

November 26th 2019

To:

The Business Law Modernization and Burden Reduction Council
Ministry of Government and Consumer Services,
56 Wellesley St. W, 6th Floor,
Toronto ON, M7A 1C1

RE: Business Law Modernization and Burden Reduction Council Recommendations to Modernize Ontario's Business Law Statutes -- Public Consultation

Dear Council Members,

Thank you for inviting Transparency International Canada (TI Canada) to submit feedback regarding Council recommendations to modernize Ontario's Business Law Statutes. We make this submission in partnership with our coalition partners Publish What You Pay Canada and Canadians for Tax Fairness (The Coalition).

This submission will address the general question posed in the consultation paper: How else can the Ontario government modernize its business laws to facilitate a prosperous business environment and reduce burden on business?

Facilitating a prosperous business environment in Ontario and reducing burden through beneficial ownership transparency

We recommend that the Ontario government continue working with federal, provincial, and territorial governments as per the 2017 Agreement to Strengthen Beneficial Ownership Transparency¹ and advocate for the creation of a publicly accessible registry that collects and discloses beneficial ownership information from existing corporate registers. Such a registry would require disclosure of the basic business information on who ultimately owns or controls more than 25% of the shares of a company. The registry would not require any disclosure of financial or operational information of the company or personal details about its shareholders.

A publicly accessible, pan-Canadian registry could be a build out of existing corporate registries, or it could be a stand-alone registry, such as the United Kingdom's Persons of Significant Control Register (PSC Register).² Our Coalition recommends the registry should only publish basic information about an ultimate beneficial owner (UBO). The public fields would include:

- The full name of the beneficial owner;
- Commonly known names of the beneficial owner;
- The partial date of birth of the beneficial owner;
- The percentage of shares held (regardless of the 25% threshold) for any person who qualifies as a beneficial owner, and a disclosure of how that individual exercises significant control (for example, control or direction of other shares, agreements with other

¹ [Refer to Agreement From Finance Canada Website](#)

² [Refer to UK PSC Register](#)

- shareholders to vote in concert, the existence of personal relationships with other owners that result in significant control, veto rights);
- A unique identifier number that shows ties to other business entities over which the individual has significant control;
 - The service address of the beneficial owner.

The creation of a publicly accessible pan-Canadian company register of beneficial owners will support a prosperous business environment in Ontario and reduce burden on businesses.

Facilitate a prosperous business environment by deterring illicit financial flows into Ontario's economy

Money laundering jeopardizes a sound business environment for Ontario companies. And, experts have estimated that 8.2 billion dollars was laundered into Ontario in 2015.³ There are many legitimate shell and shelf companies in Canada, yet Canadian shell companies are being marketed abroad for tax evasion schemes and used to launder billions of dollars into the Canadian economy.⁴ Criminals can remain anonymous for a variety of nefarious activities including committing fraud, embezzling company funds, and paying bribes, and distorting market prices—posing serious risks to legitimate small and medium enterprises.⁵ Legitimate businesses and investment alike benefit from strong financial regulation of illicit financial flows and the owners of companies being known. A publicly accessible registry of beneficial owners supports these aims and will contribute to a strong business environment.

Reduce burden on business through public disclosure of beneficial ownership information

A publicly accessible company register of beneficial owners can help reduce the burden on Ontario's financial sector who are required to collect and maintain records of beneficial ownership information, and designated non-financial business professions - DNFBPs - (e.g., casinos; accountants, and accounting firms; dealers in precious metals and stones; real estate brokers, developers, and sales representatives) who are likely to be required to identify beneficial ownership information from customers according to a 2018 report from the House of Commons Finance Committee.⁶ Further, a registry of beneficial owners would support both the financial sector and DNFBPs to fulfil existing Financial Transactions and Reports Analysis Centre (FINTRAC) of Canada reporting obligations to conduct customer due diligence and to report suspicious cash transactions. Finally, a publicly accessible company register of beneficial owners reduces the due diligence burden for Ontario small and medium businesses who do not necessarily have reporting obligations to FINTRAC, yet who are both subject to regular due diligence checks as well as conduct due diligence on their business partners and subcontractors using available information.

Ontario financial sector

Ontario's financial sector bears the majority of anti-money laundering risk and spends millions to ensure that investments in businesses are not exposed to dirty money. The required investments could be a burden to new, nimble, financial players starting operations in Ontario. To overcome this burden, a number of financial sector actors are discussing open banking and saying the industry needs to stop treating compliance data as intellectual property. A publicly accessible beneficial ownership registry

³ [Refer to CBC story](#)

⁴ [Refer to Financial Post](#)

⁵ [Refer to the Impact of Criminal Misuse of Secret Companies](#)

⁶ [Refer to Standing Committee on Finance -- Recommendation 8](#)

would not only act as a tool to facilitate open banking, but provides access on an equal footing to large established actors and emerging companies.

Designated Non-Financial Business Professionals (DNFBPs)

While DNFBPs are currently not required to collect beneficial ownership information, federal anti-money laundering laws may lead to this requirement soon. Furthermore, the general lack of beneficial ownership information for DNFBPs to access still puts them at risk for required know your customer due diligence. For example, while lawyers are not required to disclose this information to national regulators due to attorney-client privilege, law society rules do require members to make best efforts to determine the true owners of companies they engage with. In both cases, businesses are asked to collect information at risk of reprisal with access to incomplete and difficult to verify information.

One of the sectors at high risk is Ontario's real estate sector. In early 2019, The Coalition produced the report *OPACITY: Why criminals love Canadian real estate (and what to do about it)*. In this report, The Coalition assessed 1.4 million residential property transactions in the Greater Toronto Area (GTA) between 2008 and 2018. In this time, The Coalition found the following risks facing GTA real estate⁷:

- Corporate entities have acquired \$28.4 billion in GTA housing since 2008. The vast majority of those companies are privately owned, with no information on their beneficial owners.
- \$9.8 billion in GTA housing was acquired by companies through cash purchases during that period, much of it bypassing statutory Anti-Money Laundering (AML) checks on source of funds and beneficial owners.
- From 2008 to 2018 more than \$25 billion in residential mortgages in the GTA were provided by unregulated lenders with no anti-money laundering reporting obligations. Nearly 50% of those unregulated mortgages were issued to corporate buyers, despite corporate purchases accounting for less than 4% of total transactions.
- Opaque ownership is most prevalent in the luxury segment of the market, with more than half of homes above \$7 million owned through companies.

These figures present a risk assessment of the province's exposure to anonymous businesses camouflaging the funds of criminals, tax dodgers and kleptocrats which compromises the integrity of the Ontario economy. In October this year in a Toronto Sun op-ed, Tim Hudak, CEO of the Ontario Real Estate Association (OREA) stated support for a beneficial ownership registry through Ontario's land title registry system.⁸⁹

As DNFBPs, access to a beneficial ownership registry would ensure better financial and reputational risk management practice.

Small and medium enterprises

Businesses routinely complete new due diligence forms when seeking financing from large financial institutions. This is time consuming for businesses as the process is often redundant. A publicly accessible registry would significantly reduce the administrative burden that is faced by thousands of businesses in

⁷ [OPACITY: Why Criminals Love Canadian Real Estate \(And How to Fix It\)](#)

⁸ [Tim Hudak, "Time To Get Dirty Money out of Canadian Real Estate", Toronto Sun, October 17, 2019](#)

⁹ [Refer to OREA Statement for 2019 Fall Economic Outlook](#)

Ontario, because their ownership information would be available on a centralized registry in which banks and other financial institutions can access. As a result, the due diligence process can be made much easier on behalf of banks and in turn, small-businesses would spend less time completing forms.

Further, in today's complex business and financial environment, it is increasingly important for businesses to conduct thorough due diligence before making critical decisions in their supply chains. Knowing exactly who they are doing business with enables companies to make informed decisions about transactions and business relationships. A sizeable amount of the thousands of business bankruptcies that occur annually across Canada can be attributed to creditors not being paid for goods or services they have already provided. Yet there is currently no way for a business (particularly small businesses) to conduct beneficial ownership due diligence on a privately-held corporation with which it is considering doing business. Ontario businesses would benefit from finding out if the beneficial owner of a potential business partner is a convicted fraudster, a person with a poor reputation, or perhaps, a longstanding competitor with dishonest intent.

Concluding Remarks

In conclusion, we call on the Government of Ontario to play a leadership role in ongoing work to strengthen beneficial ownership transparency alongside provinces, territories, and the federal government. More specifically, we call on the Government of Ontario to create a publicly accessible, company register of beneficial owners. Advancing beneficial ownership transparency aligns with the goals of The Council by facilitating a prosperous business climate through deterring illicit cash from entering Ontario, and reducing burden for Ontario's financial sector, DNFBPs, and Ontario's small and medium business community at-large.

Thank you for taking time to consider our feedback. If you have any questions, please do not hesitate to get in touch.

Yours sincerely,

James Cohen, Executive Director -- Transparency International Canada
Sasha Caldera, Campaign Manager, Beneficial Ownership Transparency -- Publish What You Pay Canada
Emily Nickerson, Director -- Publish What You Pay Canada
Toby Sanger, Executive Director -- Canadians For Tax Fairness

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About Transparency International Canada:

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

About Canadians For Tax Fairness:

Canadians for Tax Fairness is a non-profit organization whose aim is to raise public awareness of crucial issues of tax justice and to change the way Canadians talk about tax. We advocate for fair and progressive government policies aimed at building a strong and sustainable economy, reducing inequalities and funding quality public services. Canadians for Tax Fairness believes in the development and implementation of a tax system, based on ability to pay, to fund the comprehensive, high-quality network of public services and programs required to meet our social, economic and environmental needs in the 21st century.

About Publish What You Pay Canada:

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