

Bureau du sous-ministre adjoint au droit fiscal,
à l'optimisation des revenus et aux politiques locales et autochtones
Ministère des Finances
12, rue Saint-Louis
Québec (Québec) G1R 5L3
E-mail: transparence-corporative@finances.gouv.qc.ca

Dear Sirs,

Re: Brief on Corporate Transparency and a Public Registry of Beneficial Ownership

I have divided this submission into two parts. The first part is a general discussion developed from first principles. It examines the likely source of large amounts of money laundering in Quebec and Canada, from which it develops suggested components to a publicly accessible registry of beneficial ownership.

The second part, set out in the Appendix, consists of specific responses to the principle questions posed in the Quebec Corporate Transparency Consultation Paper. Much of that information is already set out below, but has been repeated to make life easier for those government persons gathering and organizing the responses from all submitters.

Understanding the source of money laundering in Canada in order to effectively combat it.

One of the most important questions to ask when developing an anti-money laundering system is—Where's the dirty money coming from? If it's predominantly coming from countries with a strong rule of law, then the system can heavily rely on official government channels to obtain key information to follow the money.

But if a significant amount of that dirty money is coming from countries with authoritarian and corrupt regimes, then official government channels from those countries are of little help because they are often controlled by corrupt government officials who are laundering their dirty money in foreign countries, including Canada.

Unfortunately, money laundering is an invisible crime committed by anonymous perpetrators. Not only does that make it extremely difficult to detect and prosecute, it is also makes it difficult to determine whether a significant amount of dirty money in Canada is coming from authoritarian and corrupt regimes. However, simple logic tells us that criminals in authoritarian and corrupt regimes have a strong incentive to send their dirty money to Canada.

Historically, it was difficult for criminals to move dirty money across international borders into Canada, particularly if they lived in an authoritarian or communist regime where trade and financial flows rarely entered the free world. As a result, dirty money tended to remain in those foreign countries, where it was typically used to buy homes and luxury goods or mixed with the assets of legitimate businesses to hide the money's illicit origins.

But holding assets in one's home country is a big problem for criminals in authoritarian and corrupt regimes because, in the absence of the rule of law, they continually face the risk that someone closer to power will arbitrarily confiscate those assets.¹

Then, globalization changed everything. It revolutionized money laundering throughout the world because it provided a way for criminals to reduce their risk of arbitrary confiscation of assets.

Free trade of goods and services and globalization of financial markets over the last 15 years have made it significantly easier for criminals from authoritarian and corrupt regimes to transfer their dirty money to western liberal democracies where the rule of law protects against arbitrary confiscation of assets. And when doing so, these criminals are likely to further reduce their risk of detection by choosing those western democracies with the weakest anti-money laundering laws, such as Canada.²

That suggests Canada is likely receiving a double dosage of dirty money from authoritarian and corrupt regimes—a disproportionately high amount of that dirty money is being transferred to western liberal democracies and, of that dirty money going to western democracies, a disproportionately high amount is likely coming to Canada.

Consequently, in its attempt to build an effective anti-money laundering regime, Quebec must be ever mindful that much of the dirty money coming into the province is likely from authoritarian and corrupt regimes where official information-sharing systems will be of little help in connecting money laundering transactions to the perpetrators of the underlying predicate crimes. And when it comes to effectively combatting money laundering—an invisible crime committed by anonymous perpetrators—nothing is more critical than information sharing. That's because criminals lie.

Criminals who have laundered their illicit proceeds through multiple layers of secret trusts and companies in multiple jurisdictions are not going to disclose their own names on Quebec's beneficial ownership registry. They are going to use someone close to them that they trust, such as a relative, close friend or business associate, to falsely declare themselves as beneficial owner. And when those criminals are from authoritarian and corrupt regimes, official sources will be of little help in connecting the true beneficial owner with the nominee.

That suggests a private registry of beneficial ownership, where the flow of information is limited to official channels, will be much less effective than a public registry where information is widely disseminated throughout the world.

A properly structured publicly accessible registry of beneficial ownership can significantly augment official sources because it enables ordinary citizens with local knowledge (as well as journalists, anti-corruption researchers, political rivals, and foreign law enforcement agencies) to search for the names

¹ See David Petraeus and Sheldon Whitehouse, "Putin and other authoritarians' corruption is a weapon — and a weakness." Washington Post March 8, 2019 at <https://www.washingtonpost.com/opinions/2019/03/08/putin-other-authoritarians-corruption-is-weapon-weakness/>

² See Denis Meunier, "Inside Access: Hidden Beneficial Ownership and Control - Canada As a Pawn in the Global Game of Money Laundering." C.D. Howe Institute September 2018 at <https://www.cdhowe.org/essential-public-policy-events/inside-access-hidden-beneficial-ownership-and-control-canada-pawn-global-game-money-laundering> and "Why is Canada Still the World's Money Laundering Pawn?" C.D. Howe Institute January 28, 2019 at <https://www.cdhowe.org/intelligence-memos/denis-meunier-why-canada-still-world%E2%80%99s-money-laundering-pawn>

of family members, close friends and business associates of criminals and corrupt officials in their country. In other words, a public registry widens the information flow in a way that significantly increases the possibility of connecting the true beneficial owners with their falsely registered nominees.

So, what does a public registry need to maximize Quebec's ability to detect, investigate and prosecute international money launderers? In addition to the obvious information required (e.g., name, address, etc.—see Appendix) the registry should include the following:

- 1 **Verification**—it is imperative that the Registrar be given the authority and resources to both verify the information submitted and require additional information and documentation at his or her discretion. Otherwise, garbage in; garbage out.
- 2 **Declarations of beneficial ownership**— The electronic form for filing on the registry should have a box to tick indicating that the beneficial owner declares that the information submitted is true and correct, and he acknowledges that any wilful false statement is punishable by fine, imprisonment, or both and specifically set out those sanctions (e.g., up to \$5 million or imprisonment of not more than five years, or both).
- 3 **Penalties for False Declarations**—Attach meaningful sanctions to false declarations of beneficial ownership, including large fines (maximum \$5 million or, in the case of real estate, the value of the home) and stiff prison sentences (e.g., maximum 5 years less a day). Those suggested sanctions are consistent with penalties for false or misleading statements made in a filing under the Securities Act (Quebec),³ which is a much less serious offense than money laundering crimes, particularly when we consider that money laundering is an extension of its underlying predicate crimes (e.g., drug trafficking, human trafficking, terror financing, and tax evasion). Equally important, meaningful sanctions provide law enforcement agencies with the leverage they need to obtain critical information needed to follow the money to the true beneficial owner.⁴
- 4 **No paywall**—many of the foreign persons with local knowledge to connect criminals and their nominees are poor. Any paywall, no matter how little the amount, is likely to deter searches on the registry, which reduces the chances of connecting foreign criminals to their nominees listed on the registry.
- 5 **Open data format**—make searches as easy and efficient as possible. In addition to searches by name, the registry should provide searchable fields that can connect the nominee with the country in which the true beneficial owner resides.⁵ Those fields will allow searchers to pare down the list of names to check on the registry. For instance, registrants should be required to disclose "*All Past and Present Countries of Residence*." (Don't limit the information to only present residency because a nominee can change his present residency by merely moving to a new country.) Using that field to obtain a list of registered beneficial owners from one's home country, an informant

³ See sections 204.1 and 208.1 of the Securities Act (Quebec). The same penalties (maximum fines of \$5 million and imprisonment for 5 years less a day) are found in the securities legislation of other provinces such as section 122 of the Securities Act (Ontario). Also see section 1001 of Title 18 of the US Code, which sets maximum prison sentences at 5 years for false or misleading statements.

⁴ This critical point is explained more fully in "*The Money-Laundering Rabbit Hole*" on p. 4 of "*Why we Fail to Catch Money Launderers 99.9% of the Time*." See <https://www.cdhowe.org/public-policy-research/why-we-fail-catch-money-launderers-999-percent-time>

⁵ This is discussed more fully in the Appendix— The importance of the field "*Past and Present Countries of Residence*."

- could identify, say, the unemployed nephew of the mayor of Moscow as the declared beneficial owner of a \$5 million home in Mont-Royal.
- 6 **All other commonly known names**—Require not just the legal name of the registrant, but also “*all names by which the person has commonly identified himself in public.*” In many countries, a person’s commonly known name often differs significantly from his or her legal name. To increase the ability of civil society informants to identify falsely registered nominees, it is important that both the legal and commonly known names be disclosed.
 - 7 **Create a confidential tip line.** This will allow informants from around the world to anonymously share their critical information with Canadian law enforcement agencies.⁶ That will create a two-way flow of information—the public registry will provide the world with critical information about the registered beneficial owner, and the tip line will provide Canadian authorities with critical information connecting nominees with the true beneficial owner.
 - 8 **Initial Declaration for real estate**—Require all registered owners of Quebec real estate (including individuals) to submit an initial declaration of beneficial ownership.⁷
 - 9 **Have only one registry**—Don’t have one public registry of beneficial ownership for real estate and a separate beneficial ownership registry for companies/enterprises. Make it a one-stop shop. It is a much more efficient use of resources if all vetting were conducted by one office with a concentration of expertise on public disclosure of beneficial ownership. Further, it is much easier for persons searching the public registry of beneficial ownership if all information were available on one registry. That’s particularly true for persons from distant lands who will have difficulty enough searching through one registry, let alone two. Finally, if Canada is to have a pan-Canadian public registry, as recently set out in the Prime Minister’s Mandate Letters,⁸ then incorporating Quebec’s registry into the federal registry will be much easier if the Quebec registry begins a stand-alone operation.

Respectfully submitted,
Kevin Comeau
December 15, 2019

⁶ Informant’s anonymity would be guaranteed by protections similar to those provided under Quebec’s Échec au Crime system.

⁷ This point is explained more fully in Kevin Comeau’s opinion piece, “*B.C.’s anti-money laundering efforts deserve praise, but more needs to be done.*” *Globe & Mail*, April 8, 2019.

<https://www.theglobeandmail.com/business/commentary/article-bcs-anti-money-laundering-efforts-deserve-praise-but-more-needs-to/>

⁸ See Prime Minister Trudeau’s Mandate Letters to Minister Bains and Minister Morneau, released on December 13, 2019, which stated: “*To Minister Bains: Work with the Minister of Finance and interested provinces and territories and communities to establish a national approach to beneficial ownership so that law enforcement and the Canada Revenue Agency have the tools to crack down on financial crime in real estate while respecting Canadians’ privacy rights. With the support of the Minister of Finance, conclude consultations with the provinces and territories on the creation of a pan-Canadian public registry for beneficial ownership and prepare legislation reflecting the outcome of those consultations.*” See <https://pm.gc.ca/en/mandate-letters/minister-innovation-science-and-industry-mandate-letter>

“*To Minister Morneau: Support the Minister of Innovation, Science and Industry in concluding consultations with provinces and territories on the creation of a pan-Canadian public registry for beneficial ownership and in preparing legislation reflecting the outcome of those consultations.*” See <https://pm.gc.ca/en/mandate-letters/minister-finance-mandate-letter>

Appendix

Specific Responses to Questions Posed in the Quebec Corporate Transparency Consultation Paper.

Section 4.3 Potential approach

1 *In your opinion, is the federal definition appropriate for Québec and, if not, what other model or definition should Québec take into consideration, and why?*

Lower the ownership threshold to 10%. A 10% ownership threshold has been commonly used in securities legislation in Canada and numerous other jurisdictions around the world for decades and has proved itself to be a workable balance between effective regulation and the burden of compliance. If the threshold is set at 25%, then money launderers will simply organize their affairs such that no individual owns more than 25%, and law enforcement officials will have the burden of proving those persons were acting in concert, which is extremely difficult to prove when these shareholders live in distant lands that are authoritarian regimes. A 10% threshold is more difficult for money launderers to work around because it increases the number of persons (i.e., at least 11) that the true beneficial owner will have to find and trust to act as a nominee.

2. *In your opinion, what personal information about ultimate beneficiaries should be collected?*

In order to protect privacy rights, it is critical that the information filed on registry be divided into two categories: “Publicly Available Information” and “Strictly Confidential Information.”

Strictly Confidential Information would be filed with the Registrar, would not be made public, and would be made available to law enforcement agencies, including CRA, on a need-to-know basis.

Strictly Confidential Information should include the following about the ultimate beneficial owner:

- 1 notarized copy of passport;
- 2 notarized copy of birth certificate;
- 3 any information from “Publicly Available Information” that the Registrar exempts from public disclosure⁹
- 5 Declarations of beneficial ownership¹⁰

Publicly Accessible Information should include the following about the ultimate beneficial owner:

- 1 Full legal name;
- 2 all other names by which the person has commonly identified himself or herself in public;¹¹
- 3 Full Address

⁹ It is proposed that the Registrar be given the authority to grant exemptions to persons who, upon application, provide sufficient evidence that they meet the requirements for exemption under the Act. Examples would include persons whose lives would be endangered if the information were made public. Partial exemptions would also be available. For instance, a beneficial owner may have to disclose her name but not her address or country of present residence.

¹⁰ The electronic form for filing on the registry should have a box to tick indicating that the beneficial owner declares that the information submitted is true and correct, and he acknowledges that any wilful false statement is punishable by fine of up to \$5 million or imprisonment of not more than five years, or both. See “Penalties” discussed below.

¹¹ These should include all former legal names and all other names by which the person has identified themselves in public.

- 4 Date of birth;
- 5 Country of birth;
- 6 All past and present citizenships;
- 7 All past and present countries of residence;

It is recommended that each filer on the Registry be given a unique identifier number to minimize confusion of registered persons with the same name.

3 *Should certain legal forms of organization be exempted from the obligation to transmit information on their ultimate beneficiaries?*

No. Any exemption of entities will simply provide money launderers with a loophole to exploit.

Section 4.4 Other Considerations

1 Nominees

There should be no exemption for nominees. Doing otherwise would completely undermine the effectiveness of the registry to combat money laundering.

2 Information Quality and Keeping the Beneficial Registry separate from the Land and Enterprise Registers

It is imperative that the Registrar be given the authority, mandate and resources to verify information filed on the registry. Otherwise, the data on the registry will not be of sufficiently reliable quality that Reporting Entities (i.e., financial institutions and designated non-financial businesses and professions) can rely on that data to meet their obligations under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act. Further, money launderers would be able to file false data with low risk of detection. Ultimately, without Registrar verification, the effective utilization of the registry would be greatly compromised.

But verification is expensive. It requires significant staff and financing to do properly. That's why it makes sense to avoid duplication of resources and have only one registry of beneficial ownership that is separate from the the Land Register of Quebec and the Registraire des entreprises du Québec. Those registries should simply remain as they are.

For instance, within a given time frame (e.g., 10 days) of the transfer of land, the new owner would be required to file all required information on the beneficial ownership registry. Further, upon registering on the Registraire des entreprises du Québec, the ultimate beneficial owners of an enterprise would be required, within a given time frame (e.g., 10 days) to file on the Beneficial Ownership Registry. Once verified by the Registrar, the filed information would be placed on the beneficial ownership registry and then sent by computer link to the Land Register and/or the Registraire des entreprises du Québec, thereby making it also available to searches of those registries.

The Registrar of the Beneficial Ownership registry will be dealing with Strictly Confidential Information and will be making decisions of a highly sensitive nature, such as who should be exempt from public disclosure requirements on personal safety grounds, such as kidnapping. That information and those decisions should not be left with municipal Land Registers who have neither the expertise nor the staff or systems to deal with such sensitive matters.

Finally, the Prime Minister mandate letters, released on December 13, 2019, suggest the real possibility that Canada will eventually have a pan-Canadian, publicly accessible registry of beneficial ownership. The integration of the Quebec registry with the pan-Canadian registry will be much easier to complete if the Quebec registry begins life separate from the Land Register of Quebec and the Registraire des entreprises du Québec.

3 Penalties

The electronic form for filing on the registry should have a box to tick indicating that the beneficial owner declares that the information submitted is true and correct, and he acknowledges that any wilful false statement is punishable by fine of up to \$5 million or imprisonment of not more than five years, or both.

Identical sanctions for false and misleading statements are set out in sections 204.1 and 208.1 of the Securities Act (Quebec) and similar sections in securities legislation of other provinces.¹² Also see Section 1001 of Title 18 of the US Code, which sets prison sentences at a maximum of five years for any materially false, fictitious, or fraudulent statement or representation made on a government filing.

Meaningful sanctions are extremely important. They provide a deterrent to false and misleading information filed on the registry, thereby increasing the quality of the data.

Equally important, they provide law enforcement agencies with the leverage they need to convince a falsely registered nominee to “accept a reduced punishment in exchange for the evidence needed to trace the illicit proceeds back to the predicate crime and its perpetrators.”¹³

4 The importance of the field “*Past and Present Countries of Residence*”

Perhaps the most important field in the public registry is “*Past and Present Countries of Residence*.” That’s because it is the most likely field to help efficiently link a falsely registered beneficial owner with the true beneficial owner. As I explained in “*Why We Fail to Catch Money Launderers 99.9% of the Time*,”¹⁴ linking those two persons together is the fundamental purpose of a public registry. {My apologies for the long quote.}

“Money laundering almost always occurs at a different time and place than its underlying predicate crime (for example, drug trafficking, government corruption, tax fraud), and often involves different actors. That separation of time, place and actors creates the appearance of a benign event – merely another legitimate transaction in a world of millions of legitimate transactions. As a result, an overwhelming majority of the time, law enforcement agencies not only do not know who committed the money-laundering crime or where the crime was committed; they do not even know a crime was committed at all. The effective invisibility of the crime of money laundering and the anonymity of its perpetrators give money launderers a massive advantage over those tasked with apprehending them. That advantage is even more pronounced in the case of international money laundering, where the predicate crime is committed in one country and the dirty money is laundered in some distant land where law enforcement officials will not even be aware of the existence of the predicate crime.

The advantage money launderers possess suggests that anti-money laundering legislation should include the following key objectives:

- *increasing the visibility of the predicate crime and money-laundering crime;*

¹² For example, see section 122 of the Securities Act (Ontario).

¹³ For a fuller discussion of the need for significant penalties for false declarations see “*Why We Fail to Catch Money Launderers 99.9% of the Time*.” Kevin Comeau. May 7, 2019. C.D. Howe Institute at https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/Final%20for%20release%20e-brief_291_web%20%28003%29.pdf. In particular, within that article, see “*The Money Laundering Rabbit Hole*.”

¹⁴ C.D. Howe Institute. May 7, 2019. See <https://www.cdhowe.org/public-policy-research/why-we-fail-catch-money-launderers-999-percent-time>

- *removing the anonymity of perpetrators of the predicate crime and enablers of the money laundering crime; and*
- *increasing the visibility of the relationship between the perpetrators of the predicate crime and enablers of the money-laundering crime.*

All three of these objectives could be met by increasing the flow of critical information received by law enforcement agencies from those with knowledge of the predicate crime, its perpetrators and those who help facilitate the laundering of the illicit proceeds. In some cases that information could come from a single person, such as when law enforcement officials catch a perpetrator of the predicate crime (say, a mid-level drug dealer) who strikes a plea deal for a shorter prison sentence in exchange for key information to help trace the illicit proceeds.

More often, however, individuals will have only pieces of key information. For instance, someone from a distant country might know a corrupt mayor has been extorting money from local merchants and might also know the names of persons close to the mayor (such as family members, trusted friends and business associates) who might be helping him launder that money. But that individual might not know the money was laundered in Canada by the incorporation of a company in Ontario and the purchase of a large house in Toronto.

So, how best to connect people in order to facilitate the flow of critical information? Anti-money-laundering experts have long recognized that beneficial ownership is the connecting factor between the predicate crime, the flow of its illicit proceeds through the international financial system and the integration of those proceeds back into the legitimate economy through investments in “clean” assets such as real estate. Requiring disclosure of beneficial ownership helps law enforcement agencies connect the clean asset to the perpetrator of the predicate crime. Accordingly, the first step in an effective anti-money-laundering system is to require disclosure of beneficial ownership. That disclosure should apply to both “clean” assets that are common investments by money launderers (such as real estate and luxury assets) and the legal vehicles used to buy those assets (such as corporations and trusts).

The problem, of course, is that criminals lie. A person who commits a predicate crime and creates a complex scheme to hide the trail of his illicit proceeds is unlikely to disclose that he is the beneficial owner of the clean asset. Instead, the money launderer will use someone he trusts (a relative, close friend or business associate) as a nominee who will falsely declare himself to be the beneficial owner. That is why it is imperative that beneficial ownership information be made publicly accessible. It would allow civil society informants from distant lands (as well as journalists, anti-corruption researchers and political rivals) to identify a falsely registered beneficial owner as a relative, close friend or business associate of the perpetrator of a predicate crime.”

But it is not pragmatic to expect those civil society informants from distant lands to have to enter the individual names of millions of people in their country in the hope of identifying falsely registered beneficial owners. There has to be a searchable field on the registry that functionally narrows down the list of persons to those with a connection to their country. Three recommended fields help meet that need: (i) *Country of Birth*; (ii) *Past and Present Citizenships*; and (iii) *Past and Present Countries of Residence*.

Ideally, the Quebec beneficial ownership registry would include all three fields because each field captures important connecting elements that the other fields don't. Of the three fields, "*Past and Present Countries of Residence*" is the most helpful because it is most likely to capture persons with a relationship to a particular searched country.

Searcher should be able to simply enter the name of their own country in the search bar and obtain a list of all persons (say, 300) from their country who are listed on the registry. From that narrowed list, they could more efficiently identify the 23-year old unemployed nephew of a corrupt mayor as the owner of a \$4 million mansion, or the son-in-law of a suspected human trafficker as the owner of seventeen condos in Montreal. In other words, the field "*All Countries of Past Residence*" enables Canada to more effectively use civil society from around the world to combat money laundering in our country.

One final note. The field must not be limited to just "*present country of residence*," which can be effectively changed by an individual by simply moving to another country. By also including "*all past countries of residence*," the connection between a falsely registered beneficial owner and the true owner remains in tact.