COMMISSION OF INQUIRY INTO MONEY LAUNDERING
IN BRITISH COLUMBIA

CLOSING SUBMISSIONS OF THE COALITION OF TRANSPARENCY INTERNATIONAL CANADA, CANADIANS FOR TAX FAIRNESS and PUBLISH WHAT YOU PAY CANADA

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Overview

1. Money laundering enables criminal enterprise, contributes to the decay of Canada's social fabric and places great pressures on our local economies. The creation and empowerment of this Commission of Inquiry reflects a surge in public awareness of the toll exacted by money laundering in British Columbia and an index of a public demand for principled regulatory reform. This Commission has an historic opportunity to guide and channel this public demand to render British Columbia and Canada inhospitable to money laundering and the corruption, tax evasion, smuggling and economic distortions that are travelling companions to money laundering.

2. This Commission is tasked with making findings of fact and recommendations on money laundering in British Columbia. In this, the Commission is hobbled by the jurisdictional limits inherent to the separation of powers in Canada and the refusal of key federal regulators[1] and federally regulated industries[2] to fully cooperate with this Commission.

3. Although much of the evidence heard by the Commission concerned activities within British Columbia and industries regulated by the Province of British Columbia, there is a compelling and sufficient body of evidence for the Commission to draw reliable conclusions and make strong recommendations regarding federal authorities and federally regulated industries, as well as the importance of and optimal form of inter-provincial cooperation.

4. The Terms of Reference ask this Commission to make broad findings of fact respecting money laundering in British Columbia, including:

a. The extent, growth, evolution and methods of money laundering in a variety of sectors;

b. The acts or omissions of regulatory authorities or individuals with powers to regulate;

c. The scope and effectiveness of the powers, duties and functions exercised by the regulatory authorities; and

d. The barriers to effective law enforcement.

5. The Coalition of Transparency International Canada, the Canadian Taxpayers Federation and Publish What You Pay Canada (the "Coalition") submits that this Commission is best served by maintaining its broad mandate and tackling Canada's money laundering problems from an inter-jurisdictional and multi-jurisdictional perspective. British Columbia is an important piece of the puzzle, and its proper internal regulation will

[1] The Coalition here refers to the refusal of Canada's Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) and the Prosecution Service of Canada to cooperate with the Commission. FINTRAC reports to Canada's Minister of Finance. The Director and CEO of FINTRAC during the relevant period of the Commission was Nada Seeman. FINTRAC ironically cites "promoting a culture of accountability" and "collaboration with other levels of government" as two of its three "strategic pillars" in its five-year plan released in 2019. There is sufficient evidence from reliable sources who testified or provided reports to the Commission for the Commission to draw an adverse inference about FINTRAC's motives for refusing to cooperate with the Commission.

[2] The Coalition here refers to the five largest banks in Canada, to which the bulk of anti-money laundering due diligence is effectively delegated: the Royal Bank, Bank of Montreal, TD Canada Trust, Canadian Imperial Bank of Commerce, and Bank of Nova Scotia. Representative of three banks provided secret in camera testimony in a panel format for a total of approximately two hours, and their testimony is subject to a publication ban. Lack of cooperation is a serious deficit and the Commission should draw adverse inferences.

provide guidance and an example for other Provinces to follow and emulate. Strong and coherent recommendations will provide a bridge and structure for federal-provincial coordination and engagement.

6. A disproportionate share of the evidence heard by the Commission dealt with money laundering solely within the gaming sector and/or related to the trade in illicit drugs. This reflects the fact that complicated white-collar crime is generally and inappropriately deprioritized in favour of drug enforcement and that money-laundering ideas have been locally influenced by video images of duffel bags of money in casinos. The Coalition is of the view that a more balanced approach would give equal prominence to domestic and international corruption, tax evasion, trade-and-service-based money laundering and large-scale fraud.

7. Given this Commission's broad mandate and the Coalition's limited standing in these proceedings, the Coalition's submissions will address the following areas:

a. Difficulties in the quantification of money laundering statistics and the resulting implications;

b. Canada's role within transnational crime and corruption;

c. The proliferation of tax evasion and the corruption of professionals;

d. Canada's historical failure at combatting money laundering;

e. Money laundering threats to Canada and British Columbia and in particular the criminal abuse of legal entities;

f. Regulatory developments in Canada and British Columbia's fight against money laundering including:

    i. Recent amendments to the *BC Corporations Act*;

    ii. Recent amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*;

    iii. The establishment of the Land Owner Transparency registry; and

    iv. Other Canadian jurisdictions' implementation of beneficial ownership registries.

g. The need for further regulatory reform on corporate transparency, including:

    i. Refinements to the newly implemented *Land Owner Transparency Act* ("LOTA") and the accompanying registry; and

ii. The need for a pan-Canadian corporate beneficial ownership registry and what the mechanics of that registry ought to entail.

8. Ultimately, the Coalition submits that the most pressing need in Canada's anti-money laundering ("AML") regime is to increase transparency with a publicly accessible beneficial ownership registry of corporations and other artificial legal entities.

Quantification of Money Laundering

1. Quantification of the scale of money laundering is a difficult task. The crime is committed in secrecy, is difficult to detect and the methods involved in money laundering are constantly evolving. Nonetheless, an understanding of the scale of money laundering is necessary to appreciate its effects and the scale of resources appropriately devoted to its suppression.

2. This Commission heard evidence concerning five methods to quantify money laundering:

a. the International Monetary Fund "consensus" range of 2-5% of the gross domestic product ("GDP");

b. extrapolations from capital mobility data;

c. extrapolations from measurements of the shadow or underground economy;

d. extrapolations from suspicious transaction reports or other indicators of potential money laundering; and

e. extrapolations from proceeds of crime data including case studies and the Walker/Unger gravity models.[3]

3. In terms of dollar figures, aside from the IMF's GDP calculation, the only other figures that could be applicable for Canada and British Columbia are provided by the Maloney Report, using the Walker gravity model, which estimates money laundering activity in Canada in 2015 at $41.3 billion ($6.3 billion in B.C.) and in 2018 at $46.7 billion ($7.4 billion in B.C.). As set out in the Overview Report, the Maloney Report similarly estimates ranges of money laundering in B.C. real estate as follows:

> 102. The Maloney Report also generated ranges of how much of the estimated money laundering flow in British Columbia were invested in provincial real estate. The first range was based on the proportion of laundered money in real estate assuming all money laundering flows were either: (1) income subject to decisions about consumption and investment;

[3] Exhibit 322.

or (2) intended to be invested. The resulting range was $2.1 billion to $7.4 billion. The other range was based on a wealth portfolio allocation approach. Based on data indicating portfolio allocation to real estate varied from 37 to 72%, and assuming 28% or 100% of all money laundered was invested, the top bound was $2.7 to $5.3 billion and the bottom bound was $0.8 to $5.3 billion.[4]

4. As set out in the Overview Reports and evidence before this Commission, there are problems with each attempt to quantify money laundering within any jurisdiction. An adequate assessment of the extent to which money laundering infiltrates our economy is important for regulators and policy makers to select and implement effective AML policies and practices.

5. Professor Reuter gave evidence that AML competes with other kinds of law enforcement for resources on what could be described as a results-based approach.[5] Relative efficacy of AML enforcement and other types of enforcement efforts is necessary for resource allocation. Without a quantifiable normative baseline, the effects of any given AML strategy cannot be measured and its absolute or relative efficacy cannot be evaluated.

6. The Coalition respectfully suggests that the Commission make a recommendation that the Province of British Columbia engage in research to determine:

a. The return on investment for AML strategies in terms of:

   i. Increased revenue (i.e. asset seizure and sale under civil forfeiture regimes);

   ii. Decreases in market distortions (i.e. sale of assets by nominee or anonymous corporate purchasers without repurchase);

   iii. Reputational changes, including changes in domestic and international confidence in asset markets and changes in rates of international cooperation in law enforcement;

   iv. Public searches for AML-related transparency information (LOTA and corporate registry);

b. Changes in reported figures for proxy metrics discussed above in paragraph 2 (the five quantification options).

[4] Exhibit 323, p. 47.
[5] Transcript, June 7, 2020, p. 61, ll. 26-31.

7. The Coalition also supports efforts to quantify money laundering, including research that provides precision on (1) what sectors are most exposed to money laundering and (2) what foreign and domestic sources are contributing the most to the influx of proceeds of crime. In respect of the latter, the Coalition says that research based on foreign jurisdictions is not inherently racist. Money laundering arises from the character of the legislation and regulations within a foreign jurisdiction, not from the character of its population. Canada is of course not immune from domestic sources of corruption and money laundering.

8. The Coalition submits that further research is particularly needed to address the extent to which illicit funds are entering the local economy from jurisdictions with weak rule of law, known capital flight, corruption, kleptocracy and weak currency and transaction control. The current ambiguity on how foreign illicit funds contributes to various local sectors, including real estate, contributes to a disturbing and false public narrative that any questioning of the source of foreign funds is inherently racist. The public would benefit from further insight into this area.

9. The panel of British Columbia's Anti-Money Laundering Deputy Ministers gave evidence that the Province is contemplating undertaking further quantification efforts.[6] The Coalition supports those efforts.

10. The Criminal Intelligence Service Canada ("CISC"), a branch of the RCMP, has not undertaken any studies to quantify the scale of money laundered in Canada as quantification has proven to be "extremely difficult"[7]. CISC purports to "follow, with a great interest" other groups' attempts to quantify money laundering "in order to provide advice and guidance to our law enforcement operational partners."[8]

11. Although none of the quantitative methods yields a definitive answer, there is sufficient evidence to conclude that money laundering causes significant social and economic problems and is of sufficient magnitude to warrant robust regulatory responses.

Canada and British Columbia's Role within Transnational Crime and Foreign Corruption

12. The Coalition encourages the Commission to emphasize that Canada's money laundering enforcement systems have the potential to deter or promote domestic and foreign corruption. Canada is particularly vulnerable to the purchase of assets as storage for ill-gotten capital. This should be of significant concern to this Commission and the Canadian public.

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[6] Transcript, June 11, 2020, p. 37.
[7] Transcript, June 9, 2020, p. 40, ll 20-33.
[8] Transcript, June 10, 2020, p. 70, ll. 13-39.

13. Mr. Bullough, author of the book *Moneyland*, emphasized that Canada and other western democracies are known as resting places in the international money laundering system:

> The point I really want to always stress in the book again and again is that though somewhere like Nevis is guilty of obscuring the origins and movement of capital, it is not – you can't find money there. The money isn't – doesn't stay there. You go there. It's an island in the middle of nowhere with 11,000 residents and a few lovely beach bars. It's got nothing else. The money moves through Nevis. It passes under its protection and ends up in places like Vancouver...[9]

14. Allowing the integration of proceeds of foreign corruption into our local economies by means of asset purchases enables foreign corruption. While eliminating foreign corruption is itself a valid pursuit and one that Canada should earnestly undertake, the influx of foreign ill-gotten capital has real effects on the average Canadian citizen.

15. An international perception that a jurisdiction allows money laundering can destroy confidence in that jurisdiction's financial system and "block inwards investment and trade". This, in turn, may increase the cost of borrowing, increase taxation and distort allocation of resources to income assistance programs and health care.[10] The cost to purchase or rent housing may inflate, which can pressure residents to leave the cities in which they were born.[11]

16. Serious consequences follow from acquiring a reputation as a country that welcomes the proceeds of corruption. These countries become known as countries that effectively "enable" corruption and kleptocracy as "without [their] financial systems, kleptocracy would not exist".[12] The embrace of foreign corruption influences domestic attitudes, promoting convenience before community, prioritizing short term over long term interests, and fomenting distrust of government.

17. The harms associated with foreign corruption are not solely felt by those in the foreign jurisdiction. The Coalition submits that British Columbia's regulatory responses, and this Commission's recommendations, ought to be informed by British Columbia's role in enabling foreign corruption.

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[9] Transcript, June 1, 2020, p. 30, ll 30-41.
[10] Transcript, May 28, 2020, p. 44-46, ll. 33-47; 1-12, 31-39; 6-16.
[11] Transcript, June 1, 2020, pp. 85-86, ll.44-47;1-34 . See also, Exhibit 962 at FN 21 and *Combatting Money Laundering in BC Real Estate* (Maloney, Somerville & Unger) at page 14 which indicates "a conservative estimate attributes about a 5 percent increase in the price of residential real estate to money laundering
[12] Transcript, June 2, 2020, p. 55, ll. 20-27.

Ameliorating a Damaged Reputation Requires Publicity

18. Ameliorating reputational interests requires ongoing publicity for regulatory changes and sustained enforcement efforts. Strong regulatory responses must not only be effected, they must be seen to be effected.

19. The evidence is that "Canada has long been accused of being a very attractive destination for proceeds of crime"[13]. Historically, Canada has made international headlines as an attractive money laundering destination for kleptocrats, criminals, and tax dodgers.[14]

20. Simon Lord gave evidence that since the Financial Action Task Force ("FATF") creates uniform standards, "if a country is somehow perceived as not complying with that approach and somehow making themselves vulnerable to money laundering, it can get a whole country a bad reputation and can put people off from doing legitimate business in that location."[15]

21. In 2016, FATF released their mutual evaluation report on Canada. Professor Gilmore provided evidence that while, historically, Canada had scored well on FATF Mutual Evaluations, in 2016 many weaknesses were identified.[16] In particular, the 2016 FATF Mutual Evaluation Report found that "law enforcement results in Canada are not commensurate with the money laundering risk and asset recovery is low".[17]

22. The 2016 FATF report should be of considerable concern to Canada, British Columbia and this Commission. Even the perception that Canada is lagging behind its international counterparts is enough to warrant strong regulatory measures. The 2016 evaluation along with the bulk of evidence heard before this Commission suggests that in fact Canada *is* an ideal jurisdiction to launder the proceeds of crime.

23. The Coalition submits that the Commission should recommend that the Province direct or request that the Auditor General prepare and publicize biannual reports for the next decade to objectively measure improvements in money laundering enforcement and regulation.

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[13] Transcript, May 25, 2020, p. 54, ll. 29-31.
[14] Exhibit 282, p. 5 of exhibit (p. 6 of .pdf)
[15] Transcript, May 28, 2020, p. 45, ll. 31-39.
[16] Transcript, June 3, 2020, p. 32-38.
[17] Exhibit 4, Appendix N, p. 3 (p. 994 of .pdf)

Tax Evasion and the Corruption of Professionals

24. The Coalition submits that the Commission should make strong recommendations to deter the use of money laundering techniques to evade payment of taxes. Tax evasion is a predicate to the offence of money laundering.

25. Tax evasion benefits the wealthiest and richest members of society and leaves the honest taxpayers of Canada to pick up the tab. The obligation to pay taxes, and self-report honestly, is part of the social fabric of Canada. There is an obligation on taxpayers to be honest and accurate and dishonesty is a breach of the collective trust. The Supreme Court of Canada made the following observations regarding this obligation and its relationship to the public interest:

> 18 It is fitting and appropriate that the s. 239 offences be considered as criminal law. The *Income Tax Act* is a major source of funds for the federal government. Its provisions are applicable to most adult Canadians. The vast majority pay their income tax by way of payroll deduction with little or no opportunity for evasion or misstatement. Those who do evade the payment of income tax not only cheat the State of what is owing to it, but inevitably increase the burden placed upon the honest taxpayers. It is ironic that those who evade payment of taxes think nothing of availing themselves of the innumerable services which the State provides by means of taxes collected from others.
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> 19 The entire system of levying and collecting income tax is dependent upon the integrity of the taxpayer in reporting and assessing income. If the system is to work, the returns must be honestly completed. All taxpayers have the right to know that it is a criminal violation to commit any of the offences described in s. 239. The Act imposes a public duty. A breach of that fundamentally important public duty should constitute a criminal offence.
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> *R. v. Knox Contracting Ltd.*, [1990] 2 S.C.R. 338

26. The evidence before this Commission supports the conclusion that professionals, especially accountants, lawyers and bankers, are employed by criminals to assist (either knowingly or unwittingly) in the establishment of shell corporations and other legal entities to conceal income, contrive false expenses and otherwise avoid taxes. These offences harm the public interest.

27. It is important to recognize that money laundering in service of tax evasion is a crime committed both by those who have derived their income by lawful means and by those who have derived their income from other crimes. Crude enforcement with over-emphasis on drug dealers and/or cash dealings allows a significant group of tax evading money launderers to escape detection.

28. Unwitting or corrupted accountants, lawyers and bankers are vectors of money laundering and tax evasion schemes.[18] These professionals hold a privileged place in society, and when they exploit that privilege to assist in the laundering of illicit funds the public trust in their professional institutions is eroded.

29. Recognizing professionals as vectors of money laundering for tax evasion in British Columbia and Canada should be central to the work of this Commission and the Province. Accountants and lawyers are subject to ethical obligations, held in high esteem within their communities and have a reasonable legitimate income that allows for a comfortable lifestyle.

30. The evidence given respecting the accounting profession shows some in the profession's indifference and lack of knowledge verging on willful blindness to the potential that accountants could be used to assist in money laundering activities. This should be of significant concern to the public as accountants are routinely involved in assisting individuals and corporations to minimize their tax exposure by a variety of means. Further, accountants often play a critical role in the creation of shell corporations or trusts that can in turn be used to conceal unlawfully obtained assets and revenues.

31. Regulatory responses must remove plausible deniability to professional enablers and make the process of facilitating money laundering too risky to undertake. Forcing lawyers, accountants and bankers to gather and preserve information about their clients as well as gather and preserve information about the source of funds and the purpose of transactions makes it more difficult for these professionals to deny or avoid knowledge of money laundering.

32. The Coalition takes the failure of the Canada Revenue Agency ("CRA") to attend and participate in the Commission proceedings as an indication of the failings of the government of Canada to meaningfully participate in this Commission.

33. The Coalition asks the Commission to recommend the enactment of specific professional rules to ensure that lawyers and accountants gather and preserve information relating to the source of funds and the purpose of transactions. The creation of legal entities, including domestic and foreign corporations, bank accounts and trusts, that have no business purpose other than tax avoidance or evasion should be banned outright.

34. The Law Society of British Columbia should impose a requirement that all lawyers engage in continuing legal education courses to identify entities, transactions, sources of funds and situations that are indicative of money laundering, including the creation of legal entities with no actual business purpose (i.e. setting up subsidiary corporations in Ireland

[18] As examples of lawyers, see *R. v. Rosenfeld*, 2009 ONCA 307; *Coles, Re.*, 1997 CanLII 591 (On LST)

if no business is to be conducted in Ireland). Although representatives of the Law Society testified that money laundering enforcement activities are ongoing, it would provide additional assurance if the Law Society engaged in an internal audit to assess the sufficiency of its enforcement efforts. An external and independent review of the sufficiency of the methods and resources employed by the internal auditors could provide additional assurances to the public without infringing solicitor-client privilege.

35. The Coalition submits that the recommendations from this Commission ought to be informed by the specific threats of tax evasion and the corruption of professionals.

Canada's Lack of Capacity at the Federal Level to Suppress Money Laundering

36. Canada lacks the institutional capacity at the federal level to effectively detect, investigate and prosecute money laundering. The status quo is not working.

37. Analysis of evidence on why Canada has been an attractive destination for money launderers yields several reoccurring themes:

a. Canada enjoys a very good international reputation for political stability;

b. The rule of law is dominant in Canada, with significant procedural fairness guarantees in the criminal law context (i.e. *Stinchcombe* and *Jordan*);

c. Canada, and particularly British Columbia and Vancouver, are nice places to live and own real estate;

d. Canada is open to foreign investment;

e. It is relatively simple and inexpensive to create artificial legal entities;

f. Canada has weak corporate transparency; and

g. Canada has a weak regulatory structure and little enforcement capacity.

38. Most of these attractions do not require fixing; they are the virtues of a free, democratic and prosperous society that welcomes wealth-seeking economic activity. Canada, and particularly British Columbia, is an excellent place to live, work or visit. British Columbia is a thriving economic hub that welcomes lawful trade and business from around the world. The formidable task is to create and enforce barriers to money laundering that do not abridge freedom, democracy, undermine the rule of law or throttle the entrepreneurial spirit with red tape and bureaucracy.

39. Witnesses to the challenge of enforcement provided the following evidence of the reasons for Canada's low success rate in combatting money laundering:

a. money laundering offences are extremely complicated to investigate;

b. RCMP and provincial police agencies are under-resourced when it comes to combatting money laundering;

c. RCMP and provincial police agencies lack the required expertise when it comes to investigating financial crimes and money laundering;

d. Money laundering offences are considered secondary in importance to prosecution of predicate offences; and

e. There is a lack of political will to make financial crimes a target, especially compared to drug crimes and other offences.

40. The RCMP's success rate for convicting money laundering is a fraction of what it is for other crimes. In 80% of cases a suspect cannot be identified and only a third of the cases that do go to trial result in conviction.[19] This Commission heard further evidence over the course of the hearings that prosecutions, and therefore successful prosecutions, and asset recovery in British Columbia and Canada are low.[20]

41. Money laundering offences may be perceived to have a lower status or priority because of policing focus on drug trafficking, smuggling and production. Predicate offences for drugs are no doubt easier to prosecute (and easier to understand) than money laundering, but money laundering is equally harmful to Canadians.

42. The evidence shows that the RCMP have made efforts to commence the long process of building capacity, but these efforts are embryonic and it is difficult to assess whether the embryo will develop investigative capacity or will falter in the face of institutional resistance to fully incorporate forensic accounting and legal expertise into investigative units.

43. The limits of the past and current RCMP approach should not be attributed to the RCMP members who testified. The limit is found in the imagination of RCMP senior management, which, it is reasonable to conclude, has only very lately been prompted into action by the creation of this Commission of Inquiry and perhaps other political and international pressures. This Commission has an opportunity to assist in crafting the horizon for enforcement capacity.

44. To be fair to the RCMP, the Public Prosecution Service of Canada ("PPSC") likely shares some proportion of the responsibility for low conviction rates for money laundering offences. Based on the limited PPSC evidence before this Commission, it is difficult to

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[19] Exhibit 282, p. 7 of exhibit (p. 8 of .pdf)
[20] Exhibit 1015.

say whether PPSC lacks enthusiasm, lacks technical capacity, lacks sufficient referrals, or some combination of factors.[21]

45. Knowledgeable observers of FINTRAC testified that FINTRAC lacks the analytic capacity to discern the meaning of the data it collects. In its current form, it is not equal to its assigned task. There was disturbing evidence that was sufficient to conclude that FINTRAC has effectively delegated oversight of Canadian financial institutions to United States authorities, which no doubt maintain policies and priorities that are tailored to serve US interests.[22]

46. Similarly, the ability of CRA to detect, investigate and seek appropriate remedies for tax evasion involving money laundering was not sufficiently addressed by this Commission to know with confidence the answers to the obvious capacity questions. The Commission can be confident, however, that it is undeniably in the public interest to seek answers to these questions.

47. Evidence from knowledgeable observers supports the conclusion that the Office of the Superintendent of Financial Institutions (OSFI) is equally unable to engage in oversight or provide meaningful guidance to banks and other financial institutions on appropriate anti-money laundering protocols.

48. The Coalition asks this Commission to recommend either a federal Commission of Inquiry into money laundering or:

a. External audits of the RCMP and PPSC for their capacity to work separately and together to investigate and prosecute money laundering;

b. External audit of the capacities of CRA to detect, investigate and seek remedies for the use of money laundering techniques (particularly the creation of legal entities to conceal income or simulate expenses) to evade taxes;

c. External audit of the analytic and communications capacity of FINTRAC in the area of money laundering; and

d. External audit of OSFI's capacity to regulate and provide guidance to financial institutions in the area of money laundering.

49. The Coalition submits that the Commission should not confine itself to recommendations in the Provincial sphere. Despite the lack of cooperation at the federal level and jurisdictional limits, there is significant evidence that improvements can be made

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[21] Exhibit 1015.

[22] Transcript, January 11, 2021, p. 198.

within the government of Canada, and that audits of the relevant regulatory and enforcement authorities are appropriate.

50. Audits of federal agencies should address integration of detection, enforcement and prosecution capacities among regulatory, investigative and enforcement agencies. The limited evidence heard regarding CRA, FINTRAC, PPSC and RCMP operations indicates they have a low level of cooperation, integration and interoperability amongst themselves and provincial and municipal police and regulatory agencies. Audits at the federal level should attend to these issues.

51. The Coalition reiterates that evidence of weak institutional capacity to suppress money laundering supports providing public access to ownership information. Public access to ownership data will allow interested and knowledgeable analysts from the public to detect misconduct on a voluntary basis. Investigative reporters, business competitors, and other enthusiastic members of the public will bring a broad range of background capacities, contextual business or social knowledge and a range of analytic capacities to understanding ownership data. No government can ever hope to replicate the knowledge and capacity of the public.

Sector-specific Money Laundering Threats in Canada

52. This Commission heard evidence of sector-specific threats posed by money laundering to British Columbia and Canada. Relevant sectors included real estate, financial institutions, professionals, luxury goods and gaming. While each sector has its own unique features, the Coalition submits that money launderers are increasingly sophisticated and make use of multiple sectors. Enforcement difficulty arises as investigators must be as adaptable and knowledgeable as the launderers they attempt to investigate.

53. Sophisticated professional money launderers appear to be a relatively recent phenomenon within the AML landscape. Professional money launderers are persons or entities that have an expertise in laundering large sums of money and have succeeded in overcoming the current AML regime. As an example, CISC has identified:

> a high-level network of professional money launderers based in British Columbia and Ontario. This network represents several service providers nationally and internationally that conduct self-laundering and provide third party money laundering services to organized crime groups. It uses complex money laundering operations through casinos, underground banking systems, nominees, shell companies, trade-based money laundering and real estate.[23]

[23] Transcript, June 9, 2020, p. 46, ll. 30-42.

54. The rise to prominence of professional money launderers who utilize complex networks across regulatory bodies demonstrates the requirement that regulatory responses be equally robust, comprehensive and not siloed to a single sector.

Artificial Legal Entities are a Money Laundering Threat

55. Artificial legal entities created by legislation and common law in Canada are a money laundering threat. These entities arrive packaged by law with invisibility cloaks that simultaneously provide their owners with anonymity and legal security. The term "snow-washing" has come to describe the abuse of Canadian legal entities by money launderers.

56. The 2016 dissemination of confidential and privileged records of the law firm Mossack Fonseca (the so-called "Panama Papers" leak) showed the Bahamas-based law firm to be engaged to act as an intermediary. Mossack Fonseca advertised Canada as an easy place to hide money for two reasons: (1) it is cloaked by its good reputation; and (2) it has a weak beneficial ownership regime.[24]

57. The Coalition submits that use of artificial legal entities (corporations, partnerships and trusts) for money laundering transcends each regulated sector (gaming, real estate, professionals, financial institutions). The legislative and common law rules that create and sustain these legal entities must be amended to serve the public interest. There is nothing inherent to any of these legal entities that requires them to assist their owners in concealing their identities.

58. No normative principle or theory supports automatic concealment of ownership of artificial legal entities. The public does not need to meet an onus to know who owns these legal entities. In a democracy, these legal entities are deemed to be supported by the public will, and the public, it should be inferred, by default has a right to know the truth about the legal entities it has created. The burden ought to rest with those who seek concealment.

Enforcement evidence on the threat of legal entities

59. There was a great deal of CISC evidence concerning the use of artificial legal entities for gang-related money laundering. It should be noted that the utility of this evidence is limited by the RCMP's historic emphasis on the war on drugs and related gang activity.

60. As of 2019, CISC believes that 176 organized crime groups are actively involved in money laundering in Canada.[25] With particular reference to British Columbia, Mr. Wellwood provided that:

[24] Transcript, November 30, 2020, p. 10, ll. 1-25.
[25] Transcript, June 9, 2020, p. 39, ll. 24-38.

> Of the 37 groups who are identified in British Columbia for involvement with money laundering, approximately 25 percent, or nine of those groups, were considered to have higher capacity or higher capability for money laundering, and that simply defines as ability to conduct money laundering activity on behalf of another group or groups, or on behalf of a criminal network or multiple criminal networks.[26]

61. In 2019, CISC identified that the most prevalent typology of money laundering associated with the 176 organized crime groups believed to be engaged in money laundering was private sector businesses.[27] In addition, seven percent of the 176 organized crime groups used real estate to launder money.[28]

62. Mr. Wellwood testified that CISBC sees four sectors as most prevalent for money laundering activity in British Columbia (in no particular order): money service businesses, casinos, real estate and privately owned businesses and corporations.[29]

63. Use of artificial legal entities is common for gang-related money laundering typologies. With respect to how corporations and legal entities may be used by money launderers, the CISC panel testified as follows:

> … "Similar to my comments earlier, some groups can access and use more than one type of private business or use nominees to hide business ownership, which can make it difficult to track the proceeds of crime. Private sector businesses are used for money laundering purposes in numerous ways, including the comingling of proceeds of crime with legitimate business cash inflow, falsifying receipts and invoices, paying employees in cash, the use of corporate accounts to purchase assets – for example, real estate assets and other high-valued goods – to further obscure the origin in ownership. As well as the use of nominees and shell companies to distance transaction from beneficial owners and provide financing or loan services using proceeds of crime.[30]

64. With respect to Real Estate in particular, the CISC panel stated the following:

> [a]s of 2019, 12 organized crime groups were identified to having used real estate as a means to launder their proceeds of crime. … Criminals exploit the Canadian real estate market for money laundering purposes by using proceeds of crime to purchase real estate, often after the illicit funds have transited through the money laundering stages of placement and layering, to obscure their criminal source. Real estate is an attractive investment for illicit funds as it can provide a home to live in, a relatively secure high-value investment, and/or a place to conduct further criminal endeavors, including

[26] Transcript, June 9, 2020, p. 51, ll. 7-15.
[27] Transcript, June 9, 2020, p. 47, ll. 41-47.
[28] Transcript, June 9, 2020, p. 48, ll 9-12.
[29] Transcript, June 9, 2020, p. 52, ll. 22-37.
[30] Transcript, June 9, 2020, p. 53-54, ll. 26-47 ; 1-9.

outlaw motorcycle gang clubhouses, underground casinos, brothels and drug production and/or trafficking locations.

65. Significantly, a CISC witness testified that "inadequate beneficial ownership transparency in Canada is a significant enabler for money laundering through real estate as the legal ownership of property, like companies, partnerships, trusts and nominees, allows the individuals with the ultimate real-world control of the property to be concealed."[31]

66. The CISC panel also gave evidence that spoke to the investigative obstacle that a lack of beneficial ownership information presents:

> One of the challenges with regards to developing a comprehensive assessment of an organized crime group is not knowing the ultimate beneficial owners, here in Canada. For any type of corporate intelligence analysis or research about companies in Canada, beneficial ownership information becomes an important piece of - - pieces of information in order to properly assess organized crime involvement.[32]

67. This evidence dovetails with many of the enforcement witnesses that provided evidence on the complications arising from investigating money laundering offences. Dr. German's reports are replete with references to the lack of available resources to the RCMP for the purposes of combatting money laundering; Dr. German further testified that he supported the creation of a publicly accessible beneficial ownership registry to enable further corporate transparency.[33] Similarly, Inspector Heard gave evidence that the distortion of beneficial ownership information of corporations "weighed heavily" in coming to a decision on whether to pursue a money laundering charge or just pursue the predicate offence.[34]

68. Overall, the CISC and enforcement evidence is indicative that one of the key money laundering threats is the use and abuse of legal entities within money laundering operations. This is consistent with the expert literature and expert evidence before this Commission.

Experts agree that legal entities represent a significant money laundering threat

69. The evidence of experts heard throughout this Commission repeatedly highlighted the money laundering risk associated with artificial legal entities. In the 2016 Mutual Evaluation Report, the FATF identified the role that legal entities play in Canada:

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[31] Transcript, June 9, 2020, p. 61-62, ll. 16-47 ; 1-6.
[32] Transcript, June 10, 2020, p. 72, ll. 35-44.
[33] Transcript, April 12, 2021, p. 30-34.
[34] Transcript, March 30, 2021, p. 136-137.

legal entities and legal arrangements in Canada are at a "high risk of being abused for ML/TF purposes. The NRA indicates that organized crime and third-party ML schemes pose a very high ML threat in Canada. Some of FINTRAC's statistics reflected in the NRA suggest that well over 70% of all ML cases and slightly more than 50% of TF cases involved legal entities. Canadian legal entities play a role in the context of channeling foreign POC into or through Canada, as well as in the laundering off domestically generated proceeds. Typologies identified include: foreign PEPs creating legal entities in Canada to facilitate the purchase of real estate and other assets with the proceeds of corruption; laundering criminal proceeds through shell companies in Canada and wiring the funds to offshore jurisdictions; and utilization of Canadian front companies to layer and legitimize unexplained sources of income and to commingle them with or mask them as profits from legitimate businesses.[35]

70. Dr. Schneider provided significant evidence suggesting the potential abuse of legal entities by criminals. Dr. Schneider's evidence described that the use of nominees and legal entities is "very typical" in the layering stage of money laundering and that this technique is universal and transcends commercial sectors.[36] Further, Dr. Schneider set out that the reason why corporations are used by money launderers is because "companies, shell or real companies, can be quite effective in concealing criminal ownership of the company itself as well as the assets purchased with the proceeds of crime."[37]

71. The primary feature that makes corporate vehicles an attractive means to launder illicit funds is the secrecy that a corporation or similar legal entity can provide. The creation of a legal entity can allow a criminal to further remove themselves from the predicate offence and illicit funds. Those jurisdictions with weak beneficial ownership regulations, such as Canada and British Columbia, become attractive jurisdictions for money launderers.

72. Dr. Cockfield agreed that Canada's weak beneficial ownership regime made it an attractive target for money laundering and global criminals and that criminals exploited this feature of Canada's regulatory regime.[38] Similarly, after discussing the use of companies to launder illicit funds, Simon Lord gave evidence that "it's really important ...that there is a transparency of beneficial ownership within any jurisdiction".[39]

[35] FATF report, pg. 102.
[36] Transcript, May 25, 2020, p. 72, ll 25-43.
[37] Transcript, May 26, 2020, p. 16, ll. 20-47.
[38] Transcript, April 9, 2021, p. 173, ll. 2-18.
[39] Transcript, May 28, 2020, p. 32-33, ll. 38-47; 1-4, 28-43

73. It follows, then, that a jurisdiction in which you can easily create a corporate structure combined with weak corporate transparency regulations creates the ideal conditions for money launderers. Unfortunately, British Columbia is just such a jurisdiction.

The Importance of Corporate Transparency

74. To combat the threat posed by the abuse of legal entities, jurisdictions like British Columbia must take concrete steps to increase corporate transparency. From an AML perspective, increased corporate transparency transcends the sectors and typologies of money laundering and acts as a deterrent, investigative tool and reliable due diligence mechanism.

75. Increased corporate transparency is a public good. Corporations will know who they contract with. Employees will know who they are working for. Increased corporate transparency will in turn serve to increase transparency within public procurement and large-scale political donations. All of these valid public policies are served by increasing corporate transparency.

76. Thomas Hale points out that transparency promotes accountability by changing the behavior of the actor to be more accountable:

> Transparency empowers actors to comply with their own internalized norms … Transparency can facilitate self-reflection by exposing an actor's own behavior to itself. Where that behavior is in conflict with internalized norms, the actor has the ability – because it is relatively autonomous within its functionally differentiated sphere – to change to comply with its own norms.[40]

77. Increased corporate transparency not only provides outsiders with a view into the ultimate beneficial owner, it also serves to empower the corporate entity (and its facilitators) to self-reflect and modify their behavior to comply with societal and legal norms. This is a powerful tool in the money laundering context where the actions happen in secret and far removed from a predicate offence.

78. It is easy for professionals, such as accountants and lawyers, to forget ownership details that enable money launderers. When ownership details are recorded and easily accessible, professionals may think twice about the appearance of the transactions and entities they facilitate. If details about the entity are publicly available (particularly if there is potential for criminal sanctions) corporate transparency has the power to modify the behavior of these facilitators by enhancing self-monitoring and self-awareness. Professionals generally not only want to stay clear of complicity in impropriety, they want to stay clear of the appearance of complicity in impropriety.

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[40] Thomas N. Hale, "Transparency, Accountability, and Global Governance" in Global Governance, 14:1 (2008) 73-94 at 86.

79. Corporate secrecy is neither a necessary nor a desirable feature of modern legal entities. As set out in Mora Johnson's submission to the Cullen Commission:

> In policy discussions about increasing the transparency of corporations, it is worth recalling that corporations are creatures of statutes passed by legislatures, and therefore, their proliferation in our economy and society represents a deliberate public policy choice. Through incorporation, a company with a separate legal personality is created under the law, whereby the liability of those investing in the company is limited to the amount invested.
>
> Thus, the corporate form represents a fundamental intervention of the state into the free marketplace, altering potential risks, benefits, and liabilities of different stakeholders. Note that incorporation does not reduce risks, but rather, displaces them, tipping risks away from investors and reallocating them onto others in our economy, largely creditors, consumers and government.[41]

80. The proliferation of anonymous corporate vehicles in modern economies was not intentional or deliberate; quite the contrary. As Robert Lowe, who introduced the *Companies Act* into the British Parliament in 1856 said it is essential to give "the greatest publicity to the affairs of companies, that everyone may know on what grounds he is dealing".

81. The Coalition submits that there is simply no legal or moral justification for corporate anonymity. Corporate anonymity serves to perpetuate the use of corporate vehicles for criminal enterprise. Conversely, increased corporate transparency serves many public goods, including modifying illicit or unethical behavior and enabling public scrutiny.

Recent Steps on Corporate Transparency

82. Historically, British Columbia and Canada have had weak corporate transparency laws which have contributed to its reputation as a destination for proceeds of crime. While some international jurisdictions are taking steps to combat the threat of insufficient corporate transparency, Canada has been slow to respond. In 2016, the FATF gave low compliance scores to Canada for lax transparency of beneficial ownership information.[42] In particular, the FATF made the following critical findings:

a. Canadian legal entities and legal arrangements are at a high risk of misuse for ML/TF purposes and that risk is not mitigated.[43]

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[41] Exhibit 283, p. 3.

[42] Exhibit 282, p. 14 of exhibit (p. 15 of .pdf).

[43] FATF Mutual Evaluation, p. 101.

b. For the majority of trusts in Canada, beneficial ownership information is not collected.[44]

c. Federal and provincial registers record basic information on Canadian companies and their directors, as well as on partnerships with businesses in Canada, but do not require the collection of beneficial ownership information.[45]

83. Ultimately, the FATF found that "Canada has achieved a low level of effectiveness for IO.5 – [legal persons and arrangements]"[46].

84. Chris Taggart helpfully provided this Commission with his efforts to track down the currently available corporate information in British Columbia using the current online interface. Mr. Taggart provided evidence about the hurdles he encountered in the process, including the "really convoluted experience" of navigating the online platform, setting up an account to search, learning that an initial deposit of $150 CAD was required, and then being forced to wait for days while the account was being activated. Mr. Taggart concluded, bluntly:

> if I was listening to this hearing today and I was a criminal, I'd be thinking that BC companies are definitely good option [sic] for companies for money laundering because frankly, you know - - if I'm overseas, that is, because frankly the chances of UK law enforcement or still less a Kenyan investigator or journalist or law enforcement anywhere, you know, actually getting to passing through all of these hurdles would seem to be - - would be pretty remote and they would probably give up.[47]

85. Mr. Taggart further remarked that he has seen "many developing world countries" where accessing basic company information is "much, much easier than that, and that's a real shame and it really does create a great fertile ground for bad actors".[48]

86. In the wake of the 2016 FATF Mutual Evaluation Report and international criticism, several steps have been taken at both a federal and provincial level to address the need for enhanced corporate transparency. The Coalition submits that Canada and British Columbia are still at the early stages of responding to the abuse of corporate vehicles for money laundering purposes.

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[44] FATF Mutual Evaluation, p. 101.
[45] FATF Mutual Evaluation, p. 104.
[46] FATF Mutual Evaluation, p. 105.
[47] Transcript, November 30, 2020, pp. 63-66.
[48] Transcript, November 30, 2020, p. 68-69; ll. 20-25; 1-2.

1. Amendments to the Business Corporations Act in the Province

87. Bill 24, the *Business Corporations Amendment Act*, received Royal Assent in May 2019 and fully eliminated the use of bearer shares and required private companies to keep records of their beneficial owners, referred to as "significant individuals", at their corporate records office.[49] Similar legislation was passed at the federal level.

88. The Amendments to the Provincial *Business Corporations Act* are found at Part 4.1 which is named "Transparency Register".[50] This part establishes that private companies must take reasonable steps to maintain a transparency register that contains certain categories of information on "significant individuals", defined as someone who owns 25% or more of the shares of a private company. The Transparency Register is required to be held at the company's corporate records office. Law enforcement, tax authorities and regulators are permitted to inspect the company's Transparency Register upon request.

89. While the amendments to the *Business Corporations Act* represent a positive first step towards corporate transparency, the Coalition submits that the amendments are insufficient to meet the policy objectives at which they are aimed.

90. First, the public does not have access to a company's records outlining its beneficial owners. As further elaborated below, the Coalition submits that there is significant value in having public access to corporate beneficial ownership information. As Peter Dent testified, the fact that it is not public effectively means that the beneficial ownership information is not transparent.[51] The Coalition submits that even the name "Transparency Register", as contemplated in the amendments, is a misnomer as the records and information are still privately held. There is no transparency.

91. Second, the *Business Corporations Act* only requires that corporations keep their beneficial ownership records at their corporate records office. If law enforcement agencies required beneficial ownership information for the purposes of an investigation, they must ask for the information at the registered or records office. As James Cohen testified, that is akin to "going up to a potential criminal's house, knocking on the door and saying, would you please bring out your beneficial ownership information, and waiting ... while somebody maybe slips out the back".[52] This of course has a negative impact on law enforcement's ability to discretely investigate suspicious entities and seize assets. Those corporations that are subjected to an investigation will be tipped off which gives them a significant advantage to move assets or otherwise cover their tracks of any impropriety.

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[49] Exhibit
[50] *Business Corporations Act*, S.B.C. 2007, c. 57.
[51] Transcript, November 30, 2020, p. 45, ll. 16-25.
[52] Transcript, November 30, 2020, p. 38, ll. 11-19.

92. Even a one-time covert search may require a search warrant, perhaps even a complicated and resource-intensive warrant to search a lawyer's office. Such warrants might need to be delayed until the last moment, as the execution of the warrant will betray the existence of an investigation. If such obstacles to investigation of artificial, publicly-created entities are to exist, they require strong justification.

93. The Coalition submits that the proper solution to rectify these issues is to enact legislation that creates a publicly accessible corporate beneficial ownership registry.

2. Update to the KYC Obligations of the PCMLTFA

94. The Coalition applauds the enactment of a new requirement, effective June 1, 2021, for designated non-financial businesses under FINTRAC to take reasonable steps to ascertain the identity of their clients. The *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* were amended in the Spring of 2020 to require reporting entities that are designated non-financial businesses and professions to verify the identity of the beneficial owners of their clients.

95. Such steps advance the anti-money laundering cause without significant prejudice to those who are not engaged in money-laundering.

3. Creation of the Land Owner Transparency Registry

96. The Province of British Columbia has improved transparency by enacting the *Land Owner Transparency Act*, which creates a registry of beneficial owners of real estate in British Columbia (the "LOTA Registry"). The LOTA Registry requires individuals, companies, trusts and partnerships to file transparency declarations that disclose beneficial owners of land. The contents of the LOTA Registry are publicly accessible, and the reporting threshold has been set at 10% of ownership. The Coalition applauds these positive aspects of the registry.

97. The LOTA Registry creates two levels of accessibility: (1) primary identification information is available to the public at large; and (2) a transparency report that is available to law enforcement and other government agencies who have much broader access to more personal and identifiable information.[53]

98. Dr. Dawkins described the purpose of the registry as follows:

> [the purpose is] for British Columbians to understand ... who owns land in British Columbia, because ... at this point, if you just look at the legal ownership, there's a very limited understanding of who actually owns the land in British Columbia. So having that understanding will have knock-on effects in terms of it will be greater transparency and it may help reduce fraud and

[53] Transcript, November 30, 2020, p. 97-98, ll. 1-16; 1-17.

> money laundering, but it - - by having a greater set of information, we just have a bigger - - better understanding of the - - of who owns the land in British Columbia.[54]

99. While the creation of the LOTA Registry should be applauded as a positive first step in increasing beneficial ownership transparency, the Coalition submits that there are significant faults with the mechanics and setup of the registry that severely limits its utility. The Coalition submits the following are critical flaws with the LOTA Registry.

100. First and foremost, the Coalition submits that there is no requirement that registry officials, or any independent party, verify identification information filed on the registry. Similarly, there is no requirement that the reporting entities provide a passport or other identification document to prove they are who they say they are.[55] This is a threat to the overall data quality contained in the LOTA Registry. When it comes to the quality of information contained on the Register, the only safeguards contemplated by LOTA are:

> (1) requiring a transferee or reporting body (a corporation, a trustee of a trust or a partner of a partnership) to certify a transparency declaration or transparency report to be correct and complete. But there is no requirement that the identification information for an individual be verified and certified by an independent third party, which means criminal organizations and their front men can themselves certify their own transparency declarations.
>
> (2) the LOTA gives the registry administrator or an enforcement officer the discretionary power to demand verification of information for the purpose of determining compliance with the Act. In effect, this means that verification of information will only occur by way of random spot check or when the administrator has reason to believe there has been non-compliance. This approach builds inherent risk into the system. If the identification information filed on the registry is false or misleading, it minimizes the ability of law-enforcement agencies and public searchers to identify the criminal front men.[56]

101. In explaining that LOTA had "some degree" of verification of the information, Mr. Danakody, Director and Administrator of the LOTA Registry, explained the LOTA verification of information as follows:

a. First, that there was a bunch of work done "upstream", which can be taken to mean that financial institutions, real estate professionals and perhaps legal professionals had to verify the beneficial ownership information prior

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[54] Transcript, June 12, 2020, p. 70, ll. 8-22.
[55] Transcript, June 11, 2020, p. 64, ll 14-37.
[56] See Exhibit 398 for more.

to submitting it to the registry on behalf of their client which would serve to improve the quality of data on the LOTA Registry.[57]

b. Second, that the administrator has authority within LOTA to look into the information and to conduct audits either on their own volition or under the instruction of the enforcement officer.

102. It is problematic to rely on upstream verification performed by financial institutions, real estate professionals and legal professionals. First, this approach fails to account for the fact that the professionals themselves may be parties or facilitators to the criminal offence. Second, professionals and in particular real estate agents, often have a conflict of interest as their commission is dependent on the conclusion of transactions. Third, there is no requirement that a real estate purchase even engage a realtor, legal professional or financial institution. The Coalition submits that relying on upstream work is insufficient and dramatically reduces the power of the LOTA Registry.

103. The lack of validation and verification of information submitted to the LOTA Registry is detrimental to its ultimate utility. The registry will only have information from honest property owners and those criminals that seek to park their illicit funds in our real estate markets will be able to do so by simply creating a fictitious name. In addition, the registry will be of limited utility to BC real estate professionals to meet their new know your client reporting obligations.

104. The evidence before this Commission is that the Province did not conduct a cost benefit analysis on the benefit of increased vetting versus not vetting the information on the LOTA Registry. There was no analysis of the overall benefit to society or the estimated revenues from fines and seized assets.[58]

105. Since the primary barrier to increased verification measures of information submitted to the LOTA Registry appears to be cost, conducting a cost-benefit analysis is a logical next step. James Cohen provided the following evidence on how to look at associated costs:

> When we look at costs, let's also think about costs recovered on the other side of this and the money that we can recoup from tax evasion that has been used by shell companies as well. So it's not just a matter of how much is the public spending on this and not getting back in costs incurred so much as what are we getting back in tax revenue received; what are we getting back in cutting down in CRA, in police, in FINTRAC investigation times for them to be

[57] Transcript, March 12, 2021, p. 223.
[58] Transcript, June 12, 2020, p. 65, ll. 1-10 ; 25-35.

> able to do their business; what are getting back in terms of businesses cutting down on the due diligence work that they have to do…[59]

106. Any cost-benefit analysis of ownership transparency must consider the likelihood of increased asset seizures and broader socio-economic benefits.

107. A second fault with the LOTA Registry is that it does not have significant enough penalties for those persons that intentionally submit false information; there are only modest fines. Fines alone will not act as a sufficient deterrent to criminals or wealthy non-criminals. Deterring corruption of LOTA Registry data requires the threat of prison sentences.

108. Prison sentences are not unlawful or particularly harsh. The *Securities Act*, R.S.B.C. 1996, c. 418 contains prison sentences as an available sanction for those persons that make a materially false or misleading statement in a filing. The Coalition submits that the same sanctions should follow for false filings on the LOTA Registry.

109. A third fault with the LOTA Registry is that it charges $5.00 for each search. The Coalition submits that there is evidence to support that a search fee, even a modest search fee, will only serve to limit the use and therefore overall effectiveness of the register. Limiting the use of the registry adversely effects the utility of the registry and arguably limits the potential revenue generated from the registry in the form of increased asset seizures.[60]

110. A fourth fault is the absence of a tip line or direct line of communication to specialized investigators. General duty police officers or dispatchers are unlikely to know how or where to direct the information to the appropriate investigator. The lack of a tip line does not allow the LOTA Registry to reach its full potential as a conduit for whistleblowers to tip off law enforcement.

111. A fifth fault is that there is no unique identifier for each filer. This poses problems in identifying the true owner of a property when someone has a common name. A unique identifier number would eliminate these issues. Mr. Danakody agreed that a unique identifier would solve a lot of problems from an administration standpoint.[61]

112. A sixth fault is that the LOTA Registry has limited search fields as it does not allow keyword searches; the public is only able to search for a specific person or the land parcel identifier for a specific property. The public is not able to search by country of residence or any other type of information.[62] To enable the full utility of the LOTA Registry,

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[59] Transcript, November 30, 2020, p. 113, ll. 4-18.
[60] Exhibit 398, p. 11 "The Profit Potential of a Public Registry of Beneficial Ownership of Land".
[61] Transcript, March 12, 2021, p. 231, ll. 7-22.
[62] Exhibit 398, p. 7.

prospective searchers should be able to conduct keyword searches (such as the name of a specific country or city) as well as statistical and data-specific searches.[63]

113. Ultimately, the LOTA Registry is a positive first step and British Columbia should be commended for taking steps to address the lack of transparency for land owners in British Columbia. That said, the Coalition does point to limitations within the register that ought to be addressed as soon as practicable.

4. Canadian Jurisdictions are Implementing Beneficial Ownership Registries

114. On June 8, 2021, Quebec adopted Bill-78, *An Act mainly to improve the transparency of enterprises*, which requires beneficial owners of corporations carrying on business in Quebec to submit beneficial ownership information to a registry. The Quebec registry is publicly available and both natural persons as well as corporations can be searched free of charge. The Coalition commends Quebec on taking this significant step towards corporate transparency.

115. In its annual budget, released on April 19, 2021, the Canadian federal Government announced its plan to implement a beneficial ownership registry for corporations in Canada. The budget proposed to provide $2.1 million over two years to Innovation, Science and Economic Development Canada to build and implement a publicly accessible corporate beneficial ownership registry by 2025.

116. While this also represents a positive step towards the creation of a pan-Canadian publicly accessible registry, the Province of British Columbia has not committed to following suit. Without the cooperation and strategic implementation of a registry across all Canadian jurisdictions, the national registry is of limited value.

117. The evidence before this Commission is that the Province is conducting "preliminary work" on a corporate beneficial ownership registry.[64] In particular, there is evidence that the Province made a call for submissions on a corporate beneficial ownership registry in early 2020 and, as of June 11, 2020, the Province was in the process of "consolidating the feedback from that consultation process" to make recommendations to the government around the creation of a publicly accessible registry.[65] It can be inferred that the recommendations from this Commission will play a significant role on whether a registry will be created in British Columbia and, if so, what that registry might look like.

[63] Exhibit 398, p. 15.
[64] Transcript, June 11, 2020, p. 67, ll. 24-30.
[65] Transcript, June 11, 2020, p. 53, ll 17-26.

Properly Constructed Publicly Accessible Beneficial Ownership Registries are a Game Changer

118. Given the clear evidence that corporations are commonly used to launder funds in a variety of sectors, the question inevitably becomes, what can be done to increase corporate transparency and deter the criminal abuse of legal entities? The Coalition submits that the evidence heard by this Commission answers that question emphatically: increase corporate transparency by creating a publicly accessible corporate transparency register.

119. The Coalition submits that a properly constructed beneficial ownership registry would have positive cascade of effects. A publicly accessible beneficial ownership registry can serve the public interest by:

a. providing a reliable source of beneficial ownership information to law enforcement and other regulatory investigative bodies;

b. providing a new and simple offence (akin to a fraudulent reporting) that provides law enforcement with a means to target the underlying predicate crimes and potentially seize assets;

c. deterring criminals from using corporations or real estate to launder their funds as criminals will know that many eyes will be on them and their ill-gotten funds;

d. enabling NGOs, journalists and citizens from all jurisdictions to inspect and report on the true beneficial owners, which thereby increases the chance of detecting money laundering activity and the underlying predicate crimes;

e. increasing detection by creating an easily accessible avenue of investigative ground;

f. allowing reporting entities under the *PCMLTFA*, including financial institutions and other professionals, a consistent and reliable source of information for their customer due diligence obligations;

g. removing the defense of plausible deniability to those professionals (accountants, lawyers, trust companies, etc.) that act as ownership fronts and enablers;[66] and

[66] See also, Exhibit 398, p. 8 "Disrupting the foundation upon which international money-laundering systems are built".

h. increasing the ability of domestic and international law enforcement agencies to obtain evidence of money laundering sourced from authoritarian and corrupt regimes.[67]

120. A properly constructed beneficial ownership registry has the potential to truly change British Columbia's AML and commercial landscape.

The International Context

121. Publicly accessible beneficial ownership registries are being implemented across the world. The UK, Denmark, Latvia, Slovenia, Bulgaria and the Ukraine have already introduced public beneficial ownership registries. This Commission has similarly heard that all EU member states have agreed to implement public registries under the fifth AML Directive.[68]

122. The Coalition points to the United Kingdom's, People with Significant Control register (the "PSC Register"), as a useful example that provides lessons learned on how to construct and implement a beneficial ownership registry.

123. The PSC Register became operational in 2016 and establishes a free, publicly accessible beneficial ownership registry.[69] In March 2019, the UK Department for Business, Energy and Industrial Strategy did a review of the PSC Register and noted the following points about the positive effects of the register:

a. Overall, businesses were engaged with the PSC register – "nearly all businesses surveyed (92%) had PSCs. The most common number of PSCs reported was one (43%), followed by two (37%). Only 13% of businesses had three or more.[70]

b. The financial costs of compliance to the business was relatively small. The mean overall cost was £287.[71]

c. The majority of businesses (95%) felt the process [of collecting information about their business' PSCs and submitting it to the PSC register] had "not had an impact at all" on the way their business operates.[72]

d. Twenty-two percent of businesses surveyed had used the PSC register to look up information about other businesses, of those businesses, most considered it useful. The majority of businesses using the PSC register were

[67] Exhibit 398, p. 10 "Circumventing official channels in authoritarian regimes".
[68] Exhibit 282, p. 14 of exhibit (p. 15 of .pdf).
[69] Exhibit 284, p. 8 of exhibit (p. 12 of .pdf); Exhibit 292 at p. 1.
[70] Exhibit 289, p. 4.
[71] Exhibit 289, p. 5.
[72] Exhibit 289, p. 5.

looking up information about clients and customers and found the information "useful" or "very useful".[73]

e. All Financial Institutions interviewed as part of the study had used the PSC register, mainly to identify the PSCs of prospective corporate clients during the onboarding process.[74]

f. All Civil Society Organizations interviewed as part of the study had made use of the PSC Register for their work.[75]

g. Stakeholder organizations generally considered the PSC register to be a useful resource for their work ... because the register has made the process of obtaining information about beneficial ownership more efficient.[76]

124. Further, Dr. Sharman[77] and James Cohen[78] provided evidence that after Scottish LPs were brought under the PSC Register, there was a drop of incorporation of those entities by roughly 80%. Dr. Sharman noted that there was, in turn, a corresponding increase in the creation of similar legal entities in Northern Ireland:

> When they were secret, they were very popular. When they became open they became rapidly very unpopular, which to me suggests that the main attraction was secrecy and that putting them on the registry made them much less secretive and much less attractive to people who were, for good reasons or for bad reasons, interested in secrecy.[79]

125. Prior to their inclusion on the PSC Register, Scottish LPs were widely known as a popular vehicle used for money laundering activities.

126. In a similar vein to Dr. Sharman's evidence, Mr. Bullough went one step further and suggested that since the implementation of the UK PSC Register there was a shift from Scottish LPs to Canadian legal structures.[80] The Coalition submits that the evidence of the displacement of legal entities after the implementation of the PSC Register is a positive sign that shows that increased corporate transparency acts as a deterrent to would be money launderers.

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[73] Exhibit 289, pp. 5-6.
[74] Exhibit 289, p. 6.
[75] Exhibit 289, p. 6.
[76] Exhibit 289, p. 6.
[77] Transcript, May 6, 2021, p. 180-181.
[78] Transcript, November 30, 2020, p. 112, ll. 16-23.
[79] Transcript, May 6, 2021, p. 181, ll. 13-20.
[80] Transcript, June 1, 2020, p. 66, ll 14-29.

127. As a first of its kind register, the PSC Register has not been without its growing pains. In May 2019, anti-corruption NGO Global Witness analyzed the state of the PSC Register and made the following recommendations:

a. The U.K government should clearly mandate and resource Companies House to verify submitted beneficial ownership data and sanction non-compliance.

b. Companies House should develop the capability to identify and investigate suspicious activity revealed through analyzing the data, in coordination with other relevant government departments.

c. Regulatory and legislative loopholes that enable companies to file questionable beneficial ownership statements should be closed.[81]

128. Similar issues with verification and validation of data are noted in the UK Department for Business, Energy and Industrial Strategy's 2019 review.[82]

129. The primary issue encountered by the UK PSC Register has been the quality of data as the information submitted to the register is not verified or vetted in any meaningful way. The lack of verification resulted in an abundance of low-quality data that undermined the remaining validity of submitted information. Canada and British Columbia should apply this lesson to the creation of their own publicly accessible registry, including the already established LOTA Registry.

The Mechanics of a Corporate Beneficial Ownership Registry

130. The Coalition submits that special care must be given to considering the mechanics of a public beneficial ownership registry. Certain features of a registry are imperative to ensure it reaches its full potential for success. The Coalition submits the following features should be incorporated:

Public Access

131. First and foremost, the Coalition submits that a beneficial ownership registry must have public access. While the Coalition acknowledges that the creation of a registry might engage certain privacy interests, the Coalition submits that if any minor privacy interest is

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[81] Exhibit 284, p. 8 of exhibit (p. 12 of .pdf)

[82] See, for example, Exhibit 289, p. 6: "some Law Enforcement Organizations and Financial Institutions did not think that the introduction of the PSC register had had a positive effect on their work. This is because, due to concerns about the quality of information held of the PSC register, these organizations did not consider it a reliable source of information about beneficial ownership ... To improve the quality of the information held on the PSC register, many stakeholders suggested that Companies House introduce both validation (e.g. checks at the point information is submitted) and verification processes (e.g. checks to verify the information submitted)."

engaged it is justified by the benefits of having public access to the registry. This point is elaborated on in the privacy analysis further below. The Coalition submits that the following justifies having a publicly accessible ownership registry:

132. First, public accessibility allows NGOs, journalists and civilians to access and report on the content of the registry. A private registry, or one that only allows important fields of information to be viewed by law enforcement and regulators, does not. This is a particularly important aspect of a registry for the purposes of combatting foreign corruption where the people closest to the predicate offence (the corruption) are likely overseas or in a foreign jurisdiction. As Chris Taggart testified:

> When we're talking about the snow-washing and the money laundering ... we're talking about offences where the predicate offence is overseas. And if you're in a country where actually it's the heads of the government or the senior ministers and so on or - - that are committing those crimes and you're a civil society actor doing that, then, you know, who is going to be investigating that? And is that really what BC wants, to be an enabler for maybe making it more difficult for Canadian crime but easier for overseas crime, enabling corrupt regimes to exploit and to - - you know, the resources of the country at the expense of the population?
>
> So I think that there's some - - really that this has to be public.[83]

133. Enabling public citizens and journalists to inquire as to what assets and companies a suspected kleptocrat holds in Vancouver is in the public interest. Further, the evidence before this Commission supports the conclusion that most large-scale money laundering cases are not discovered by law enforcement or police, but instead by NGOs and journalists. It ought to be borne in mind that the Panama Papers and FinCEN files were uncovered by journalists; as was the "Vancouver Model" that sparked this Commission. This evidence, in conjunction with the clear resource and expertise limitations on the RCMP, clearly enhances the need for public access.

134. Second, a publicly accessible beneficial ownership register allows all reporting entities under FINTRAC the opportunity to utilize the registry's beneficial ownership information when required to meet their customer due diligence reporting obligations under the *PCMLTFA*.[84] A private registry does not. The evidence of these sectors was that, if the information was of sufficient veracity, a registry would be helpful for these reporting entities to meet their know your client obligations. Even those entities, like lawyers, who have know your client reporting obligations that are outside the *PCMLTFA* guidelines, would benefit from a publicly accessible corporate beneficial ownership

[83] Transcript, November 30, 2020, p. 101-102, ll. 8-25; 1-2.

[84] Exhibit 282, p. 11 of exhibit (p. 12 of .pdf)

registry to conduct due diligence for the purposes of meeting the Law Society obligations.[85]

135. Third, public accessibility can serve to improve the veracity of the information contained within the registry by allowing the public to catch and report errors and irregularities.[86] It is significantly riskier for a criminal to lie in public than it is to lie privately.[87] As elaborated below, the registry is only useful if the information contained within it is truthful. Public access will enhance the integrity of the content of the registry.

136. Fourth, from a high level (and perhaps non-AML) perspective, a public registry is shown to have considerable economic advantages for businesses. In the UK, businesses have found the PSC Register to be "very useful" and economically advantageous with greater business confidence and investment.[88] A publicly accessible registry allows small and medium sized enterprises to make informed decisions about who they are doing business with.[89]

137. There is a clear benefit to having public access to the beneficial ownership registry. As set out below, the Coalition acknowledges that some information may attract a privacy interest and therefore, as an alternative to a fully public registry, the Province should consider a tiered approach that allows unfettered access to all information to law enforcement and designated AML agencies, but restricts public access to certain levels or categories of information.

Which entities should be included

138. The Coalition submits that all privately held companies and all partnerships should be included on a corporate beneficial ownership registry.

139. The issue with trusts is more complicated. While this Commission has heard evidence about the prevalence of the abuse of trusts for money laundering purposes, the Coalition acknowledges that their inclusion on a publicly accessible registry may require trustees and beneficiaries to reorganize their affairs in a rather thoroughgoing and complicated way. Sufficient time should be allowed for such reorganizations.

140. The fundamental problem is that if any type of artificial entity remains to provide a cloak of secrecy, then those with illicit secrets to keep will scurry under that cloak. There is no normative or principled distinction that would allow for differential treatment of trusts and corporations. At a minimum, as an interim step, the Commission should recommend

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[85] Transcript, November 30, 2020, p. 96, ll. 4-14.
[86] Transcript, November 30, 2020, p. 101, ll. 2-5.
[87] Transcript, November 30, 2020, p. 136, ll. 4-25.
[88] Exhibit 282, p. 11 of exhibit (p. 12 of .pdf)
[89] Exhibit 282, p. 11 of exhibit (p. 12 of .pdf)

that professionals be required to gather and preserve complete records of beneficial ownership information for trusts in anticipation that it will be included in a public register.

141. The Coalition submits that the Commission should recommend timely research into the creation of a publicly accessible trust registry. Such research should, as James Cohen testified, look into the categorization of different trusts and the specific issues that attend to each of those as opposed to just lumping all trusts in a group.[90]

Information collected and disclosed

142. The Coalition submits information should be collected and/or disclosed for the purposes of a beneficial ownership registry in accordance with **Appendix "A"** to these submissions.

143. In addition to the categories of information set out in **Appendix "A"**, the Coalition submits that all names should be provided in their original alphabet script and in English. Only providing names in English makes it difficult for searchers from foreign jurisdictions with non-Latin scripts to search and utilize the registry.

144. The Coalition further submits that the enabling legislation should include language that requires a disclosing entity to update the beneficial ownership information within 30 days of any change to information taking place.[91]

Enforcement and penalties

145. The Coalition submits that the enabling legislation should include an offence with respect to failing or fraudulently reporting beneficial ownership information. In addition to the offence, the legislation should include clear language that failing to disclose beneficial ownership information is subject to a range of penalties. Penalties should range with level of culpability associated with the failure to disclose. At one end of the spectrum, inadvertent failures to disclose information should result in a minimal fine or no fine with an opportunity to correct the information. At the other end of the spectrum are those that deliberately misreport or fraudulently report the beneficial ownership information. Penalties for fraudulent and willful noncompliance should attract significant penalties, including the possibility of jail time, that will deter criminals from viewing the potential fines for false reporting as a cost of doing business.

146. Professor Bullough accurately sets out the range and rationale for stiff penalties for willful non-compliance:

> The idea is to – is to create a disincentive that prevents people from wishing to engage in this kind of activity. You know, I think that the majority of people

[90] Transcript, November 30, 2020, p. 94.
[91] Exhibit 292, p. 3.

> who are involved in money laundering in somewhere like Vancouver or, for that matter, London, are people with a relatively high status in the community. These tend to be relatively high status jobs, quite well rewarded jobs. And – you know, these are the kind of people who really don't want to go to prison. They're – you know, they're not – you know, hardened street – street criminals who can take a spell in prison and come out of it the tougher. They certainly wouldn't be that. They would come out of it with their lives ruined, and they're aware of that.
>
> So – you know, to my mind, two or three well publicized criminal convictions and prison terms for you know, high profile lawyers or accountants would go a very long way to dissuade any other lawyers and accountants from engaging in these kind of activities. And that's what I would like to see. You know, I think the ideal law in this regard is one that doesn't need to be used, right, because you've used it enough times that the point has been made. You know, we want to stop people doing this. We don't want to punish them for doing it. It's to stop them doing it. That's the point.[92]

147. British Columbia would not be the first jurisdiction to implement stiff penalties for non-compliance. Fines run as high as 1,000,000 euros in Germany and range from 50,000 to 200,000 for noncompliance as well as terms of imprisonment in Gibraltar, Malta, the Netherlands and Norway.[93] Similarly, and as earlier referenced in the context of the weak sanctions under the LOTA Registry, the *Securities Act* in British Columbia contains prison sentences as an available sanction for those persons that make a materially false or misleading statement in a filing. Similar sanctions should apply in this context.

148. Similar to the stiff penalties for those that provide false declarations, those professionals (lawyers and accountants) that facilitate the filing of false declarations should be subject to strict penalties. Professionals that knowingly abuse their position of trust and power within society to facilitate money laundering should not benefit from any leniency.

Validation and verification of information submitted to the registry

149. As set out above, this Commission has heard evidence about the problems with the PSC Register that had insufficient validation and verification procedures. In particular, Mr. Bullough gave evidence about his experience identifying persons with significant control on the PSC Register being listed as "Mr. XXX" and "Mr. XXX Stalin".[94] The success of any beneficial ownership registry hinges on the ability to prevent, detect and correct these types of false recordings.

[92] Transcript, June 2, 2020, p. 52, ll. 13-43.
[93] Exhibit 282, p. 16 of exhibit (p. 17 of .pdf)
[94] Transcript, June 1, 2020, p. 93-94.

150. Validation is conceptually distinct from verification and is meant to ensure that the value is valid (i.e. a beneficial owner is unable to have a birth date in the future) and includes those preventative steps taken at the outset to ensure the accuracy of submitted information. The Coalition submits that, at a minimum, validation should include such steps as, providing drop down menus where appropriate to limit the type of data available for input. For example, the information should be standardized so that a reporter could not enter the same jurisdiction in different ways. (e.g. British Columbia, B.C., BC, etc.)– it should be standardized to one field by the use of a drop-down menu. Similarly, reporters should not be able to input birth dates that are in the future. The proposed registry should be equipped with software that prohibits this type of faulty reporting.

151. In addition, the Coalition submits that reporters should have to submit a copy of photo ID or a certified copy of photo ID to the registry. Copies of this ID would be openly available to law enforcement and regulatory bodies but unavailable to the public.[95] A more robust approach to validation would include a sworn statement or attestation of ownership.

152. These may seem like simple steps, but the Coalition submits that they must not be overlooked. Mr. Bullough offered the following sentiments on validation: "this isn't – this isn't rocket science. I mean, banks do it when they open a bank account. It's – you know, the practice is established."[96] Mr. Bullough further provided:

> To my mind, an ideal registry, the information needs to be checked in the same way that a bank will check the information provided when you are opening a bank account. You know, that means that in order to – to – if you need to submit your name, address and so on, you need to provide proof that that is indeed your name and address. You know, this is – it's a fairly mundane process and one conducted by you know, high street banks all over the world without any kind of complications. You know, that's to my mind, pretty straightforward. [97]

153. Distinguished from validation is the concept of verification. Verification is the process by which the information submitted to the registry would be confirmed to be accurate. Verification answers the question is the information provided true? This is a tricky question when it comes to beneficial ownership information.

154. With respect to verification of information submitted, the Coalition supports the proactive verification of all submissions to the register. Generally speaking, a reactive approach to verification, that contemplates spot checking information on a random basis or after a tip, is insufficient and will significantly compromise the integrity and utility of the information contained within the registry.

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[95] Exhibit 292, p. 2
[96] Transcript, June 1, 2020, p. 95, ll. 21-24.
[97] Transcript, June 2, 2020, p. 45, ll. 16-40.

155. An ideal system would include a register or third party verifying all information that is submitted to the registry to ensure that it is accurate. The Coalition recognizes some potential costs of this type of verification system.

156. The Coalition submits that any upfront cost to the taxpayer to set up a registry with proper verification is likely to be mitigated by the increased fines and asset forfeitures that would come from a fully functioning registry with properly verified information. The Province would be able to recover substantial revenues in line with the increased detection, investigation and successful prosecutions of money-laundering offences. If properly implemented and enforced, these revenues could likely overshadow the cost to setup and verify the information on the registry.[98]

157. This Commission has also heard evidence with respect to additional mechanisms to offset costs to the taxpayer and ensure verification of the submitted information. One option is the use of emerging technologies. For example, financial institutions have begun to adopt digital IDs which allow individuals to securely confirm their identities online and can help alleviate any cost of verifying the information on the registry.[99] Emerging technologies offer some optimism and the Province ought to explore their potential in earnest.

158. Another option is to have the information audited and submitted by a professional that is subject to regulations for money laundering purposes. Mr. Bullough offered the following evidence when it comes to verification:

> ... I think the information should be audited or submitted by a professional who is regulated for money laundering purposes, and so we know that there is an individual's name attached to the information who can be held accountable if that information is shown to be willfully false. That, to my mind, is the best thing – the best way it could be run.[100]

159. Mr. Bullough also suggests that certified copies of a "registered agent model" would be appropriate for vetting.[101]

160. As an alternative to the creation of a fully proactive register that vetted all information submitted, the Coalition would support the verification of information submitted to the registry by third party professionals that can be found equally culpable and subject to significant sanctions if information submitted to the registry is false.

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[98] Exhibit 398, p. 11-12.
[99] Exhibit 282, p. 16 of exhibit (p. 17 of .pdf); Exhibit 284, p. 16 of exhibit (p. 20 of .pdf).
[100] Transcript, June 2, 2020, p. 45, ll. 16-40.
[101] Transcript, June 2, 2020, p. 46, ll. 1-28.

161. The benefit of this type of solution is that the cost of proactively verifying the submitted information is shifted away from the taxpayer and put on the filing entity.

162. The thrust of the Coalition's submission on the issue of verification is that proper verification of the information submitted to the registry is critical to its efficacy. While there are potential cost considerations, they are not insurmountable, and options should be explored in earnest.

Reporting threshold

163. The Coalition supports a 10% reporting threshold to determine who must report as a beneficial owner under the proposed registry legislation. In principle, the higher the threshold for a reporting obligation, the easier it is for criminals to hide. An analysis by Global Witness found one in ten companies in the UK still claimed to have no beneficial owner under this higher 25% threshold.[102]

164. Under the *BC Corporations Act*, a person with significant control is set at a 25% threshold. The Coalition submits that this reporting threshold should be lowered to 10% for the purposes of a beneficial owner registry in accordance with international expertise and given the fact that publicly traded companies and the LOTA Registry has set reporting thresholds at 10%. Peter Dent stressed that uniformity around what percentage is landed upon is "very, very important" for the purposes of a pan-Canadian publicly accessible registry.[103]

Fees

165. The Coalition submits that it is crucial that the register remain open and freely accessible to the public. Registering for an account or requiring individuals to pay for access curtails transparency in identifying beneficial owners.[104] The UK PSC register originally had user fees, those were eliminated and then the number of searches "skyrocketed".[105] Chris Taggart gave evidence that "since [the UK] moved towards open data and making of [the information] available for free ... the increase of the use of the [PSC Register] increased well over 100 times."[106] Increasing the public use of a beneficial ownership registry will only increase the veracity of the information held within it and the overall utility of the register.

Enable broad searchability

[102] Exhibit 282, p. 15 of exhibit (p. 16 of .pdf)
[103] Transcript, November 30, 2020, p. 88, ll. 16-22.
[104] Exhibit 292, p. 3
[105] Transcript, June 2, 2020, p. 52, ll. 1-31.
[106] Transcript, November 30, 2020, p. 109, ll. 14-18.

166. Similar to the submissions on proposed refinement to the LOTA Register, the Coalition submits that the proposed corporate registry must have broad search abilities. An effective registry must allow users to search the registry using both keyword searches as well as statistical and data-specific searches.[107]

Tip Line

167. The Coalition submits that there should be a confidential tip line to a register official and/or law enforcement for whistleblowers to report on the content of information and anomalies contained within the register. A confidential tip line will allow for the two-way flow of information which will thereby increase detection of anomalies and false reporting and improve the veracity of the information contained on the registry. Gilchrest, for the CISC panel, confirmed that "most major federal departments, particularly ones that are involved in law enforcement functions in one way or another, do have tip lines".[108] A beneficial ownership registry should follow suit.

Privacy Considerations

168. The collection, use and disclosure of beneficial ownership information in a publicly accessible registry carries privacy considerations. In particular, the following privacy regimes must be contemplated and addressed:

a. privacy interests protected by the *Personal Information Protection Act*, S.B.C 2003, c. 63 ("PIPA") and *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996 c. 165 ("FOIPPA"); and

b. privacy interests protected by the *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (the "Charter").

FOIPPA & PIPA

169. If the proposed beneficial ownership registry collected information solely through provincial public institutions (i.e., a Registrar) then FOIPPA would apply. If however, for expediency and/or resourcing issues, the proposed registry chose to obtain the information from commercial actors, then PIPA would apply.

170. FOIPPA regulates the collection, use and disclosure of personal information by public bodies. Schedule 1 of FOIPPA provides that personal information means "recorded information about an identifiable individual other than contact information". The proposed

[107] Exhibit 398, p. 15.
[108] Transcript, June 10, 2020, p. 76, ll. 34-38.

beneficial ownership registry would attract FOIPPA considerations as it is collecting information about the beneficial owners.

171. Part 3 of FOIPPA provides the relevant sections on the protection of publicly collected information. The following sections are relevant to a publicly accessible beneficial ownership registry:

a. Section 26(a) provides that a public body may **collect** personal information only if the collection of the information is expressly authorized under an Act.

b. Section 32(a) provides that a public body may **use** personal information in its custody or under its control only for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose.

c. Together, sections 33 and 33.1(c) provide that a public body may **disclose** personal information inside or outside Canada in accordance with an enactment of British Columbia or Canada that authorizes or requires its disclosure.

172. The Coalition submits that to comply with FOIPPA, the Province should enact legislation to create a publicly accessible beneficial ownership registry that expressly authorizes the collection, use and disclosure of that information.

173. The other protection of privacy legislation that could have application is PIPA. PIPA regulates the collection, use and disclosure of personal information by <u>private organizations</u>. Section 3(1) of PIPA provides that by default, PIPA applies to every organization (s.1 provides that an organization includes a person, unincorporated association, a trade union, a trust or a not for profit organization). Section 3(5) provides that "if a provision of this Act is inconsistent or in conflict with a provision of another enactment, <u>the provision of this Act prevails unless another Act expressly provides that the other enactment</u>, or provision of it, applies despite this Act."

174. Under s. 1, PIPA defines personal information as information about an identifiable individual and includes employee personal information but does not include (a) contact information, or (b) work product information. A publicly accessible registry that requires private entities to collect and disclose beneficial ownership information would attract PIPA considerations.

175. Parts 4 through 6 of PIPA sets out the provisions on the collection, use and disclosure of personal information by organizations. The Coalition submits that, if commercial actors are expected to play a role in the collection, use or disclosure of beneficial ownership information for the purposes of a publicly accessible registry, the Province should enact legislation that exempts them from the operation of PIPA to enable them to share information with the registry.

Canadian Charter

176. The question of whether the public disclosure of beneficial ownership information would be constitutionally valid demands a *Charter* analysis under ss. 8 and 1 of the *Charter*.

177. Section 8 of the *Charter* provides that "everyone has the right to be secure against unreasonable search or seizure." The Courts have emphasized that the protection of privacy is a prerequisite to individual security, self-fulfillment, and autonomy as well as to the maintenance of a thriving democratic society.

R. v. Spencer, 2014 SCC 43 at para 15.

178. In *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145 the Supreme Court of Canada provides that the purpose of s. 8 of the *Charter* is to protect an individual's reasonable expectations of privacy from unjustified state intrusion.

179. Whether the Province's collection and public dissemination of beneficial ownership information breaches s. 8 of the *Charter* requires an assessment of whether there is a search or a seizure that breaches a reasonable expectation of privacy. Not every taking by the government will constitute a search or a seizure for constitutional purposes. An inspection is a search, and a taking is a seizure, where a person has a reasonable expectation of privacy in the subject matter of the state intrusion and the information to which it gives access.

R. v. Tessling, [2004] 3 S.C.R. 432 at paragraph 18

180. If a search or seizure is found, then the inquiry shifts to whether the search was reasonable in that it was:

a. Authorized by law;

b. The law itself is reasonable; and

c. The manner in which the search or seizure is carried out is reasonable.

R. v. Shepherd, [2009] 2 S.C.R. 527 at paragraph 15

Does the collection of beneficial ownership information infringe a reasonable expectation of privacy?

181. With respect to assessing the reasonable expectation of privacy, at paragraph 18 of *Spencer*, the Supreme Court of Canada found that there are a wide variety of factors that may be considered in assessing the reasonable expectation of privacy and then grouped those factors under four main headings:

a. the subject matter of the alleged search;

b. the claimant's interest in the subject matter;

c. the claimant's subjective expectation of privacy in the subject matter; and

d. whether the subjective expectation of privacy is objectively reasonable having regard to the totality of the circumstances.

182. The Coalition focuses the inquiry on the subject matter of the alleged search and whether, assuming there is a subjective expectation of privacy, that expectation is objectively reasonable.

The subject matter of the information collected

183. The Courts have historically categorized privacy interests into one (or more) of three main categories: personal privacy, territorial privacy and informational privacy.

184. Personal privacy is typically afforded the strongest claim to constitutional shelter because it protects bodily integrity. Territorial privacy protects from unlawful state intrusion into a person's home, residences and other property and derives its origin from the adage that "the house of everyone is to him as his castle and fortress".

> *Tessling*, paras 21-22 citing Semayne's Case, [1558-1774] All E.R. Rep. 62 (1604), at p. 63

185. Most apt to the privacy analysis for the proposed beneficial ownership registry is the third category of privacy interest, informational privacy. While Courts have found that varying degrees of privacy interests attach to different information, *R. v. Plant* provides guidance that a claim to privacy will be strongest in relation to information that is at the "biographical core of personal information which individuals in a free and democratic society would wish to maintain and control from dissemination to the state": p. 293. The Court in *Plant* further clarified that section 8 *Charter* protection is afforded to information which is itself of that nature, but also to "information which tends to reveal intimate details of the lifestyle and personal choices of the individual".

186. Important to the context here, the Court in *Thomson Newspapers* provided that privacy concerns in relation to information are at their strongest where aspects of an individual's identity are at stake, such as in the context of information "about one's lifestyle, intimate relations or political and religious opinions". Conversely, business records and documents that are created during the course of regulated activities attract a diminished privacy interest.

> *Thomson Newspapers Ltd. v. Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 S.C.R. 425

at pp. 517-518; *R. v. Jarvis*, [2002] 3 S.C.R. 757 at para. 72; *McKinlay Transport*, pp. 649-650.

187. Applying the law to a beneficial ownership registry, the Coalition submits that the subject matter of the information contained within a beneficial ownership registry are those categories of information as set out in the table **Appendix "A"**. On their own, the Coalition submits that the categories of information contained within that chart attract a relatively low expectation of privacy, if any. For example, full legal names and residential addresses are typical information that is already publicly available through the Yellow Pages and other publicly created databases. In general, most of the information collected by the proposed registry attaches a very low privacy interest.

188. Further, the Coalition submits that there is no justification in law for corporate secrecy. Mr. Bullough provided good commentary on this topic by comparing incorporation to essentially a "form of insurance" in that society allows limited risk and liability to an incorporation in exchange for their effort to grow the economy and "make us all better off". Mr. Bullough further pointed out that it was "absurd" that a company can be anonymous and own assets anonymously; anonymization of corporations was unintended and has historically progressed by accident.[109]

189. It should be noted that publicly held companies under the *BC Securities Act*, R.S.B.C. 1996, c. 418 and *National Instrument 55-102 System for Electronic Disclosure By Insiders (SEDI)*, BC Reg 230/2001 are required to file reports on beneficial owners that hold 10% or more of the company's total shares. These reports are publicly accessible on the SEDI database and contain, among others, the following categories of information: name, address, telephone number, date of birth, type of ownership interest and number of securities acquired. The Coalition notes that this type of information, combined with the public knowledge of share price, easily allows the public to calculate a person's wealth.

190. While, on the whole, the Coalition submits that the type of information collected by the proposed registry would attract a low informational privacy interest, there are circumstances and certain pieces of information that arguably touch on a person's biographical core. The Coalition acknowledges that the Supreme Court has found that an individual's financial information has been held to attract section 8 *Charter* protection.[110] While the proposed registry would not require the disclosure of financial information, it is plausible that beneficial ownership information could lead to speculative inferences of a person's wealth.

191. Therefore, a balancing analysis is required that puts the public interest against the minor privacy infringement. Ultimately, the Coalition submits that any minor privacy

[109] Transcript, June 1, 2020, pp.58-60; ll 33-47; 1-47; 1-44.
[110] *R. v. Cole*, 2012 SCC 53; *Royal Bank of Canada v. Trang*, 2016 SCC 50

infringement is outweighed by the public's interest in increasing corporate transparency by collecting and publicly disclosing the contemplated categories of information. Further, the Coalition submits that measures can be taken to minimally impair any privacy concerns that arise.

Is the seizure of information reasonable?

192. The Supreme Court in *Thomson* Newspapers articulated the point that "[a]t some point, the individual's interest in privacy must give way to the broader state interest in having the information or document disclosed". The Supreme Court of Canada elaborated on this principle in *R. v. Jarvis*, [2002] 3 SCR 757 when they articulated that naturally, if a person has but a minimal expectation with respect to informational privacy, this may tip the balance in favour of the state interest.

193. The Coalition submits that the proposed registry would meet the test of a reasonable seizure of information. The proposed registry would be created by the enactment of legislation that would expressly allow the collection, use and disclosure of the information. The seizure would be authorized by law.

194. That leads to the question of whether the law itself would be reasonable. A reasonable law is one that strikes a reasonable balance between the particular state interest and the privacy right engaged.

McKinlay Transport at page 643

195. Courts will take a flexible approach to whether a law is reasonable. Considerations that may be helpful in a reasonableness analysis include: the nature and purpose of the legislative scheme, the mechanisms employed having regard for the degree of potential intrusiveness and the availability of judicial supervision.

Goodwin v. British Columbia (Superintendent of Motor Vehicles), 2015 SCC 46 at para 57

Purpose and objective of the registry

196. The purpose and objective of the proposed registry is to improve corporate transparency. As set out in this argument, increased corporate transparency contemplates a variety of legitimate and substantial purposes. In addition to those already set out in these submissions, the Coalition draws on those enumerated purposes set out in Mora Johnson's publication for this Commission:[111]

[111] Exhibit 290.

a. Assisting law enforcement in combatting financial crimes and money laundering.

b. Streamlining regulatory oversight of corporations.[112]

c. Enabling tax enforcement under the *Canadian Income Tax Act* and Provincial Income Tax Act.

d. Transparency relating to government procurement contracts.

e. Consumer protection.

f. Transparency in political financing.

g. AML due diligence by non-governmental actors like Financial Institutions and Designated non-financial businesses and professions.

h. Transparency in business activities:

   i. for creditors;

   ii. better business bureaus and other non-governmental watchdogs;

   iii. due diligence on prospective customers or suppliers;

   iv. consumer due diligence.

i. Assist public interest groups and investigative NGOs.

j. Transparency across provincial and international borders.

197. When one considers the benefits of increased corporate transparency, the purpose and object of a beneficial ownership registry should not be limited to just one. The benefits are dynamic, far-reaching and robust.

The mechanism employed is the least intrusive means to achieve the state interest.

198. The proposed registry is the least intrusive means to achieve the corporate transparency objectives. To ensure that it is minimally intrusive on the relatively modest privacy interests, the Coalition submits that two mechanical approaches could be considered: (1) a tiering of information; and (2) an exemption system for those persons with a legitimate interest in being exempted from the registry.

[112] Exhibit 290, p. 10 ("Directors of Corporations would need access to beneficial ownership information for the purposes of implementing and enforcing corporate law statutes").

199. First, the Coalition submits that, to alleviate any privacy concerns with specific categories of information, there could be a tiering of certain categories of information. Information carrying a relatively higher degree of privacy interest could be restricted from public access and allowed accessible to law enforcement and other regulatory agencies.[113] The Coalition submits that the information on the registry should all be public. However, a tiering system is a reasonable alternative to unfettered public access.

200. Second, for persons with a legitimate interest in having their beneficial ownership information private, the Coalition submits that there should be a process available whereby persons can make application to a Justice of the Supreme Court to exclude their information from being publicly available on the registry. A similar approach has been adopted by the PSC Register.

201. By adopting the above mechanisms, the proposed registry would certainly minimally impair the low informational privacy interest attached to the information contained therein. Put in context of the pressing and substantial underlying objectives of increasing corporate transparency, the Coalition submits that any minor privacy infringement by the collection and disclosure of information is justified. The proposed mechanisms to minimally impair these rights would help to ensure *Charter* compliance and the overall success of the proposed registry.

Conclusion

202. The Coalition praises British Columbia for its willingness to address the challenge of suppressing money laundering. This Commission affords British Columbia the opportunity to serve the public interest by recommending enhancements to AML systems and ameliorate corporate transparency. The Coalition encourages the Province of British Columbia to implement the recommendations made by this Commission.

203. Based on the foregoing, the Coalition asks this Commission to make the following recommendations:

a. That the Province engage in further efforts to research the quantification of money laundering and in particular the return on investment for AML strategies in terms of:

    i. Increased revenue (i.e. asset seizure and sale under civil forfeiture regimes);

    ii. Decreases in market distortions (i.e. sale of assets by nominee or anonymous corporate purchasers without repurchase);

[113] Exhibit 282, p. 17 of exhibit (p. 18 of .pdf)

iii. Reputational changes, including changes in domestic and international confidence in asset markets and changes rates of international cooperation in law enforcement;

iv. Public searches for AML-related transparency information (LOTA and corporate registry);

b. That the Province direct or request that the Auditor General prepare and publicize biannual reports for the next decade to objectively measure improvements in money laundering enforcement and regulation.

c. That the Province enact specific professional rules to ensure that lawyers and accountants gather and preserve information relating to the source of funds and the purpose of transactions and, in particular:

   i. That the Law Society of British Columbia impose a requirement that all lawyers engage in periodic professional development that enhances their knowledge of money laundering threats and risks in their practice areas. And,

   ii. That the Law Society undertake an internal audit of its money laundering enforcement efforts and that those audit results be: (1) publicized for public review; and (2) subject to an external review of the sufficiency of the internal audit's methods.

d. that Canada initiate a federal Commission of Inquiry into money laundering or:

   i. External audits of the RCMP and PPSC for their capacity to work separately and together to investigate and prosecute money laundering;

   ii. External audit of the capacities of CRA to detect, investigate and seek remedies for the use of money laundering techniques (particularly the creation of legal entities to conceal income or simulate expenses) to evade taxes;

   iii. External audit of the analytic and communications capacity of FINTRAC in the area of money laundering; and

   iv. External audit of OSFI's capacity to regulate and provide guidance to financial institutions in the area of money laundering.

e. That the Province amend the *Land Owner Transparency Act* and supporting regulations and policies to implement:

i. A proactive process of information verification;

ii. More significant penalties for false or fraudulent reporting, including jail time;

iii. The removal of any search fees;

iv. A confidential tip line;

v. A unique identifier for filing entity; and

vi. A more robust searching mechanism that, in particular, allows for keyword searches.

f. That the Province enact legislation to create a beneficial ownership registry of corporations with the following specific mechanics:

i. Public access to the information contained within the registry;

ii. The requirement that all private companies and all partnerships must submit beneficial ownership information;

iii. That names of beneficial owners are filed and submitted in their original alphabet script and in English;

iv. A requirement that filing entities must disclose any change to information contained within the registry within 30 days of the change taking place;

v. An offence for false and fraudulent filings as well as a corresponding penalty that includes jail time and significant fines;

vi. A robust validation and proactive verification process, including a registrar with the ability to vet submitted information;

vii. A reporting threshold set at 10% for beneficial owners;

viii. Information on the registry should be free to access to the public;

ix. A confidential tip line or a mechanism to provide tips to the registrar and/or law enforcement;

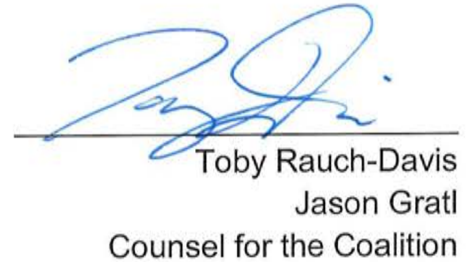
x. A mechanism that allows certain individuals to apply for an exclusion from the requirement to have their information publicly accessible on the registry.

g. That the Province require professionals (accountants and lawyers) to gather and preserve complete records of beneficial ownership information for trusts in anticipation that that information will be included in a public register.

h. That the Province engage in timely research into the creation of a publicly accessible trust registry.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: July 20, 2021



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Appendix "A"		
Data Field	**Access**	**Rationale for Collection/Disclosure**
A unique identifier number that shows ties to other business entities over which the individual has significant control	Public	Avoids confusion between registered persons of the same name and avoids problems caused by transliteration from different alphabets into Latin script.
Full legal name	Public	Needed for identification.
Aliases	Public	Needed to identify persons who do not use their exact legal name.
Date of birth	Month/Year – Public; Full birthdate - private	Improves positive identification.
Usual residential address and service address	Public	Improves identification and allows for correspondence.
Country of principal tax residency (present and former)	Public	Important for law enforcement, CRA and other tax agencies as it allows the identification of taxpayer information.
Country of usual residence	Public	Improves positive identification.
Citizenships (present and former)	Public	Improves identification. Law enforcement and investigative bodies should have access for international cooperation and investigation.
Nature and extent of beneficial interest held	Public	Clarifies who owns what and to what extent.
Day on which the individual became or ceased to be a beneficial owner	Public	Establishes a timeframe for the purchase or sale of shares
Politically exposed person status and/or Head of International Organization Standard	Public	Useful for reporting entities for *PCMLTFA* obligations and assists public identification.