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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

**RE: Corporate Transparency Consultation Paper**

Dear Sir/Madam

On behalf of Publish What You Pay Canada, Transparency International Canada, and Canadians For Tax Fairness we are pleased to submit feedback as part of the Corporate Transparency consultation. We make this submission together as a coalition (The Coalition) and more information about each organization is included at the end of this discussion document.

As civil society organizations with mandates for anti-corruption, transparency, and combating tax avoidance and evasion, we view this consultation on corporate transparency as a crucial step of progressive leadership of the Government of Québec to advance progress on the 2017 Tax Fairness Action Plan and ensure the integrity of the tax system in Québec through enhanced searchability of the Registraire des Entreprises du Québec (REQ).

In reviewing the Consultation Paper, we strongly support the recommendation of the National Assembly's Committee on Public Finance to strengthen corporate transparency, through the REQ. **More notably, we strongly support the recommendation from committee to set up a central public registry of Québec enterprises that will make it possible to identify the ultimate physical beneficiaries of enterprises.**

Public disclosure of information concerning beneficial owners and ensuring that this data is high-quality and open—free, machine readable, validated, and with verification measures—will serve as a powerful tool for the province to detect, deter, investigate and prosecute money laundering, terrorist financing, and tax evasion.

We believe this level of disclosure will have the following benefits for the province:

- Allow Québec to become the leading sub-national jurisdiction to adhere to G20 principles to implement a stronger beneficial ownership reporting system;
- Align Québec with international jurisdictions that have already taken measures to publicly disclose ultimate beneficiaries, such as the United Kingdom and the European Union;
- Deter money launderers from funneling proceeds of crime and terrorist financing through Québec companies and real estate;

- Reduce artificial price inflation in Québec real estate and allow Québec housing prices to adjust to more affordable levels;
- Reduce the number of empty homes and apartments purchased by foreign and domestic buyers to launder money;
- Deter and safeguard against dirty money entering the Québec economy, thus making the province more attractive to legitimate investors;
- Reduce financial and reputational risk of Québec financial institutions and other sectors to meet due diligence obligations by supporting them to detect money launderers;
- Provide individuals, investors, and businesses (particularly small businesses) with more reliable market information, and helps them to know who they are actually doing business with - a critical requirement for a trusted investment and business environment;
- Create a balance between privacy rights of the individual and the expectations of businesses to be transparent about their activities in order for Québec to fight money laundering, terrorist financing, and tax evasion through anonymous companies and properties;
- Increase the ability to detect, investigate, and prosecute tax evasion on behalf of the Canada Revenue Authority (CRA), Revenu Québec, and other jurisdictions.

As its own jurisdiction, Québec should determine its own registration requirements for beneficial ownership transparency. Québec should add to its corporate registry (REQ) information that not only meets the new requirements for beneficial ownership transparency that the federal government has implemented recently in the Canada Business Corporation Act (CBCA), but instead the province should endeavour to exceed federal requirements by establishing a stronger registry.

Four major weaknesses to combat money laundering were built into the CBCA legislation: no process for verification of the identities of the beneficial owners; a too-high threshold of 25% of control/ownership for defining who is a beneficial owner; a lack of significant sanctions when dealing with money laundering schemes in the millions of dollars; and finally the lack of unimpeded access to beneficial ownership information for law enforcement and competent authorities, institutions that have due diligence obligations, civil society, journalists, and foreign tax authorities.

Should Québec move forward to meet and exceed current international best practice and adopt open data practices, the province can distinguish itself as one of the most trustworthy and transparent jurisdictions in the world for business and investment.

As part of our discussion document, we have included our responses to questions posed in the consultation paper on page two, and we have enumerated our recommendations below for ease of reading. Please refer to individual sections in the discussion document for more context:

1. Lower the threshold of ownership to 10% instead of the 25% threshold that is used in the current federal regime.
2. Publicly disclose the following information about beneficial owners in the REQ:
  - a. Percentage of shares held by any beneficial owner to understand the extent of ownership, control, and direction of shares;
  - b. The date shareholders ceased or became a beneficial owner;
  - c. Unique identifiers;
  - d. Individual status for politically exposed persons;
  - e. Full name of beneficial owner;
  - f. Commonly known names of the beneficial owner;

- g. Date of birth;
  - h. Address;
  - i. Commonly known names of the beneficial owner;
  - j. Country of usual residence with a recommendation for including current and past countries of residence.
3. No exemptions for all for-profit legal vehicles to publicly disclose beneficial ownership information.
  4. A registry of trusts which include information about ultimate beneficiaries for future consideration.
  5. Include the following as necessary features to ensure the Québec registry is effective: penalties and sanctions, a registrar with regulatory authority, validation and verification of data, and a tip-line for use by whistleblowers.
  6. Recommend that general public may search on the enterprise register using an individual's name.
  7. Recommend exemptions for individuals under extraordinary circumstances to opt-out from being listed in the registry who are at risk of fraud, abuse, victimization, blackmail, and other types of targeting.
  8. Recommend an office should be created which has a mandate to collect and handle BO information and possesses training to handle sensitive information.
  9. Recommend that the definition of real property assets match the definition of a beneficial owner in the British Columbia Land Ownership Transparency Act (LOTA).
  10. Recommend that information to be collected is in line with the British Columbia Land Ownership Transparency Act (LOTA) and includes information pertaining to nominees of properties.
  11. Recommend registered owners of Québec real estate (including individuals) submit an initial declaration of beneficial ownership that they are the beneficial owner of a real property asset.
  12. Publicly disclose the following information about ultimate beneficiaries of real property assets:
    - a. The date shareholders ceased or became a beneficial owner;
    - b. Unique identifiers;
    - c. Individual status as a politically exposed person;
    - d. Full name of beneficial owner;
    - e. Commonly known names of the beneficial owner;
    - f. Date of birth;
    - g. Address;
    - h. Commonly known names of the beneficial owner;
    - i. Country of usual residence with a recommendation for including current and past countries of residence.
  13. Recommend the consideration of extending beneficial ownership checks to Québec notaries.

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## **RESPONSES TO SPECIFIC QUESTIONS**

### **4. OBLIGATION TO DISCLOSE INFORMATION ON ULTIMATE BENEFICIARIES TO THE REGISTRAIRE DES ENTREPRISES DU QUÉBEC**

**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?**

It is our recommendation that Québec utilize the federal definition under the Proceeds of Crime, Money Laundering and Terrorist Financing Act (PCMLTFA) except that it should lower the threshold of ownership to 10% instead of the 25% threshold that is used in the current regime. Additionally, the exact percentage of ownership or control should be captured because this gives a precise indication of the control of an enterprise, rather than using ownership bands (e.g. 25-50%, 50-75% etc) as in the UK Persons of Significant Control (PSC) Register.<sup>1</sup> This exact percentage is valuable for those investigating as they will have a clear understanding of ownership and control.

Lowering the threshold to 10% aligns with existing best practice as insider trading requirements for publicly traded companies in Canada under the System for Electronic Disclosure for Insiders (SEDI) requires that beneficial owners who directly or indirectly own, or control 10% or more shares must disclose changes in their shareholdings.<sup>2</sup> Moreover, the British Columbia Land Owner Transparency Act (LOTA) stipulates disclosure for corporate interest holders who directly or indirectly own or control 10% or more of shares.<sup>3</sup>

Individuals can own less than 25% of shares and still exert significant control over a corporation and experts have noted that this is a tactic employed on behalf of professional money launderers.<sup>4</sup> International jurisdictions have also raised concerns with a 25% disclosure threshold. For instance, the Nigerian Ministry of Justice identified the 25% threshold as one of the key challenges in the UK PSC register, stating that “there is a strong argument for reduction of the threshold as it is suspected that this [the threshold] is being exploited by some businesses to avoid full compliance with the reporting rules.”<sup>5</sup>

The threshold amounts in some Latin American and Caribbean countries are lower in comparison to Canada. For example, beneficial ownership thresholds are set at 20% in Argentina and Dominican Republic, 15% in Uruguay and Costa Rica, 10% in the Bahamas, Barbados, Belize and Chile, and 5% in Colombia.<sup>6</sup>

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<sup>1</sup> Refer to “What information must go on the PSC Register” <https://www.stanleydavis.co.uk/News/PSCGuide>

<sup>2</sup> Refer to SEDI website [https://www.sedi.ca/sedi/new\\_help/english/public/PDF\\_en/FAQs\\_Factsheet\\_-\\_SEDI\\_\(FINAL\).pdf](https://www.sedi.ca/sedi/new_help/english/public/PDF_en/FAQs_Factsheet_-_SEDI_(FINAL).pdf)

<sup>3</sup>

<http://www.mondaq.com/canada/x/815344/real+estate/Understanding+The+Impact+Of+BCs+Proposed+Land+Owner+Transparency+Act>

<sup>4</sup> <https://www.cdhowe.org/intelligence-memos/denis-meunier-%E2%80%93-canada-business-corporation-act-changes-beneficial-ownership-hal>

<sup>5</sup> Nigerian Federal Ministry of Justice, *Improving the Business Environment in Nigeria through Transparency in the Management of Beneficial Ownership: A Policy Brief*, February 2017; p12. Available at: <https://irp-cdn.multiscreensite.com/e0b6c17a/files/uploaded/Policy%20Brief%20on%20Beneficial%20Ownership%20FMOJ%20and%20IBLF%20Global%20Final.pdf>.

<sup>6</sup> Knobel, A. “Regulation of Beneficial Ownership in Latin America and the Caribbean”. Institutions for Development Sector, Innovation in Citizen Services Division. Technical Note IDB-TN-134. November 2017. <https://publications.iadb.org/publications/english/document/Regulation-of-Beneficial-Ownership-in-Latin-America-and-the-Caribbean.pdf>

While some jurisdictions use a risk-based approach to set the threshold for disclosure such as the Financial Crimes Enforcement Network (FINCEN) in the United States<sup>7</sup>, lowering the threshold for all companies would make it more difficult for nefarious actors to control a company without tipping them off that they are being investigated by competent authorities. Employing a disclosure threshold of 10% aligns Québec with the most progressive direction being taken by the international community while maximally deterring the proceeds of crime from entering the Québec economy, and thus safeguarding the province from dirty money.

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

For beneficial owners and ultimate beneficiaries, we recommend collecting and publicly disclosing the following information listed in the table below.

We also note that the proposed information disclosures take into consideration the degree of information that is already available in existing Québec information portals such as the Société Québécoise d'Information Juridique (SOQUIJ) and the REQ itself. We have also included a rationale based on a Coalition report which examines information disclosures within a privacy context. The full publication, *A Public Beneficial Ownership Registry and the Canadian Privacy Regime: A Legal Analysis* authored by The Coalition is included a separate attachment to this submission.

Based on our privacy analysis, it is likely that citizenship, usual residential address and countries of tax residency will receive a higher expectation of privacy so further analysis is needed to determine if these fields should be public.

**Table 1**

Proposed fields of information to be collected and publicly disclosed	Explanation and Privacy Rationale (see analysis for full details <sup>8</sup> )
<b>To understand the extent of ownership and control status of individuals that are conducting business activities in an enterprise:</b>	
The percentage of shares held for any person who qualifies as a beneficial owner, and a disclosure of how that individual exercises significant control (e.g., control or direction of other shares, agreements with other shareholders to vote in concert, the existence of personal relationships with other owners that result in significant control, and veto rights)	Clarifies to what extent a beneficial owner owns, controls, or directs a company. Possibly slightly higher expectation of privacy, yet this type of information is already publicly available under SEDI
Date shareholder became or ceased to be a beneficial owner	Clarifies ownership record

<sup>7</sup> <https://www.fincen.gov/sites/default/files/2019-07/Joint%20Statement%20on%20Risk-Focused%20Bank%20Secrecy%20Act-Anti-Money%20Laundering%20Supervision%20FINAL1.pdf>

<sup>8</sup> See pages 22-23 in *A Public Beneficial Ownership Registry and the Canadian Privacy Regime: A Legal Analysis*

A unique identifier number that shows ties to other business entities over which the individual has significant control	Avoids confusion between registered persons of the same name and from the same country. Low expectation of privacy and not sensitive information
The individual's status as a politically exposed person, foreign or Canadian	No reasonable expectation of privacy. Useful for reporting entities as it helps meet obligations under the Proceeds of Crime, Money Laundering and Terrorism Financing Act (PCMLTFA)
<b>To support identification of the beneficial owner:</b>	
The full name of the beneficial owner	Needed for identification. Not inherently sensitive.
Commonly known names of the beneficial owner	Needed to identify persons who do not use their exact legal name. Lower expectation of privacy.
Date of birth	Improves positive identification to beneficial owner and would likely be rationally connected to the purpose of a beneficial ownership registry. Full dates of birth are currently available to the public in the SOQUIJ Portal (e.g., criminal, statutory and bylaws court history) upon creating an account. <sup>9</sup>
Address	Improves positive identification. The REQ currently collects addresses for natural persons, legal persons, and partnerships. <sup>10</sup> A similar definition could be used in this case:  <i>"For legal persons, it is the address of the head office.</i>  <i>For natural persons operating a sole proprietorship, it is the person's domicile address.</i>  <i>For partnerships, limited partnerships, associations and groups of persons, it is the address of the principal establishment."</i> <sup>11</sup>
Country of usual residence	Country of usual residence improves positive

<sup>9</sup> <https://soquij.qc.ca/>

<sup>10</sup> [http://www.registreentreprises.gouv.qc.ca/en/consulter/rechercher/elements\\_registre.aspx](http://www.registreentreprises.gouv.qc.ca/en/consulter/rechercher/elements_registre.aspx)

<sup>11</sup> Ibid.

	<p>identification and is included in existing registries in other jurisdictions. There is a lower expectations of privacy as similar information is found on SEDI. The Québec Government can go further in line with leading expert opinion highlighted in a recent C.D. Howe report which suggests collecting information about countries of current and past residences in order to ensure effectiveness for whistleblowers in other jurisdictions.<sup>12</sup></p>
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**3. Should certain legal forms of organization be exempted from the obligation to transmit information on their ultimate beneficiaries?**

Based on current evidence available, we believe there should be no exemptions for all for-profit legal vehicles to publicly disclose beneficial ownership information, including ultimate beneficiaries. This is because we recognize that all types of corporate vehicles are at risk of misuse. Please refer to *Secret Entities: A legal analysis of the transparency of beneficial ownership in Canada* that is attached as a supplementary resource to The Coalition discussion document on all for-profit legal entities that are subject to abuse.<sup>13</sup>

**4. In your opinion, are there other potential approaches that Québec should consider?**

We would like to note that a registry for trust arrangements, which would include ultimate beneficiaries, could also be considered in the future as trusts have been used to launder money and evade taxes. A recent House of Commons Finance Committee Report has recommended a private registry of trust arrangements.<sup>14</sup> Moreover, a registry of trusts, including the ultimate beneficiaries, has been recommended as part of AMLD5 with access available to competent authorities, financial intelligence units, obliged [reporting] entities, and those who can demonstrate legitimate interest.<sup>15</sup> Furthermore, the UK has a private registry of trusts in place, which includes beneficial ownership information, and it is available to competent authorities and actors as part of AMLD4.<sup>16</sup>

**4.4 OTHER CONSIDERATIONS**

<sup>12</sup> Refer to “Why we Fail to Catch Money Launderers 99.9% of the Time.” by Kevin Comeau; April 2019 C.D. Howe Institute. See <https://www.cdhowe.org/public-policy-research/why-we-fail-catch-money-launderers-999-percent-time>

<sup>13</sup> Refer to Secret Entities Report <https://static1.squarespace.com/static/5c8938b492441bf93fdbc536/t/5cc245b8f4e1fc84564e6de2/1556235707409/Secret-Entities-Report.pdf>

<sup>14</sup> <https://www.ourcommons.ca/DocumentViewer/en/42-1/FINA/report-24/page-18>

<sup>15</sup> <https://www2.deloitte.com/content/dam/Deloitte/lu/Documents/risk/lu-rna-amld5-has-entered-into-force-20072018.pdf>

<sup>16</sup> <https://www.irwinmitchell.com/personal/wills-trusts-estates/trusts/uk-trusts-register#access>

**1. Among the other considerations discussed above, which ones do you think are most relevant? Why?**

In our opinion, the most relevant other issues that should be considered are the level of penalties and the quality of information.

*Penalties*

Regarding penalties, publicly accessible registers require compliance from business entities who must disclose information about their ultimate beneficial owners (UBOs). While reporting entities may make mistakes in good faith, others may willfully fail to disclose information or provide incorrect details to obscure the identities of their beneficial owners. Reporting entities who make mistakes in good faith should be given the opportunity to correct data entry errors and ensure that the information contained in the register is correct. However, failure to correct data that have already been identified by the registrar, regulator, or by law enforcement in a timely manner should be subject to an administrative monetary penalty.

The challenge then remains as to how to handle businesses and beneficial owners that deliberately disclose false information or fail to disclose information altogether. Businesses that are set up specifically for criminal purposes are unlikely to be compliant with disclosure requirements, and penalties set too low may be considered part of the ‘cost of doing business.’

The appropriate penalties to levy against individuals for willful non-compliance should be carefully considered and treated separately from errors made in good faith. In jurisdictions with public registries such as the Netherlands and Norway, non-compliance with registration can result in criminal sanctions such as six months maximum imprisonment or community service (Netherlands), or one-year maximum imprisonment (Norway).<sup>17</sup> Failure to comply can result in financial penalties in both the Netherlands and in Poland. Additionally, there are fines against the business in question, as well as operating restrictions that prevent the business from distributing profits, holding government contracts, and accessing European Union (EU) and other government funds.<sup>18</sup> Sweden also punishes noncompliance via fine.<sup>19</sup> Fines for willful non-disclosure in EU jurisdictions run as high as €1,000,000 in Germany, and generally range from €50,000 to €200,000 for noncompliance, as well as terms of imprisonment in Gibraltar, Malta, the Netherlands, and Norway.<sup>20</sup>

Canada assesses where it should apply criminal and administrative monetary penalties against businesses for non-compliance with Financial Transactions and Analysis Reports Centre of Canada (FINTRAC) reporting requirements. Issuing administrative monetary penalties are FINTRAC standard practice. With respect to failing to meet record-keeping requirements or failure to provide assistance, or information during a compliance examination, the relevant penalties include fines up to \$500,000 and/or a term of imprisonment up to five years.<sup>21</sup> Restrictions may also be placed on business

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<sup>17</sup> *Supra*, note 5.

<sup>18</sup> *Ibid*.

<sup>19</sup> Swedish Companies Registration Office. “How to Register Beneficial Ownership Information”. February 5, 2018. <https://bolagsverket.se/en/us/about/beneficial-ownership-register/how-to-register-beneficial-ownership-information-1.15230>

<sup>20</sup> *Supra*, note 5.

<sup>21</sup> Financial Transactions and Analysis Reports Centre of Canada. Obligations: Penalties for non-compliance. August 28, 2018. <https://www.fintrac-canafe.gc.ca/pen/1-eng>



operations, following the model adopted by Portugal where profit disbursement is prevented until businesses comply with UBO register requirements.<sup>22</sup>

We recommend meaningful sanctions to false or misleading declarations of beneficial ownership, including large fines (maximum \$5 million or, in the case of real estate, the value of the home) and prison sentences (e.g., maximum five years less a day). These sanctions are consistent with penalties for false or misleading statements made in a filing under the Securities Act (Québec)<sup>23</sup> 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.<sup>24</sup>

### *Information quality*

The second consideration regarding information quality is important because up-to-date and accurate information is crucial for a public register of beneficial ownership to be effective.

Out of date information hampers law enforcement activity, due diligence procedures undertaken by businesses to manage risks, including reporting entities, and the work of journalists and other members of civil society who benefit from an open, searchable registry. Businesses should report changes to beneficial ownership status (for example, acquisition of beneficial ownership status or the sale of shares and termination of beneficial ownership status) within 30 days of the change in beneficial ownership taking place. Failure to disclose this change should be subject to a publicly disclosed administrative monetary penalty. Such a penalty is in keeping with Canada's approach to accountability with respect to money laundering.<sup>25</sup>

As for accurate information, any register containing ultimate beneficiary information must be both validated at data-entry and verified with a registrar with regulatory authority. Data validation and verification are part of the ongoing challenges currently experienced by the UK PSC Register and it creates a problem of unreliable data commonly known as "garbage in, garbage out". For example, people submitting information to the UK register were asked to type their nationality into the relevant field, resulting in over 500 spellings of 'British' and 10 beneficial owners listing their nationality as Cornish (a county in South West England). Further analysis of the UK register found multiple examples of potential non-compliance, including listing companies based in tax havens as beneficial owners or reporting looped ownership where companies appear to own themselves.<sup>26</sup> Adjustments to the disclosure form including drop down menus to select nationality could limit spelling errors but both

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<sup>22</sup> *Supra*, note 5.

<sup>23</sup> See sections 204.1 and 208.1 of the Securities Act (Québec). 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 prison sentences at a maximum of 5 years for a materially false, fictitious, or fraudulent statement or representation.

<sup>24</sup> 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.*" by Kevin Comeau; April 2019 C.D. Howe Institute. See <https://www.cdhowe.org/public-policy-research/why-we-fail-catch-money-launderers-999-percent-time>

<sup>25</sup> Refer to Coalition Briefing Note: *Necessary Components and Considerations of a Publicly Accessible Beneficial Ownership Registry*.

<sup>26</sup> Refer to full report by Open Ownership <https://www.openownership.org/uploads/learning-the-lessons.pdf>

examples highlight the importance of having a team responsible for implementation of a beneficial ownership registry, and verifying reports. For example, data quality was an issue noted in implementation of the Extractive Sector Transparency Measures Act (ESTMA). The team at Natural Resources Canada has worked to address data quality by creating a template, providing a validation checklist which the team checks each submitted report against, and providing additional guidance after year 1 of implementation to address the major reporting issues that were noted in company submissions.<sup>27</sup>

## **2. Which measures should the Québec government put in place to facilitate the implementation of this requirement?**

### *Registrar with regulatory authority*

The Coalition believes that the Québec Government should have in place a registrar with sufficient regulatory authority who has the ability to review suspicious disclosures and assess and review cases from those who are seeking exemptions. Review of the UK PSC Register suggests that its effectiveness is limited by the role that Companies House plays in administering the registry. Companies House is a registrar, not a regulator: it does not verify the information provided by persons with significant control. A lack of regulatory oversight offers the opportunity for misspellings of business names or incomplete fields to be exploited by persons with significant control for their own benefit.<sup>28</sup> As such, the registry contains unverified and flawed information, rendering it less effective than it could be.

### *ID verification*

Second, we recommend the Québec government incorporate ID verification measures in order to improve information quality. Relevant identity documents could include passports, driver's licenses, or provincially issued identification cards with photo. Digital ID verification measures can be considered in the future whenever the appropriate technology exists and the Québec Government may use the recent draft guidance on digital IDs from the Financial Action Task Force (FATF) as a means to develop knowledge.<sup>29</sup>

### *Tip-line for whistleblower disclosure*

Third, in the instances of corruption or bribery related to UBOs, it is important for the registry to have an option for whistleblowers to flag and disclose false or missing information from companies. In addition, a reporting portal or a tip-line can help whistleblowers tie corruption and bribery (or other financial crimes, including money laundering, tax evasion, or terrorist financing) to UBOs and the business(es) they control.

## **3. In addition to information on ultimate beneficiaries, should the REQ collect and publish other types of information in the register?**

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<sup>27</sup> Reporting template, validation checklist, and guidance document for ESMTA can be found here: <https://www.nrcan.gc.ca/mining-materials/resources/extractive-sector-transparency-measures-act-estma/tools-extractive-businesses/18192>

<sup>28</sup> Ibid.

<sup>29</sup> <https://www.mccarthy.ca/en/insights/blogs/techlex/fatf-releases-draft-guidance-digital-identity>

At this time, the Coalition does not have a view with respect to collecting and publishing other types of information beyond ultimate beneficiaries.

## 5. ALLOWING THE SEARCH BY NAME AND ADDRESS OF A NATURAL PERSON IN THE ENTERPRISE REGISTER

### **1. Given the potential impact on privacy, is it appropriate to extend the right to search by an individual's name in the enterprise register to the public?**

It is the view of the Coalition that it is appropriate to search by an individual's name in the enterprise register. This is because the fields used to positively identify beneficial owners would likely be held to be rationally connected to any purpose of a registry. These include providing public disclosure of beneficial owners' unique identifier, full name, country of usual residence—these are already found publicly available on the SEDI website of beneficial owners of publicly traded companies.

Searching by full name and any common names has a value for whistleblowers and for the register to be used by foreign tax authorities, civil society groups and journalists, as well as by private sector entities with due diligence obligations. For more insight, please refer to *A Public Beneficial Ownership Registry and the Canadian Privacy Regime: A Legal Analysis* as a separate attachment.

### **2. Should certain conditions apply to searches using an individual's name? Should there be any exceptions?**

In our perspective, there should be no restrictions in searching the registry using an individual's name. However, the Coalition recommends exemptions for individuals in extraordinary circumstances who can opt not be listed in the registry due to a risk of victimization and we are including some examples from other jurisdictions in the paragraphs below.

Some national registers in the European Union give consideration for individuals with demonstrable risk of victimization from fraud, kidnapping, blackmail, or extortion. Other national registries give consideration for individuals under the age of majority, or who are legally disabled.<sup>30</sup>

Under AMLD5, decisions to make UBO information private are made on a case-by-case basis and are reserved for exceptional circumstances, or where the UBO is a legal minor or an individual who is "otherwise legally incapable".<sup>31</sup> Furthermore, applications may result in some of the UBO's identifying information to remain private, such as circumstances where UBOs would face a "disproportionate risk"<sup>32</sup> such as kidnapping, violence or intimidation, harassment, extortion, and/or blackmail. The goal of these opt-out provisions is to strike a balance between transparency and the risk of victimization faced by a very small percentage of UBOs.

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<sup>30</sup> PriceWaterhouseCooper, "The UBO Register: An Update." December, 2018.

<https://www.pwc.nl/nl/assets/documents/ubo-register-update-december-2018.pdf>

<sup>31</sup> Ibid.

<sup>32</sup> Directive (EU) 2018/843.

In the UK for instance, individuals may apply to restrict the disclosure of their private information on the public registry – see Note 1 in the annex at the end of this discussion document for terms of exemption. The UK example, if not perfectly appropriate for Canada, provides an idea of a policy measure designed to address privacy concerns of a public registry.

## 6. REQUIREMENT FOR ALL LANDOWNERS TO DISCLOSE INFORMATION ON ULTIMATE BENEFICIARIES

### ***1. Which of these approaches should be chosen?***

It is the view of the Coalition that an office should be created which has a mandate to collect and handle BO information and possesses training to handle sensitive information. The office would also have a mandate to operate a register. In our perspective, it is an efficient use of resources if all vetting were conducted by one office with a concentration of expertise on public disclosure of beneficial ownership. We believe that a registry with sound data validation, verification measures, free, searchable and machine readable—in any of the approaches—need to be satisfied in order to maximally deter, detect, inspect and prosecute money launderers, tax evaders, and those seeking to finance terrorism.

### ***2. What should be the definition of “ultimate beneficiary of real property assets”?***

The Coalition recommends that the definition of real property assets match the definition of a beneficial owner in the British Columbia Land Ownership Transparency Act (LOTA) below.<sup>33</sup>

*“Subject to the exemptions, if any, in the regulations, an individual is a beneficial owner in respect of an interest in land registered or to be registered in the name of a trustee of a relevant trust if any of the following apply:*

*(a) the individual has, in respect of the interest in land, a beneficial interest, other than an interest that is contingent on the death of another individual;*

*(b) the individual has the power to revoke the relevant trust and receive the interest in land;*

*(c) the individual is a corporate interest holder in respect of a relevant corporation and the relevant corporation has*

*(i) a beneficial interest in respect of the interest in land, or*

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<sup>33</sup> Refer to full text here: <http://www.bclaws.ca/civix/document/id/bills/billscurrent/4th41st:gov23-1>

*(ii) the power to revoke the relevant trust and receive the interest in land;*

*(d) the individual has a prescribed interest, right or ability in relation to the interest in land, or a prescribed criterion or circumstance applies to the individual.”*

### **3. What information on the ultimate beneficiaries of real property assets should be collected?**

The Coalition recommends the following information should be collected, similar to the British Columbia Land Ownership Transparency Act (LOTA) and text from sections of the LOTA is copied below: <sup>34</sup>

- a. **Interest Holders** – Reporting bodies must report the following information regarding each of their interest holders: primary identification information (full name, location of principal residence, etc.), last known address; citizenship(s), SIN number; tax number (if applicable); residency status for tax purposes; and a description of how they are an interest holder.
- b. **Relevant Corporations** – Relevant corporations must disclose the information described in (a) for all of their interest holders; the relevant corporation's business number, if any, within the meaning of the Income Tax Act (Canada); the incorporation, continuation, amalgamation or other identifying numbers given to the corporation by the jurisdiction in which they were incorporated; and the parcel identifier assigned to the land to which the transparency report relates.
- c. **Relevant Trusts** – The reporting body must disclose the information required in paragraph (a) above for each of the settlors of the relevant trust as well as the parcel identifier assigned to the land to which the report relates. In addition, the reference number of any relevant trust instruments must be disclosed.
- d. **Relevant Partnerships** – The relevant partnerships must disclose the partnership's primary identification information; business number under the Income Tax Act (Canada); and the identifying number, if any, issued to the partnership by the jurisdiction in which it was formed.

The Coalition also recommends that nominees (whose names are on title but who hold property on behalf of another beneficial owner) are required to disclose the same identifying information as interest holders mentioned above. Furthermore, that all registered owners of Québec real estate (including individuals) be required to submit an initial declaration of beneficial ownership that they are the beneficial owner of real property assets.<sup>35</sup>

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<http://www.mondaq.com/canada/x/840918/real+estate/What+You+Need+To+Know+About+The+Land+Owner+Transparency+Act>

<sup>35</sup> 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.

The Coalition also recommends the Government of Québec should consider extending due diligence requirements that include mandatory beneficial ownership checks in line with recent House of Commons Finance committee recommendations to extend obligations to all designated non-financial businesses and professions (DNFBPs) in reviewing the PCMLTFA.<sup>36</sup> This could include requiring Québec professions such as notaries to conduct beneficial ownership checks when drafting of deeds of sale.

#### **4. What information on the ultimate beneficiaries of real property assets should be made available to the public?**

For beneficial owners and ultimate beneficiaries, we recommend collecting and publicly disclosing the following information listed in Table 2 below. This aligns with the submission Transparency International Canada and Canadians For Tax Fairness made to the Government of British Columbia. This public data contained in disclosure reports should be available for free, online, in machine-readable format, and this should be specified in the Act to ensure its implementation.

**Table 2**

Proposed fields of information to be collected and publicly disclosed	Explanation and Privacy Rationale (see analysis for full details <sup>37</sup> )
<b>To understand the extent of ownership and control status of individuals that are conducting business activities in an enterprise:</b>	
Date shareholder became or ceased to be a beneficial owner	Clarifies ownership record
A unique identifier number that shows ties to other business entities over which the individual has significant control	Avoids confusion between registered persons of the same name and from the same country. Low expectation of privacy and not sensitive information.
The individual's status as a politically exposed person, foreign or Canadian	No reasonable expectation of privacy. Useful for reporting entities as it helps meet obligations under the Proceeds of Crime, Money Laundering and Terrorism Financing Act (PCMLTFA)
<b>To support identification of the beneficial owner:</b>	
The full name of the beneficial owner	Needed for identification. Not inherently sensitive.

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

<sup>36</sup> <https://www.ourcommons.ca/DocumentViewer/en/42-1/FINA/report-24/page-81>

<sup>37</sup> See pages 22-23 in *A Public Beneficial Ownership Registry and the Canadian Privacy Regime: A Legal Analysis*

Commonly known names of the beneficial owner	Needed to identify persons who do not use their exact legal name. Lower expectation of privacy.
Date of birth	Improves positive identification to beneficial owner and would likely be rationally connected to the purpose of a beneficial ownership registry. Full dates of birth are currently available to the public in the SOQUIJ Portal (e.g., criminal, statutory and bylaws court history) upon creating an account. <sup>38</sup>
Address	Improves positive identification. The REQ currently collects addresses for natural persons, legal persons, and partnerships. <sup>39</sup> A similar definition could be used in this case:  <i>“For legal persons, it is the address of the head office.</i>  <i>For natural persons operating a sole proprietorship, it is the person’s domicile address.</i>  <i>For partnerships, limited partnerships, associations and groups of persons, it is the address of the principal establishment.”<sup>40</sup></i>
Country of usual residence	Country of usual residence improves positive identification and is included in existing registries in other jurisdictions. There is a lower expectations of privacy as similar information is found on SEDI. The Québec Government can go further in line with leading expert opinion highlighted in a recent C.D. Howe report which suggests collecting information about countries of current and past residences in order to ensure effectiveness for whistleblowers in other jurisdictions. <sup>41</sup>

<sup>38</sup> <https://soquij.qc.ca/>

<sup>39</sup> [http://www.registreentreprises.gouv.qc.ca/en/consulter/rechercher/elements\\_registre.aspx](http://www.registreentreprises.gouv.qc.ca/en/consulter/rechercher/elements_registre.aspx)

<sup>40</sup> C.D. Howe Institute. May 7, 2019. See <https://www.cdhowe.org/public-policy-research/why-we-fail-catch-money-launderers-999-percent-time>

<sup>41</sup> Refer to “Why we Fail to Catch Money Launderers 99.9% of the Time.” by Kevin Comeau; April 2019 C.D. Howe Institute. See <https://www.cdhowe.org/public-policy-research/why-we-fail-catch-money-launderers-999-percent-time>

## CONCLUDING REMARKS

Publicly disclosing information about beneficial owners of companies and properties, and ensuring that this information is validated, verified, machine readable, and free of cost to access will serve as a powerful tool to combat the proceeds of crime from entering the Québec economy.

We believe that Québec can become internationally applauded as a jurisdiction that has implemented meaningful anti-corruption reforms that safeguards its citizens and its economy from the threat of dirty money and ensures the province is a world-class environment for doing business with integrity.

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

Yours sincerely,

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

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### **About Transparency International Canada (TI-Canada):**

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

### **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 (PWYP-Canada):**

Publish What You Pay Canada is part of the global Publish What You Pay movement of civil society organizations working to make oil, gas and mineral governance open, accountable, sustainable, equitable and responsive to all people. As a movement, we envision a world where all people benefit from their natural resources, today and tomorrow. Launched in 2008, PWYP-Canada today numbers 15



members and realizes its work through advocacy, research and public outreach to promote and achieve enhanced disclosure of information about extractive industry operations, with an emphasis on revenues and contracts.

#### ANNEX:

##### *List of attachments:*

1. Report: A Public Beneficial Ownership Registry and the Canadian Privacy Regime: A Legal Analysis.
2. Report: Secret Entities: A Legal Analysis of the Transparency of Beneficial Ownership in Canada.
3. Brief: Necessary Components and Considerations of a Publicly Accessible Beneficial Ownership Registry.
4. Building a Transparent, Effective, Beneficial Ownership Registry.

*Note 1: Exemptions from the UK PSC Register*

#### **Applying to restrict disclosure of private information from the UK Register of Persons of Significant Control (Beneficial Ownership Registry)<sup>42</sup>**

“Certain characteristics or personal attributes of a Person of Significant Control (PSC) when associated with a company could put them, or someone who lives with them at serious risk of violence or intimidation. In these cases, an application can be made so that no information about them in relation to that company is available on the public register. If the application’s successful, the PSC’s registered information is protected. This would still be available to specified public authorities on application. In these cases, the public register will show there’s a PSC subject to protection.

...The activities of certain companies can place their directors and PSCs, or someone who lives with them, at serious risk of violence or intimidation. This could be due to their involvement in a particular sector of commerce or industry.

An application may be appropriate if:

you’re a director or PSC of a company whose business is licensed under the Animal (Scientific Procedures) Act 1986

you’re a director or PSC of a company active in the defence industry

you’re a director or PSC of a company that’s a readily traceable supplier to, or partner of an organisation in the above categories

a company you’re a director or PSC of, has been targeted by activists.”

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<sup>42</sup><https://www.gov.uk/government/publications/restricting-the-disclosure-of-your-psc-information/restricting-the-disclosure-of-your-information>