force categorizes the techniques used by criminals to obscure beneficial ownership into three broad methods:

1. **generating complex ownership and control structures** through the use of legal persons and legal arrangements, particularly when established across multiple jurisdictions;
2. **using individuals and financial instruments to obscure the relationship between the beneficial owner and the asset**, including bearer shares, nominees, and professional intermediaries; and
3. **falsifying activities** through the use of false loans, false invoices, and misleading naming conventions.[19]

Despite the diversity of these methods and techniques, they are all enabled by and largely dependent on one thing: anonymity. It is the ease with which criminals can conceal their true ownership control behind a web of corporate and other legal contrivances – which otherwise exist in "plain sight" – that is the root of the problem. It is for this reason that the former deputy director of FINTRAC, Denis Meunier, has described corporate anonymity as the money launderer's "secret sauce."[20] Were this anonymity removed, the façade of legitimacy could be peeled back to reveal the real-

16 Exhibit 3, Overview Report: Documents Created by Canada, Appendix B, Department of Finance, *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada 2015* (Ottawa: 2015).

17 Ibid, p 32.

18 Evidence of G. Barrow, Transcript, December 2, 2020, pp 68–69. See also Exhibit 314, Canadian Entities Involved in Global Laundromat Style Company Formations. A report released after the conclusion of the Commission's hearings similarly accessed the United Kingdom's publicly accessible beneficial ownership registry to identify Canadian legal entities used in suspicious corporate structures: Transparency International *Canada, Snow-washing, Inc: How Canada is Marketed Abroad as a Secrecy Jurisdiction* (2022), online: https://www.taxfairness.ca/sites/default/files/resource/2022-03-16_report_-_snow-washing-inc.pdf.

19 Exhibit 4, Appendix U, FATF/Egmont Beneficial Ownership Report, p 25–26.

20 See Denis Meunier, *Hidden Beneficial Ownership and Control: Canada as a Pawn in the Global Game of Money Laundering* (Toronto: CD Howe Institute, 2018), cited in Exhibit 6, p 95, footnote 291, and available online: https://www.cdhowe.org/sites/default/files/2021-12/Final%20for%20advance%20release%20Commentary_519_0.pdf.

world criminal ownership and control present throughout the money laundering process. As it stands now, law enforcement is often frustrated in attempts to unravel the true identities behind corporate and other legal entities, particularly those that have complex, multilayered ownership and control structures spanning multiple jurisdictions.[21] The consequence is that vast, often impenetrable shadows are cast across our economies – shadows in which criminals are able to hide and thrive.

There has been some debate in the evidence and submissions before me as to whether anonymity is a legitimate feature of corporate personhood. For example, Mr. Bullough opined that corporations are essentially a form of insurance through which society communicates to businesspeople that if they make an investment that will grow the economy to the benefit of all, society will insure the risk through limited liability. For that reason, Mr. Bullough's view was that it was "absurd that a company can be anonymous."[22] Similarly, Mora Johnson, an Ottawa-based lawyer with expertise in responsible business practice, testified that there is no principled justification for the anonymity of companies; "it's a fundamental policy choice to displace risks and to alter risks in the free market."[23] Chris Taggart, executive director of Transparency International Canada, described the benefits that individuals receive from incorporation and the resultant anonymity as follows:

> [W]hat's happening is when somebody creates one of these legal constructs, they create a legal person … who can act on their behalf … [T]hat person can hold assets; it can owe money; it can employ people; it can enter into contracts on their behalf; it can even break the law. So, the owners get the benefit from this proxy person, but they don't get any of the downsides … [T]hey get the money, they get the activities, they get the influence, but they … don't get hit by losses and they don't go to jail if the company has broken the law in most cases.
>
> And so … this proxy for the owner, which is … almost like an avatar or someone they can control by remote control … it doesn't just do this in the jurisdiction where the owner's based and where the company's incorporated. It can do this anywhere in the world. So you have this sort of … remote-control person that can go off and do all sorts of things, can get the benefits and even if it's caught functionally, mostly … the recourse is the assets of that local company and not to the people that are behind them.
>
> And so this is a tremendously powerful thing … [and you] can have companies controlling companies controlling companies. You can have them diverting their control. You can … make this incredibly complex. …

21 Exhibit 4, Appendix U, FATF/Egmont Beneficial Ownership Report, p 27.

22 Evidence of O. Bullough, Transcript, June 1, 2020, pp 59-60; see also Exhibit 55, BC Ministry of Finance, BC Consultation on a Public Ownership Registry (January 2020), p 7; Exhibit 283, Submission to the Cullen Commission of Mora Johnson (November 2020), p 3.

23 Evidence of M. Johnson, Transcript, November 30, 2020, p 27.

> [For example, a] Russian hacker or something controlling a computer in the Seychelles that controls a computer in the Cayman Islands that controls a computer in Nevada that controls a computer in British Columbia and then hacks somebody's bank account … and they're using all of these to obfuscate it. And of course … by the time … that crime becomes visible, the network's gone or functionally it's gone. The money's gone. You can't get back at that person.[24]

On the other side, the British Columbia Civil Liberties Association highlighted the impact on privacy that abolishment of anonymity would entail. These privacy impacts would be felt by both the corporation itself and the individual beneficial owners. In respect of the latter, the impact would be felt on privacy interests in respect of financial information, and also in respect of sensitive personal information that might be made public such as names, aliases, birth dates, citizenship, addresses, and status as a politically exposed person. The BC Civil Liberties Association raised a further concern that making such information public gives rise to a risk of identity theft, fraud, and harassment.[25]

Having considered all of the evidence and submissions before me, I have concluded that there are strong and compelling reasons to require disclosure of corporate beneficial ownership, and little in the way of legitimate rationale for general corporate anonymity. I do accept that there are legitimate concerns about privacy that may flow from abolishing anonymity. However, as I explain in Chapter 24, these risks and impacts can and should be addressed by targeted exemptions from openness, rather than a general rule of anonymity.

For decades, there have been efforts internationally that focused on reducing the anonymity of corporate and other legal vehicles by identifying those behind them. Those efforts initially focused on the **disclosure** of beneficial ownership information, with the goal of making that information ultimately available to law enforcement and other authorities. More recently, there has been a growing view that such efforts have had limited success in preventing the misuse of legal entities and that something more is required – beneficial ownership **transparency** – through some form of government-maintained centralized registry. This shift is reflected in the increasing number of jurisdictions that either have adopted such transparency measures or are moving to do so.

I describe the evolution and current state of these efforts to tackle corporate anonymity, both internationally and in Canada, below. In light of these developments, I am of the opinion that there is no longer a credible question as to whether or not British Columbia should move forward toward implementing or participating in a beneficial ownership transparency registry. Instead, the key policy questions that I see as now front and centre are the following:

- Given the strong federal steps that are being developed now, how can the Province of British Columbia best facilitate and support an effective beneficial ownership registry?

24 Evidence of C. Taggart, Transcript, November 30, 2020, pp 29–32.

25 Closing submissions, BC Civil Liberties Association, paras 80–88.

The Province's efforts must be coordinated and harmonized with the approach being taken federally, as well as by other provincial and territorial partners.

- What features should such a regime incorporate to be most effective, while balancing important privacy and other rights?

British Columbia, as a jurisdiction that is starting to address corporate ownership transparency later than some other jurisdictions globally, should learn and take guidance from the experiences of jurisdictions such as the United Kingdom, which were more proactive in this area. That said, the first question, which is focused on coordination within Canada, raises challenges that are largely unique to Canada's federated system.

International Efforts to Improve Beneficial Ownership Disclosure

In 1989, Canada joined the other members of the G7 in establishing the Financial Action Task Force, the international community's response to the growing problems of money laundering and terrorist financing.[26] The next year, FATF published its 40 recommendations,[27] which laid out the measures that participating countries should implement.

The recommendations have been revised several times over the years, as more was learned about money laundering techniques and effective measures to combat money laundering. In 2003, FATF added two recommendations specifically directed at addressing the need for the disclosure of beneficial ownership information of corporations[28] and trusts,[29] and making that information available to law enforcement and other competent authorities.

Recommendation 24, which addressed corporations, read, in relevant part (from its introduction in 2003, until its revision in March 2022):

> **Transparency and beneficial ownership of legal persons**
>
> … 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 …

26 See Chapter 6 for a more detailed discussion of FATF and its recommendations.

27 Exhibit 4, Overview Report: Financial Action Task Force, Appendix E, FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (Paris: FATF, 2019) [FATF Recommendations]. The 40 recommendations are discussed in more detail in Chapter 6 of this Report.

28 Corporations are referred to as "legal persons" by FATF. When first introduced in 2003, this was Recommendation 33: see FATF, *The Forty Recommendations* (Paris: FATF, 2003), p 9, online: https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf.

29 Trusts and similar arrangements are referred to as "legal arrangements" by the FATF. When first introduced in 2003, this was Recommendation 34: ibid.

Recommendation 25 created a parallel expectation for the "adequate, accurate, and timely" disclosure of beneficial ownership information relating to trusts. Other recommendations set out expectations that financial institutions and other regulated entities identify and take reasonable steps to verify the beneficial ownership of their corporate clients as part of their customer due diligence obligations.[30]

FATF defined a "beneficial owner" as follows:

> Beneficial owners refers to the natural person(s) who ultimately own or controls a legal entity and/or the natural person on whose behalf a transaction is conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.
>
> Reference to "ultimately owns or controls" and "ultimate effective control" refer to situations in which ownership control is exercised through a chain of ownership or by means of control other than direct control.[31]

Compliance with Recommendations 24 and 25 (collectively, the "FATF Standards") is part of FATF's peer-based mutual evaluation process. Starting in 2014, FATF added to these evaluations an assessment of the overall effectiveness of a country's compliance with the recommendations (graded at either a "low," "moderate," or "substantial" level).[32]

Significantly, until the revisions to Recommendation 24 were approved in March 2022, the long-standing FATF Standards did not require beneficial ownership information to be stored or made accessible through any form of government-maintained registry, whether publicly accessible or otherwise. Instead, the FATF Standards could be satisfied in a variety of ways, including by companies collecting and holding up-to-date beneficial ownership information in their own records, which would then be theoretically accessible by law enforcement and other "competent authorities."[33] This approach, which effectively requires authorities to attend at a corporation's records office to access the information, is generally referred to as **beneficial ownership disclosure**. Such disclosure is to be contrasted with more recent efforts to require that beneficial ownership and control information be posted on a government-maintained registry, with varying degrees of public access – a model generally referred to as **beneficial ownership transparency**.[34]

30 See FATF Recommendations 10 and 22.

31 FATF, *Guidance on Transparency and Beneficial Ownership*, (Paris: FATF, 2014), p 8, online: https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf.

32 Immediate outcome 5 states: "Legal persons and arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments": Exhibit 4: Overview Report: Financial Action Task Force, Appendix F, FATF, *Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems* (Paris: FATF, 2019), p 110.

33 Ibid.

34 Evidence of T. Law, Transcript, November 27, 2020, p 17.

The original FATF Standards served as a reference point for the establishment of other regional bodies' standards and approaches, which have focused on disclosure as opposed to transparency. In 2014, the G20 added political impetus to beneficial ownership disclosure by incorporating the FATF Standards into a set of "High Level Principles on Beneficial Ownership Transparency" aimed at tackling international tax evasion and corruption.[35]

As the Financial Action Task Force has itself acknowledged, most jurisdictions have found it "challenging" to implement the FATF Standards to achieve a satisfactory level of transparency around the beneficial ownership of legal persons.[36] Further, even when a jurisdiction has technically complied with the standards, that has not guaranteed effectiveness in terms of actually preventing the misuse of legal structures and arrangements. As of January 2019, of the 68 countries that had been evaluated in FATF's fourth-round mutual evaluations, only eight had achieved "substantial levels" of effectiveness, requiring moderate improvements; 32 had achieved "moderate levels," requiring major improvements; and 28 – including Canada – were assessed to have "low levels" of effectiveness, requiring fundamental improvements. No country has yet received a "high level" rating.[37]

I heard considerable evidence about Canada's poor record in relation to beneficial ownership transparency. Canada is one of those jurisdictions that has consistently struggled to achieve either technical compliance with the FATF Standards or a satisfactory level of effectiveness in preventing the misuse of legal persons and arrangements. As noted, in its most recent mutual evaluation of Canada in 2016, FATF assessed Canada as having only a "low level" of overall effectiveness in preventing the misuse of corporate vehicles, requiring fundamental improvements.[38] The evaluators also rated Canada as only "partially compliant" with Recommendation 24 and "non-compliant" with Recommendation 25.[39] Other key findings were that Canadian legal entities were at "high risk of misuse" for money laundering, that mitigating measures were "insufficient," and that it was difficult for law enforcement to obtain beneficial ownership information on corporations and even more difficult with respect to trusts.[40] There was no improvement in any of the above assessments as of FATF's most recent follow-up report in October 2021.[41]

35 Exhibit 272, Justine Davila, Michael Barron, and Tim Law, *Towards a Global Norm of Beneficial Ownership – A Scoping Study on a Strategic Approach to Achieving a Global Norm* (UK: Adam Smith International, March 2019) [Beneficial Ownership Scoping Study], p 14.

36 Exhibit 274, FATF Best Practices on Beneficial Ownership for Legal Persons (October 2019), p 7.

37 Exhibit 272, Beneficial Ownership Scoping Study, p 12. See also FATF's Consolidated Assessment Ratings for numbers updated to March 2022, online: https://www.fatf-gafi.org/media/fatf/documents/4th-Round-Ratings.pdf. Of note, no country has yet received a "high level" rating, and Canada maintains a "low level" of effectiveness.

38 Exhibit 4, Appendix N, FATF Fourth Mutual Evaluation, p 106, para 295.

39 Ibid, pp 168–70.

40 Ibid, p 101.

41 Exhibit 1061, FATF, *1st Regular Follow-Up Report & Technical Compliance Re-Rating: Canada* (October 2021), p 6.

As a result of two Transparency International Canada reviews in 2015 and 2017, James Cohen, executive director of Transparency International Canada, testified that "while some of our peers [i.e., other countries] had managed to move up the ladder to a better framework, Canada was left in the back as a laggard with South Korea, maintaining a weak framework for beneficial ownership transparency."[42] He shared with me his view that the misuse of corporate legal structures is

> a pretty serious problem in Canada, and I think this has come to a head through the term "snow-washing" ... Intermediaries overseas were essentially advertising Canada as an easy place to hide dirty money ... The really critical factor is our weak beneficial ownership regime in Canada ... Intermediaries would say to their clients, bring your dirty money to Canada; it will be cleaned like the pure white snow, hence "snow-washing."[43]

He added that "[a]s we become the laggards internationally, we become the easy targets ... for the crooks who want to place their funds."[44]

Despite this, I recognize that there have been important steps taken since 2016, both federally and provincially. I discuss those actions below, in the context of the current state of beneficial ownership transparency in Canada and British Columbia.

The Global Shift Toward Corporate Transparency

There has been a global shift toward beneficial ownership transparency, driven by the recognition that mere technical compliance with the FATF Standards is ineffective. As if to underline that point, the FATF updated Recommendation 24 in early March 2022 to require some form of government-maintained registry or "alternative mechanism".

Although the FATF Standards introduced in 2003 have set the global norm for beneficial ownership disclosure for almost two decades, I heard that recognition of the limited progress on effectiveness – and revelations including the Panama Papers, global laundromats, and other notable examples of financial wrongdoing facilitated by corporate secrecy – have driven a growing number of jurisdictions to move beyond those minimum standards and toward implementing beneficial ownership transparency systems.[45]

Michael Barron and Timothy Law, two UK-based consultants specializing in beneficial ownership transparency, and co-authors along with Justine Davila of a study on the topic for the United Kingdom government, testified about this growing global shift towards beneficial ownership transparency. In their testimony and written report, Messrs. Barron and Law detailed how an increasing cohort of countries and

42 Evidence of J. Cohen, Transcript, November 30, 2020, p 11.

43 Ibid, pp 9–10.

44 Ibid, p 37; see also Exhibit 284, Transparency International Canada, *Implementing a Publicly Accessible Pan-Canadian Registry of Beneficial Ownership – Legislative and Technical Options* (2020), p 7.

45 Evidence of J. Cohen, Transcript, November 30, 2020, pp 9–10.

international bodies have been moving beyond beneficial ownership disclosure, and either establishing publicly accessible beneficial ownership registries or laying the groundwork to do so.[46]

While it is beyond the scope of this Report to summarize all of the jurisdictions and international bodies that have moved in this direction, I highlight some of the most significant developments below:

- **United Kingdom:** in 2016, the United Kingdom became the first country to establish a publicly accessible beneficial ownership transparency registry through the creation of its register of Persons of Significant Control (PSC), which is housed within the Companies House, the government agency in which all corporate records are maintained.[47] There is also a registry for partnerships,[48] and a new register for foreign beneficial ownership of real estate is planned.[49]
- **European Union**: the European Union's Fifth Anti–Money Laundering Directive, which came into force in July 2018, introduced a requirement that all member states create publicly accessible and interconnected registries of corporate beneficial ownership by 2020. Although all European Union members have since established central registries, only a small number have satisfied their commitment to make those registries public.[50]
- **United States**: on January 1, 2021, the United States Congress passed the *Corporate Transparency Act*, creating beneficial ownership disclosure requirements for most corporate entities formed or operating in the United States, which is then reported to the Financial Crimes Enforcement Network (FinCEN) and accessible by government authorities (but not the public).[51]
- **Extractive Industries Transparency Initiative**: in 2016, the Extractive Industries Transparency Initiative adopted a standard requiring that its 51 implementing countries request, by 2020, that companies bidding for and operating licences in the extractive sector collect and publish beneficial ownership information through a central public registry.[52]

46 Evidence of M. Barron and T. Law, Transcript, November 27, 2020; Exhibit 272, Beneficial Ownership Scoping Study.

47 Exhibit 277, Global Witness, *Learning the Lessons from the UK's Public Beneficial Ownership Register* (October 2017), p 3, footnote 9.

48 Evidence of M. Barron, Transcript November 27 2020, p 135.

49 Ibid, pp 64, 126. It appears that this bill has been fast-tracked following the Russian invasion of Ukraine in 2022: Andy Bruce, Patrick Plant, and Tracey Kennedy, "New Register of Beneficial Owners of Overseas Entities Owning UK Property" (March 8, 2022), online: https://www.linklaters.com/en/knowledge/publications/alerts-newsletters-and-guides/2022/march/08/new-register-of-beneficial-owners-of-overseas-entities-owning-uk-property.

50 Exhibit 272, Beneficial Ownership Scoping Study, pp 17–18.

51 Mayling C. Blanco and Robert J. Kovacev, "Corporate Transparency Act: New Beneficial Ownership Reporting Requirements for All Entities with US Operations" (January 2021), online: https://www.nortonrosefulbright.com/en/knowledge/publications/f99c2d40/corporate-transparency-act

52 Exhibit 272, Beneficial Ownership Scoping Study, p 14.

- **London Anti-Corruption Summit**: in 2016, eight countries (Afghanistan, France, Ghana, Kenya, the Netherlands, Nigeria, Tanzania, and Ukraine) made explicit commitments to establish public central beneficial ownership registries.[53]
- **Open Government Partnership:** as of March 2022, 45 countries have, through the Open Government Partnership (a multilateral initiative comprised of national and sub-subnational governments and civil society organizations), committed to implement or explore beneficial ownership transparency in their Open Government Partnership Action Plans.[54] As part of its own 2018–2020 Open Government Partnership Action Plan, Canada committed to requiring that federal corporations hold beneficial ownership information and to engaging with provincial, territorial, and other key stakeholders to improve access to beneficial ownership information.[55]

Messrs. Barron and Law observed, that by the time their report was published in 2019, even FATF officials had acknowledged that the "debate ha[d] moved on" and that the next periodic update to the FATF Standards in 2022 would provide "an important opportunity to align the … Standards with emerging international practice on greater transparency."[56]

Indeed, as Messrs. Barron and Law predicted, on March 4, 2022, following a two-year review and public consultation, FATF announced new amendments to Recommendation 24 and its accompanying interpretive note to "significantly strengthen the requirements for beneficial ownership transparency globally, while retaining a degree of flexibility for individual countries to go further in refining individual regimes."[57] FATF adds that it expects "all countries to take concrete steps to implement these new standards promptly, and to determine the appropriate sequence and timeframe for implementation at national level."[58]

The revised recommendation now states, in key part:

> Countries should ensure that there is adequate, accurate and up-to-date information on the beneficial ownership and control of legal persons that can be obtained or accessed *rapidly and efficiently* by competent authorities, *through either a register of beneficial ownership or an alternative mechanism*. [Emphasis added.][59]

53 Exhibit 272, Beneficial Ownership Scoping Study, p 14.

54 Open Government Partnership, "Beneficial Ownership," online: https://www.opengovpartnership.org/policy-area/beneficial-ownership/.

55 Exhibit 273, *Canada's 2018–2020 National Action Plan on Open Government* (2018).

56 Exhibit 55, BC Ministry of Finance, BC Consultation on a Public Ownership Registry (January 2020).

57 FATF, Public Statement on Revisions to R. 24 (Paris: FATF, March 4, 2022), online: https://www.fatf-gafi.org/publications/fatfrecommendations/documents/r24-statement-march-2022.html.

58 Ibid.

59 FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (Paris: FATF, March 2022), online: https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html.

FATF has not elaborated on what "alternative mechanism" might meet the new standard of rapid and efficient access aside from a centrally maintained registry. I am not aware of any alternative models that have done so. In any event, it is clear to me that beneficial ownership *disclosure* has proven ineffective, and the goalposts have shifted to now require some form of beneficial ownership *transparency*.

I turn now to consider the current state of beneficial ownership transparency in Canada, including recent steps toward greater transparency.

Current State of Beneficial Ownership Transparency in Canada

At present, there is little transparency in the ownership of corporations, trusts, and limited partnerships. In what follows, I describe the current measures in place, before turning to recent steps to improve this transparency.

Corporations

Canada's federated nature means that corporations can be created and regulated federally under the *Canada Business Corporations Act*, RSC 1985, c C-44, or in any one of Canada's provinces or territories, each with its own corporate laws and registries.[60] All Canadian jurisdictions require that privately held companies be registered and that they record basic shareholder and director information in their own corporate records (some of which is generally available online or by request through that jurisdiction's corporate registry); however, until very recently, no Canadian jurisdiction has required corporations to collect, maintain, or report their beneficial ownership information. Notwithstanding significant steps taken by the federal government and certain provinces to begin requiring companies to obtain and hold up-to-date beneficial ownership information in their own records, to which I return below, no jurisdiction in Canada has yet established a beneficial ownership registry, publicly accessible or otherwise.[61]

In the absence of either a central registry, or even an obligation for corporations to hold beneficial ownership information in their own records, Canada has generally relied on what FATF calls "existing information" to determine a legal entity's beneficial ownership "if and as needed."[62] "Existing information" is a reference to the information that is collected by financial institutions and other designated entities as a part of their know-your-client obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 (*PCMLTFA*), which include an obligation to collect and take steps to confirm the beneficial ownership information of their corporate and

60 In British Columbia, the applicable statute is the *Business Corporations Act*, SBC 2002, c 57.

61 For a fuller discussion of how things currently operate in Canada, see the detailed discussion in Exhibit 4, Appendix N, FATF Fourth Mutual Evaluation, pp 162–168.

62 Ibid, p 164.

trust clients. Once collected, this information is then theoretically available to law enforcement through production orders. Prior to June 2021, these obligations applied only to specific regulated entities, including banks, securities dealers, and money services businesses; however, they have now been expanded to other designated non-financial services businesses and professions.[63] As I explain in Chapter 28, lawyers also collect this information in some cases, although they do so pursuant to regulation by the Law Society of British Columbia.

Even with the newly expanded scope of these know-your-customer obligations, each entity must attempt to obtain and verify the ownership information on its own, and the information is not verified, centrally reported, cross-referenced, or readily accessible.[64] This presents a challenge for law enforcement, which must first link a specific financial institution to an individual corporation under investigation, issue a production order, and then trust that the information that has been collected regarding the ultimate control or ownership of the entity is accurate.[65] This is a slow and inefficient process. Moreover, relying on such a system means there is no ability to search effectively for common ownership and control by the same beneficial owners across multiple corporations, identify the red flags often associated with criminally controlled corporate structures, or otherwise identify the complex webs of indirect ownership and control employed by even moderately sophisticated money launderers. As Mr. Barrow testified, it is often the corporate structures themselves revealed through interrogation of the registry that will lead to suspicion of particular entities rather than the reverse.[66]

As FATF evaluators concluded in their 2016 mutual evaluation of Canada, "deficiencies with regards to the collection and availability of full and updated beneficial ownership information remain and timely access by law enforcement authorities to such information is not guaranteed in all cases."[67] The evaluators specifically noted the challenge this has posed to Canadian law enforcement agencies, which are either incapable of, or dissuaded from, unravelling complex ownership structures despite the significant risk they pose:

> [Law enforcement agencies] have successfully identified the beneficial owners in limited instances only. Despite corporate vehicles and trusts posing a major [money laundering] and [terrorist financing] risk in Canada, [law enforcement agencies] do not investigate many cases in which legal entities or trusts played a prominent role or that involved complex corporate elements or foreign ownership or control aspects.[68]

63 *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184, s 138.

64 Evidence of P. Dent, Transcript, November 30, 2020, pp 47, 50–51.

65 Evidence of J. Primeau, Transcript, December 1, 2020, pp 76–77.

66 Evidence of G. Barrow, Transcript, December 2, 2020, p 77.

67 Exhibit 4, Appendix N, FATF Fourth Mutual Evaluation, p 165.

68 Ibid, pp 8, 105.

Given what I understand to be the prevalence of complex ownership and control structures in money laundering schemes, I see the inability of law enforcement to effectively and efficiently investigate them to be a serious problem that must be remedied. This may be partly a problem of insufficient law enforcement capacity, discussed at greater length in Chapters 39 and 40.[69] However, it is also a consequence of the ease with which criminals are able to establish anonymity through legal contrivances when compared to the considerable challenge to law enforcement in unravelling them. That asymmetry can only be addressed by the sorts of systemic improvements that fundamentally address that imbalance.

Trusts

In many ways, trusts in Canada are even more opaque than corporations.[70] There is no general requirement for trusts to be registered in Canada, although certain trusts are required to be registered in Quebec, and Canadian resident trusts and certain foreign-resident trusts are required to file information with the Canada Revenue Agency (CRA). Canadian trusts also have "global reach," in that both Canadians and non-residents can establish Canadian trusts from within Canada or abroad.[71]

There are only two mechanisms by which information about non-registered trusts is available. First, there is the information obtained by financial institutions and other reporting entities when providing services to trust clients, which is collected pursuant to the same know-your-customer obligations under the *PCMLTFA* that apply when dealing with corporations. However, the adequacy and availability of that information suffers from flaws. It is not comprehensive, independently verified, or centrally collected, and – according to FATF evaluators – it is even *more* difficult to obtain for law enforcement than in the case of corporations.[72]

Second, there is the information that is collected by CRA about certain trusts. However, that information has limited coverage. As noted by FATF, the total number of trusts in Canada is "estimated in the millions," but at least as of 2007, only 210,000 trusts filed tax returns with CRA.[73]

Trusts are useful to criminals for many of the same reasons as corporations. They are another means to separate legal and beneficial ownership, creating an additional layer of complexity that can prevent law enforcement from "exerting authority to unravel the true

69 This is supported by the feedback from police forces and prosecutors that was in Canada's fourth-round mutual evaluation, that "legal persons are hardly ever prosecuted for [money laundering] offenses, *mainly because of a shortage of adequate resources and expertise* (emphasis added)": see Exhibit 4, Appendix N, FATF Fourth Mutual Evaluation Report, p 53.

70 Exhibit 4, Appendix N, FATF Fourth Mutual Evaluation, p 8. For a complete definition of trusts in Canada, see Canada Revenue Agency, "Trust Types and Codes," online: https://www.canada.ca/en/revenue-agency/services/tax/trust-administrators/types-trusts.html.

71 Exhibit 4, Appendix N, FATF Fourth Mutual Evaluation, p 16.

72 Ibid, p 8.

73 Ibid, p 28.

ownership structure."[74] However, because trusts are generally more expensive and complex to set up and maintain than corporations, they may be less attractive in less sophisticated and profitable laundering operations.[75] In one study, FATF identified trusts being used in approximately one-quarter of the money laundering cases it examined, most often in combination with corporate structures.[76] However, the authors note the true prevalence of schemes involving trusts may be higher, as the use of trusts increases the difficulty in identifying beneficial owners to the point where they may remain undetected.[77]

The 2018 federal budget proposed significantly expanding trust reporting requirements to require all non-resident trusts that are currently required to file tax returns, as well as all express trusts resident in Canada (with some limited exceptions), to report beneficial ownership information to CRA on an annual basis, including the identity of all trustees, beneficiaries, and settlors of the trust, as well as individuals with the ability to exert control over trustee decisions. Although these new rules were expected to come into force in December 2021, CRA announced in January 2022 that implementation would be delayed pending the supporting legislation receiving Royal Assent.[78] Similarly, Quebec had intended to introduce its own requirements for trusts to report beneficial ownership information to Revenu Québec, but announced that it would delay those new rules until the parallel federal requirements came into force.[79] Notably, Quebec already required trusts created in that province to register if "operating a commercial enterprise," which means carrying on some form of economic activity in order to make a profit.[80]

Limited Partnerships

Limited partnerships do not seem to be a significant focus for FATF. However, I heard evidence that they have been involved in laundromat schemes[81] in the United

74 See Exhibit 4, Appendix U, FATF/Egmont Beneficial Ownership Report, p 34.

75 Ibid.

76 Ibid, pp 33–34.

77 Ibid, p 34.

78 See Canada Revenue Agency, "Reporting Requirements for Trusts" (last updated February 14, 2022), online: https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/federal-government-budgets/budget-2018-equality-growth-strong-middle-class/reporting-requirements-trusts.html.

79 See KPMG, "Quebec Also Delays Beneficial Ownership Reporting for Trusts" (February 2, 2022), online: https://home.kpmg/ca/en/home/insights/2022/02/quebec-also-delays-beneficial-ownership-reporting.html. See also Matias Milet, Mark Brender, and Ilana Ludwin, "Trust Beneficiary Reporting Deferred for One Year" (January 17, 2022), online: https://www.osler.com/en/resources/regulations/2022/trust-beneficiary-reporting-deferred-for-one-year.

80 Revenu Québec, Definitions, "Trust Operating a Commercial Enterprise", online: https://www.revenuquebec.ca/en/definitions/trust-operating-a-commercial-enterprise/?refrq=businesses.

81 A laundromat in this context is "effectively a collection of entities that are utilized to clean money." A laundromat scheme uses "potentially thousands of these entities that are highly multi-jurisdictional that are operated normally by the same people or very few number of persons to enable the obfuscation of the sources of the money so that when eventually it emerges back into the real economy, it is impossible to connect that money to its origins. And the reason why it's a laundromat and not just not entity is that part of that process is … commingling … the mixing together of funds from lots of different sources so it's impossible to tell where each came from through that process, so that when it comes out the other side, there is no direct line of sight back to its source": Evidence of G. Barrow, Transcript, December 2, 2020, pp 12–13.

Kingdom.[82] In a report prepared for the Commission, Mr. Barrow notes that limited liability partnerships involved in such schemes had the following characteristics:

- Large numbers registered at the same, virtual address
- The use of corporate "designated members"[83] resident in offshore or secrecy locations
- Failing to declare a "person with significant control" or, when they do, it is either another legal entity or an anonymous individual, based often in a Central or Eastern European jurisdiction with no obvious internet presence and no previous experience of owning and running a business
- Filing either dormant accounts or very low levels of activity utilising templates that are consistent across a wide variety of similar [limited liability partnerships] and with commonalities of account signatories
- Little or no corporate internet presence[84]

Indeed, Mr. Barrow observed the use of *Canadian* limited partnerships in UK laundromat schemes. His report notes that with the introduction of the UK's "person of significant control" registry, corporate service providers "had to become more creative in circumventing the transparency requirements whilst maintaining the use of UK entities which were, clearly, seen as being advantageous to money laundering operations" and turned to limited partnerships in Canada (and elsewhere).[85]

Transparency International similarly considers limited partnerships to pose risks in Canada:

> [Limited partnerships (LPs)] have fewer reporting and disclosure requirements than most other entities in Canada, and unless they do business in Canada they need not engage with the tax authorities. They can also be established cheaply without any need for their owners or administrators to set foot in Canada or be represented by a Canadian. And crucially, although LPs are not considered legal persons in Canada, they can nevertheless be used to open bank accounts and conduct business transactions. These characteristics, and the cover of Canada's international reputation, might present "unique business opportunities," to anyone engaging in such jurisdictional arbitrage, as the advertisement

82 Ibid, pp 74–75.

83 A "designated member" is the UK equivalent of a director: ibid, p 23.

84 Exhibit 314, Graham Barrow, "Canadian Entities Involved in Global Laundromat Style Formations 2020," p 1.

85 Ibid, pp 2–3; Evidence of Graham Barrow, Transcript, December 2, 2020, pp 60–61.

> below ambiguously suggests, but it also makes Canadian LPs particularly vulnerable to exploitation for transnational financial crime. [86]

Based on the foregoing, I am satisfied that limited partnerships are useful to criminals for many of the same reasons as corporations.

The Need for Transparency for Trusts and Limited Partnerships

Although much of the recent attention and initiatives have focused on improving beneficial ownership transparency for corporations, it is important not to lose sight of the largely unmitigated money laundering risks associated with trusts and limited partnerships. This is particularly so given the tendency of money launderers to respond to increased vigilance in one area by shifting to another that is less guarded. I expect that if Canada and the provinces and territories focus their efforts only on improving the transparency of corporations, without eventually addressing the opacity of trusts and limited partnerships, there is a risk we will see their criminal exploitation expand.

With that in mind, I am in favour of the Province's approach, which involves obtaining public feedback on a potential government-maintained registry of trusts and limited partnerships,[87] drawing lessons from the Quebec experience and looking ahead to a future registry for trusts and limited partnerships (though I have not recommended that this step be taken immediately). If such a registry is implemented in British Columbia, it will require adequate consequences for non-compliance as well as careful consideration of appropriate exceptions for trusts that may pose little risk for misuse and involve greater expectations of privacy. Because of the unique privacy considerations associated with trusts in particular – especially those with a personal (often family) as opposed to commercial purpose – it may be preferable that any registry of trusts not be made publicly accessible; this question will require study and consultation.

First Steps Toward Greater Transparency In Canada

After a long period in which it is fair to say Canada earned a deserved reputation as a laggard in beneficial ownership transparency, a number of significant steps have been undertaken over the past five years that, taken together, suggest a shared commitment on the part of federal, provincial, and territorial governments to begin to catch up on this issue.

In September 2016, shortly after the release of FATF's fourth mutual evaluation of Canada, the federal government convened the first meeting of the Federal, Provincial, Territorial Working Group on Improving Beneficial Ownership Transparency in

86 Transparency International Canada, Snow-washing, Inc.: *How Canada is Marketed Abroad as a Secrecy Jurisdiction* (2022), p 12, online: https://www.taxfairness.ca/sites/default/files/resource/2022-03-16_report_-_snow-washing-inc.pdf.

87 Exhibit 55, BC Ministry of Finance, BC Consultation on a Public Ownership Registry (January 2020), p 19.

Canada (FPT Working Group). In December 2017, the FPT Working Group produced its Agreement to Strengthen Beneficial Ownership Transparency,[88] which expressed the agreement in principle of all of the federal, provincial, and territorial ministers of finance to:

- seek to amend their respective corporate statutes to require corporations to hold up-to-date beneficial ownership information; and
- eliminate the use of bearer shares, with the aim to bring the necessary laws into force by July 1, 2019.[89]

Ministers also agreed to "continue existing work assessing potential mechanisms to enhance timely access by competent authorities to beneficial ownership information."[90]

The federal discussion paper that accompanied the Agreement to Strengthen Beneficial Ownership Transparency proposed that action to improve beneficial ownership transparency in Canada be taken through a "phased approach."[91] The first of these phases would involve "short term" actions by provinces, territories, and the federal government to require corporations to maintain beneficial ownership information in their own records, as well as the prohibition of bearer shares. If implemented, these first-phase measures would establish a minimum standard more consistent with FATF Recommendation 24 (at least as it stood before March 2022) but were acknowledged to fall significantly short of the beneficial *transparency* measures implemented by leading jurisdictions (and now effectively required by Recommendation 24).[92] Longer term, the FPT Working Group proposed to explore more robust options, such as the centralized collection and potential publication of beneficial ownership information in corporate registries.

Action by the Federal Government

At the federal level, Bill C-25, which received Royal Assent on May 1, 2018, amended the *Canada Business Corporations Act* to prohibit the issuance of new bearer shares, warrants, options, or rights, and required corporations presented with bearer instruments to convert them into registered form.[93]

88 Exhibit 304, Department of Finance Canada, Agreement to Strengthen Beneficial Ownership Transparency (July 2019).

89 Ibid.

90 See Exhibit 303, BC Ministry of Finance Briefing Document re Federal Proposal for Improving Beneficial Ownership Transparency in Canada (November 2017), pp 6–14.

91 I note that Exhibit 303, BC Ministry of Finance Briefing Document re Federal Proposal for Improving Beneficial Ownership Transparency in Canada (November 2017), indicates the "phased approach" was proposed in response to concerns raised by more reluctant provinces, which illustrates some of the challenge Canada faces in taking strong, concerted action in areas of shared jurisdiction.

92 Exhibit 303, BC Ministry of Finance Briefing Document re Federal Proposal for Improving Beneficial Ownership Transparency in Canada (November 2017).

93 Exhibit 414, Government Response to the 24th Report of the House of Commons Standing Committee on Finance, tabled November 8, 2018.

In fall 2018, the federal government passed Bill C-86, which amended the *Canada Business Corporations Act*, effective June 13, 2019, to require almost all federally incorporated companies – which make up roughly 10 percent of all Canadian companies – to obtain and hold beneficial ownership information of "individuals with significant control" in their own records, available on request by relevant authorities.[94] I discuss the requirements of the federal regime in greater length in Chapter 24.

In November 2018, the House of Commons Standing Committee on Finance recommended that Canada work with the provinces and territories to create a pan-Canadian beneficial ownership registry for all legal persons and entities.[95] By 2019, the federal government had taken preliminary steps to examine a potential beneficial ownership transparency regime. Mandate letters to the minister of finance and several other ministers directed them to look into a potential beneficial ownership registry, and in 2020, the federal government held public consultations to examine a publicly accessible registry and the need for harmonization across Canada.[96] Notably, the report on the feedback from the consultation stated that public access was "*not* considered by the majority of stakeholders as essential to achieving the policy objectives of combatting the misuse of corporations [emphasis added]."[97] However, as indicated below, despite that feedback, the federal government did commit to a publicly accessible registry.

On June 14, 2019, following a meeting in Vancouver to consider a national response to money laundering and terrorist financing, federal, provincial, and territorial governments issued a joint statement that reaffirmed their commitment to improving beneficial ownership transparency. The joint statement included an agreement "to cooperate on initiating consultations on making beneficial ownership information more transparent through initiatives such as aligning access through public registries, while respecting jurisdictional responsibilities with respect to corporations."[98]

In April 2021, the federal government's budget included an announcement of $2.1 million over two years to build and implement a publicly accessible beneficial ownership registry by 2025 in order to better "catch those who attempt

94 Exhibit 414, Government Response to the 24th Report of the House of Commons Standing Committee on Finance, tabled November 8, 2018.

95 Exhibit 436, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward, Report of the Standing Committee on Finance* (November 2018), pp 1, 28–29.

96 Evidence of J. Cohen, Transcript, November 30, 2020, pp 38–40. See also the consultation paper prepared by the federal government: Canada, *Consultation Paper: Strengthening Corporate Beneficial Ownership in Canada* (February 2020), online: https://www.ic.gc.ca/eic/site/142.nsf/eng/h_00000.html. The feedback from that consultation is summarized in *Public Consultations on Strengthening Corporate Beneficial Ownership Transparency in Canada: What We Heard* (April 2021), online: https://www.ic.gc.ca/eic/site/142.nsf/eng/00002.html.

97 *Public Consultations on Strengthening Corporate Beneficial Ownership Transparency in Canada: What We Heard* (April 2021), online: https://www.ic.gc.ca/eic/site/142.nsf/eng/00002.html.

98 Joint Statement – Federal, Provincial and Territorial Governments Working Together to Combat Money Laundering and Terrorist Financing in Canada (June 2019), online: https://www.canada.ca/en/department-finance/news/2019/06/joint-statement--federal-provincial-and-territorial-governments-working-together-to-combat-money-laundering-and-terrorist-financing-in-canada.html.

to launder money, evade taxes, or commit other complex financial crimes."[99] This was the first specific commitment to a publicly accessible registry made by any Canadian jurisdiction.

Regulatory amendments that came into force on June 1, 2021, expanded the application of beneficial ownership measures to cover all *PCMLTFA* reporting entities, including casinos, real estate professionals, and other non-financial businesses and professions.[100] Bill C-97, which received Royal Assent on June 21, 2019, requires a corporation to provide a copy of its Significant Control Register to investigative bodies, if the investigative body can establish reasonable grounds to suspect that certain offences have been committed by the corporation, by individuals with significant control over the corporation, or by related entities.[101]

On March 22, 2022, the federal government announced that it would implement "a publicly accessible beneficial ownership registry by the end of 2023,"[102] accelerating its original timeline by two years.

In combination with the expansion of know-your-customer obligations under the *PCMLTFA* to require all regulated entities to obtain and take steps to confirm beneficial ownership information, these steps toward transparency indicate an encouraging level of commitment and action on the part of the federal government to meaningfully address the issue of corporate anonymity. However, in order for these efforts to be ultimately effective, federal action must be sustained and, critically, matched by and harmonized with similar actions on the part of provincial and territorial counterparts.

Action in British Columbia

In May 2019, two months before the deadline agreed to in the joint statement by the federal, provincial, and territorial governments, the Government of British Columbia delivered on its commitment under the Agreement to Strengthen Beneficial Ownership Transparency by passing Bill 24, the *Business Corporations Amendment Act, 2019*. In doing so, it became the first province to require corporations to keep records of their beneficial owners in their corporate records office, to be accessible by law enforcement, tax authorities, and designated regulators. (The amendments also fully eliminated bearer shares.)

99 See Federal Budget 2021, online: https://www.budget.gc.ca/2021/report-rapport/p4-en.html?wbdisable=true.

100 *PCMLTF Regulations*, s 138, as amended by *Regulations Amending the Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, 2019, SOR/2020-112, s 5.

101 Budget Implementation Act 2019, No 1, SC 2019, c 29, s 103; C*anada Business Corporations Act*, RSC 1985, c C-44, s 21.31, Schedule, ss 1(z.052)–1(z.054) and 1(z.095).

102 Prime Minister of Canada, "Delivering for Canadians Now" (March 22, 2022), online: https://pm.gc.ca/en/news/news-releases/2022/03/22/delivering-canadians-now.

The amendments make companies liable for knowingly authorizing, permitting, or acquiescing to:

- identifying an individual as a significant individual when they are not;
- excluding an individual who is a significant individual; and
- including or omitting information about a significant individual that makes the information provided false or misleading of any material fact.[103]

It is also offence for a company to:

- fail to maintain and update the register, and
- fail to notify individuals who have been added or removed from the register.[104]

Any director or officer of a corporation who authorizes, permits, or acquiesces to the commission of such offences or any shareholder who provides false or misleading information to a corporation may be held personally liable. Companies may be fined up to $100,000 and individuals up to $50,000.[105]

In the same year, the British Columbia Legislature passed the *Land Owner Transparency Act*, which the minister of finance described would be "the world's first public registry of beneficial ownership in real estate."[106] To date, the new Land Owner Transparency Registry has been created, but not yet populated with historic information (meaning that it shows beneficial ownership of real property for *new* transactions, but not for purchases or transactions before the registry was created). I note that legislating on beneficial ownership transparency in real estate matters was simpler than in corporate matters because registration of real estate is, constitutionally, a matter within exclusive provincial jurisdiction. Developing a transparency regime for corporations is more complex because of the need for interprovincial, national, and international consistency.

In early 2020, the Province initiated public consultations on beneficial ownership transparency supported by a consultation paper,[107] which generated the following feedback:

- overall support for a government registry of company beneficial ownership;
- low support for giving the public access to the registry;
- a desire by financial institution stakeholders to be able to access the registry to assist them in meeting their due diligence obligations under the *PCMTLFA*;

103 *Business Corporations Act*, ss 426(4.1), 427.
104 Ibid, s 426(4.1).
105 Ibid, s 428(2.1).
106 Exhibit 55, BC Ministry of Finance, BC Consultation on a Public Ownership Registry (January 2020), p 2.
107 Ibid.

- opposition to imposing a filing fee for the beneficial ownership information, as yet another cost of compliance;
- support for the integration of beneficial ownership filings with the current corporate registry filings such as annual reports;
- support for harmonizing all registries across Canada with one-stop shopping;
- support for providing comprehensive guidance for filers in gathering required information; and
- acknowledgment that government has a responsibility to ensure that the beneficial ownership information in the registry is accurate and that, of all the groups involved in anti–money laundering activities, government is in the best position to ensure accuracy.[108]

Action by Other Provinces

The majority of other Canadian jurisdictions have likewise amended their provincial corporations legislation and implemented requirements that corporations maintain a register of individuals with significant control over the corporation.[109] In January 2022, Ontario passed similar amendments, although these will not come into force until 2023.[110] Likewise, in March 2022, the New Brunswick government introduced a bill that, if passed, will introduce similar amendments.[111] I discuss these various legislative schemes in greater detail in Chapter 24. For now, I observe that Quebec's legislation is notable for going beyond its commitments under the 2017 *Agreement to Strengthen Beneficial Ownership Transparency* and going further than any other province towards transparency. Conversely, Alberta is notable for lack of action in furtherance of beneficial ownership transparency. If anything, Alberta appears to be moving in the opposite direction.[112]

108 Exhibit 275, BC Ministry of Finance, Briefing Document – Company Beneficial Ownership Consultation – Summary (May 26, 2020).

109 *The Corporations Act*, CCSM c C225, ss 2.1, 21.1; *The Business Corporations Amendment Act*, 2020, SS 2020, c 1; *Corporations Act*, RSNL 1990, c C-36, ss 45.1-45.5; Bill No. 226, *Companies Act* (Amended), 2nd Sess, 63rd Assembly, 2020, online: https://nslegislature.ca/legc/bills/63rd_2nd/3rd_read/b226.htm; *Business Corporations Act*, RSPEI 1988, c B-6.01, ss 2.1, 28.1; Ontario has passed similar amendments although these will not come into force until 2023: *Business Corporations Act*, RSO 1990, c B.16, ss 140.2–140.4.

110 *Business Corporations Act*, RSO 1990, c B.16, ss 140.2–140.4.

111 Karissa Donkin, "Province Moves to Force Corporations to Reveal Who Controls Them," *CBC News* (March 30, 2022), online: https://www.cbc.ca/news/canada/new-brunswick/beneficial-ownership-legislation-nb-1.6401597.

112 See, for example, Jenine Urquhart "New Anti–Money Laundering Legislation: Why Is Alberta So Slow on the Uptake?" *Law Society of Saskatchewan* (November 18, 2020), online: https://www.lawsociety.sk.ca/saskatchewan-law-review-articles/new-anti-money-laundering-legislation-why-is-alberta-so-slow-on-the-uptake/.

Conclusion

The global trend away from disclosure and towards transparency is reflected most clearly by FATF's March 2022 revision to its standards, making a central beneficial ownership registry all but mandatory. Furthermore, five years ago, this Province – along with all of its federal, provincial, and territorial counterparts – committed to moving toward greater corporate transparency. Action has commenced on that commitment by the Province, the federal government, and some (but not all) provincial partners. The federal government and Quebec have signalled an intention to make their beneficial ownership registries public, which may result in other jurisdictions doing the same.

There is encouraging progress underway. There is support for beneficial corporate ownership transparency – both in this province and federally. I applaud and encourage this ongoing work. The key question for *this* province, in my view, is how it can best support the new national registry. In the next chapter, I draw on the evidence led before me and offer my views on key features the Province should advocate for in the new regime.

Chapter 24
Developing a Corporate Beneficial Ownership Registry

In this chapter I discuss a reform that holds great promise in the fight against money laundering, not just in British Columbia, but across Canada. The federal government has very recently taken encouraging steps toward a national and publicly accessible registry of corporate beneficial ownership. I urge the Province to do all it can to support this step and ensure the registry is designed and launched without delay.

The federal initiative offers the Province a unique opportunity to take the strong work it has already started, and transpose it to a national level. In light of the federal registry that is being created soon – by the end of 2023[1] – the key question for British Columbia is how best to support and promote an effective national beneficial ownership registry. To succeed, this registry should include corporate ownership information for federally incorporated companies *and* for those incorporated at the provincial or territorial level. Although British Columbia has already implemented and commenced consultations on a provincial registry,[2] given the recent federal commitment to launch a federal registry in a timely way, it now makes sense to dedicate energy to the federal initiative. The Province should not focus on a separate provincial registry; it should work with the federal government, and with other provinces and territories, to ensure that a truly effective registry is created. Such a registry will draw on research on best practices, and ultimately become a federally led (but pan-Canadian) database. Drawing on the evidence before me, I emphasize particular features that I believe should figure prominently in the design of the new registry, and that the Province should promote.

1 Prime Minister of Canada, "Delivering for Canadians Now" (March 22, 2022), online: https://pm.gc.ca/en/news/news-releases/2022/03/22/delivering-canadians-now.

2 Exhibit 55, BC Consultation on a Public Beneficial Ownership Registry, pp 1–2, 21.

The Need for the National Corporate Beneficial Ownership Registry

In Chapter 23, I discussed the rationale for corporate beneficial ownership transparency, and I outlined the federal government's commitment, announced in Ottawa's 2021 budget, to establish a publicly accessibly registry that would disclose the beneficial owners of companies. That initiative was initially on a longer timeline; Budget 2021 indicated it was to be in place by the end of 2025. But recently – in the context of public concern about the misuse of nominee and corporate ownership by Russian oligarchs amidst the Russian invasion of Ukraine[3] – the federal government has accelerated its commitment. It announced in March 2022 that the federal registry will now be in place before the end of 2023.[4]

At this point, the details as to the design of the federally led registry are not yet settled. They are under development. My expectation is that the registry will be pan-Canadian – meaning that it will be federally led, but will incorporate and include information about companies from across the nation. The Province of British Columbia should assert itself as an early and active proponent of the pan-Canadian registry. It can lead by example and inspire other provinces and territories to follow suit.

There is a growing international consensus among nations, and experts who focus on money laundering, in support of corporate beneficial ownership transparency. As I outlined in Chapter 23, the reasons for this are clear and compelling. Corporations have become a tool for obscurity, permitting criminals to hide behind corporate secrecy. The original historic *raison d'être* for companies was to limit liability, so that entrepreneurs could take business risks without wiping out their entire savings; instead the company would assume the risk and would be treated as a "legal person." This "limited liability" rationale for companies remains a valid and legitimate principle. Canada (as with most countries) has made a policy choice that companies can engage in business, sign contracts, raise funds through investors and the stock market, hire people, and sell things. Equally, they can merge with other companies, get taken over, or go bankrupt. This is the nature of the legal personhood and limited liability that companies enjoy.

But in modern times, corporations and other legal persons have come to be widely used not merely to transact and limit liability, but for a very different purpose: to hide the real owners. Shielded from visibility – both to the public and to law enforcement and regulators – shady people can and do conduct shady transactions in anonymity. They can carry on in secrecy, using company names rather than the actual names of the people involved.

3 B. Shecter, "Hunt for Oligarch Assets Adds New Urgency to Canada's Plan for Beneficial Ownership Registry," *National Post* (April 4, 2022), online: https://financialpost.com/fp-finance/hunt-for-oligarch-assets-adds-new-urgency-to-canadas-plan-for-beneficial-ownership-registry; M.C. Oved, "Federal Government Promises Public Registry to Reveal Who's Really Behind Canadian Companies," *Toronto Star* (March 23, 2022), online: https://www.thestar.com/news/canada/2022/03/23/federal-government-promises-public-registry-to-reveal-whos-really-behind-canadian-companies.html.

4 Prime Minister of Canada, "Delivering for Canadians Now" (March 22, 2022), online: https://pm.gc.ca/en/news/news-releases/2022/03/22/delivering-canadians-now.

This feature of companies has proven itself open to exploitation and misuse, as I noted in Chapter 23. Revelations have emerged though various leaks – such as the Panama Papers, Paradise Papers, and Pandora Papers – that illustrate how corporate vehicles have been employed to hold property and wealth, and conduct transactions, while obscuring who really owns or controls the company. The academic literature and the evidence before me establish in an unambiguous way, that this feature of companies and corporate legal vehicles is present in innumerable money laundering typologies.

To combat money laundering, it is vital that criminals, and those facilitating their conduct, cannot be permitted to exploit corporate vehicles to hide their identities. The time for corporate beneficial ownership transparency has come.

That being the case, the federal government's announcement of a publicly accessible beneficial ownership registry is very good news. It signals an important development of particular relevance to the fight against money laundering.

In Chapter 23, I outlined steps being taken in this province to achieve openness with respect to beneficial ownership, most obviously in the Land Owner Transparency Registry, but also to work toward a provincial corporate beneficial ownership registry. Those efforts are to be commended, and indeed they have shown British Columbia to be a leader (within Canada) in this area.

Given the accelerated timeline of the federal initiative (and its endorsement of a public registry), it is my view that the best course for the Province at this stage is to focus its efforts on the pan-Canadian registry. I recommend that the Province do all it can to ensure that, before the end of 2023, a publicly accessible corporate beneficial ownership registry is in place. The Province should share its expertise and work co-operatively with the federal, provincial, and territorial governments to that end. The registry should be publicly accessible.

Recommendation 52: I recommend that the Province work with its federal, provincial, and territorial partners to ensure that, before the end of 2023, a publicly accessible pan-Canadian corporate beneficial ownership registry is in place.

I say this because, although there remains some logic behind a provincial registry (on its own), there is much greater logic in ensuring that the pan-Canadian registry is harmonized, effective, and national.

The Province of British Columbia has already put work into a corporate beneficial ownership registry. As noted, the Province has implemented a requirement that a BC private company must provide information about its beneficial owners, with that information held at the company's records office (rather than a central registry).[5] It has

5 Exhibit 55, BC Consultation on a Public Beneficial Ownership Registry, pp 1–2, 21.

developed expertise and experience – especially with respect to real estate ownership, with the Land Owner Transparency Registry (even though that initiative remains at a nascent stage). The Province has been a leader within Canada. As such, it can and should play a leadership role in the development of the national corporate beneficial ownership registry. The Province can draw on that expertise, and may rely on the analysis in this Report to advocate for the best design features for the registry.

The Need for Coordination

I have emphasized the need for a strong, nationwide registry. Although there are different ways to accomplish it, in my view the registry should encompass beneficial ownership information from Canada, British Columbia, and ultimately all the provinces and territories. As is often the case in our confederation, compromise will be necessary. No province should get so hung up on a particular feature that it loses sight of the big picture: an operational pan-Canadian registry will be far more effective. Such a registry will permit users and the public a "one-stop shop" to obtain comprehensive information about who really owns or controls particular corporate vehicles.

There is a strong case for coordination as between the federal, provincial, and territorial governments. Canada's federated system presents challenges to addressing beneficial ownership transparency for corporate and other legal structures. Each of the federal government, the provinces, and the territories has jurisdiction to regulate legal entities. Uniformity in such regulation is not constitutionally required. These challenges must be overcome. If any jurisdiction lags behind the others in its transparency efforts, it may be perceived as the weak link and become a target for criminality.

The Province will need to undertake additional work in order to support and improve the implementation of the new pan-Canadian registry. There will be an ongoing need for the Province to address details, design, and issues that arise as the federal initiative comes into being.

I turn now to the particular design features that the Province should advocate for in support of the federal registry.

Key Design Features for a Corporate Beneficial Ownership Registry

From the evidence before me, I consider that there are certain components of an effective beneficial ownership registry that are vital to its success. In the remainder of this chapter, I examine design features for a public corporate beneficial ownership registry, in this sequence:

- what information the registry should contain;
- ensuring accurate and updated information;

- accuracy through strong enforcement and compliance;
- how much information is collected, and how much is shared;
- what types of entities should be included in the registry;
- what level of control or ownership is needed to be on the registry;
- the architecture of the new registry;
- costs and fees for the registry; and
- a commitment to ongoing review and improvement of the regime.

Of these features, I would emphasize the need for a strong compliance and enforcement regime to ensure the accuracy and comprehensiveness of the information in the registry.

What Information Should the Registry Hold?

There is enormous variability when it comes to the kinds of information that can be held in the registry. Does it simply list names of people, or does it contain much more information about the person, his or her or their interest, their identifying information, and the like?

The federal statute, the *Canada Business Corporations Act,* RSC 1985, c C-44, requires that a federal company's records are to be held at its registered office (or another designated place) "a register of individuals with significant control over the corporation" (section 21.1(1)). The Act mandates the collection of information for each "individual with significant control" (the meaning of which I discuss below), such as:[6]

- their name, date of birth, and last known address;
- their jurisdiction of residence for tax purposes;
- when they became or stopped being an individual with significant control; and
- how it is that they are an individual with significant control (i.e., a description of their interests and rights in relation to the corporation);

The Act also requires the corporation to update this information to ensure accuracy and completeness, once a year (section 21.1(2)).

This sort of approach has been used in a number of provincial legislative schemes.[7]

6 *Canada Business Corporations Act,* s 21.1(1).

7 See, for example, The *Business Corporations Act,* 2021, SS 2021, c 6, s 4-4; *The Corporations Act,* CCSM c C225, s 21.1; *Corporations Act,* RSNL 1990, c C-36, s 45.2; *Business Corporations Act,* RSPEI 1988, c B-6.01, s 28.1; see also *Business Corporations Act,* RSO 1990, c B.16, s 140.2 (not yet in force).

The British Columbia *Business Corporations Act*, SBC 2002, c 57, is worded slightly differently. Instead of recording the "the jurisdiction of residence for tax purposes of each individual with significant control," the BC Act requires corporations to record whether they are a Canadian citizen or permanent resident (and if not, where they hold citizenship), and whether or not the person is considered "resident in Canada" for the purpose of Canadian tax law.[8]

These categories of information are all highly useful. A number of witnesses offered views as to other types of information that should be included in the register:

- a **unique personal identifier**: a randomly issued number, not based on any other identification number, to be publicly disclosed, in order to allow searchers to know quickly if they are dealing with the same person;[9]
- **occupation**;
- **politically exposed person status** (and/or head of international organization standard);[10] and
- nominee shareholders and directors must be required to **identify their nominators**.[11]

In my view there is an important distinction between the information that the registry *collects*, and what it *makes publicly available*. There is a need to constrain what can be made public. But as for the collection of information, it is my view that the registry should contain as much of the information noted above as it can, to ensure maximum effectiveness.

Ensuring Accurate and Updated Information

A beneficial ownership registry is only as good as the quality of the information it contains. But some corporate registries, and even some beneficial ownership registries, accept the information the applicant offers, without any vetting or verification. For example, the United Kingdom's People with Significant Control registry has been criticized for relying on self-reporting and not verifying the information submitted by companies. To illustrate how a lack of vetting can undermine the integrity of a beneficial ownership registry scheme, in February 2017

8 *Business Corporations Act*, s 119.2(2).

9 Exhibit 283, Submission to the Cullen Commission of Mora Johnson (November 2020), p 13. The merits of this sort of unique identifier avoid the problem of familiar names (e.g., John Smith, Ryan Li) and also overcome different usages of the same name (Jon Smith, Jonathan Smith, J.E. Smith, etc.).

10 Exhibit 272, Justine Davila, Michael Barron, and Tim Law, *Towards a Global Norm of Beneficial Ownership – A Scoping Study on a Strategic Approach to Achieving a Global Norm* (UK: Adam Smith International, March 2019) [Beneficial Ownership Scoping Study], p 29; Exhibit 284, Transparency International Canada, *Implementing a Publicly Accessible Pan-Canadian Registry of Beneficial Ownership – Legislative and Technical Options* (2020), p 13.

11 Exhibit 283, Submission to the Cullen Commission of Mora Johnson (November 2020), p 7.

the United Kingdom's Companies House identified 4,500 companies that had reported a company located in a tax haven as their beneficial owner.[12]

The UK Companies House registry has also achieved some notoriety for the lack of verification of the information submitted. Oliver Bullough emphasized this, pointing to directors such as "Xxx Stalin … Kwan Xxx … Xxx Raven … Tracy Dean Xxx … Jet Xxx; and finally Mr. Xxxx Xxx."[13]

As noted, the *Canada Business Corporations Act* requires that the information be updated at least once during each financial year of the corporation and that the corporation take "reasonable steps" to ensure "the information in the register is accurate, complete, and up-to-date."[14] Most jurisdictions in Canada have followed suit.[15]

Conventional corporate registries typically require corporations to file annual reports and to ensure accuracy at that time. But for those who regularly use public beneficial ownership registries (such as law enforcement, anti–money laundering agencies, businesses, and investigative journalists), they will need much more than an annual updating if the database is to be current. Most legislation in Canada requires that if the corporation becomes aware of any information that it is required to maintain in the register, it must record that information in the register within 15 days of becoming aware of it.[16] British Columbia's legislation allows for 30 days to update the register.[17]

Most Canadian jurisdictions require that when the corporation requests the information to complete the register, the shareholders have an obligation to provide accurate and complete information and to respond as soon as possible.[18] Ontario's legislation – which is yet to be brought into force – similarly requires that shareholders "shall, promptly and to the best of their knowledge, reply accurately and completely."[19] Again, British Columbia's legislation is worded slightly differently, requiring the shareholder to take "reasonable steps to compile the requested information" and to "promptly send to the private company the information that the shareholder was able to

12 Exhibit 277, Global Witness, *Learning the Lessons from the UK's Public Beneficial Ownership Register* (October 2017), pp 8–9.

13 Exhibit 14, Leon Edler, "How Britain Can Help You Get Away with Stealing Millions: A Five-Step Guide," *The Guardian*, July 5, 2019, p 8; Evidence of O. Bullough, Transcript, June 1, 2020, pp 93–94.

14 *Canada Business Corporations Act*, s 21.1(2).

15 See, for example, *Business Corporations Act*, SBC 2002, c 57, s 119.3; *The Business Corporations Act*, 2021, SS 2021, c 6, s 4-4(2); *The Corporations Act*, CCSM c C225, s 21.1(2); *Corporations Act*, RSNL 1990, c C-36, s 45.2(2); *Business Corporations Act*, RSPEI 1988, c B-6.01, s 28.1(2); *Business Corporations Act*, RSO 1990, c B.16, s 140.2(3) (not yet in force).

16 See, for example, *Canada Business Corporations Act*, s 21.1(3); *The Business Corporations Act*, 2021, SS 2021, c 6, s 4-4(3); *The Corporations Act*, CCSM c C225, s 21.1(3); *Corporations Act*, RSNL 1990, c C-36, s 45.2(3); *Business Corporations Act*, RSPEI 1988, c B-6.01, s 28.1(3); *Business Corporations Act*, RSO 1990, c B.16, s 140.2(4) (not yet in force).

17 *Business Corporations Act*, SBC 2002, c 57, s 119.31(1).

18 See, for example, *Canada Business Corporations Act*, s 21.1(4); *The Corporations Act*, CCSM c C225, s 21.1(4); *Corporations Act*, RSNL 1990, c C-36, s 45.2(4); *Business Corporations Act*, RSPEI 1988, c B-6.01, s 28.1(4).

19 *Business Corporations Act*, RSO 1990, c B.16, s 140.2(5) (not yet in force).

compile."[20] Likewise, Saskatchewan requires only that the shareholder "shall, to the best of the shareholder's knowledge, provide that information to the corporation."[21]

As I look ahead to a new pan-Canadian registry, it seems evident that these differences in approach as to the updating of information will need to be reconciled, either by being harmonized on a single standard or accounting for different rules for the provision of accurate and timely information about those who have significant control over the corporate vehicle.

But there are important steps that the registry would do well to emphasize in order to ensure the accuracy of beneficial ownership information. In the evidence before me, they were often discussed under two different but related concepts: validation and verification.

Validation of data refers to measures that prevent obvious errors, such as birthdates in 1668 or 40 different spellings for one citizenship (UK, English, Cornish, Breton, etc.). Equally, listing another company as the beneficial owner would not be possible with validated data. There are design features that go a good distance to permitting validation, and any person familiar with internet transactions will recognize them: drop-down menus for categories of information such as birth dates, addresses, countries, and the like.[22]

Verification of data refers to the kinds of measures that ensure the real-life accuracy of information in the database. There are several measures that a registry can adopt in order to identify potential inaccuracies or irregularities in the data, such as:

- making it easy for users to report suspected inaccurate data in registry;
- requiring employees of the beneficial ownership registry to follow up on every report; and
- requiring "reporting entities" that have due diligence obligations under Canada's FINTRAC scheme to report to the beneficial ownership registry discrepancies between what is shown on the registry and what they have learned about their customers. This is a requirement under the European Union scheme.[23]

Meanwhile, **authentication** of information is a further important feature. This describes the kinds of steps that the new beneficial ownership registry may take to ensure that the information disclosed by the corporation is accurate:

- requiring that the person making the disclosure provide documentary proof of the facts disclosed (for instance, government photographic identification or proof of their ownership or control); and
- imposing a duty on the registry itself to vet the information disclosed by, for example, cross-checking the data against other government databases.

20 *Business Corporations Act*, SBC 2002, c 57, s 119.21(2).

21 *The Business Corporations Act*, 2021, SS 2021, c 6, s 4-4(4).

22 Exhibit 277, Global Witness, *Learning the Lessons from the UK's Public Beneficial Ownership Register* (October 2017), p 8.

23 Ibid, pp 8–9.

As the Province supports the federal corporate beneficial ownership registry, there are important resources that provide insights on the best practices. In particular, the United Kingdom has devoted much attention to this.[24]

Ensuring Accuracy: Strong Enforcement and Compliance

Having emphasized the need for accurate information in terms of validation, verification and authentication, I turn to a closely related issue. How can the registry ensure that it does not become a "garbage in, garbage out" database? If criminals or bad actors are dishonest, what can be done to stop them from simply lying in the information they submit to the registry? In my view, the answer lies in having powerful sanctions and a rigorous approach to ensuring that beneficial ownership information is correct.

As noted earlier, the great majority of beneficial owners and directors are law-abiding; they will do their best to comply with disclosure requirements. To the extent there are minor failures in their submission of information, and no deliberate intent to deceive, the approach should be a corrective and supportive one. But when it comes to unscrupulous individuals exploiting (indeed, choosing) corporate entities to facilitate crime and money laundering, a very different approach is required. Such bad actors will be reluctant participants in this new registry scheme. They may well deliberately try to misrepresent the true state of affairs. As with many public registries, the innocent majority are inconvenienced in order to catch the dishonest minority.

There must be sanctions to compel compliance, and those sanctions must be effective, proportionate, and dissuasive.

The federal legislation presently contains offences for contraventions of the duty to maintain an accurate register of beneficial owners.[25] The penalties available may, in more serious cases, go up to fines of $200,000 or imprisonment of up to six months in duration.[26] Most Canadian jurisdictions have analogous offences and penalties,[27] though there is some variation in BC,[28] Saskatchewan,[29] and Quebec.[30]

24 Exhibit 289, UK Department for Business, Energy and Industry Strategy, Review of the Implementation of the PSC Register (March 2019); Exhibit 313, UK Department for Business, Energy and Industry Strategy, Corporate Transparency and Register Reform (September 18, 2020).

25 *Canada Business Corporations Act*, ss 21.1(6), 21.31(5), 21.4(2), 21.4(3), 21.4(4).

26 *Canada Business Corporations Ac*t, s 21.4(5).

27 See, for example, *The Business Corporations Act*, 2021, SS 2021, c 6, ss 4-9(2)-(4); *Business Corporations Act*, RSO 1990, c B.16, ss 140.4(4)–(7); *The Corporations Act*, CCSM c C225, ss 21.4(2)–(5); *Corporations Act*, RSNL 1990, c C-36 , ss 503.1(2)-(5); *Business Corporations Act*, RSPEI 1988, c B-6.01, ss 28.5(2)-(5).

28 British Columbia has analogous offences but larger penalties for corporations (a fine of not more than $100,000) and lesser penalties for individuals (fines of between $10,000 and $50,000): *Business Corporations Act*, SBC 2002, c 57, ss 427, 427.1(2)–(6), 428(2)–(2.1).

29 Analogous offences but lesser penalties (a fine of $10,000, a term of imprisonment of not more than 6 months, or both): The Business Corporations Act, 2021, SS 2021, c 6, ss 22–21(1).

30 A lesser penalty of $25,000, and also the potential for companies to lose their ability to claim assets if their structures are inaccurately reported. *Business Corporations Act*, SQ c S-31.

As the federal government builds the new pan-Canadian registry, it will need to account for differences in the penalties for non-compliance. There is no constitutional requirement that each province adopt the same penalties as the others, although this seems advisable. In addition the federal government, in creating the registry, may wish to consider whether a penalty provision that applies nationally is viable. To the extent that the new registry is launched with different penalties in different provinces, and if British Columbia proves to have lesser penalties, this is a problem. Lower penalties would make a jurisdiction more appealing to criminal operators. In my opinion, it would be desirable for British Columbia to bring its penalties in line with its federal and provincial counterparts. As British Columbia supports the new pan-Canadian corporate beneficial ownership registry, it should ensure it has a strong compliance regime with effective enforcement and serious, dissuasive penalties for those who provide inaccurate information to the registry.

How Much Information Is Collected, and How Much Is Shared?

I adverted earlier to the fact that while the new pan-Canadian registry will *collect* significant personal information about those individuals who are beneficial owners, that does not mean it should all be *published*. On any view of it, there will be categories of information that are not made public. This is sometimes referred to as tiered access, because there are different people or bodies that can access different levels of information.[31]

As I have discussed, initial steps taken toward beneficial ownership *disclosure* involved the records maintained by the companies themselves and held by corporate records offices, with access restricted to law enforcement and government agencies. Under the federal legislation, this approach changed to one that required that information as to the individual of significant control (beneficial owner) would be made available to shareholders and creditors of the corporation or their personal representatives for particular uses, and on request to investigative bodies including police and taxation authorities.[32] A number of beneficial owner schemes implemented by provinces have substantially similar categories of access.[33] Access to full beneficial ownership information under the BC scheme is more limited; it extends only to directors of the company, or inspecting officials for tax, law enforcement, or regulatory purposes.[34] Ontario's scheme, when brought into force, will be limited to prescribed members of a police force and prescribed government officials requesting disclosure for law enforcement, tax, or regulatory purposes.[35] Under Manitoba's scheme, access to beneficial ownership information is limited to the director and shareholders and creditors for prescribed uses.[36]

31 A useful illustration of this appears at p 13 of the Province's consultation paper on corporate beneficial ownership: Exhibit 55, BC Consultation on a Public Beneficial Ownership Registry.

32 *Canada Business Corporations Act*, RSC 1985, c C-44, ss 21.3–21.31.

33 *The Business Corporations Act*, 2021, SS 2021, c 6, ss 4-6–4-7; *Corporations Act*, RSNL 1990, c C-36, ss 45.4–45.5; *Business Corporations Act*, RSPEI 1988, c B-6.01, ss 28.3–28.4.

34 *Business Corporations Act*, SBC 2002, c 57, ss 119.61–119.81.

35 *Business Corporations Act*, RSO 1990, c B.16, s 140.3.

36 *The Corporations Act*, CCSM c C225, s 21.3.

The more recent shift internationally to beneficial ownership *transparency* has prioritized much wider access to civil society; it has involved access well beyond merely law enforcement–type bodies. This has led to the need to balance public access with privacy interests, as I will discuss later in this section. Quebec's provincial budget for 2020–21 included a specific proposal for a public beneficial ownership registry.[37] On June 8, 2021, the National Assembly of Quebec passed *An Act Mainly to Improve the Transparency of Enterprises,* providing for a publicly accessible registry of beneficial ownership within its existing corporate registry.[38] And of course, there is the federal government's 2022 commitment to "a publicly accessible beneficial ownership registry by the end of 2023."[39]

In examining these competing interests, a good place to begin is with a consideration of the value of beneficial ownership registries. Although the impetus for such registries grew out of the frustration experienced by law enforcement and anti–money laundering agencies in breaking through the ambiguous ownership of shell companies, there are numerous other sectors of society that can benefit from widely accessible registries.

Beneficiaries and Benefits of Access

There are many potential beneficiaries of registry information, such as:

- law enforcement agencies investigating revenue-generating criminal offences;
- law enforcement and anti–money laundering agencies tracing the proceeds of crime;
- tax authorities, who need access to beneficial ownership in order to cross-check tax declarations against corporate disclosures of beneficial ownership;
- regulatory authorities that administer and enforce other laws;
- civil forfeiture authorities that trace the movement of funds and assets;
- financial "reporting entities" under Canada's FINTRAC scheme that have statutory due diligence obligations to collect beneficial ownership information under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR/2002-184, s 138 (currently, it is difficult and expensive for banks to get this information);
- other designated non-financial business sectors such as accountants, notaries, and realtors;
- corporate registries that need access to beneficial ownership in order to implement and enforce corporate law statutes;

37 Exhibit 284, Transparency International Canada, *Implementing a Publicly Accessible Pan-Canadian Registry of Beneficial Ownership – Legislative and Technical Options* (2020), p 4.

38 *An Act Mainly to Improve the Transparency of Enterprises*, SLQ 2021, c 19.

39 "Delivering for Canadians Now" (March 22, 2022), available online: https://pm.gc.ca/en/news/news-releases/2022/03/22/delivering-canadians-now.

- civil society (e.g., journalists, non-governmental organizations, etc.) who may examine publicly accessible data in order to research alleged incidents of corruption and government patronage, assist law enforcement and company registries in identifying data anomalies, and thereby contribute to preserving trust in the integrity of business transactions and of the financial system;[40]
- companies, creditors, and professionals – all of whom do know-your-customer research, and/or may evaluate competitors or companies with whom they may do business. This is a point that was raised in the submissions of BMW and the CPA Canada.[41]

Some additional benefits of increased transparency include:

- Visibility into the actual ownership or control of a company removes a significant hurdle to the investigation and enforcement of money laundering and other offences. At a basic level, this reform means the end of the notion that companies can be used as a convenient smokescreen behind which nobody can peer.
- Allowing anyone across Canada and worldwide to have easy access to the registry allows law enforcement, taxation, and regulatory authorities in other jurisdictions to enforce the laws entrusted to them.
- In government procurement, transparency may prevent individuals who have been banned from bidding on government contracts from disguising a disbarred corporation and/or beneficial owners and bidding again.
- Where political campaign financing laws restrict totals that individuals and corporations can donate to a political party, beneficial ownership information would help in determining whether individuals are breaking laws by donating through multiple legal entities.
- Increased transparency improves the business environment and benefits economic growth.[42]
- When "many eyes" see disclosed information on a registry, it increases feedback about inaccurate filings, which ultimately yields more reliable information.

Privacy Concerns

I accept that, as a general principle, the more beneficial ownership registries fulfill these goals, the greater the public access to them.

40 Evidence of M. Barron and T. Law, Transcript, November 27, 2020, pp 92–93; Exhibit 272, Beneficial Ownership Scoping Study, p 18.

41 Evidence of M. Barron and T. Law, Transcript, November 27, 2020, pp 98–101; Closing submissions, BMW Canada and BMW Financial Services, p 8; Closing submissions, CPA Canada, pp 27–29.

42 Closing submissions, BC Civil Liberties Association, pp 33–35; Evidence of M. Barron, Transcript, November 27, 2020, p 101–4.

Having said that, I also accept that corporate shareholders may have privacy interests and that putting more information about a company's principals or its beneficial owners into the public sphere impacts the privacy interests of those individuals. In its closing submissions, the BC Civil Liberties Association adverted to concerns about identity theft, scams, solicitation, and risks to personal safety.[43]

One scoping study placed before me in evidence suggested that three questions should be asked in balancing the benefits and risks of transparency:

- Is it **lawful** to disclose the personal details of the beneficial owner?
- If so, is disclosing beneficial ownership data **necessary** to achieve a legitimate aim?
- If so, how can a registry be structured so that benefits are **balanced** against potential harms?[44]

In supporting the development of the new pan-Canadian registry, the Province will have important insights to offer, and experience to draw on (in particular with its Land Owner Transparency Registry). There may be sensitivities and even prohibitions over certain personal information, the publication of which could unduly interfere with individual privacy interests. That would be the case, I expect, were a registry to publish full names, dates of birth, and social insurance numbers. On the other hand, a registry publishing names, cities or regions of residence, and unique identifiers may be an example of a balancing that achieves both the need for an effective database and respect for personal privacy.

There are two different ways that the design of the corporate beneficial ownership registry can ensure that the right balance is struck between effectiveness and privacy. They are not "either/or" and indeed, both should be engaged in order to have the right balance.

First, **tiered access** is a method of structuring who gets access to what information. Realistically, it is not tenable that every piece of information obtained (or obtainable) by the registry would simply be published on an online database. On the other hand, it need not be that, other than the public information, *no* information is available to law enforcement and government agencies, absent some form of court order requiring the registry to hand it over. By using tiered access, the registry can establish gradations of transparency. At a general level, this would involve a spectrum of access, under which some groups would get broad access, others a mid-level of access, and the public would get the least (but still a meaningful amount) of access to beneficial ownership information. Under that approach, the tiers may be along these lines:

- law enforcement only;
- law enforcement and authorized government agencies;

43 Closing submissions, BC Civil Liberties Association, p 3; Evidence of M. Barron and T. Law, Transcript, November 27, 2020, p 105.

44 Exhibit 272, Beneficial Ownership Scoping Study, p 61.

- law enforcement, authorized government agencies, and "reporting entities" under the FINTRAC scheme that have due diligence obligations; and
- anyone.[45]

Second, **exemptions** allow for information that the registry obtains, which would otherwise be publicly available, to *not* to be made public in a particular instance, upon application or request by the affected individual. The premise for exemptions is a presumption that a person's name and some limited personal information (such as city of residence) will be available on the public registry. However, this presumption of openness can be overcome where a person establishes that if they are identified, there is a meaningful prospect of unfair consequences or risks for them. In the United Kingdom's scheme, beneficial owners can request the redaction of some information in order to prevent a threat to personal safety or intimidation; this sort of exemption could be especially relevant for people such as celebrities and defence contractors.[46] In the UK, the test for exemption has been interpreted restrictively. A Global Witness report found that, of 270 applications for exemptions, only five were granted.[47]

Having considered all of the evidence and submissions before me, the question for British Columbia is how to engage in and support the new pan-Canadian registry by advocating for the best design features. Both tiered access and exemptions should be employed in the registry, in my view. Making use of both permits an optimal balance between effectiveness and individual privacy. This sort of approach ensures that serious and well-founded risks to individuals are accounted for in order to safeguard against unacceptable harassment, targeting, identity theft, or extortion-type conduct. On the other hand, the default of public access brings to an end the traditional opacity that is automatically available by incorporating. I would add that, although the United Kingdom's registry has faced criticism, its model provides a sound, real-world example of how exemptions can be used.[48] While it may not lend itself to wholesale adoption in British Columbia and Canada, no doubt the experiences in that jurisdiction will provide valuable insights in crafting solutions in this one. The approach taken here will, of course, need to be sensitive to the unique constitutional and legislative frameworks that apply, including the constitutional and legislative protection of privacy rights.

45 Exhibit 283, Submission to the Cullen Commission of Mora Johnson (November 2020), p 18; Evidence of M. Barron, Transcript, November 27, 2020, p 104–10; Evidence of M. Johnson and P. Dent, Transcript, November 30, 2020, pp 95–97.

46 Evidence of M. Barron, Transcript, November 27, 2020, p 107.

47 Evidence of M. Barron and T. Law, Transcript, November 27, 2020, p 125.

48 Exhibit 289, UK Department for Business, Energy and Industry Strategy, Review of the Implementation of the PSC Register (March 2019), pp 41–44; Exhibit 313, UK Department for Business, Energy and Industry Strategy, Corporate Transparency and Register Reform (September 18, 2020), pp 12–13.

What Types of Entities Should Be Included in the Registry?

The question of what entities should be included in a beneficial ownership registry is complicated, as I have described in Chapter 23. In the present context, the decision falls to be made both federally and provincially. I view it is problematic if, at the very start of the new registry, one jurisdiction is counting apples and another is trying to include all fruit. It is, in my view, preferable that there be a harmonized and consistent approach to the entities included in the beneficial ownership registry, as it gets underway. I take it as a given that companies will be included at the outset, as the very premise is to focus on corporate entities. Over time, however, the registry should be designed in a manner that allows for it to be expanded to other "legal persons" that present significant money laundering vulnerabilities – such as trusts and partnerships.

When the expansion of the registry is considered, after it is up and on its feet, in my view, two guiding principles should drive the Province's approach:

- identifying which corporate structures money launderers find most attractive for their criminal purposes; and
- where possible, erring on the side of including more types of corporate structures than fewer and including an ability to add new structures easily, so that money launderers will be left with fewer unregulated corporate structures to choose from and, as new risks emerge, government will have the ability to keep pace.

Various "legal persons" could, conceivably, be included in a beneficial ownership registry:

- **Private companies:** witnesses universally told me that this is the most important category to include in the registry.[49] My understanding of the federal initiative is that it is focused on private companies. This is the right focus as the pan-Canadian registry is commenced.
- **Public companies:** reputable stock exchanges already have their own reporting requirements, and public companies fall under the supervision of securities commissions and other regulatory bodies. There are certainly money laundering risks in this area, but they are of a character that does not point to the use of a beneficial ownership registry as the key solution, because such a registry will have a minimal ownership requirement (likely 25 percent, as discussed below) that will be inapplicable to most public companies. Moreover, beneficial ownership information is already generally available about public companies.[50]
- **State-owned companies:** the entire population are shareholders in such companies. While state-owned companies may be included in the registry, no shareholders

49 Exhibit 283, Submission to the Cullen Commission of Mora Johnson (November 2020), p 7.

50 See, for instance, the System for Electronic Document Analysis and Retrieval (SEDAR), a filing system developed for the Canadian Securities Administrators, online: http://www.sedar.com/.

will hold substantial ownership or control, so the Province will need to focus on transparency of directors, with a clear understanding of who appoints directors.[51] Having said this, based on the evidence before me, I do not understand state-owned companies to be associated to appreciable money laundering risks, and their inclusion does not seem integral to the registry.

- **Partnerships:** in a widely held partnership, it is unlikely that any partner's interest would exceed even a 10 percent ownership threshold such that these are less important to include in the registry.[52] However, smaller partnerships give rise to bigger risks. Based on the discussion of partnerships in Chapter 23, I do not recommend, at this stage, that the registry must include partnerships. But I encourage the Province and other participants in the pan-Canadian registry to keep their eye on this and to move toward adding partnerships into the registry, if and when that is viable.

- **Limited partnerships:** the United Kingdom recently added a new registry for limited partnerships.[53] Companies House had found that, after including Scottish limited partnerships in the beneficial ownership register, new registrations in Scottish limited partnerships decreased by 80 percent in the first year, suggesting that money launderers found these types of partnerships suitable for their criminal purposes.[54] Although limited partnerships have not been a significant focus for the Financial Action Task Force, they are useful to criminals for many of the same reasons as corporations and have been involved in laundromat schemes. I would include limited partnerships in the same category as partnerships as discussed above: not necessarily included in the new registry at the outset, but under consideration for inclusion in the registry once it is up and running properly.

- **Trusts:** as noted, the Financial Action Task Force has created, with amendments to Recommendation 25, an expectation for adequate, accurate, and timely disclosure of beneficial ownership information relating to trusts. Trusts are useful to criminals for many of the same reasons as corporations are and have been identified as being used in laundromat schemes. Nevertheless, trusts give rise to unique privacy considerations. I encourage the Province to study the inclusion of trusts in a beneficial ownership registry and whether additional limits on access to information are needed for this particular type of legal person. There is reason to believe that at least some categories of trusts will soon be required to report beneficial ownership information to federal and Quebec tax authorities. The Province should, first and foremost, aim for consistency in what types of structures are required to report beneficial ownership information and in who can access that information through the registry.

51 Evidence of M. Barron, Transcript, November 27, 2020, pp 77–78.

52 Evidence of P. Dent, Transcript, November 30, 2020, p 185.

53 Evidence of M. Barron and T. Law, Transcript, November 27, 2020, p 79.

54 Exhibit 283, Submission to the Cullen Commission of Mora Johnson (November 2020), p 6.

- **Unlimited liability companies and charities:** several witnesses made passing reference to these two types of corporate structures that money launderers may find attractive, but told me that both require more analysis.

In respect of partnerships, limited partnerships, and trusts, I do not recommend that these be included at the outset as the pan-Canadian registry commences. I encourage the Province to study and to consult with federal, provincial, and territorial partners as to the viability of including these three types of legal persons in the registry.

I would add that I take it as obvious that, as a starting point, all federally incorporated private companies – as well as private companies from participating provinces and territories – will be included in the registry.

What Level of Control or Ownership Is Needed To Be on the Register?

A registry of beneficial ownership does not mean that the true identity of all shareholders must be disclosed. Instead, the idea is to identify who is actually directing or owning the company, in substance. The United Kingdom articulately captured the focus of its scheme through the name "Persons of Significant Control Registry."

To date, as noted above, most of the legislative amendments in Canada have likewise coalesced around the idea of "significance." For example, the *Canada Business Corporations Act* uses the concept of an "individual with significant control,"[55] and various provinces have replicated this approach.[56] In simple terms, the federal legislation defines, an "individual with significant control" as being (a) the registered holder, beneficial owner, or person controlling 25 percent or more of the company's shares; or (b) someone who can, in fact, control the company.[57]

The BC *Business Corporations Act* is worded slightly differently but largely tracks the same legal concepts.[58]

The benefits of these definitions are that they capture a variety of owners and controllers. They are also flexible in that the legislation includes the ability to prescribe additional individuals to whom the definition applies. The definitions capture both shareholder ownership and indirect control.

Although the legislative definitions in Canada capture individuals who hold 25 percent or more of voting rights attached to a corporation's outstanding voting shares, or 25 percent or more of all of the corporations outstanding shares measured by fair market value, various commentators argue for different thresholds.

55 *Canada Business Corporations Act*, SC 1985, c C-44, s 2.1.

56 See, for example, *The Business Corporations Act*, 2021, SS 2021, c 6, ss 1–3; *The Corporations Act*, CCSM c C225, s 2.1; *Corporations Act*, RSNL 1990, c C-36, s 45.1; *Business Corporations Act*, RSPEI 1988, c B-6.01, s 2.1; *Business Corporations Act*, RSO 1990, c B.16, s 1.1 (not yet in force).

57 *Canada Business Corporations Act*, SC 1985, c C-44, s 2.1.

58 *Business Corporations Act*, SBC 2002, c 57, s 119.1.

In the United Kingdom, corporations are required to disclose the level of shareholder ownership in "bands"; for example, 25–50 percent, 50–75 percent, or more than 75 percent. Some commentators argue that this is too imprecise, and it would be no additional burden to require the corporation to report exact percentage ownership, as is required in Sweden.[59] Others argue that the shareholder ownership threshold should be reduced to 10 percent,[60] or even lower thresholds for higher-risk business sectors.[61] Those in favour of a lower threshold argue that shareholder ownership between 11 and 24 percent could still allow control by a criminal element, and that there will be few or no negative consequences with a lower threshold. I was told that it is a very small percentage of corporations in which the number of beneficial owners is a concern. A UK study found that in 80 percent of corporations there were only one or two beneficial owners, and that in only 2 percent there more than five beneficial owners.[62]

Differing thresholds and reporting requirements will be a valid subject of consultation and debate moving forward. My concern with a 25 percent threshold is that those seeking to avoid the obligation to divulge beneficial ownership information may be able to do so merely by having five, rather than four, owners. A 10 percent threshold makes this much harder. However, to echo a point made earlier, what I view as most critical is that the pan-Canadian registry be initiated with a consistent and harmonized scheme. The Province will need to determine if it should advocate for a 10 percent threshold, or to hold to the existing 25 percent standard that appears in the provincial transparency registry and the current federal legislation (as well as in many provinces).

The Architecture of the New Registry

The Province (and Canada) would do well to analyze and build upon the work done by Transparency International Canada, setting out two alternative models for a pan-Canadian beneficial ownership registry scheme.[63] I acknowledge with thanks the considerable thought and effort that went into preparation of its report.

The first model involves a **federated, distributed architecture**. Under this model, provinces and territories would independently collect beneficial ownership data, and then provide that data to a central Canadian repository. Each jurisdiction would use an open and international data standard. There would be a centralized beneficial ownership registry database and portal for access and compliance management,

59 Evidence of M. Johnson, Transcript, November 30, 2020, pp 84–88; Exhibit 277, Global Witness, *Learning the Lessons from the UK's Public Beneficial Ownership Register* (October 2017), p 7.

60 Evidence of M. Barron, Transcript, November 27, 2020, p 69.

61 Evidence of M. Barron and T. Law, Transcript, November 27, 2020, p 70.

62 Exhibit 283, Submission to the Cullen Commission of Mora Johnson (November 2020), p 9.

63 Exhibit 284, Transparency International Canada, *Implementing a Publicly Accessible Pan-Canadian Registry of Beneficial Ownership – Legislative and Technical Options* (2020); Canada, "Public Consultations on Strengthening Corporate Beneficial Ownership Transparency in Canada: What We Heard" (April 6, 2021), online: https://ised-isde.canada.ca/site/consultation-strengthening-corporate-beneficial-ownership-transparency-canada/en/public-consultations-strengthening-corporate-beneficial-ownership-transparency-canada-what-we-heard.

enabling authorized federal, provincial, and territorial public servants to manage their data. An application programming interface (API) would enable provinces and territories to upload beneficial ownership data to a central repository.

The second model is a **centralized architecture**, under which businesses in all jurisdictions would directly report beneficial ownership data to a central registry through a single portal. Each jurisdiction would be able to control their level of participation and data sharing. Provinces and territories would be able to access beneficial ownership data via a cloud-based central registry, to add this information to their own registries using an API.

Key considerations in choosing the model for the new registry will include:

- who controls what data goes into the registry;
- who decides *when* beneficial ownership information is collected (i.e., during incorporation or annual filings);
- uniform data quality;
- the developmental and data infrastructure costs;
- the potential for what is termed "legislative arbitrage," in which some corporations would shop around for the jurisdiction with the least onerous disclosure requirements; and
- security and cyber threats.

I do not purport to wade into the minutiae of design questions, which fall to be resolved by way of co-operative hard work involving the Province, the federal government, and others joining the new registry from the outset. What is key, to my mind, is that interoperability across provinces is an important objective that should be built into the architecture of any registry.[64]

Data users need to be able to trace corporate ownership across all participating provincial and territorial governments, and the federal government. This means that a user should be able to search all jurisdictions' beneficial ownership registries at once, which also means that all Canadian registries (if there are multiple) must "speak the same language."

Maximum interoperability of data is also important among law enforcement, tax officials, financial intelligence officers, and other regulators locally, and across provincial and international boundaries.[65] For example, I heard that the United Kingdom is putting in place legislative gateways to permit cross-referencing registry

64 Evidence of T. Law and M. Barron, Transcript, November 27, 2020, pp 44, 45.

65 Exhibit 283, Submission to the Cullen Commission of Mora Johnson (November 2020), p 13.

data against other data sets.[66] If this same approach were adopted in British Columbia, this could include, for example, the Land Owner Transparency Registry, tax authorities, and others.

A great deal of work has been done internationally on the issue of data standards. Open Ownership has developed the **Beneficial Ownership Data Standard**, which enables the publication of structured, linkable beneficial ownership data.[67] It will be important to ensure that data standards are selected that plan for the future, and allow for linked data with other countries.[68]

If a **federated, distributed architecture** is adopted, then each jurisdiction will need to establish its own beneficial ownership registry, into which corporations that are registered in that jurisdiction must make their beneficial ownership disclosures.

Each jurisdiction would have to decide whether to roll the new beneficial ownership registry into the existing corporate registry or to establish a stand-alone new registry. Since the existing corporate registry already holds data about every corporate entity registered in that jurisdiction, there is some logic to rolling the two registries together, effectively generating a more complete and current record of the corporation and its ownership and control.

If it is accepted that the new beneficial ownership registry will be in an open data standard, then rolling the two registries together will require that the corporate records of all existing corporations be converted to a compatible open data standard. Although this would be a major undertaking, it would achieve a valuable modernization of the corporate registry with much wider public accessibility than exists today.

In a report entitled *Towards a Global Norm of Beneficial Ownership Transparency: A Scoping Study on a Strategic Approach to Achieving a Global Norm*, the point is made succinctly:

> Where countries have existing corporate registers, they may require substantial modernisation to change their roles, for example to provide new responsibilities for data collection, manage the collection and/or publication of beneficial ownership data, oversee any verification and sanctions regime and ensure compliance with legislation and international standards such as those set by [the Financial Action Task Force]. These roles require specific technical expertise, human and financial resourcing.[69]

66 Exhibit 313, Exhibit 313, UK Department for Business, Energy and Industry Strategy, Corporate Transparency and Register Reform (September 18, 2020), para 38.

67 See: https://standard.openownership.org/en/0.2.0/; Exhibit 284, Transparency International Canada, *Implementing a Publicly Accessible Pan-Canadian Registry of Beneficial Ownership – Legislative and Technical Options* (2020), p 13; see also Exhibit 287, Opencorporates, *EU Company Data: State of the Union 2020 – How Poor Access to Company Data is Undermining the EU* (2020); Exhibit 288, Opencorporates, *US Company Data: State of the Union 2020 – How Accessible Is Official Company Register Data in the US* (2020); Evidence of C, Taggart, Transcript, November 30, 2020.

68 Evidence of M. Barron, Transcript, November 27, 2020, p 41; Exhibit 272, Beneficial Ownership Scoping Study, p 57.

69 Exhibit 272, Beneficial Ownership Scoping Study, p 55.

If a **centralized architecture** is adopted, in which BC-based corporations make their beneficial ownership disclosures directly to a central registry operated either by the federal government or by participating jurisdictions collectively, then the BC government and public and private users of the new registry could access it directly, and British Columbia would not need to establish its own beneficial ownership registry. It would presumably want to ensure that it retains control over the data disclosed by BC-based corporations.

The result would be that BC's existing corporate registry and the new beneficial ownership records applicable to BC-registered corporations would be found in separate registries, requiring separate searches. Although the new beneficial ownership information would be available in an open data standard, British Columbia could, but would not be required to, modernize its existing corporate registry or improve public and private accessibility to it.

In my view, given the imminent arrival of the new registry, a centralized architecture appears preferable and I would encourage the Province to advocate for this approach. It maximizes interoperability between provinces, which will be of critical importance to the effectiveness of the registry nationally. It also minimizes development and maintenance costs and may deter forum shopping as an enforcement avoidance technique.

Costs and Fees for the Registry

I turn now to the costs involved in creating and then running the pan-Canadian registry of beneficial ownership.

Development and Ongoing Operational Costs

It is only after the federal government, and participating provinces and territories, settle on the architecture for the pan-Canadian scheme that precise costing will be possible. However, even at this stage, some general observations can be made.

There will be cost consequences involved with a beneficial ownership registry, in terms of development and maintenance, increased costs of verification and monitoring, and potentially the loss of search revenue to the provincial registry, to name only a few.

Some provinces and territories that want to participate may not have the financial resources or expertise to develop or operate their registries, let alone enforce compliance.[70] I was told that there is little publicly available data on the costs associated with establishing and operating a beneficial ownership registry. Legal costs for producing definitions, reviewing existing legislation, and drafting legislation to establish the registry can be significant. Then there is the need to design the mechanisms for collecting, verifying, and publishing the information, including the scope of information to be collected, plus the cost of implementing the information technology solutions, and public consultations.[71]

70 Evidence of J. Cohen, Transcript, November 30, 2020, p 143.

71 Exhibit 272, Beneficial Ownership Scoping Study, p 56.

Currently, the cost of determining beneficial ownership is borne by the private sector. That is, a bank or a regulated entity under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17, must take steps to determine beneficial ownership each time it commences a new client relationship. This is inefficient and unnecessarily costly, because numerous companies devote vast resources to research the same companies,[72] and because the same inquiries can be repeated many times but with the costs borne separately each time, by the private sector.

A U4 report claims that the UK Treasury Department found that implementing beneficial ownership registries resulted in significant savings internal to the government. 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.[73]

On the issue of costing, it is important to take into account offsetting increased tax revenue, reduced Canada Revenue Agency and police costs, FINTRAC investigations, and business due diligence costs.[74]

In my view, beneficial ownership registries should be seen as an integral part of Canada's anti–money laundering regime. If my view is accepted that a centralized architecture is preferable, and more importantly, given that Canada is leading the new pan-Canadian registry initiative, it follows that that the costs arising will primarily be a federal responsibility, with provinces and territories playing supportive roles within their jurisdiction. Nevertheless, and as I discuss in greater detail below, I agree with witnesses like Mr. Barrow and others that, ultimately, those who incorporate companies and benefit from corporate structures, as opposed to users of the registry, should pay costs associated with the beneficial ownership registry. In the United Kingdom, this cost is recovered through higher incorporation fees. That model would not work as easily in Canada due to the federated nature of incorporation statutes. A topic that will need to be resolved through federal, territorial, and provincial negotiation is whether and how to recoup the costs of running the beneficial ownership registry from those who incorporate companies and benefit from corporate structures.

Access Fees for the Registry

Having discussed the costs involved in developing and operating the pan-Canadian registry, I turn finally to the question of whether users of the registry should bear some of the costs involved.

In my view, the top priority should be maximum usage of the beneficial ownership registry. Any user fee will deter usage. As I noted earlier, the United Kingdom's experience is instructive. During the time period when it charged users of the registry

72 Exhibit 283, Submission to the Cullen Commission of Mora Johnson (November 2020), p 21.

73 Ibid.

74 Evidence of J. Cohen, P. Dent, and C. Taggart, Transcript, November 30, 2020, pp 105–13.

an access fee, there were 6 million searches annually, but when the user fee was abolished, usage increased to 2 billion per year, and there are currently more than 9 billion searches annually. The lesson to be learned is clear: the fewer impediments to usage, the more use will be made of the registry.

To the extent that some suggest that a paywall is justified as an indirect privacy protection,[75] I disagree with such an approach. In my view privacy should be protected *directly*, through tiered access and UK-style exemptions, as I have outlined above. It should not be accomplished indirectly, and unevenly, by relying on fees to dissuade use.

I agree with witness Graham Barrow, who convincingly explained why even a nominal user fee will fundamentally diminish the utility and effectiveness of a registry.[76]

Ongoing Review and Improvement of the Regime

The nature of the registry is such that it cannot be designed and built and then left alone. It will benefit from ongoing scrutiny and review over time, to assess how the registry is operating, what the weaknesses and problems are, and how it can be improved. The United Kingdom experience is one to draw from, as it has engaged in a serious review process that has afforded important insights to permit the improvement of the registry model.[77] The Province would do well to revisit and examine how the pan-Canadian registry is being implemented and how it operates, in order to address any weaknesses that are being exploited.

Conclusion

In this chapter, I have taken time to draw on the evidence as to the optimal features that a beneficial ownership registry should have. I have also taken pains to emphasize that rather than fixating on any one design feature, the Province should be flexible and embrace the opportunity presented by the federal government's strong initiative to launch a publicly accessible pan-Canadian registry.

75 Evidence of G. Barrow, Transcript, December 2, 2020, pp 91–92.

76 Evidence of G. Barrow, Transcript, December 2, 2020, pp 25–28, 91–93.

77 Exhibit 289, UK Department for Business, Energy and Industry Strategy, Review of the Implementation of the PSC Register (March 2019); Exhibit 313, UK Department for Business, Energy and Industry Strategy, Corporate Transparency and Register Reform (September 18, 2020).