

## ANTI-MONEY LAUNDERING 2019

PAPER 1.3

# Introduction to Money Laundering: Context, Global Trends and Recent Canadian Developments

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## INTRODUCTION TO MONEY LAUNDERING: CONTEXT, GLOBAL TRENDS AND RECENT CANADIAN DEVELOPMENTS

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### I. Introduction and Context

- Organized crime’s relentless commission of offences like global trafficking in drugs and in human beings causes unspeakable human suffering, as does grand scale corruption.
- The President of the World Bank has referred to global corruption as “public enemy #1 in the developing world.”<sup>1</sup>
- The UN High Commissioner for Human Rights has stated: “Let us be clear. Corruption kills. The money stolen is enough to feed the world’s hungry every night.”<sup>2</sup>

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<sup>1</sup> Gerry Ferguson, 2018. *Global Corruption: Law Theory and Practice* at p. 7 (UVic).  
<https://icclr.law.ubc.ca/resources/global-corruption-law-theory-and-practice/>

### 1.3.2

- The illicit proceeds from these types of offences are immense. But to fully enjoy those illicit proceeds, criminals need to integrate the proceeds into the lawful economy by laundering them.
- Money laundering is the life-support machine that keeps these crimes alive. Dismantling the money laundering machine is one important way to reduce these terrible crimes.

#### **A. Global Influences on Canada's Money Laundering Legislation**

Canada's anti-money laundering regime has been largely shaped by global responses to money laundering.

Thirty years ago, money laundering began to emerge as a significant global concern. There are two international conventions and one intergovernmental body which have been particularly important in shaping Canada's money laundering regime. They are:

1. The Financial Action Task Force (FATF) <sup>3</sup>
2. Organisation for Economic Co-operation and Development (OECD) *Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions* (hereinafter *OECD Convention Against Bribery*)(1999)<sup>4</sup>
3. United Nations (UN) *Convention Against Corruption* (2005)<sup>5</sup>

Since Canada is a member of the FATF and a ratifier of the two Conventions, our domestic law is required to reflect the content of these documents and the FATF Recommendations referred to below.

#### **B. The Financial Action Task Force (FATF)**

The FATF is an international intergovernmental body, created by the G7 countries in 1989. The FATF develops and promotes a national and international response to money laundering. The FATF currently consists of 34 countries.

In 1990, the FATF created its 40 Recommendations designed to combat money laundering. These 40 Recommendations (in their latest iteration)<sup>6</sup> are recognized as the universal standard and best practices for combatting money laundering.

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2 *Ibid* at p. 11.

3 Financial Action Task Force. *Who we are*. <https://www.fatf-gafi.org/about/>

4 The *OECD Convention Against Bribery* does not deal extensively with money laundering, but it does touch on it in Articles 7 and 8. For further discussion see Ferguson, *ibid* at p. 338-339.

5 For an explanation of the mandatory and optional money laundering requirements under the UNODC Convention, see Ferguson, *ibid* at p. 323- 338.

6 The original recommendations in 1990 have been revised four times: 1996, 2001, 2003, and 2012.

### 1.3.3

According to the FATF, their objectives are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other threats related to the integrity of the international financial system. Starting with its own members, the FATF monitors countries' progress in implementing the FATF Recommendations; reviews money laundering and terrorist financing techniques and counter-measures; and promotes the adoption and implementation of the FATF Recommendations globally.

The FATF Recommendations include, amongst other things, the creation in each member country of a financial intelligence unit [FIU] (e.g. FINTRAC in Canada), the duty on reporting entities<sup>7</sup> to (1) advise the FIU of potentially suspicious transactions, (2) to conduct customer due diligence, and (3) to keep records of relevant financial transactions. The recommendations also deal with necessary enforcement powers for the FIU.<sup>8</sup>

An important function of the FATF is its monitoring and evaluation of each country's compliance with its 40 Recommendations. The evaluation for each country is conducted by an assessment team consisting of a number of experts appointed to the team from other member countries other than the country under review. The evaluations are made public and are available on the FATF website.<sup>9</sup>

For 10 years (1990-2000), Canada did very little to incorporate the FATF's 40 Recommendations into its national legislation.

Starting in 2000, the federal government enacted fairly comprehensive legislation now called the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* plus a number of money laundering regulations under the *Act*.<sup>10</sup>

## C. Total Amount of Money Laundered: Globally

"Nobody really knows, but the experts all agree that it is a lot!"

The best estimates come from agencies like the UN Office on Drugs and Crimes (UNODC), the International Monetary Fund, and the FATF. They estimate that money laundering constitutes

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7 Reporting entities is the expression used to describe financial institutions and persons involved in financial transactions who are mandated by the relevant legislation to report financial information under prescribed circumstances, as set out in the relevant anti-money laundering legislation.

8 Financial Action Task Force. *The FATF Recommendations 2012*. <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>; For further discussion of the FATF requirements, see Ferguson, *supra* note 1 at p. 339-343.

9 See for example, Financial Action Task Force, September 2016. *Anti-money laundering and counter-terrorist financing measures: Canada Mutual Evaluation Report*. <https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-canada-2016.html>

10 *Canadian Criminal Code*, RSC 1985, c 42 (4th Supp.), as amended, Part XII.2- Proceeds of Crime. These provisions have been amended several times. The regime also includes regulations entitled *Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations* SOR/2007-292. For a detailed analysis of Canada's money laundering laws and regulations, see Peter German, *Proceeds of Crime: The Criminal Law, Related Statutes, Regulations and Agreements* (Carswell, loose leaf, updated quarterly) and Terrence Hall, *A Guide to Canadian Money Laundering Legislation* (4<sup>th</sup> ed., Lexis Nexis, 2015).

### 1.3.4

anywhere between 2 to 5% of global GDP annually<sup>11</sup> or, in other words, anywhere between 1.5 and 3.75 trillion dollars.

What could governments do globally with the lower estimate of 1.5 trillion dollars?<sup>12</sup>

- eradicate **malaria** (\$8.5 billion over 7 years)
- provide **basic education** to all children (\$26 billion)
- wipe out **hunger** (\$116 billion)
- bridge the entire global **infrastructure** gap (\$1 trillion)

#### D. Total Amount of Money Laundered: Canada

Again we don't know, but everyone agrees it's a lot!

For example, if the total amount is 2 to 5% of Canada's 1.65 trillion dollar GDP, that means at least 33 to 82 billion dollars are laundered annually in Canada.

FINTRAC conservatively estimates that money laundering could be between 5 to 40 billion dollars annually.<sup>13</sup>

Transparency International Canada (TI Canada) and others have suggested it could be as high as 100 billion dollars,<sup>14</sup> which seems to me to be a more realistic figure, particularly since Canada has been seen internationally as a money laundering haven.

Imagine what poverty and other social problems Canada could solve with 100 billion dollars a year.

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11 United Nations Office on Drugs and Crime. *Money-Laundering and Globalization*.

<https://www.unodc.org/unodc/en/money-laundering/globalization.html> ; Financial Action Task Force. *How much money is laundered each year? Frequently Asked Questions*. <https://www.fatf-gafi.org/faq/moneylaundering> .

The International Monetary Fund, as early as 1998, estimated that the aggregate size of money laundering in the world could be somewhere between two and five percent of the world's GDP.

12 World Economic Forum, January 12 2017. *We waste \$2 trillion a year on corruption. Here are four better ways to spend that money*. <https://www.weforum.org/agenda/2017/01/we-waste-2-trillion-a-year-on-corruption-here-are-four-better-ways-to-spend-that-money/>

13 This estimate comes from a report titled, *Estimating Scale of Money Laundering in Canada*, prepared by FINTRAC, which attempts to identify the best way of defining the contours of money laundering. Ultimately, the report did not settle on a single solution, and estimated that money laundering could be anywhere from \$5 billion to \$40 billion dollars. Although the report was not made public, it was recently shared with the Globe and Mail: Mike Hager, *Globe & Mail*, March 13 2019. *Federal watchdog unable to reliably estimate scope of Canada's money-laundering problem: report*. <https://www.theglobeandmail.com/canada/british-columbia/article-federal-watchdog-unable-to-reliably-estimate-scope-of-canadas-money/>

14 See for example, Transparency International Canada, 2019. *Opacity: Why Criminals Love Canadian Real Estate (And How to Fix It)* at fn 12. <http://www.transparencycanada.ca/wp-content/uploads/2019/03/BOT-GTA-Report-WEB-copy.pdf> ; Denis Meunier (Former Deputy Director of FINTRAC), September 2018. *Hidden Beneficial Ownership and Control: Canada as a Pawn in the Global Game of Money Laundering*, Commentary No. 519. C.D. Howe Institute at p. 1. [https://www.cdhowe.org/sites/default/files/attachments/research\\_papers/mixed/Final%20for%20advance%20release%20Commentary\\_519\\_0.pdf](https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/Final%20for%20advance%20release%20Commentary_519_0.pdf)

## E. Total Amount of Money Laundered: British Columbia

In Vancouver in recent years, there have been startling estimates of the amount of criminal proceeds being laundered through BC casinos, and elsewhere, with that money then ending up in higher end Vancouver real estate. Peter German's Report, *Dirty Money*, published in March 2018, has shown us how easily huge sums of dirty money have been laundered through BC casinos.<sup>15</sup>

T.I. Canada in its 2016 report "No Reason to Hide..."<sup>16</sup> revealed that the true ownership of nearly half of Greater Vancouver's 100 most expensive homes was hidden through either shell companies, trusts or nominees. This lack of transparency in the ownership structure of these homes facilitates the strong possibility of the homes being owned by criminals who purchased them with the proceeds of crime. Indeed subsequent investigation has indicated that several of the actual owners are highly connected with organized crime.

The RCMP conducted a secret intelligence report in 2016 which only became public six months ago.<sup>17</sup> That report suggested as much as one billion dollars of crime proceeds, annually, could have been used to buy houses in Metro Vancouver.

Peter German's second Money Laundering Report, and an Experts Report on Money Laundering in BC chaired by Maureen Maloney, will soon be released and will no doubt show the shocking amounts of criminal proceeds being washed in BC real estate, and elsewhere.

## F. Who are the Money Launderers?

Money laundering schemes are incredibly diverse and thus the money launderers themselves are very diverse.

Money launderers can include: Drug dealers, corrupt heads of state, cult leaders, marathon organizers, small business owners, lawyers and law firms, accountants, executives, directors and senior employees of multinational companies, banks and other financial institutions.<sup>18</sup>

Sometimes it is assumed that laundering of dirty money is only done by organized crime groups and their underground banks. In fact, much of the laundered money flows through major global and domestic banks and financial institutions and through the enabling hands of professionals

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15 Peter German, QC, March 31 2018. *Dirty Money: An Independent Review of Money Laundering in Lower Mainland Casinos* conducted for the Attorney General of British Columbia. [https://news.gov.bc.ca/files/Gaming\\_Final\\_Report.pdf](https://news.gov.bc.ca/files/Gaming_Final_Report.pdf)

16 Transparency International Canada, 2016. *No Reason to Hide: Unmasking the Anonymous Owners of Canadian Companies and Trusts* at p. 31. <http://www.transparencycanada.ca/wp-content/uploads/2017/05/TIC-BeneficialOwnershipReport-Interactive.pdf>

17 Global News. Sam Cooper, Stewart Bell, and Andrew Russell, November 26 2018. *Secret police study finds crime networks could have laundered over \$1B through Vancouver homes in 2016.* <https://globalnews.ca/news/4658157/fentanyl-vancouver-real-estate-billion-money-laundering-police-study/>; The Georgia Straight. Charlie Smith, December 13 2018. *Attorney General David Eby never knew about RCMP's secret report on money laundering until it became public.* <https://www.straight.com/news/1177466/attorney-general-david-eby-never-knew-about-rcmps-secret-report-money-laundering-until>

18 Ferguson, *supra* note 1 at p. 308-309.

### 1.3.6

like lawyers and accountants. Sometimes this flow occurs in spite of due diligence and other times it occurs with little or no due diligence.

For example, the following major financial institutions have all been convicted and fined for participating knowingly or through willful blindness in the laundering of huge sums of money:<sup>19</sup>

- JP Morgan Chase in New York
- Citigroup in New York
- HSBC in London
- Standard Charter of London
- ING in Amsterdam
- Deutsche Bank in Germany

On the other hand, money laundering in Vancouver<sup>20</sup> and Toronto<sup>21</sup> real estate markets shows a shockingly high level of money laundering largely conducted by organized crime. The leaders of organized crime groups have laundered billions of dollars by buying Vancouver and Toronto real estate with the cash proceeds of drug trafficking and with loans or mortgages through private banks (ie. entities not required to report to FINTRAC).

## **G. Evaluating a Country's Risk of AML**

Since 2012, the Basel Institute on Governance has produced an annual index on anti-money laundering.<sup>22</sup> The Basel AML Index provides a helpful tool for assessing and comparing the risk of money laundering in different countries worldwide. The Index also provides for the ability to observe changes over time to the risk within a given country.

Risk is evaluated by looking at 14 indicators, including indicators targeting the country's laws and the country's financial transparency and accountability.<sup>23</sup>

It is important to note that the Basel AML Index rankings only calculate the risk of money laundering in each country. The rankings do not correspond with the amount of money that is laundered in each country. For example, Iran's place as the top ranked country on the Basel AML Index does not mean that Iran launders the most money. Rather, it means that the risk of money laundering is highest in Iran based on the 14 indicators used to create the Basel AML Index.<sup>24</sup>

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19 See for example, Bloomberg. Alan Katz, January 28 2019. *The Cost of Dirty Money*.  
<https://www.bloomberg.com/graphics/2019-dirty-money/>

20 Peter German, QC, *supra* note 15.

21 Transparency International Canada, *Opacity*, *supra* note 14.

22 Ferguson, *supra* note 1 at p. 371-373.

23 *Ibid* at p. 372.

24 *Ibid*.

### 1.3.7

KnowYourCountry is another risk ranking tool designed to provide a measure of the money laundering risk of countries around the world.<sup>25</sup> Similar to the Basel AML Index, KnowYourCountry provides a helpful tool for assessing and comparing the risk of money laundering in different countries worldwide.

Risk is evaluated by examining eight factors (one of which has four subfactors), by examining each country's compliance with the FATF recommendations and by ascertaining whether each country has international sanctions against violators of FATF.<sup>26</sup>

KnowYourCountry also provides users with individual country reports.<sup>27</sup> These reports provide an overview of how each country is doing with respect to the eight factors.

## H. Canada's Reputation for Money Laundering

Canada has earned a reputation internationally as a "safe haven", and a "utopia" for money laundering, and a "pawn" in the global game of money laundering.

One of the reasons is the ease with which anonymous or shell companies can be created. As TI Canada reports, "[a] recent study found that of 60 countries around the world—including known tax havens and secrecy jurisdictions—only in Kenya and a select few US states is it easier to set up an untraceable company than it is in Canada."<sup>28</sup> Further, TI Canada notes "[a]s a testament to the secrecy afforded in Canada, the law firm at the centre of the Panama Papers leak, Mossack Fonseca, marketed Canada to its clients as an attractive place to set up anonymous companies."<sup>29</sup>

TI Canada notes, "[i]n Canada, more rigorous identity checks are done for individuals getting library cards than for setting up companies."<sup>30</sup>

Canada has been referred to by many as a "laggard" due to its inaction in preventing the flood of money laundering in Canada.<sup>31</sup>

## I. Why is Canada a Magnet for Money Laundering?

Canada has strong and stable political, economic and legal systems, which make it a desirable investment country.

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25 KnowYourCountry. *Ratings Table*. <https://www.knowyourcountry.com/country-ratings-table>

26 KnowYourCountry. *Methodologies and Sources*. <https://www.knowyourcountry.com/methodologies-sources>

27 KnowYourCountry. *Reports*. <https://www.knowyourcountry.com/copy-of-country-reports>

28 Transparency International Canada, *No Reason to Hide*, *supra* note 16 at p. 15, citing Sharman et al, "Global Shell Games: Testing Money Launderers' and Terrorist Financiers' Access to Shell Companies" (2013).

29 *Ibid*.

30 *Ibid* at p. 6.

31 Meunier, *supra* note 14 at p. 1, 3. Canada has been criticized by various international governments and agencies for its lack of effective control of money laundering. For example, in 2014, the US Bureau of International Narcotics and Law Enforcement Affairs ranked Canada as a country of "primary concern" in respect to money laundering. US Department of State, 2014. *2014 INCSR: Major Money Laundering Countries*. <https://www.state.gov/j/inl/rls/nrcrpt/2014/vol2/222471.htm>

### 1.3.8

The West Coast of Canada is especially ideal since it is a major meeting point between Asia and North America, and is one of the most ethnically diverse regions throughout the world. Because Canada engages in a significant volume of lawful trade with Asia and Central and South America, this makes it easier for unlawful businesses from these regions to hide amongst the lawful ones.

Canada has been slow to recognize and acknowledge our large money laundering problem and therefore Canada has assigned few resources to combatting it.<sup>32</sup> International money launderers know the risk of apprehension in Canada is very low. Furthermore, if convictions are obtained, sentences appear lenient compared to many other jurisdictions. The FATF suggests sanctions imposed in Canada for money launderers are low and not dissuasive enough.<sup>33</sup> In 145 sentencing cases where money laundering was the most serious offence, nearly half received no prison time, and only 11% received over 2 years' incarceration.<sup>34</sup>

Inadequate investigative tools – our legal framework for fighting money laundering has some big gaps: none is bigger or more important than the ease with which beneficial owners of criminal proceeds can hide their ownership of those proceeds through shell companies, trusts and nominees.<sup>35</sup>

## J. Recovery of Proceeds of Crime

How much of laundered proceeds are detected or recovered?<sup>36</sup>

Sadly, most incidents of money laundering through financial institutions are never detected and the United Nations Office on Drugs and Crime (UNODC) states “less than 1% of global illicit financial flows [ie. money] is currently being seized and frozen.”<sup>37</sup>

The Stolen Asset Recovery Initiative (StAR), a joint World Bank and UNODC initiative, estimates that only 5 billion dollars (out of approximately 400 to 800 billion dollars of stolen assets) was recovered in the past 15 years (in other words, between 0.8% and 1.6% of stolen assets).<sup>38</sup>

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32 In fact, RCMP federal enforcement arguably sunk to zero in BC in the last year. See CBC News, April 8 2019. *No federally funded RCMP officers dedicated to money laundering in B.C., report reveals.* <https://www.cbc.ca/news/canada/british-columbia/peter-german-money-laundering-report-2019-1.5089036>

33 Financial Action Task Force, *supra* note 9 at p. 54 <https://www.fatfgafi.org/media/fatf/documents/reports/mer4/MER-Canada-2016.pdf>

34 *Ibid* as discussed in *Ferguson, supra* note 1 at p. 365.

35 Global News. Sam Cooper, September 6 2018. *Hidden ownership loopholes make Canada 'a pawn in the global game of money laundering' report says.* <https://globalnews.ca/news/4430806/canada-money-laundering-cd-howe-report/>. For a detailed analysis of hidden ownership loopholes generally, see the FATF-Egmont Group Report, note 69, below.

36 For a general discussion of the various issues arising out of asset recovery, see *Ferguson, supra* note 1 at Chapter 5, p. 386-506.

37 United Nations Office on Drugs and Crime, October 2011. *Estimating Illicit Financial Flows Resulting From Drug Trafficking and Other Transnational Organized Crimes, Research report* at p. 5. [https://www.unodc.org/documents/data-and-analysis/Studies/Illicit\\_financial\\_flows\\_2011\\_web.pdf](https://www.unodc.org/documents/data-and-analysis/Studies/Illicit_financial_flows_2011_web.pdf)

38 World Bank and UNODC. Kevin Stephenson et al., 2011. *Barriers to Asset Recovery: An Analysis of the Key Barrier and Recommendations for Action* at p. 1 <https://star.worldbank.org/sites/star/files/Barriers%20to%20Asset%20Recovery.pdf>

### 1.3.9

In their 2016 Mutual Evaluation Report, the FATF noted that asset recovery is generally low in Canada, although some provinces such as Quebec seem to be more effective in recovering assets linked to crime.<sup>39</sup> StAR released a report in 2014 entitled *Few and Far: The Hard Facts on Stolen Asset Recovery*, indicating that between 2006 and 2012 Canada only froze assets totalling 2.6 million dollars.<sup>40</sup> This is shockingly low considering at least 33 to 82 billion dollars are laundered annually in Canada.

- There are various barriers to asset recovery. In developing countries. Those barriers include limited legal, investigative and judicial capacity and inadequate resources. In developed countries, this problem is exacerbated where assets are hidden and where necessary laws are lacking to respond to requests for legal assistance.<sup>41</sup>

## II. Global Developments and Trends in Combatting Money Laundering

### A. Overview of Nine Developments and Trends

Below is a list of nine developments and trends in global efforts to combat money laundering. Undoubtedly there are more.<sup>42</sup>

- 1) There is a significant increase in the priority and the amount of money that many governments are allocating to fighting money laundering. One significant reason for this increase in government spending is the public and political outrage over the massive volume of tax evasion and money laundering through shell companies and tax havens that has been revealed by the Panama Papers in 2016,<sup>43</sup> as well as other huge corruption scandals which have rocked the world (e.g. Petrobras in Brazil).

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39 Financial Action Task Force, *supra* note 9 at p. 3, 6, 36.

40 World Bank and UNODC. Larissa Gray et al., 2014. *Few and Far: The Hard Facts on Stolen Asset Recovery* at p. 19-21. <https://openknowledge.worldbank.org/handle/10986/20002>

41 *Ferguson*, *supra* note 1 at p. 386-387.

42 For a detailed assessment of some trends and developments, see FATF Report, *Professional Money Laundering* (July 2 2018) <http://www.fatf-gafi.org/media/fatf/documents/Professional-Money-Laundering.pdf>. See also Morrison and Foerster LLP, April 24 2019. *Top 10 international anti-corruption developments for March 2019* <https://www.lexology.com/library/detail.aspx?g=7b10fe82-001f-4509-bedf-0f44975d9bfd>

43 The International Consortium of Investigative Journalists, the German newspaper *Suddeutsche Zeitung* and more than 100 media partners conducted a yearlong investigation sifting through 11.5 million leaked files connected to the law firm Mossack Fonseca, based in Panama. They discovered that Mossack Fonseca was one of the world's top creators of shell companies, creating 214,000 offshore companies, in order for people in more than 200 countries and territories to hide their assets: International Consortium of Investigative Journalists. *About the investigation*. <https://www.icij.org/investigations/panama-papers/pages/panama-papers-about-the-investigation/>

The Reuters Institute at Oxford University found that authorities had launched investigations or official inquiries in nearly half of the approximately 200 countries that were subject of reporting, while substantial legal, regulatory or policy changes were implemented by about one in five countries or international bodies: International Consortium of Investigative Journalists. Ben Hallman, March 15 2019. *Tallying Panama Papers Impact, One Change at A Time*. <https://www.icij.org/blog/2019/03/tallying-panama-papers-impact-one-change-at-a-time/>

### 1.3.10

- 2) Fraud and corruption charges, convictions and sanctions against giant multi-national companies by the US Department of Justice (DOJ) and Securities Exchange Commission (SEC) have increased.<sup>44</sup> This increase has resulted in these companies developing and operating complex and expensive anti-corruption, anti-money laundering compliance programs, implemented in an effort to avoid criminal law prosecution.<sup>45</sup> It remains to be seen whether these corporate compliance programs are cost effective.
  - 3) The number and size of rewards for whistleblowers who provide corruption and money laundering tips has increased.<sup>46</sup>
  - 4) Collaboration by financial institutions, regulators and law enforcement in detection of money laundering by sharing of financial information is beginning to occur.<sup>47</sup>
  - 5) As law enforcement detection improves, criminals are using more sophistication and professional expertise to disguise bribery schemes as ordinary commercial transactions.
  - 6) Increase in the development and use of AI software
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Transparency International reported that 23 countries have recovered at least \$1.2 billion in taxes: Transparency International, April 4 2019. *Three Years After the Panama Papers: Progress on Horizon*. [https://www.transparency.org/news/feature/three\\_years\\_after\\_the\\_panama\\_papers\\_progress\\_on\\_horizon](https://www.transparency.org/news/feature/three_years_after_the_panama_papers_progress_on_horizon)

- 44 For example, nine out of the ten largest FCPA penalty and disgorgement agreements with the DOJ/SEC have all involved foreign companies.

See Richard Cassin, March 11 2019. *With MTS in the new Top Ten, just one U.S. company remains*. <http://www.fcpablog.com/blog/2019/3/11/with-mts-in-the-new-top-ten-just-one-us-company-remains.html> ;

Richard Cassin, March 15 2019. *Why are new companies still landing on the Top Ten List?* <http://www.fcpablog.com/blog/2019/3/15/why-are-new-companies-still-landing-on-the-top-ten-list.html> ;

Richard Cassin, April 9 2019. *Fresenius lands on our top 10 disgorgement list*.

<http://www.fcpablog.com/blog/2019/4/9/fresenius-lands-on-our-top-ten-disgorgement-list.html> . For a summary of 2018 FCPA actions, see Arnold & Porter, January 17 2019. *Global Anti-Corruption Insights: Winter 2019*. <https://www.arnoldporter.com/en/perspectives/publications/2019/01/global-anticorruption-insights>

- 45 For discussion of anti-corruption compliance programs in the context of large multinational corporations, see *Ferguson, supra* note 1 at p. 802-844.
- 46 Harry Cassin reports that the SEC has awarded \$376 million to 61 individual whistleblowers since its first award in 2012. He also explains that SEC awards can range from 10 to 30 percent of the money collected when penalties are more than \$1 million. See Harry Cassin, March 26 2019. *SEC awards \$50 million to two whistleblowers*. <http://www.fcpablog.com/blog/2019/3/26/sec-awards-50-million-to-two-whistleblowers.html> . Also see Priya Roy, April 8 2019. *Proposed Kleptocracy Asset Recovery Rewards Act Adds Whistleblower Incentives and Protections*. <https://www.moneylaunderingnews.com/2019/04/proposed-kleptocracy-asset-recovery-rewards-act-adds-whistleblower-incentives-and-protections/#> . For an examination of whistleblower protections, see *Ferguson, supra* note 1 at p. 1007-1069.
- 47 Department of Finance Canada, February 7 2018. *Reviewing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime* at p. 33 <https://www.fin.gc.ca/activity/consult/amlatfr-rpcfa-eng.pdf> ; Norton Rose Fulbright. Tunde Fasoyiro and Jeremy Moller, February 2019. *Financial crime outlook- key themes for 2019*. <https://www.nortonrosefulbright.com/en/knowledge/publications/e28a5b6d/financial-crime-outlook-key-themes-for-2019>

### 1.3.11

- 1) By criminals to conduct and disguise money laundering; and
- 2) By law enforcement to detect, pinpoint and catch the newest AI money laundering schemes.<sup>48</sup>
- 7) Dramatic increase in the use of online shopping creates new risks of online money laundering.<sup>49</sup>
- 8) Recognition of the need to add more resources and better tools to dramatically improve the rate of successful recovery and return of corruption assets and crime proceeds is slowly emerging. One new and controversial asset recovery tool is the United Kingdom's unexplained wealth orders.<sup>50</sup>
- 9) The most dominant global trend and development, especially in the past five years, has been the pressure for governments to unmask anonymous beneficial owners who are able to hide their true identity in companies and trusts in order to commit tax evasion and shield their criminal proceeds from public and law enforcement scrutiny.

## B. The Most Dominant Global Development: Disclosure of Beneficial Ownership

### 1. Brief Account of Movement to Create Beneficial Ownership Registries

For the past 20 years, there have been increasing calls from public and private organizations to make individual ownership of corporations more transparent in order to thwart tax evasion, corruption, money laundering and other illicit activities by largely anonymous corporations.

In November 2001, the OECD issued a report calling on governments to obtain and share information on the beneficial ownership of corporations established within their jurisdiction.<sup>51</sup>

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48 BBC News. Jessica Bown, April 2 2019. *What's the new weapon against money laundering gangsters?* <https://www.bbc.com/news/business-47772362> ; Christine Duhaime, February 13 2019. How artificial intelligence is changing investigations, policing and law enforcement. <http://www.antimoneylaunderinglaw.com/2019/02/how-artificial-intelligence-is-changing-investigations-policing-and-law-enforcement.html> ; Forbes. Vishal Marria, January 16 2019. *Is Technology Helping or Hindering Our Fight Against Financial Crime?* <https://www.forbes.com/sites/vishalmarria/2019/01/16/is-technology-helping-or-hindering-our-fight-against-financial-crime/#794ffc06312e> ; Helen Jiang, September 10 2018. *The New Frontier: Using Artificial Intelligence to Help Fight Corruption.* <https://globalanticorruptionblog.com/2018/09/10/the-new-frontier-using-artificial-intelligence-to-help-fight-corruption/>

49 ACAMS TODAY, January 30 2019. *Emerging Financial Crime Threats for 2019.* <https://www.acamstoday.org/emerging-financial-crime-threats-for-2019/> ; The New Economy. Alexon Bell, May 1 2018. *Money laundering in a digital world.* <https://www.theneweconomy.com/business/money-laundering-in-a-digital-world>

50 Forbes. Vishal Marria, October 25 2018. *How the Unexplained Wealth Order Combats Money Laundering.* <https://www.forbes.com/sites/vishalmarria/2018/10/25/how-the-unexplained-wealth-order-combats-money-laundering/#4e5a45a14703> ; Peter Sproat, June 2018. Unexplained Wealth Orders: An Explanation, Assessment and Set of Predictors. *The Journal of Criminal Law*, 82(3), p. 232-244. <https://journals.sagepub.com/doi/pdf/10.1177/0022018318773210>

51 OECD Centre for Tax Policy and Administration, November 2001. *The OECD's Project on Harmful Tax Practices: The 2001 Progress Report* at p. 11. <http://www.oecd.org/ctp/harmful/2664438.pdf>

### 1.3.12

In June 2003, the FATF amended its 40 Recommendations to require countries to ensure that accurate information on beneficial ownership of corporate vehicles (and other legal arrangements) is available to competent enforcement authorities.<sup>52</sup>

From 2003 to 2013 dozens of organizations pushed for legislation to create transparency and access to beneficial ownership of corporations and trusts, but governments around the world took very little action in that regard<sup>53</sup>

In 2013, the G8 countries pledged to tackle anonymous ownership of companies.<sup>54</sup>

In 2014 the G20 countries all committed to endorsing the 10 principles outlined in the “High-Level Principles on Beneficial Ownership Transparency.”<sup>55</sup> The 10 Principles are intended to guide the nature and scope of domestic legislation on beneficial ownership. But the G20 countries, with the one exception of the UK, were still slow to enact such laws domestically.<sup>56</sup>

In April 2016, the UK became the first G20 country to require all non-public companies:

- 1) To keep a registry of people with significant control, directly or indirectly, over a company.<sup>57</sup> In most cases, significant control occurs where a person has indirect or direct ownership or control of more than 25% of shares or voting rights in a company, or when the person has the right to appoint or remove Directors.<sup>58</sup> This number is reduced from 25% to 5% in the case of politically exposed persons<sup>59</sup>
- 2) To require those companies to report information on beneficial ownership to the UK government’s Companies House. The Companies House then produces a publicly

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52 See Financial Action Task Force, *The FATF Recommendations 2012*, *supra* note 8 at Recommendations 24 and 25; Financial Action Task Force, September 2016. *FATF Report to the G20 Beneficial Ownership*. <http://www.fatf-gafi.org/media/fatf/documents/reports/G20-Beneficial-Ownership-Sept-2016.pdf> ; Financial Action Task Force, 2019, *History of the FATF*. <https://www.fatf-gafi.org/about/historyofthefatf/>

53 See for example, Connor Bildfell *Timeline of Key Developments in Beneficial Ownership Transparency* prepared for the conference “Follow the Money” Corruption, Money Laundering and Organized Crime” (Vancouver, BC, October 28 2016) hosted by the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR).

54 The Guardian. Larry Elliott, June 18 2013. *G8 countries agree to tackle tax evasion*. <https://www.theguardian.com/world/2013/jun/18/g8-countries-agree-tackle-tax-evasion>

55 See G20, 2014. *G20 High-Level Principles on Beneficial Ownership Transparency*. [http://www.g20.utoronto.ca/2014/g20\\_high-level\\_principles\\_beneficial\\_ownership\\_transparency.pdf](http://www.g20.utoronto.ca/2014/g20_high-level_principles_beneficial_ownership_transparency.pdf)

56 See Transparency International, 2018. *G20 Leaders or Laggards? Reviewing G20 promises on ending anonymous companies*. [https://transparency-france.org/wp-content/uploads/2018/04/TI\\_G20-Leaders-or-Laggards.pdf](https://transparency-france.org/wp-content/uploads/2018/04/TI_G20-Leaders-or-Laggards.pdf)

57 Gov.UK, April 6 2016. *‘People with Significant Control’ register comes into force*. <https://www.gov.uk/government/news/people-with-significant-control-register-comes-into-force>

58 *Ibid.*

59 Gov.UK. *Beneficial Ownership Guide*. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/703499/uk-eiti-beneficial-ownership-guide-2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/703499/uk-eiti-beneficial-ownership-guide-2017.pdf)

### 1.3.13

available register of that information on the beneficial ownership and control of private corporations.<sup>60</sup>

On July 9 2018, the EU's AML Directive 5 came into force and it has set January 10, 2020 as the deadline for all 28 EU countries to enact the Provisions of the AML5 into their domestic laws.<sup>61</sup>

The EU AML5:

- Requires the creation of a beneficial registry.<sup>62</sup> The registry must include individuals who own or control, directly or indirectly, a company by having more than 25% of the shares or voting rights of that company. <sup>63</sup> Plans to lower the quorum of beneficial ownership to 10% were not adopted.<sup>64</sup>
- The registry will be publicly available with only a few exceptions.<sup>65</sup>
- It is mandatory to consult the beneficial registry as part of AML due diligence;<sup>66</sup>
- Virtual currencies such as bitcoin will now be subject to AML transaction reporting regulations;<sup>67</sup> and
- The value of prepaid cards excluded from AML regulation has now been lowered to €150.<sup>68</sup>

In time, one can expect that these EU provisions will spread to non-EU countries like Canada.

The latest FATF Report, Professional Money Laundering (July 2018) provides excellent insight and analysis of the methods and vulnerabilities of the use of beneficial ownership as a money-laundering tool.<sup>69</sup>

## 2. Movement to Create Beneficial Ownership Registries in Canada

While national and international pressure on Ottawa to act on beneficial ownership has existed for 15 to 20 years, it seems fair to say that until March 2019 no concrete proposals were

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60 Gov.UK, *supra* note 57.; Gov.UK, April 13, 2016. *The new 'people with significant control' register.* <https://companieshouse.blog.gov.uk/2016/04/13/the-new-people-with-significant-control-register/>

61 Library of Congress. Jenny Gesley, July 16 2018. *European Union: 5th Anti-Money Laundering Directive Enters into Force.* <https://www.loc.gov/law/foreign-news/article/european-union-5th-anti-money-laundering-directive-enters-into-force/>

62 Global Compliance News. Juergen Kraiss, July 16 2018. *EU: 5<sup>th</sup> EU Anti-Money Laundering Directive published.* <https://globalcompliancenews.com/eu-5th-anti-money-laundering-directive-published-20180716/>

63 ACAMS TODAY, December 12 2017. *Ultimate Beneficial Ownership.* <https://www.acamstoday.org/ultimate-beneficial-ownership/>

64 Global Compliance News, *supra* note 62.

65 ACAMS TODAY, *supra* note 63.

66 Global Compliance News, *supra* note 62.

67 *Ibid.*

68 *Ibid.*

69 FATF-Egmont Group Report, *Concealment of Beneficial Ownership* (July 2018), <https://www.fatf-gafi.org/publications/methodsandtrends/documents/concealment-beneficial-ownership.html>

enacted by the federal government. However the FATF's 2016 evaluation of Canada's anti-money laundering regime and at least three significant Canadian NGO reports strongly prompted the government to take action on the issue of beneficial ownership.<sup>70</sup>

### a. Federal Budget Speech and Bill C-97: March 19, 2019

The three most important AML developments in the 2019 Budget Speech and Bill<sup>71</sup> are:

- 1) significantly increasing law enforcement budgets to enhance the fight against money laundering;
- 2) broadening the legal definition of money laundering in the *Criminal Code*, thereby making it easier for prosecutors to obtain convictions; and
- 3) creating a new law enforcement tool to better detect and investigate money laundering, namely a register of beneficial corporate ownership.

### i. Significant Increase in AML Budget

In the 2019 Budget, the Liberal government has committed a significant amount of new money to strengthen law enforcement's fight against fraud, money laundering and tax evasion, particularly in the real estate sector. This new money includes the following:

- 1) Canada Revenue Agency (CRA) gets \$50 million (over 5 years) to create four new real estate audit teams in high-risk regions.<sup>72</sup>
- 2) The RCMP gets a new allocation of \$508.6 million (over 5 years) to enhance general operations.<sup>73</sup> The RCMP has additionally been promised up to \$68.9 million over five years, beginning in 2019–20, and \$20.0 million per year ongoing, to strengthen RCMP federal policing operational and investigative capacity to fight money laundering and other financial crimes.<sup>74</sup>
- 3) Public Safety Canada receives \$24 million over five years, beginning in 2019–20, to implement the Anti-Money Laundering Action, Coordination and Enforcement (ACE) Team as a pilot initiative. The ACE Team is designed to bring together dedicated experts from across intelligence and law enforcement agencies to strengthen inter-

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70 See Financial Action Task Force, *supra* note 9; Transparency International, *Opacity*, *supra* note 14; Meunier, *supra* note 14; and Transparency International, *No Reason to Hide*, *supra* note 16. See also The Lawyer's Daily. Cristin Schmitz, September 10 2018. *Calls for beneficial ownership registry grow as lawyers face new client ID, verification rules*. <https://www.thelawyersdaily.ca/articles/7283/calls-for-beneficial-ownership-registry-grow-as-lawyers-face-new-client-id-verification-rules>

71 See Bill C-97 *An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures*. 42nd Parliament, 1st Session. Referred to Second Reading Committee Stage on April 30, 2019. <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-97/first-reading> ; *Investing in the Middle Class: Budget 2019*. Tabled in the House of Commons by the Honourable William Francis Morneau, P.C., M.P. Minister of Finance on March 19 2019 <https://www.budget.gc.ca/2019/docs/plan/budget-2019-en.pdf>

72 *Investing in the Middle Class: Budget 2019*, *ibid* at p. 32.

73 *Ibid* at p.183.

74 *Ibid*.

### 1.3.15

- agency coordination and cooperation and identify and address significant money laundering and financial crime threats.<sup>75</sup>
- 4) \$28.6 million is promised over four years, beginning in 2020–21, with \$10.5 million per year ongoing, to create a multi-disciplinary Trade Fraud and Trade-Based Money Laundering Centre of Expertise, which will complement the efforts of the ACE Team. This initiative will strengthen capacity at the Canada Border Services Agency and the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) to target growing threats.<sup>76</sup>
  - 5) FINTRAC receives \$16.9 million (over 5 years) and \$1.9 million per year ongoing to strengthen operational capacity at FINTRAC so that it can:
    - a) improve oversight of modern financial practices related to virtual currencies, foreign money service businesses, pre-paid products and customer identification;
    - b) expand public-private partnership projects to improve the overall efficiency and effectiveness of the AML/ATF Regime; and
    - c) increase outreach and examinations in the real estate and casino sectors with a focus on the province of British Columbia.<sup>77</sup>
  - 6) Provide \$1 million to Statistics Canada to conduct a data needs and data sharing assessment between provinces for AML and tax compliance.<sup>78</sup>

## ii. Broadening the Offence of Money Laundering

Bill C-97, the 2019 Budget Implementation Bill, adds the word “reckless” to the manner in which the offence of money laundering (s. 462.31 of the *Criminal Code*) can be committed.<sup>79</sup>

This revision makes the offence of money laundering potentially wider and easier to prove than the existing money laundering offence, which requires the prosecutor to prove the accused actually “knew or believed” the money in question was the proceeds of crime, rather than simply being “reckless” about that fact.<sup>80</sup> However, in criminal law, the line between “knew or believed” and reckless is subject to conflicting case law.

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75 *Ibid* at p. 199. It should also be noted that the 2018 Budget announced the creation of an Advisory Committee on Money Laundering and Terrorist Financing (ACMLTF) which was established by the Department of Finance on September 25 2018: Department of Finance Canada. *Advisory Committee on Money Laundering and Terrorist Financing (ACMLTF)*. <https://www.fin.gc.ca/act/acmltf-ccbafat/acmltf-ccbafat-eng.asp>

76 Investing in the Middle Class: Budget 2019, *ibid*.

77 *Ibid*.

78 *Ibid* at p. 33.

79 Bill C-97 *An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures*, *supra* note 71 at s.103.

80 *Canadian Criminal Code*, *supra* note 10 at s. 462.31.

### iii. Creation of a Federal Beneficial Ownership Register

The process of creating a federal beneficial ownership register began in earnest in 2017. The most significant steps in this process are set out below.

The compulsory five-year parliamentary review of Canada's *PCMLTFA* was assigned to the House of Commons Standing Committee on Finance in January 2018. In order to assist the Standing Committee, the Department of Finance published a document (February 7 2018) reviewing Canada's *PCMLTFA* and seeking views from interested parties on issues raised in their paper.<sup>81</sup> The Department received a significant number of written submissions on their consultation paper which are available online.<sup>82</sup> The Parliamentary Committee conducted hearings and published its 77 page report in November 2018.<sup>83</sup>

The above noted documents provide very useful information and background in regard to the issues and problems with *PCMLTFA* and Canada's overall anti-money laundering regime. One of the key discussions in the above documents was the creation of beneficial ownership registers.

This issue has now been addressed by Parliament in the 2018, and especially 2019, Budget Speeches and related legislation, which are briefly described below.

*Budget Implementation Act, 2018, No. 2*<sup>84</sup>

Sections 182 and 183 have amended the Canada Business Corporations Act (CBC Act) to:

- a) Require corporations to prepare and maintain a register of "individuals with significant control over the corporation" and to specify the type of identifying information the register must contain (s. 21.1);<sup>85</sup> and
- b) Add definitions in s. 2.1 of the *CBC Act* of the new expressions "significant number of shares" and "individuals with significant control over a corporation" (and extends the definition of "individual control" to "joint ownership or control").<sup>86</sup>

These provisions come into force on June 13, 2019!<sup>87</sup>

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81 Department of Finance Canada, *supra* note 47.

82 Department of Finance Canada, posted August 29 2018. *Submissions for Consultation Paper on Reviewing Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime*.  
<https://www.fin.gc.ca/consultresp/amlatfr-rpcf-at-eng.asp>

83 See House of Commons, 42nd Parliament, 1st Session, November 2018. *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward: Report of the Standing Committee on Finance*.  
<https://www.ourcommons.ca/Content/Committee/421/FINA/Reports/RP10170742/finarp24/finarp24-e.pdf> |  
See also the government's response to the Finance Committee Report (February 21 2019)  
[https://www.ourcommons.ca/content/Committee/421/FINA/GovResponse/RP10326634/421\\_FINA\\_Rpt24\\_GR/421\\_FINA\\_Rpt24\\_GR\\_PDF-e.PDF](https://www.ourcommons.ca/content/Committee/421/FINA/GovResponse/RP10326634/421_FINA_Rpt24_GR/421_FINA_Rpt24_GR_PDF-e.PDF)

84 *Budget Implementation Act, 2018, No. 2*, S.C. c. 27 [https://www.parl.ca/Content/Bills/421/Government/C-86/C-86\\_4/C-86\\_4.PDF](https://www.parl.ca/Content/Bills/421/Government/C-86/C-86_4/C-86_4.PDF)

85 *Ibid* at s. 183.

86 *Ibid* at s. 182.

87 The coming into force date is specified in s. 186 as six months after the Royal Assent of the Act: *Ibid* at s. 186. The Royal Assent date was December 13, 2018: LEGISinfo. *House Government Bill: Budget Implementation Act, 2018, No. 2*. <https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=10127729>

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*2019 Budget Implementation Bill C-97*<sup>88</sup> (Second Reading Committee Stage, April 30, 2019)

Section 99 adds s. 21.31 and s. 21.32 to the *CBC Act*:<sup>89</sup>

- a) Section 21.31 places a duty on corporations (to which section 21.1 applies) to provide “investigative bodies” with a copy of its “register of individuals with significant control” (or otherwise disclose such information)”
- b) Section 21.31(2) defines “investigative bodies” in s. 21.31(1) as:
  - i. Any police force
  - ii. The CRA or similar provincial tax agencies, and
  - iii. Any “prescribed body” (ie. established by regulation) that has investigative powers in relation to a broad list of offences listed in Schedule 1 of the 2019 Budget Implementation Bill C-97.

**Note:**

- 1) There is beneficial ownership disclosure to “investigative bodies,” but no access to beneficial ownership information for investigative reporters or other interested members of the public. This is a conservative position compared to other countries, such as the United Kingdom, and is contrary to the wishes of many Canadian organizations.<sup>90</sup>
- 2) The definition of “significant control” in s. 2.1 of the *CBC Act*<sup>91</sup> is complex and detailed but it is anchored in the expression “significant number of shares” which are defined as “25% or more of the voting rights” or “25% or more of all shares” of the company.

**Comment:** There is significant debate and disagreement globally and nationally whether the 25% share is too wide a gap for money launderers to easily walk through.

### 3. Movement to Create Beneficial Ownership Registries in British Columbia

In December 2017, the federal, provincial and territorial ministers of finance signed an agreement to amend their corporate statutes by July 1, 2019 to require corporations to collect information on beneficial owners, and make it available to enforcement authorities.

BC is the only Province to date that has taken some significant legislative action to do so.<sup>92</sup> Bill C-24 will require private corporations to keep a register of beneficial ownership which will be available to enforcement authorities but not the public.

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88 *Bill C-97 An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures, supra* note 71.

89 *Ibid* at s. 99.

90 See, for example, the two TI Canada Reports at notes 14 and 16 and the CD Howe Report at note 14, *supra*. See also the dissenting NDP report in the House of Commons, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward: Report of the Standing Committee on Finance, supra* note 83 at p. 77-78.

91 Section 2.1 was added by the *Budget Implementation Act, 2018, No. 2, supra* note 84.

92 See Standing Committee Report, *supra*, note 83, at p. 16. British Columbia’s new beneficial ownership registry for real estate in Bill C-23, if enacted, will be Canada’s first publicly searchable registry of its kind: BC Government News, April 2 2019. *New legislation makes B.C. global leader in ending hidden ownership.* <https://news.gov.bc.ca/releases/2019FIN0037-000545>

On April 2, 2019, BC government introduced two Bills for first reading<sup>93</sup>:

**a. Bill 23, *Land Owner Transparency Act***

Bill 23 is lengthy and complex in some parts (128 sections).<sup>94</sup> Bill 23 was preceded by the *Land Owner Transparency Act White Paper: Draft Legislation*.<sup>95</sup> The *White Paper* was published in June 2018 to get public and professional input and comments on its contents.<sup>96</sup>

Bill 23 will establish a public registry of beneficial owners of BC real property. The Land Title and Survey Authority will administer the registry.<sup>97</sup>

Bill 23 applies to “relevant” corporations, trusts and partnerships (s. 15(4)) and requires them to file transparency reports (ss. 12-15). “Relevant” corporations include a corporation which has a corporate interest in the real estate which constitutes 10% or more of the issued shares, or carries 10% or more of the voting rights at general meetings (s. 3).

Sections 18-24 specify the information required in a transparency report<sup>98</sup>, including information on the beneficial owner’s residency, social insurance number, tax number and the nature of the beneficial interest. Section 8 specifies that the beneficial owner’s citizenship must be included in a transparency report.<sup>98</sup>

Police, taxing authorities and regulatory authorities (including the LSBC) will have access to the transparency reports for law enforcement and regulatory purposes within their mandates (ss. 30-34).

Members of the public will only have access to the names of the persons who have an interest in land as beneficial owners (s. 35).

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93 *Ibid*; The Georgia Straight. Charlie Smith, April 2 2019. Finance Minister Carole James introduces legislation to make land ownership more transparent in BC. <https://www.straight.com/news/1222406/finance-minister-carole-james-introduces-legislation-make-land-ownership-more> ; Vancouver Sun. Rob Shaw, April 2 2019. *BC to create government registry of beneficial property ownership*. <https://vancouversun.com/news/local-news/b-c-to-create-government-registry-of-beneficial-property-ownership> ; Victoria News. Tom Fletcher, April 2 2019. *BC takes aim at ‘shell companies’ hiding property ownership*. <https://www.vicnews.com/business/b-c-takes-aim-at-shell-companies-hiding-property-ownership/>

94 Bill 23 – 2019 *Land Owner Transparency Act*. 41st Parliament, 4th Session. First Reading (April 2 2019). <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/41st-parliament/4th-session/bills/first-reading/gov23-1>

95 Ministry of Finance, June 2018. *Land Owner Transparency Act White Paper: Draft Legislation with Annotations*. <https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/buying-and-selling/land-owner-transparency-act-consultation/lota-white-paper-june-2018.pdf>

96 *Ibid*; British Columbia Government. *Land Owner Transparency Act Consultation*. <https://www2.gov.bc.ca/gov/content/housing-tenancy/real-estate-bc/consultations/land-owner-transparency-act-consultation>

97 BC Government News, *supra* note 92 at “Backgrounders”.

98 See s. 8, which specifies that a transparency report is to include whether or not the individual is a Canadian citizen or permanent resident of Canada. If the individual is not a Canadian citizen or permanent resident the transparency report is to include every country or state of which the individual is a citizen.

**Comments:**

The public registry will apply to all *new* land transactions, but there is no announced date for when *existing* beneficial owners will have to reveal their identity (s. 15).<sup>99</sup>

Existing beneficial owners who transfer their interest in land before the announced date for bringing existing beneficial ownership into the registry, will not have to declare their prior beneficial ownership. This is concerning considering the RCMP have stated in their 2016 report that up to one billion dollars annually of crime proceeds in recent years could have been used to buy houses in Metro Vancouver.<sup>100</sup>

Bill 23 provides public access to the names of the beneficial owners of real estate, but not to beneficial ownership of any other assets or luxury goods held by anonymous companies and trusts.<sup>101</sup>

**b. Bill 24, Business Corporations Amendment Act**

This amending Act will require BC incorporated private companies to keep an up to date record on beneficial ownership which must indicate registered owners, beneficial owners and owners that have indirect control.<sup>102</sup>

Beneficial owners are individuals who control 25% or more of all shares or 25% or more of voting rights in the corporation.<sup>103</sup>

With regard to beneficial ownership, “enforcement authorities” (including LSBC), but not members of the public, are given authority to access a private company’s register as part of their audit and enforcement duties.<sup>104</sup> This differs from the Land Owner Registry.

**c. Other BC AML Activities**

The Attorney General also announced last month

- 1) That his Ministry is studying the possibility of creating a licensing and regulating system for money-services businesses.<sup>105</sup>

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99 Section 15(1) states existing beneficial owners must file a transparency report “within the prescribed period”. However there is no period yet prescribed or announced by the government: BC Government News, *supra* note 92.

100 The Georgia Straight. Sam Cooper, *supra* note 17.

101 Bill 23 – 2019 *Land Owner Transparency Act*, *supra* note 94 at s. 35.

102 Bill 24 – 2019 *Business Corporations Amendment Act*, 2019. 41st Parliament, 4th Session. First Reading (April 2 2019) <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/41st-parliament/4th-session/bills/first-reading/gov24-1>. Particularly see s. 119.11(2).

103 *Ibid* at s. 119.11(1).

104 *Ibid* at s. 119.

105 Vancouver Sun. Gordon Hoekstra, March 19, 2019. *B.C. attorney general opens door to background checks for money transfer/exchange business*. <https://vancouversun.com/business/local-business/bc-attorney-general-opens-door-to-background-checks-for-money-transfer-exchange-businesses>

### 1.3.20

- 2) The Attorney General has ordered two Money Laundering Inquiries by Peter German – one last year and the second one this year. The Minister of Finance has also commissioned an Experts Report on Money Laundering this year (chaired by Maureen Maloney)<sup>106</sup> – the last two reports are due for release soon.

Finally, lawyers and law societies beware. Governments are actively looking for new strategies to better control lawyers' witting or unwitting involvement in money laundering!

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106 BC Government News, November 9 2018. *Expert panel on money laundering seeks public input.* <https://news.gov.bc.ca/releases/2018FIN0080-002120>