



Comments on the Consultation on Strengthening Corporate Beneficial Ownership Transparency in Canada

April 2020

The National Union of Public and General Employees (NUPGE) represents 390,000 members in 9 provinces. We represent workers in both the public and private sectors.

It is very encouraging to see the federal government holding consultations on improving rules around reporting the beneficial ownership of companies registered in Canada. In their work, and as part of their communities, our members are being negatively affected by the lack of transparency around beneficial ownership.

As is widely recognized, the lack of transparency around beneficial ownership has made it easier to use front, or shell, companies for money laundering and tax avoidance. Both of these problems have a significant impact on our members.

Our members deliver a wide range of public services. These include health care, post-secondary education, justice and corrections, transportation, and social services. Inadequate funding is a serious issue for almost all of these services in most provinces.

Responding to the problem of inadequate funding has made us very aware of how tax avoidance is depriving federal, provincial, and territorial governments of much-needed revenue. While estimates vary, it is safe to assume that the amount of revenue federal, provincial, and territorial governments are losing due to tax avoidance is in the billions.¹

Money laundering also has an impact on the work many of our members do. One example identified by the BC Government and Service Employees' Union (BCGEU), a NUPGE Component, is the way that the ease with which organized crime was able to launder money from fentanyl trafficking increased the severity of the opioid crisis.² As the BCGEU pointed out, "members from health care, social services, libraries, and casinos [and] deputy sheriffs and correctional officers have been thrust into first responder roles on the front lines."³

Our members are also affected as members of the public. They worry about the ability of friends, family members, and others in the communities to get the supports they need when funding for public services is inadequate. They see how money laundering contributes to problems like the housing crisis in major Canada cities.⁴

Public beneficial ownership registries are an important step to ending the problems caused by the lack of transparency around who controls companies registered in Canada. While there are separate federal, provincial, and territorial registries, it should be possible to link them so that information can be easily searched and used by enforcement agencies and civil society.

Responses to questions in the consultation paper

Our responses to the questions from the consultation paper are below. They reflect that, given the serious problems that need to be addressed by public beneficial registries, the priorities need to be ensuring that companies registered in Canada are not being used to break the law and that the public have access to the registry.

1. Should Canada establish a public registry (or public registries) of beneficial ownership for corporations, and why?

Yes. The federal corporate registry and provincial and territorial corporate registries should include information on the beneficial owners, and these registries should be public.

Much of the progress in responding to the problem of companies registered in Canada being used to facilitate tax evasion, money laundering, and the funding of terrorism has come about as a result of public scrutiny. A public registry would help ensure we build on the progress that has been made.

A public registry would also reduce the burden for businesses, governments, and procurement officers who have responsibilities under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA), or who have to reduce financial or reputational risks by verifying information on businesses with which they have dealings.

Given the benefits a public registry provides, other than exceptions noted in the response to question 11, all information in the registry should be accessible to the public. The information needs to be in a format that is searchable.

In addition, the threshold used to determine when information on beneficial owners needs to be provided should be an ownership interest of 10% or more. This is similar to the requirement that persons acquiring 10% or more of securities in publicly traded corporations must disclose their information. A lower threshold would make it harder for those trying to bypass the requirements of a beneficial ownership registry.

There also needs to be a tip line or other process for the public and whistleblowers to report possible issues to the registrar.

2. If not a public registry (or public registries), should Canada establish a central registry accessible only to competent authorities? What are the advantages and disadvantages of having a central registry over a public registry (or public registries)?

Canada needs public registries rather than just having one that is accessible to competent authorities. Public registries would bring us into line with UK and EU requirements. They would also increase the likelihood of a compliant assessment by the Financial Action Task Force (FATF).

3. What additional compliance costs might corporations face if required to transmit their beneficial ownership information to a national registry, and how might these costs be reduced?

Companies already have to collect beneficial ownership information under the *Canada Business Corporations Act* (CBCA), so the only additional requirement would be to

upload the information. The checklist for companies in the *Extractive Sector Transparency Measures Act* (ESTMA) provides a model that could be used to make it easier for companies to upload information to the register and reduce costs.

4. Should directors of a corporation be liable for non-compliance with the corporation's beneficial ownership registry obligations?

Yes. Potential penalties should also include suspensions and dissolutions of companies.

5. Should the public be charged fees to access all or parts of beneficial ownership and other company information, to help cover the costs of implementation, verification and enforcement?

No. The release of the Panama Papers, the Paradise Papers, and information from other leaks has shown by its impact that having information in the public domain allows for much-needed additional scrutiny. The resulting public pressure ensures problems are not swept under the rug.

As noted above, there should not be a charge for information in beneficial ownership registries, and the information should be searchable by the public.

6. What processes (if any) should be put in place for verifying the beneficial ownership information provided (e.g., proof of identification for directors, beneficial owners and/or officers/agents of a corporation)?

Registrars should have the authority and resources to be able to review disclosures. Particular attention needs to be given to suspicious disclosures and those where exemptions are being sought.

However, even disclosures that appear routine should be reviewed to confirm that data supplied is accurate. A coalition of 3 organizations, Publish What You Pay Canada, Transparency International Canada, and Canadians for Tax Fairness, has identified tools developed by Natural Resources Canada (NRCan) for companies registering for *Extractive Sector Resources Transparency Measures Act* (ESTMA) identification numbers as being a potential model. This includes a template and validation checklist to reduce both innocent and intentional mistakes.

7. What means could be used to verify identities (e.g., a driver's license, passport, or bio-identifiers)?

Passports, drivers' licences, or provincially issued identification that includes a photo should be used to verify identities. In the future, digital ID verification measures can be considered.

8. How frequently should corporations be required to update the information provided to the registry?

Updates should be filed within 30 days of a change in beneficial owners.

9. Under what circumstances, if any, should corporations be exempted from providing beneficial ownership information to a public registry?

The only exemptions should be for information about individuals who face a high risk of fraud, blackmail, or other types of targeting, or where there is a risk of abuse. Given the serious consequences of companies being used for tax evasion, money laundering, or funding terrorism, these exemptions should be approved on a case-by-case basis.

10. What are the potential risks to beneficial owners of making their information accessible through a public registry (or public registries) (e.g., identify theft, access by hostile foreign governments)?

As noted above, the risks of failing to take action to address the problem of the lack of transparency around the beneficial ownership of companies registered in Canada are far greater than the potential risk to owners of their information being in a public registry.

11. Should certain beneficial ownership information provided to the registry be accessible only to law enforcement, tax and other authorities? Should a tiered access model be adopted based on the entity seeking the information? What information should be withheld and under what conditions?

The information that should be available only to law enforcement, tax and other authorities should be limited that protected by privacy laws. Information that should be restricted would be citizenship, full dates of birth, SIN numbers, tax residency information, and residential address information beyond village/town/city and province.

12. Should individual beneficial owners be able to seek exemptions from having some or all of their information made public, on grounds of safety, protecting the privacy of legitimate investment decisions, or similar reasons? Under what basis should such requests be granted?

As noted in the response to question 9, exemptions should only be permitted in unusual circumstances where people's situation means they face a high risk of fraud, blackmail, or other types of targeting, or where there is a risk of abuse. Exemptions should be approved on a case-by-case basis.

13. Which other organizations (e.g., FINTRAC, private sector entities with anti-money laundering obligations) should have access to the withheld information and under what conditions?

Public agencies such as the RCMP, CRA, CBSA, and FINTRAC should have access to withheld information.

14. In other jurisdictions, have public registries demonstrated effectiveness in ensuring accurate information, supporting investigations by law enforcement, tax, and other competent authorities?

A report on the British registry from March 2019, *Review of the implementation of the PSC Register*, found that "all Law Enforcement Organisations we spoke to had used the PSC register to inform criminal investigations."⁵

15. In other jurisdictions, have public registries reduced the misuse of corporations for criminal or other illicit activities?

Scottish Limited Partnerships have been linked to money laundering and other illegal activities.⁶ However, since Scottish Limited Partnerships were required to report their beneficial owners to the registry, there has been a substantial drop in the number of new Scottish Limited Partnerships registrations.⁷

16. Have public registries had an effect on investment levels?

Based on information from a report on the registry in the UK from March 2019, *Review of the implementation of the PSC Register*, any impact on investment has been positive.⁸

17. Are there international best practices and experiences that Canada can learn from were it to adopt a public registry (or public registries)?

One of the flaws with the UK registry of beneficial ownership has been the 25% threshold for disclosure of beneficial ownership. This has made it easier for those engaged in illegal activities to hide what they are doing.

The UK registry also shows the need for data verification.

¹ Office of the Parliamentary Budget Officer, *Preliminary Findings on International Tax Evasion*, June 20, 2019, <https://www.pbo-dpb.gc.ca/web/default/files/Documents/Reports/2019/Preliminary-Findings-International-Taxation/Report%20final.pdf>.

² “BCGEU calls for public inquiry into organized crime, opioids and money laundering in B.C.,” BCGEU, January 21, 2019, https://www.bcgeu.ca/bcgeu_calls_for_public_inquiry_into_organized_crime_opioids_and_money_laundering_in_b_c.

³ Ibid.

⁴ “Billions in money laundering increased B.C. housing prices, expert panel finds,” British Columbia Ministry of Finance, May 9, 2019, <https://news.gov.bc.ca/releases/2019FIN0051-000914>; “Billions in Unknown Funds Flow Through Toronto Real Estate, Shows New TI Canada’s Report,” Transparency International Canada, March 21, 2019, <http://www.transparencycanada.ca/news/billions-unknown-funds-flow-toronto-real-estate/>.

⁵ Department for Business, Energy & Industrial Strategy, *Review of the Implementation of the PSC Register*, March 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822823/review-implementation-psc-register.pdf.

⁶ Transparency International UK, *Offshore in the UK: Analysing the Use of Scottish Limited Partnerships in Corruption and Money Laundering*, June 2017, <https://www.transparency.org.uk/publications/offshore-in-the-uk/>.

⁷ “Smash and Grab—The UK’s Money Laundering Machine,” Bellingcat, October 1, 2019, <https://www.bellingcat.com/news/uk-and-europe/2019/10/01/smash-and-grab-the-uks-money-laundering-machine/>.

⁸ *Review of the Implementation of the PSC Register*.



NATIONAL UNION OF PUBLIC AND GENERAL EMPLOYEES

- B. C. Government and Service Employees' Union (BCGEU)
- Health Sciences Association of British Columbia (HSABC)
- Health Sciences Association of Alberta (HSAA)
- Saskatchewan Government and General Employees' Union (SGEU)
- Manitoba Government and General Employees' Union (MGEU)
- Ontario Public Service Employees Union (OPSEU)
- Canadian Union of Brewery and General Workers (CUBGW)
- New Brunswick Union of Public and Private Employees (NBU)
- Nova Scotia Government and General Employees Union (NSGEU)
- PEI Union of Public Sector Employees (PEI UPSE)
- Newfoundland & Labrador Association of Public and Private Employees (NAPE)

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