



**WE CONNECT
GOVERNMENT**

A Teranet Leadership Piece on
**Ownership
Transparency
in Registries**

The Transparency Objective



Transparency around ownership within registries is increasingly being acknowledged as critical to the integrity of a jurisdiction's business environment. The purpose of this paper is to outline the importance of transparency in registries, examine global examples of innovation and discuss both the approaches which could be taken in creating a "pan-Canadian" beneficial ownership regime, and the challenges inherent in those approaches.

A beneficial owner is a natural person who has the right to some share or enjoyment of a legal entity's income or assets or the right to direct or influence the entity's activities. Ownership and control can be exerted either directly or indirectly.¹

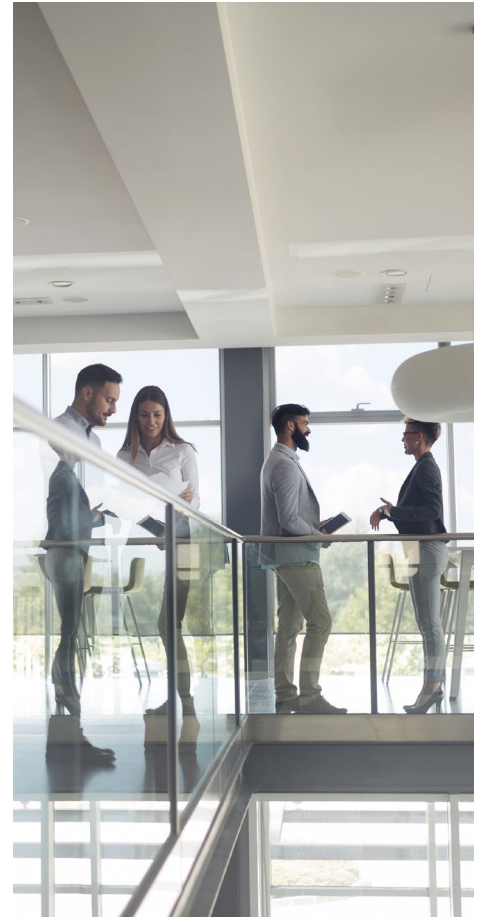
Beneficial ownership transparency stimulates sound investment, can reduce transactional costs and risks, and ultimately helps to tackle corruption, fraud, and money laundering. Beneficial ownership registries are widely recognised as essential for not only delivering on the key aspects of transparency, but also in preventing and investigating tax evasion, improving global competitiveness, creating sustainable trading environments and even protecting national security.

The goal – shared by many governments, businesses, and citizens – is that access to accurate high-quality information on the true owners of companies, trusts and properties should be available to citizens, investigative bodies, and other public sector agencies. This access is instrumental in the reduction of risk and the creation of a more sustainable business environment.²

Achieving this objective will require adaptive and consistent policy reform, international guidance, smart registry platforms that are modern and interoperable, as well as collaboration across the entire community of beneficial ownership stewards and reformers.

Open Ownership (OO) is the leading global hub for beneficial ownership information and advice, from drafting laws to verifying data and assisting in implementation. For governments to achieve success on beneficial ownership transparency, OO stipulates that the next five years will be critical, and will require:

- Effective and context-sensitive implementation of beneficial ownership commitments in order to deliver an ecosystem of high-quality data across a critical mass of countries (and in Canada's case, all the provinces, and territories);
- Robust new research is needed to advance debates on issues such as balancing privacy and public access, and how to verify data held in beneficial ownership registers;
- The use of data scaled up to realise the potential of beneficial ownership reforms as a cornerstone of 21st century governance.³



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Over 100 countries have committed to beneficial ownership transparency in at least one sector of their economy.

Source: Open Ownership 2021

¹ Beneficial Ownership in law: Definitions and thresholds. October 2020 Open Ownership

^{2,3} Nowhere to Hide: Realising the potential of beneficial ownership reform – November 2021 Open Ownership



The Canadian Challenge

Canada has faced significant criticism in recent years for its perceived lack of action in combatting both money laundering and related corruption. A 2020 report by the Criminal Intelligence Service estimates that between \$45 and \$113 billion is laundered annually through Canada.⁴

Canada has a mixed collection of disclosure rules for corporate registries in each province and territory. None of them currently require the disclosure of the beneficial owner.

The federal government and several provinces have passed legislation requiring private corporations to create and maintain their own registers of beneficial owners. These registers are a useful first step, but they do not go far enough in terms of transparency and accessibility as they are not public, are not audited and lack any effective enforcement mechanism for noncompliance.

Canada's weak corporate transparency rules have earned it an international reputation as a place to launder money and evade taxes. This is in part because Canada allows individuals to easily register shell companies with little scrutiny; not even requiring the name of the real owner. Combined with Canada's various tax minimization laws, we have become a prime destination for tax evasion, even earning a unique nickname for the practice – "snow-washing"⁵.

Bad actors have identified Canada as one country where they can exploit a wide gap between perception and reality. Canada enjoys a reputation as an affluent and stable country with good governance, robust democracy, and rule of law. Yet, the ease of establishing and maintaining intricate webs of opaque corporate ownership structures make it possible to set up and operate companies from abroad with little risk of being held accountable for wrongdoing – largely due to vast shortcomings in Canada's financial crime detection and enforcement mechanisms.⁶

Under the global anti-money laundering and anti-terrorist financing standards and guidance on transparency and beneficial ownership (set by the Financial Action Task Force (FATF)⁷, centralized registries of the beneficial owners of corporations are one of the tools that countries can use to ensure competent authorities have adequate, accurate and timely access to beneficial ownership information to support investigations.

Implementing beneficial ownership registries requires stakeholder consultation, effective law reforms and global benchmarking to ensure the appropriate jurisdictional design and that the governance and compliance within these registers are effective and meaningful to fulfill their intended purpose.

⁴ Criminal Intelligence Service Canada – Report on Organized Crime in Canada 2020 – published February 2021

⁵ Canadian Labour Congress - canada-should-crack-down-on-tax-evasion-and-put-that-revenue-to-good-use. May 2021

⁶ Transparency International Canada, "No Reason to Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts", 2016; FATF, "Anti-money laundering and counter-terrorist financing measures: Canada Mutual Evaluation Report", September 2016

⁷ Guidance on Transparency and Beneficial Ownership – FATF 2014



According to the Strengthening Corporate Beneficial Ownership Transparency in Canada 2020 public consultation paper published through the Ministry of Innovation, Science and Economic Development (ISED), Canada needs to increase corporate transparency to:

- combat money laundering, terrorist financing, tax evasion or avoidance, and other illicit activity; and
- ensure Canada's laws are consistent with international standards and best practices.⁸

Canada has moved slowly in progressing corporate transparency for years while some countries, such as the UK, which launched a Person of Significant Control (PSC) register of beneficial owners of UK companies in 2016, have made significant strides.

Over the course of the ISED consultations, the Government heard a clear message from a broad range of stakeholders — including law enforcement and tax agencies, industry associations, privacy commissioners, individual Canadians, and civil society organizations— that we must move more quickly and that more must be done to reduce the risk of corporations being misused for illicit activities, such as money laundering and tax evasion.

The Ontario Information and Privacy Commission strongly supports Canada moving to a government-controlled registry or registries of beneficial ownership data. Such registries consolidate data, making it more accessible and help to bring a level of accountability and enforcement which is lacking in decentralized corporation-maintained registers.

To enhance transparency about beneficial ownership, the ultimate objective for the federal, provincial, and territorial governments should be the creation of a public registry or registries.⁹

Nearly all parties participating in the consultation agreed that there is a legitimate public policy rationale for housing beneficial ownership data within a central government repository. The registry (or registries, at the provincial and territorial level) should be interoperable with beneficial ownership data easily exchanged, contain accurate, verified, and up-to-date data and use the latest in digital technologies.¹⁰

Stakeholders called on the federal government to take a lead role in ensuring a seamless and standardized system interoperable with existing federal and provincial registries to reduce the need for multiple filings and to facilitate compliance.

Transparency International Canada (TIC) is Canada's leading anti-corruption organization and is the Canadian chapter of the global Transparency International (TI) movement which has chapters working in more than 100 countries and an unparalleled global understanding and expertise of the challenges in developing and implementing beneficial ownership regimes. TIC's Executive Director, James Cohen, has not minced words in his evaluation on Canada's current standing in the realm of beneficial ownership transparency and the need to adopt lessons learned from other jurisdictions to play catch-up.

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Canada's reputation on beneficial ownership transparency and anti-money laundering enforcement has been bad for quite some time.

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We can learn from other countries like the UK and improve on their registry to hopefully go from last place to front of the class.

Source: James Cohen, Executive Director of Transparency International Canada

⁸ Innovation, Science and Economic Development Canada and Finance Canada, Consultation Paper: Strengthening Corporate Beneficial Ownership Transparency in Canada, February 2020

⁹ Office of the Information and Privacy Commissioner of Ontario Submission on Consultation Paper: Strengthening Corporate Beneficial Ownership Transparency in Canada, March 2020

¹⁰ <https://ised-isde.canada.ca/site/consultation-strengthening-corporate-beneficial-ownership-transparency-canada/en>

Evaluating the UK's Approach and Lessons Learned in Canada



The UK's beneficial ownership registry has been held up as a worthy model for Canada by some who track ownership transparency issues, such as TIC and others.

James Cohen has noted that "Canada could come closer to the UK's beneficial ownership model if the federal government can secure agreements from the provinces to work with Ottawa to create a "pan-Canadian" beneficial ownership registry."¹¹

The UK is quickly moving towards having registers of beneficial ownership covering three different types of assets: companies, property, and trusts.

The UK's Economic Crime (Transparency and Enforcement) Act 2022 was rushed through Parliament in just over two weeks in response to Russia's invasion of Ukraine. It brings into law a requirement that overseas entities holding UK real estate must disclose their beneficial owners.

One of the most common methods used to launder money through real estate is the use of shell companies, front companies, trusts and complex corporate structures established domestically or offshore.

Owning a property through a legal vehicle distances the individual holding the illicit funds from ownership. Therefore, it is essential to have information not only about the legal owners who own a property, but also of all real living individuals behind them who benefit from and have control over the asset.

Shining a light on the laundered wealth of the corrupt and curbing their use of real estate for concealing and stashing their illicit gains, will depend on similar reforms like that in the UK in other open information sharing jurisdictions like Australia, Canada, and the United States.¹²

These countries will need to start to collect beneficial ownership information and record it in publicly accessible property registers. Property registers should also include key data such as historical ownership,

property value and purchase date. For the registers to be most effective, they should be interoperable, easily accessible and – where the data may be of importance to investigations – in an open data format.¹³

As for the provinces dealing with beneficial ownership covering property, there are lessons learned but still much to be accomplished to deal with real estate ownership disclosure and transparency.

Home to one of the hottest real-estate markets in the world, British Columbia has been at the forefront of increasing land ownership transparency in Canada. In 2018, with the dream of home ownership becoming increasingly illusory for many of its lower-mainland residents, the province announced plans to establish a beneficial ownership registry in hopes of increasing affordability by ending hidden ownership of property.



¹¹ <https://financialpost.com/fp-finance/hunt-for-oligarch-assets-adds-new-urgency-to-canadas-plan-for-beneficial-ownership-registry>

^{12, 13} REAL ESTATE DATA – 2020 Shining a light on the corrupt – Transparency International



The Land Owner Transparency Act became law upon receiving royal assent on May 16, 2019, but most provisions did not come into force until November 30, 2020 with the Land Owner Transparency Registry (LOTR) itself becoming searchable in on April 30, 2021.

As with many ground-breaking initiatives, the timeline set by the province from ideation to implementation was ambitious and the process has not been without its challenges. As an example, the initial reporting deadline for reporting bodies holding pre-existing interests in land was extended from November 30, 2021 to November 30, 2022, in recognition of the administrative strain created by the COVID-19 pandemic and as a result of legal professionals requesting more time for pre-existing homeowners to gather information about ownership and prepare to file into the LOTR.

The sluggish rollout is no surprise to those familiar with land dealings and ownership complications in the province. While most pieces of land in the province are owned by individuals whose names are listed in public records, ownership is not always so straightforward. In fact, many thousands of pieces of land are held by trusts, real estate investment companies, partnerships and, occasionally, obscure companies whose real directors are hidden from view – all ultimately part of a group commonly referred to as “beneficial owners.”¹⁴

Drafting and implementing laws to capture these varying structures is inherently challenging. “It was a very difficult law to write. We’ve brought in this very complicated system,” said Ron Usher, general counsel for the Society of Notaries Public of B.C.¹⁵



¹⁴ B.C.’s land registry aimed at finding hidden owners bogged down by concerns over clarity, confidentiality - The Globe and Mail – April 11, 2022

¹⁵ <https://globalnews.ca/news/8655696/bc-government-comes-up-empty-handed-search-for-russian-owned-properties/>

Looking Forward



Under the 2022 Canadian Federal Budget the government has committed to put in place a public Beneficial Ownership Transparency (BOT) registry for corporations by the end of 2023. This is two years earlier than initially planned with the intended outcome being to directly assist investigative authorities to identify the true owners of companies and trusts.

The “pan-Canadian” Beneficial Ownership Transparency registry will cover corporations governed under the Canada Business Corporations Act. It should be a scalable and cloud-based registry that allows access to the beneficial ownership data held by provinces and territories that agree to participate in a national framework.

On a provincial level as it relates to foreign interests in property ownership, the initial setbacks experienced in British Columbia should not deter other Canadian jurisdictions from moving forward on their own transparency initiatives. Instead, other provinces should seek to learn from these growing pains in crafting and implementing their own beneficial ownership regimes.

The matter is of particular urgency for other major economic centres in Canada with robust real-estate markets which serve as key targets for transnational criminals seeking to take advantage of weak transparency laws in hiding their ill-begotten gains in the real-estate sector.

A new report from TIC reveals that Ontario is increasingly marketed in Russia and elsewhere as an ideal location for money laundering and fraud.¹⁶

The Federal government and the provinces need a two-pronged approach to greatly improve our reputation around money laundering and ownership transparency, requiring beneficial ownership transparency in our registries.

Firstly, we need to align ourselves closer to the UK’s beneficial ownership models. To be maximally effective, the Federal government will need to work to secure agreements from the provinces and territories to work with Ottawa to create a “pan-Canadian” beneficial ownership transparency registry for



corporations. This registry should have a centralized architecture and not just be an extension to existing provincial, territorial, and federal corporate registries, but more so complimentary to the data they currently collect.

Secondly, to address transparency in the real estate sector, Ontario and other provinces can learn directly from both B.C.’s LOTR experiences as well as the UK model focussed on data sharing and governance across the Companies Office and the Land Registry. Also, provinces should move to adopt similar reforms to those enacted in the UK and require that foreign entities holding real estate accurately disclose their ultimate owners through transparent and openly accessible LOTR’s that are then directly linked to a “pan-Canadian” beneficial ownership registry.

¹⁶Transparency International Canada - Snow-washing, Inc: How Canada is marketed abroad as a secrecy jurisdiction, 2022



Ideally, these registers should be aligned with global standards, and so to further simplify and future-proof the data collected and ensure effective interoperability across jurisdictions, it has been recommended that they adopt the Open Ownership's Beneficial Ownership Data Standard (BODS). The BODS global standard "describes what data should be shared and how... and provides guidance on data publishing processes and data use."¹⁷

There are valuable insights to be gained from the global community as well as recent Canadian consultations that can be directly leveraged in the appropriate design and timely implementation of ownership transparency in registries across Canada.

Achieving this objective will require adaptive and consistent policy reform, international guidance, private and public sector innovation, implementation of smart registry platforms, and collaboration across the entire community of beneficial ownership stewards and reformers.

Beneficial ownership transparency in Canada will stimulate sound investment, ultimately help to tackle corruption, fraud, and money laundering across

our companies, properties and trusts. By achieving a pan-Canadian beneficial ownership regime we will improve business processes and practices and address key economic and national security gaps that currently exist. In doing so, Canada will have demonstrated its serious commitment to be a digital services leader while meeting its obligations to the global ownership transparency community.



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Teranet Inc.



¹⁷ Implementing a Publicly Accessible Pan-Canadian Registry of Beneficial Ownership Legislative and Technical Options, 2020 Transparency International Canada



Teranet® is Canada's leader in the delivery and transformation of statutory registry services with extensive expertise in land and corporate and personal property registries.

For more than three decades Teranet has been a trusted partner to governments and businesses in building stronger communities and economies. Teranet developed and currently operates Ontario's Electronic Land Registration System and Writs System as well as Manitoba's Land Titles and Personal Property.

Governments entrust Teranet with the security and delivery of electronic services that draw on innovative platform technologies and analytics to create valuable market insights and efficiencies to a range of customers across Canada.



Verne® is a Registry Aware® platform that delivers a powerful suite of tools to all government registries, enabling them to provide accurate, timely and trusted data to the business and legal community.



Foster Moore®, a Teranet company, – is a specialist registry software company focussed on digital services for modernizing government.

For two decades the team at Foster Moore has developed and maintained online business registry systems, and a host of other smaller electronic registries across the globe. Our work with the New Zealand Companies Office commenced at the very early stages of their initiative to deliver the world's first online companies register. Since developing the world's first fully electronic online business registry in 1996, Foster Moore has designed and built over thirty different types of registers.

Most recently, Foster Moore, provided the Australian Taxation Office (ATO) with an innovative solution to power Australia's newly established Director ID registry. The Director ID legislation requires all directors to confirm their identity and provides a unique identifier for each person who consents to being a director. The director ID provides traceability and auditability of a director's relationships across companies.

Foster Moore's registry solutions power business registries in 21 jurisdictions across the globe. We have implementations in North America, South East Asia, the Middle East, Africa, the Pacific and New Zealand.

Developed in line with the Open Ownership Beneficial Ownership Data Standard (BODS) and leveraging off our unsurpassed business registry experience, Foster Moore's Verne® Beneficial Ownership product enables business registries to rapidly deploy a compliant, easy to use beneficial ownership register.

Foster Moore modernized the Ontario Business Registry in 2020 and will be implementing a beneficial ownership registry for the Bermuda Registrar of Companies in 2022.

The beneficial ownership register itself is only useful if it is accessible. Either by regulators or, as is argued, by the public. Equally important is the ease of capturing the information needed for the register and in keeping that information up to date.

Electronic registries are the obvious choice.



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