TRANSPARENCY INTERNATIONAL CANADA

NO REASON TO HIDE

Unmasking the Anonymous Owners of Canadian Companies and Trusts

About Transparency International and Transparency International Canada

Transparency International (TI) is the world's leading non-governmental anti-corruption organization. With more than 100 chapters worldwide and an international secretariat in Berlin, TI has helped put corruption on the agendas of governments and businesses around the world. Through advocacy, research and capacity building work, TI strives toward a world that is free of corruption.

Transparency International Canada (TI Canada) is the Canadian chapter of Transparency International. Since its foundation in 1996, TI Canada has been at the forefront of the national anti-corruption agenda. In addition to advocating legal and policy reform on issues such as whistleblower protection, public procurement and corporate disclosure, we design practical tools for Canadian businesses and institutions looking to manage corruption risks, and serve as an anti-corruption resource for organizations across Canada.

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Foreword

We are in the midst of a monumental shift in societal expectations about transparency. Whistleblower disclosures such as the Panama Papers and Luxembourg Leaks have provided concrete examples of the ways in which legal entities and arrangements – companies and trusts – are exploited to the public's detriment by those looking to avoid taxes or launder the proceeds of crime and corruption, among other nefarious aims. The abuses exposed through these leaks and others have resonated with the public and triggered widespread interest in what were once dismissed as mundane legal issues.

Governments around the world also appear to be recognizing the threats posed by under-regulated legal entities and arrangements. In 2014 the G20 issued its *High-Level Principles on Beneficial Ownership*, acknowledging the importance of transparency in protecting the integrity of the global financial system. In 2016 the European Commission mandated its 27 member countries to collect and publish information on the beneficial owners of companies registered within the bloc. The UK has already enacted legislation and implemented new disclosure rules, and other countries are following suit.

As more countries put up barriers to the criminal and corrupt, those looking to game the system will gravitate to jurisdictions with weaker standards. As the following report demonstrates, Canadian companies and trusts are particularly vulnerable to exploitation. Beneficial owners can remain entirely anonymous – their identities concealed even from the government agencies entrusted with enforcing laws and regulations. Anonymous ownership creates unnecessary obstacles for our law enforcement and tax authorities, fostering a climate of impunity due to low perceived risk.

Beneficial ownership transparency is by no means a panacea for corruption and financial crime. However, by stripping anonymity from legal entities and arrangements we can make those crimes easier to detect and prosecute, thereby deterring them. Beneficial ownership reform presents an opportunity for Canada to meaningfully reduce financial crime and honour our international commitments. We must adapt to emerging international standards or risk becoming a beacon for the corrupt.

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Glossary

AML	Anti-money laundering
BVI	British Virgin Islands
CRA	Canada Revenue Agency
DNFBP	Designated non-financial businesses and professions
FATF	Financial Action Task Force
FINTRAC	Financial Transactions and Reports Analysis Centre of Canada
G8	Group of eight leading advanced economies
G20	Group of 20 major economies
OECD	Organization for Economic Cooperation and Development
OSFI	Office of the Superintendent of Financial Institutions
PCMLTFA	Proceeds of Crime (Money Laundering) and Terrorist Financing Act
RCMP	Royal Canadian Mounted Police
StAR	Stolen Assets Recovery Initiative
STR	Suspicious transaction report
TF	Terrorist financing
TI Canada	Transparency International Canada
UNODC	United Nations Office on Drugs and Crime

Executive Summary

Anonymous companies and trusts are the getaway cars of financial crime. They enable criminals to hide behind a veil of secrecy, while giving them access to bank accounts and the means to use their illegally obtained wealth in the legal economy. These legal entities and arrangements are ubiquitous in money laundering cases, and are used to evade taxes, dodge sanctions and finance terrorism.

Legal entities and arrangements serve valuable purposes in society, such as limiting liability and enabling individuals to manage wealth for others. These legitimate functions of companies and trusts do not depend upon anonymity, and can still be served when their ownership is transparent. Hiding the identities of beneficial owners serves no constructive purpose to society as a whole, and it is time to close this legal loophole.

In November 2014, G20 leaders pledged to tackle corporate secrecy. They agreed to 10 principles, setting out concrete measures they would take to make beneficial ownership information transparent and accessible. The G20 countries committed to ensuring that all companies and trusts in their jurisdiction identify their beneficial owners and make that information available to law enforcement and tax authorities. Many governments are going further by making beneficial ownership information available to the public. For example, the European Commission has proposed public beneficial ownership registries for companies, and partially public registries for trusts.

Building on Transparency International's 2015 report, *Just for Show? Reviewing G20 Promises on Beneficial Ownership*, this report assesses Canada's progress in fulfilling its commitment to the G20 principles. It analyses the current legal framework and enforcement regime, and provides evidence showing the extent to which companies and trusts are misused in Canada. The report then takes an in-depth look at beneficial ownership in the context of the real estate market. It concludes with a series of recommendations for the Government of Canada and other stakeholders, which if implemented would bring Canada in line with international best practices.

Meeting Canada's G20 commitments

Transparency International's 2015 analysis found that Canada's performance was either "weak" or "very weak" in seven of the 10 G20 principles on beneficial ownership. In the past year, the government has tabled legislation to eliminate bearer shares (unregistered securities that are owned by whoever happens to physically hold the share certificate), but has otherwise made no measurable progress on any of the 10 principles. In September 2016 the Financial Action Task Force – the global anti-money laundering authority that informed the principles – published an evaluation of Canada that was highly critical of the secrecy it affords to legal entities and arrangements. The task force called on the government to make beneficial ownership information accessible "as a matter of priority."

Canada's secrecy regime

In Canada, more rigorous identity checks are done for individuals getting library cards than for those setting up companies. Corporate registries do not verify identification and most do not require information on shareholders, let alone beneficial owners. Most provinces also allow nominee directors and shareholders, who do not need to disclose that they are acting on someone else's behalf. Though a law has been proposed to eliminate bearer shares at the federal level, they are still allowed in much of the country.

Trusts in Canada do not need to register or file a record of their existence. There are estimated to be millions of trusts in Canada, though only 210,000 are registered to pay taxes. Trustees do not need to keep any record of beneficial owners, nor do they need to disclose that they are acting for others when transacting with banks or other businesses.

The lack of available information on private companies and trusts, and who owns them, is a huge obstacle for law enforcement and tax authorities. The RCMP's success rate in pursuing money laundering is a fraction of what it is for other crimes. A suspect cannot be identified in more than 80 percent of cases, and only a third of the cases that go to trial result in a conviction. The cost to the treasury in lost tax revenues is impossible to measure given the lack of data on legal entities and arrangements, but is likely in the billions of dollars.

Secrecy in the real estate market

The average price of a home in Canada has skyrocketed in recent years, with the largest increases in Toronto and Vancouver. An influx of overseas capital is one of several causes of rising property prices, but the extent and impact of foreign investment remains unknown since very little data is collected on property owners. Individuals can use shell companies, trusts and nominees to hide their beneficial interest in Canadian real estate. Research by TI Canada shows that this practice is most prevalent in the luxury property market.

Analysis of land title records by TI Canada found that nearly half of the 100 most valuable residential properties in Greater Vancouver are held through structures that hide their beneficial owners. Nearly one-third of the properties are owned through shell companies, while at least 11 percent have a nominee listed on title. The use of nominees appears to be on the rise; more than a quarter of the high-end homes bought in the last five years are owned by students or homemakers with no clear source of income. Trusts are also common ownership structures for luxury properties; titles for six of the 100 properties disclose that they are held through trusts, but the actual number may be much higher as there is no need to register a trust's existence.

Recommendations

The key recommendation of this paper is for the Government of Canada to require all companies and trusts in the country to identify their beneficial owners. The government should then publish this information in a central registry that is accessible to the public in an open data format.

A public registry of companies and trusts that includes beneficial ownership information would be a low-cost, high-impact way of preventing their misuse. It would improve the effectiveness of law enforcement and tax authorities. It would help the private sector comply with regulations and make better business and investment decisions. It would also bolster Canada's reputation for fairness and transparency both at home and abroad.

This report concludes with several other recommendations, including:

- Nominees should be required to disclose that they are acting on another's behalf, and the beneficial owners they represent should be identified.
- Corporate registries should be given adequate resources and a mandate to independently verify the information filed by legal entities, including the identities of directors and shareholders.
- Beneficial ownership information should be included on property title documents, and no property deal should be allowed to proceed without that disclosure.
- The Government of Canada should make it mandatory for all reporting sectors – including real estate professionals – to identify beneficial ownership before conducting transactions.
- All government authorities in Canada should require beneficial ownership disclosure as a prerequisite for companies seeking to bid on public contracts.

1 Companies, Trusts and Secrecy

Corporations and trusts – legal entities and arrangements – serve valuable purposes in our society. They enable us to take risks, such as opening a business or developing a new product, without gambling our personal livelihoods. They allow us to manage wealth for others and plan for when we can no longer manage our own affairs. But legal entities and arrangements can also be exploited in ways that were likely never intended by those who designed them. When these structures were originally developed, safeguards were not built in to prevent people from hiding their identities, and after many decades of misuse it is time to close these loopholes.

The ease of setting up a company and the anonymity it affords has made corporations a useful vehicle for criminals. According to the OECD, "almost every economic crime involves the misuse of corporate vehicles [i.e. companies and trusts]."[1] Shell companies – corporations with no business activity – are frequently used to launder money, commit fraud, evade taxes, dodge sanctions and finance terrorism.

What is a shell company?

Unlike a regular company – one with business operations – a shell company is a hollow structure that is often set up solely to perform financial manoeuvres. It essentially only exists on paper.

Like other companies, shell companies are legal persons. They can sign contracts, take out loans and set up bank accounts.

Anonymous shell companies enable criminals to:

- **Get away with corruption.** In a 2011 study, the World Bank looked at 213 cases of grand corruption spanning three decades and found that corrupt politicians had used shell companies to conceal activities in more than 70 percent of those cases, enabling the theft of US$56.4 billion.[2] One of those cases involved the son of Equatorial Guinean president, Teodoro Obiang Nguema Mbasogo, who the US Department of Justice took to court over US$32 million in luxury real estate and other assets that he had bought with the proceeds of corruption. Most of those assets were owned through anonymous shell companies.[3]

- **Launder proceeds of crime.** The United Nations Office on Drugs and Crime (UNODC) estimated the total value of money laundered worldwide to be around US$2.1 trillion in 2009, or 3.6 percent of global GDP.[4] The vast majority of that money goes undetected, and much of it is laundered through shell companies.[5] US law enforcement finds less than 1.5 percent of the estimated US$65 billion in annual drug proceeds in America.[6] In one of the detected cases a high-level trafficker, who was given a 150-year sentence in 2014, used a typical shell company structure to buy more than US$14 million in Florida property.[7] In another case detected in the US, the Zetas drug cartel used a network of shell companies to buy and sell racehorses.[8]

- **Evade taxes.** Tax evasion by individuals costs the world's governments some US$190 billion each year, according to conservative estimates.[9] The figures for aggressive tax avoidance – arrangements that are technically legal but contrary to the spirit of the law – are much higher. Opaque legal entities and arrangements enable most tax avoidance schemes, such as one designed by KPMG that reportedly hid at least C$130 million from the Canadian tax authorities before it was discovered in 2013. Though the matter has yet to be resolved in the courts, available evidence suggests that the scheme used shell companies based in the Isle of Man to help multimillionaire clients shirk domestic tax obligations.[10]

- **Commit fraud.** Shell companies are an essential part of the fraudster's toolkit, enabling them to create illusions of business success and cover their tracks. In 2010, Florida-based lawyer Scott Rothstein pleaded guilty to fraud charges after prosecutors unearthed a US$1.2 billion Ponzi scheme in which he used 85 shell companies to hide his interest in real estate and business ventures.[11]

- Legal entities and arrangements are also used to **channel funds to terrorist groups,**[12] provide cover for **insider trading and market manipulation,**[13] and **evade sanctions**[14] against international pariahs.

Who is a beneficial owner?

A beneficial owner is the natural person who ultimately owns, controls or benefits from a legal entity or arrangement and the income it generates. This term contrasts with the legal owners of a company (i.e. the shareholders) or with trustees, who might own assets on paper that are actually held for someone else's benefit.

Financial getaway cars

Since shell companies can be set up without disclosing who owns or controls them, it is difficult if not impossible for law enforcement to catch the perpetrators when an anonymized company is used to commit crimes. In many jurisdictions only the most basic information is kept on companies, and it is rarely independently verified. Shell companies are effectively financial getaway cars that can be used to enable criminals to vanish without a trace.[15] Leading law enforcement agencies have voiced their frustrations with the status quo, and many have joined the call for legal reform to collect and publish beneficial owner information.[16]

> "We will make a concerted and collective effort to tackle this issue and improve the transparency of companies and legal arrangements. Improving transparency will also improve the investment climate; ease the security of doing business and tackle corruption and bribery. It will support law enforcement's efforts to pursue criminal networks, enforce sanctions, and identify and recover stolen assets."
>
> – G8 Lough Erne Declaration, June 2013[17]

2 Big Talk, Little Action: Canada's Global Commitments

While the world's leading economies move toward greater transparency, Canada seems to be dragging its feet. The government has taken very few concrete steps, despite making strong commitments at high-profile events including recent G8 and G20 summits.

In November 2014, Canada and the other G20 nations adopted *10 High-Level Principles on Beneficial Ownership Transparency*, which set out specific measures that member countries "committed to leading by example in implementing" through "concrete action."[18] One year after the pledge was made, Canada was evaluated and ranked among the bottom three countries (with Brazil and South Korea), receiving a "weak" or "very weak" grade on seven of 10 principles by Transparency International.[19] At that time the only step Canada had taken to implement the 10 principles was to conduct a risk assessment, which it did in early 2015.[20,21]

Canada has made little progress in the past year with respect to its beneficial ownership commitments. The government recently proposed an amendment to the *Canada Business Corporations Act* that would eliminate bearer shares (an issue discussed in the following section), but has otherwise not moved to address the significant gaps between the status quo and international best practices.

Table 1: Canada's Compliance with the G20 High-Level Principles

G20 Principles		TI Ranking[22]
1	Definition of beneficial owner	 Weak
2	Risk assessment relating to legal entities and arrangements	 Strong
3	Beneficial ownership information of legal entities	 Very Weak
4	Access to beneficial ownership information of legal entities	 Very Weak
5	Beneficial ownership information of trusts	 Average
6	Access to beneficial ownership information of trusts	 Weak
7	Roles and responsibilities of financial institutions and businesses and professions	 Very Weak
8	Domestic and international cooperation	 Weak
9	Beneficial ownership information and tax evasion	 Average
10	Bearer shares and nominees	 Very Weak

Meanwhile, several G20 countries – including the UK, France, Australia and South Africa – have committed to establishing public registries of beneficial owners or have taken concrete steps toward doing so. In May 2015, the European Commission enacted a law that compels all EU countries to set up their own registries of beneficial ownership by June 2017,[23] and it has since directed that those registries be made public.[24] Even the US, which has the dubious distinction of hosting more shell companies than anywhere else on Earth, has tabled beneficial ownership legislation with support from Democrats, Republicans and the White House.[25]

Canada's inaction on beneficial ownership reform recently prompted criticism from the Financial Action Task Force (FATF), the world's foremost anti-money laundering authority. In a September 2016 evaluation, the FATF found that Canada has "achieved a low level of effectiveness" in mitigating the risks associated with legal entities and arrangements. It implored the government to ensure access to accurate and up-to-date beneficial ownership information "as a matter of priority."[26]

In an official statement issued for the Global Anti-Corruption Summit in London in May 2016, the Government of Canada committed "to exploring additional measures to improve our ability to collect timely and accurate beneficial ownership information."[27] It is now time for a specific, time-bound action plan to determine and implement those measures.

3 Canada's Secrecy Regime

Though Canada is not known as a global hub for money laundering and tax evasion, our legal framework and lax enforcement environment make it easy for individuals to misuse private companies and trusts with relative impunity. As previously highlighted, Canada is among the world's most opaque jurisdictions with regard to legal entities and arrangements. In the midst of a global shift toward greater transparency, Canada is an increasingly attractive destination for those looking to park and invest the proceeds of crime.[28]

Companies

In Canada, more rigorous identity checks are done for individuals getting library cards than for those setting up companies.[29]

Canada is one of the easiest places in the world to set up a company. All you need is a few hundred dollars, an address and someone to appoint as a director. There is no need to show documentation to prove who you are, and you are free to list other people – nominees – as the company's directors or shareholders. In all but two provinces – Alberta and Quebec – companies are not required to identify their shareholders. Beneficial owners can remain totally anonymous.

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.[30,31] The study's authors sent emails to corporate service providers where they posed as possible terrorist financiers and corrupt government officials looking to set up a company that would hide their identity. Nearly two-thirds of the Canadian lawyers and incorporation agents that responded to their emails were willing to set up a company for them and act as their nominee. As 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.[32]

The current system in Canada is particularly vulnerable to abuse, as none of the limited information that companies do disclose is independently verified. Canadian law enforcement agencies have complained that company records are often "outdated or imprecise," making it difficult to investigate suspected wrongdoing.[33] In some cases – particularly when a company is used to commit a crime or launder its proceeds – those behind it can intentionally provide false information. This is easily done as no identification is required.

Though it is illegal to do so, no company has ever been criminally sanctioned for failing to keep accurate records.[34]

Charbonneau Commission Invoicing Fraud

During a four-year investigation into Quebec's public works industry, the Charbonneau Commission documented widespread corruption, procurement fraud, price-fixing and links to organized crime.[35] The Commission found that Montreal-area construction firms used shell companies to generate false invoices for expenses on government-funded projects, costing taxpayers tens of millions of dollars each year.[36]

These false invoicing schemes typically include several companies with related beneficial ownership, which issue invoices to one another for fake services. They receive payment, convert it to cash and repay the balance less a commission. When a shell company comes to the attention of tax authorities, it is dissolved and another one is formed. One such scheme run by Normand Dubois – a construction firm owner who is now serving a six-year prison sentence for fraud – involved nearly a dozen shell companies with nominee directors and shareholders, which provided fake invoices to his own company and several others.[37] Those companies then billed the government for the falsified expenses.

As a Revenue Quebec investigator interviewed by the Commission lamented, "it's very hard to keep track of this… there is still a lot of false invoicing going on." With no disclosure of who the natural person is behind a shell company, tax authorities and investigators often struggle to connect the dots between related entities.

There is no centralized and publicly available data on how many companies exist in Canada. Each province and territory has its own corporate registry, with its own standards of information collection and disclosure. There is no central repository of company information. In the course of researching this report, TI Canada contacted each of the provincial and territorial registries in an effort to find out how many companies there are in the country. In most parts of Canada, basic data on the number of companies was not readily available even to registry employees. The fact that these figures were hard to come by reflects an overall lack of transparency and inadequate data collection with regard to Canadian companies.

Table 2:
Canadian Business Corporations

Province/Territory	Number of Companies[38]
Ontario	1,088,920
Quebec	950,000
Alberta	421,680
British Columbia	385,410
Federal	286,280
Saskatchewan	73,870
Manitoba	73,220
Nova Scotia	44,200
New Brunswick	33,610
Newfoundland	26,000
Prince Edward Island	7,140
Northwest Territories	7,070
Nunavut	4,500
Yukon	2,520
TOTAL	3.4 MILLION (APPROX.)

Trusts

What is a Trust?

A trust is a legal arrangement whereby an asset is conferred on one individual or entity (a trustee) to manage on behalf of others (the beneficiaries). The terms of the arrangement are set out in a trust instrument, which is typically drafted by a lawyer or notary.

Most trusts are used for legitimate purposes such as estate planning or managing charitable donations, but the confidentiality associated with them makes the trust structure attractive to money launderers and tax evaders.

There are estimated to be millions of trusts in Canada. No one knows how many there are, as Canadian trusts do not need to register their existence.

Canadian trusts are supposed to provide the Canada Revenue Agency (CRA) with information on their assets and trustees, and according to the CRA some 210,000 do. That constitutes a minority of the domestic trusts and foreign trusts with Canadian assets that are obligated to file tax returns.[39] Because trusts are treated as private contracts (and are often protected under attorney-client privilege) it is virtually impossible to identify those that do not meet their Canadian tax obligations.

There is an even greater degree of anonymity for beneficial owners of trusts than for beneficial owners of companies. A trust's existence does not need to be acknowledged by a government authority, and trust documents are entirely private. Under Canadian trust law, trustees have a fiduciary duty to their beneficiaries, and therefore have a practical need to know their identities. However, they are not required to keep records of the trust's beneficial owners or settlors (i.e. those contributing assets to the trust), nor are they required to do any customer due diligence. Trustees are often bound by confidentiality provisions in the trust instrument and are generally not compelled to disclose the trust's existence or the identities of its beneficiaries to the CRA or other authorities unless ordered to do so by a court.[40] Trustees can do business and execute financial transactions on behalf of a trust without disclosing their status as trustees, which poses a challenge for financial institutions and others trying to comply with their money laundering reporting obligations.[41]

The private nature of trust instruments, the fiduciary obligation of trustees to maintain confidentiality, and the absence of any record-keeping requirements combine to make trusts highly vulnerable to money laundering, according to a recent risk assessment by the Canadian government. Law enforcement agencies agree that trusts are "misused to a relatively large extent."[42] In a September 2016 evaluation, the FATF found Canada "non-compliant" with its standards on trusts.[43]

Nominees

Nominees add yet another layer of secrecy to private companies. As noted elsewhere in this report, it is legal to appoint nominees as directors or shareholders of Canadian companies. Nominees need not identify who they represent, or even disclose that they are acting on someone else's behalf. Like other directors and shareholders, there is no requirement for nominees to keep a record of a company's beneficial owners.[44]

There are two broad categories of nominee: professionals, such as lawyers or company service providers; and informal nominees, such as family members, friends or associates who front for the beneficial owner. In Canada, nominee shareholders are typically lawyers, who hold shares on behalf of their beneficial owner clients.[45] As expanded upon in the following pages, this practice can be problematic from a money laundering standpoint in light of the legal profession's exemption from reporting obligations.

The prevalence of nominees in Canadian companies – particularly with respect to nominee shareholders – is a major money laundering risk and a serious obstacle to law enforcement, as the recent FATF review made clear.[46]

Who are Nominees?

Nominees are individuals (or in some cases entities) who have been appointed to act as a director or hold shares on behalf of a beneficial owner. They are usually bound by contract to only act upon the beneficial owner's instructions, and in some cases they issue a power of attorney allowing the owner to conduct business directly.

Li Dongzhe and Li Donghu

In late 2004, two brothers on the run from Chinese authorities arrived in Canada. They stood accused of embezzling C$113 million from client accounts at a state-owned bank.

In 2000, Li Dongzhe partnered with a Bank of China branch manager, Gao Shan, and together recruited clients by offering kickbacks for depositing funds with the branch. Once the customers had deposited funds with the bank, the men forged documents and transferred money to accounts held by Li Dongzhe and his brother, Li Donghu.

Chinese police issued arrest warrants and Interpol Red Notices for the three suspects in early 2005. By that time, the Li brothers were already established in Canada with properties, bank accounts and vehicles registered in their names. Within a few months of the warrant being issued, the brothers had sold all traceable assets in Canada and restructured their holdings through nominees.[47]

Court transcripts show that investigators had difficulty identifying the Li brothers' Canadian assets due to their use of shell companies and nominees.[48] The brothers admitted that they sold or transferred all directly held assets in order to evade detection. Those efforts were somewhat successful; there are reportedly still tens of millions in unrecovered funds.

According to the RCMP, the Li brothers "placed vehicles, properties, utility bills, businesses and bank accounts into nominee names in order to avoid detection from the authorities."[49] Among the measures taken by the brothers to launder funds was the incorporation of a Manitoba company, Canada Century Greenland Investment Ltd., with a nominee director and shareholder. A bank account was set up for the company with Li Dongzhe as signatory. A police affidavit recounts a confession by Li Dongzhe that money deposited into that account included the proceeds of crime.[50]

A two-year cross-border investigation led to the Li brothers' arrest in Vancouver in February 2007. Unsuccessful in their petitions to stay in Canada, the brothers returned to China to face trial in late 2011. In September 2014, Li Dongzhe pleaded guilty to fraud charges and was sentenced to life in prison. Li Donghu and Gao Shan received 25-year and 15-year sentences, respectively.[50]

Bearer Shares

Canada is one of three G20 countries allowing companies to issue bearer shares.[51] Many other states have outlawed bearer shares because they are vulnerable to loss, theft and misuse. Even secrecy havens like Panama and the British Virgin Islands (BVI) have banned them. Though the use of bearer shares appears to be relatively uncommon in Canada, they are an antiquated instrument and a loophole for money launderers that could be easily closed.

What are Bearer Shares?

Bearer shares are unregistered securities that are owned by whoever physically holds the share certificate.

The federal government is currently taking measures to ban bearer shares. In September 2016 it tabled an amendment to the *Canada Business and Corporations Act*, Bill C-25, which will "clarify that corporations and cooperatives are prohibited from issuing share certificates and warrants, in bearer form."[52] The government should be commended for moving to ban bearer shares. Provinces that still allow bearer instruments should follow suit.

Legal Troubles

In Canada the vast majority of legal entities and arrangements are set up and administered by lawyers, who are therefore in a unique position to know what they are used for and who they benefit.[53] Lawyers frequently act as nominee shareholders and directors, and hold money in trust for their clients.[54] While there is nothing inherently wrong with these roles and activities, a significant loophole in transparency efforts has opened up in the absence of statutory reporting of beneficial owners.

In a ruling on February 13, 2015, the Supreme Court of Canada exempted lawyers and their firms from certain obligations under Canada's *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) on the grounds that those requirements breached the constitutional right to attorney-client privilege.[55] Lawyers and their firms are no longer subject to PCMLTFA requirements to identify and verify clients' identities, maintain records, develop compliance regimes and be subject to Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) audits. This ruling created "a significant loophole in Canada's [anti-money laundering and terrorist financing] framework," according to the FATF, which recently assessed "the legal profession in Canada [to be] especially vulnerable to misuse."[56]

According to the FATF, the federal government is assessing how it might introduce new anti-money laundering provisions for the legal profession that would be constitutionally compliant.[57] A statutory requirement to collect and disclose beneficial ownership information would be a significant step in that direction.

R. v. Rosenfeld

In 2009, Ontario lawyer Simon Rosenfeld was sentenced to five years in prison on money laundering charges. Rosenfeld was arrested following a 2002 sting operation in which he laundered C$440,000 for an RCMP officer posing as a representative of a Colombian drug cartel. He used shell companies to set up bank accounts and structure those transactions and allegedly others involving millions of dollars.[58]

Rosenfeld bragged during a meeting with the undercover agent that it was "20 times safer" for a lawyer to launder money in Canada than in the US.[59] He described Canada as a "la la land" where white-collar crime goes unpunished,[60] and told the officer about five Vancouver-based lawyers who laundered upward of C$200,000 a month through trust accounts in return for a seven percent commission.[61]

In his sentencing, the ruling judge noted that Rosenfeld had exploited attorney-client privilege and the exemption from reporting obligations "to enhance his money laundering services" – an apparent nod to the vulnerability of the legal profession to laundering the proceeds of crime.[62] According to the RCMP officer's testimony, "In almost every case we are doing, lawyers are central."[63]

Enforcement and Sanctions

As the case study on page 22 demonstrates, Canadian legal entities and arrangements are attractive to criminals not only due to the secrecy they afford but also because of a perceived lack of enforcement and lenient sanctions. Data published by the RCMP and FINTRAC suggests that these perceptions are well founded. Active enforcement and the use of appropriate sanctions are crucial to deterring criminal activity and promoting compliance among institutions and professionals.

> "On paper, Canada has built a Rolls-Royce when it comes to fighting money laundering… but we forgot to put in the engine – an effective law enforcement that can take on these complicated cases."
>
> – Former RCMP Proceeds of Crime Investigator[64]

Enforcement

Canada's current anti-money laundering and terrorist financing (AML/TF) regime places much of the onus for detection on the private sector,[65] which acts as the first line of defence for verifying client identities, keeping records and reporting transactions to FINTRAC. While FINTRAC supervises these reporting entities for compliance with the PCMLTFA, it has no powers to investigate money laundering. FINTRAC collects and analyses vast amounts of data provided by these reporting entities, and shares intelligence with law enforcement agencies when that information might be relevant to a money laundering or terrorist financing offence. Police use the financial intelligence produced by FINTRAC to pursue these cases.

Requirements under the PCMLTFA for identifying and verifying the identities of beneficial owners have been watered down to facilitate compliance, in part because there is no publicly available beneficial ownership registry for reporting entities to consult. While financial institutions, life insurers, securities dealers and money services businesses must attempt to determine beneficial ownership,[66] they may take other less stringent measures to meet their obligations if they cannot do so. Under rules introduced in February 2014, financial institutions must confirm beneficial ownership information when opening a new account (though that information does not need to be independently verified).[67]

As for the other reporting entities, such as real estate brokers and developers, accountants, BC notaries, and dealers in precious metals and stones, there are no requirements to determine and record beneficial ownership, which would be burdensome in the absence of an accessible registry.

In the absence of comprehensive beneficial ownership checks, individuals using shell companies or trusts for nefarious purposes can use Canadian financial entities to move money, invest or take out loans. They can also launder proceeds of crime through sectors such as real estate or precious metals, which are regulated under the PCMLTFA but have no obligation to ask questions about beneficial owners. If those front-line actors do happen to identify something suspicious, all they can do is report the information to FINTRAC, which may subsequently refer the matter to law enforcement.

Most money laundering cases in Canada are handled by the RCMP. According to government records from 2011, a suspect can be identified in only 18 percent of cases, and only one-third of cases that go to trial result in a guilty verdict. These figures are about half of the national average for criminal cases overall.[68]

One of the FATF's key findings in its September 2016 assessment of Canada was that "law enforcement results are not commensurate with [money laundering] risk." According to the task force, there is an "insufficient focus" on money laundering, and investigations "generally do not focus on legal entities and trusts (despite the high risk of misuse), especially when more complex corporate structures are involved."[69]

Where legal entities and arrangements are used to commit and conceal crimes, there is often a web that spans multiple countries. The designers of these complex ownership structures do so knowing that law enforcement agencies have trouble cutting through red tape when an investigation extends beyond their jurisdiction. Agencies rely on cumbersome mutual legal assistance requests, which routinely take months if not years to be addressed and are often refused.

According to a former director of the RCMP's Proceeds of Crime Unit, the lack of successful cases "comes down to a tremendous weakness in our investigative and prosecutorial forces."[70] Though the RCMP has not provided a public explanation for its comparatively poor performance on money laundering cases, other leading law enforcement agencies have made it clear that a lack of beneficial ownership information is a major obstacle to their investigations.[71] Some have called for public registries as a solution.[72,73]

Sanctions

> "Effective, proportionate and dissuasive sanctions should be available for companies, financial institutions and other regulated businesses that do not comply with their respective obligations, including those regarding customer due diligence. These sanctions should be robustly enforced."
>
> – G8 Action Plan Principles, June 2013[74]

From a criminal justice perspective, FATF explains that sanctions for money laundering in Canada "are not sufficiently dissuasive."[75] The FATF has recommended that Canada "increase efforts to detect, pursue, and bring before the courts cases of… misuse of legal persons and trusts," and calls on the government to ensure that law enforcement agencies are better resourced to investigate money laundering.[76]

FINTRAC, in its role of ensuring compliance with the PCMLTFA and its regulations, has the power to issue administrative monetary penalties when violations are detected. In April 2016 it levied its first fine for compliance violations against a Canadian bank. The agency came under fire from industry groups and civil society for declining to name the institution or provide details of the offences that led to the C$1.1 million penalty.[77] Prior to that fine, FINTRAC had issued 73 administrative penalties totaling C$5.12 million against non-bank entities covered by the PCMLTFA, according to the agency's 2015 annual report.[78]

Though the penalties available to FINTRAC have been criticized for being too small to be sufficiently dissuasive,[79] the agency nonetheless appears to be making some headway in ensuring compliance with the PCMLTFA. According to the FATF, "Overall, supervisory measures taken in Canada are having an effect on compliance with improvements demonstrated – albeit to varying degrees – both in the financial and designated non-financial businesses and professions (DNFBP) sectors. Information provided indicates that compliance has improved."[80] While compliance may be improving overall, beneficial ownership rules are weak and sectors like real estate remain exempt from having to identify and verify beneficial owners.

4 Focus on the Real Estate Sector

Canada is both a desirable place to live and a secure market in which to invest. Property prices – particularly in Toronto and Vancouver – have risen dramatically in recent years, due in part to an influx of foreign capital.[81] Much of that capital is presumed to come from legitimate sources. However,

Canada's real estate sector is attractive to those looking to invest the proceeds of crime, due to a lack of beneficial ownership disclosure, low levels of compliance with AML/TF obligations[82], and limited anti-money laundering enforcement.

Tax evasion, facilitated by a lack of transparency in property ownership, also seems to be a growing problem in Canada that has gone largely unpunished.[83]

A September 2016 FATF report identified the **Canadian real estate sector as "highly vulnerable to money laundering,"** echoing the findings of a government risk assessment conducted the previous year.[84] According to the FATF report, the real estate market "is exposed to high risk clients, including [politically exposed persons], notably from Asia." **Though it does not name specific individuals, the FATF report refers to "cases of Chinese officials laundering the [proceeds of crime] through the real estate sector, particularly in Vancouver."**[85]

Canadian land title offices do not hold information about beneficial owners of property; they only record the titleholder, which can be a shell company, a trust or a nominee. Beneficial owners of Canadian property can therefore remain anonymous. This anonymity is particularly prevalent in the luxury market, as research conducted by TI Canada shows.

> "There are cases of Chinese officials laundering the [proceeds of crime] through the real estate sector, particularly in Vancouver, and the Chinese government has listed Canada as a country that it wishes to target for recovering the proceeds of Chinese corruption."
>
> – FATF Mutual Evaluation Report, September 2016

Nominees

Headlines were made in May 2016 when a student from China bought a Vancouver mansion for C$31.1 million.[86] Though the value of the transaction was unique, the deal is part of a wider trend whereby unemployed individuals are acquiring luxury property in the city with other people's capital. A 2015 academic study looked at a sample of 172 Vancouver homes purchased in the last several years for C$1.25 million to C$9.1 million, and found that 35 percent of them were owned by either homemakers or students.[87] TI Canada's own research has found that 11 of Greater Vancouver's 100 most valuable residential properties are owned on paper by students or homemakers. These individuals have no source of employment income and are likely nominees for family or friends, though in the absence of more comprehensive data we cannot know for certain.

The use of nominee owners is a common tool for money laundering through real estate. A 2004 study of 149 proceeds of crime cases successfully pursued by the RCMP found that nominee owners were used in over 60 percent of real estate purchases made with laundered funds.[88]

Gang Yuan

In May 2015, the remains of a wealthy Chinese businessman were found in a West Vancouver home owned by a relative who stands accused of his murder. Court documents show that the mining magnate used nominees to hold property and other assets – a practice that has complicated the settling of his estate.

Gang Yuan had made a fortune in mining in China's Yunnan province by the time he moved to Canada in 2007. According to court documents, much of that wealth can be traced to corrupt deals. Yuan allegedly bribed officials with gold bars in order to secure coal-mining rights for his company, Beijing Datang Investment.[89] In 2016, Yunnan's former deputy director of land and resources, Lin Yunye, was convicted of corruptly selling off C$243 million in state mining assets, including those awarded to Yuan's firm.[90]

Yuan was murdered at his West Vancouver home in 2015. According to court records, he bought the mansion for C$4.5 million in 2010 but registered the purchase in the names of his cousin and her husband, Li Zhao, Yuan's alleged killer.[91] The Zhaos are the legal owners of that property, which Yuan's family claims was beneficially owned by the late mining tycoon. According to the Yuan family's counsel, Gang Yuan used the Zhaos as nominees for "legitimate tax reasons."[92] Yuan owned at least two other luxury properties in BC, including a C$17.7 million mansion that is held through a trust company managing Yuan's estate. In the absence of a will, the ownership of those assets is now a matter for the courts to decide.[93]

Beneficial owners can use nominees to avoid or evade tax by claiming principal residence or first-time homebuyer exemptions.

Recent investigations show that in some cases the principal residence exemption is being used to defraud the tax authorities on a commercial scale. In September 2016, *The Globe and Mail* reported on the activities of Vancouver-based businessman Kenny Gu, who had bought and sold dozens of properties financed by Chinese investors.[94] Though Gu was the beneficial owner and had absolute control of those properties, his investors were used to hold title and secure mortgages. According to documents reviewed by the newspaper, many of the properties were listed as principal residences for Gu's clients despite the fact that they did not live in the homes. Principal residences have several tax benefits: taxpayers are not required to report the sale of a principal residence and they receive an exemption from capital gains tax. Contracts show that Gu's investors would receive a set return of around 15 percent, while he pocketed any remaining profit. Neither Gu nor his clients appear to have paid tax on their gains.

Shell companies

In Canada, as in many other jurisdictions, legal entities can hold title to properties. Special purpose companies are useful and legitimate tools in commercial real estate, where joint ventures are common and developers need to limit liability to a single project. More controversially, those buying and selling commercial properties can also avoid property transfer tax by selling equity in a holding company rather than changing the titleholder.

For the time being, this tax loophole is also available to owners of residential property that is held through shell companies.[95] As discussed elsewhere in this report, beneficial owners can use shell companies to keep their identities secret, making their use appealing to people with something to hide.

Shell companies are used extensively to hold luxury property in international hubs such as London and New York. A February 2015 investigative report by Transparency International UK revealed that more than 36,000 London properties are held by shell companies registered in offshore havens such as the BVI, Jersey and the Isle of Man. More than 75 percent of properties investigated by the London Metropolitan Police as suspected proceeds of corruption are held through offshore shell companies.[96] A *New York Times* investigation, also from February 2015, showed how more than 200 shell companies owned apartments in Manhattan's iconic Time Warner Center.[97] Many of those apartments were traced back to politically exposed persons and controversial international business figures. According to that article, more than half of the luxury properties sold in New York City in 2014 were bought through shell companies.

Using shell companies to create a veil between beneficial owners and their properties is more common in Canada than one might expect. New research by TI Canada (see opposite) shows that nearly one-third of the 100 most valuable residential properties in Greater Vancouver are owned through shell companies. Most of those companies are registered in Canada, so the identities of their directors and officers are a matter of public record, but their ownership cannot be ascertained. Several companies are registered in offshore jurisdictions where nothing but the most basic information is disclosed.

Trusts

Property in Canada can be owned through trusts, the existence of which may or may not be disclosed on title documents. In cases where a trust is identified on title, no further information is provided about the nature of that agreement or the identities of its beneficiaries. Canadian properties may be held through bare trusts, which separate the legal title from beneficial ownership but give the trustees no decision-making powers. According to some lawyers, bare trusts have become a common tool to avoid paying property transfer tax in some provinces, in particular in BC where tax is only payable when a change in legal title is filed with the land title office.[98] It is impossible to know how many properties are held through these arrangements, as they are not registered and do not appear on land title records.

The Importance of Gatekeepers

Gatekeepers and intermediaries such as brokers, developers, notaries and lawyers are involved in the vast majority of real estate transactions and therefore can play a key role in detecting money laundering. Most of these gatekeepers have obligations under Canada's anti-money laundering law (the PCMLTFA) and its regulations. However, FINTRAC data suggests that there are low levels of compliance among professionals in the real estate sector.[99] As discussed in the previous section, there is a reporting exemption for lawyers and Quebec notaries, and several other types of intermediaries in the real estate sector are not covered by the current legislation, such as mortgage brokers and private lenders. Considering these weaknesses, it is no wonder why the sector is attractive to those looking to launder and hide the proceeds of crime.

Canada is one of seven G20 countries where real estate agents are not required to identify the beneficial owners of clients buying and selling property.[100] Some 20,000 Canadian real estate brokers are covered by the PCMLTFA, but there are major shortcomings in their compliance with the Act.[101] A recent review by FINTRAC of some 800 agencies found "significant" or "very significant" deficiencies at 60 percent of them with respect to money laundering controls.[102] According to FINTRAC, in the decade from 2003 to 2013, only 279 suspicious transaction reports (STRs) were filed in relation to real estate transactions, despite some five million sales taking place.[103]

It seems that little is being done to push real estate professionals to take their responsibilities more seriously. Despite pervasive non-compliance with Canada's anti-money laundering law, FINTRAC has only issued 12 financial penalties against realtors since December 2008.[104] Though there are criminal penalties of up to C$2 million and five years' imprisonment for failure to report suspicious transactions, no known cases against real estate professionals have been pursued.[105]

TI Canada Investigation into Vancouver Luxury Real Estate

TI Canada examined title documents for the 100 most expensive homes in Greater Vancouver, and found that nearly half of those properties – amounting to more than C$1 billion in assets – do not have transparent ownership structures. Of the 100 properties, 29 are held through shell companies (four of which are registered in offshore jurisdictions[106]), at least 11 are owned through nominees,[107] and six are held in trust for anonymous beneficiaries.

TI Canada's research suggests that the use of nominee titleholders is becoming more common.

Of the 42 high-end properties sold in the last five years, 26 percent are owned on paper by students or homemakers. In contrast, only one of the 58 homes bought before 2011 is owned through an obvious nominee.

More than one in four of the high-end properties sold in the last five years are owned by nominees, compared to 2% of the luxury homes bought before 2011.

Trusts also appear to have been used more by luxury property buyers in recent years. Titles for five of the six properties owned through disclosed trusts have been registered since 2011. As noted elsewhere in this report, there is no requirement to register trusts or even disclose their existence, so it is impossible to know how widely these arrangements are used.

Shell companies remain a popular tool for beneficial owners of luxury property in Vancouver. This ownership model was used in 30 percent of the titles registered in the past 10 years, as well as in 29 percent of the total sample reviewed by TI Canada.

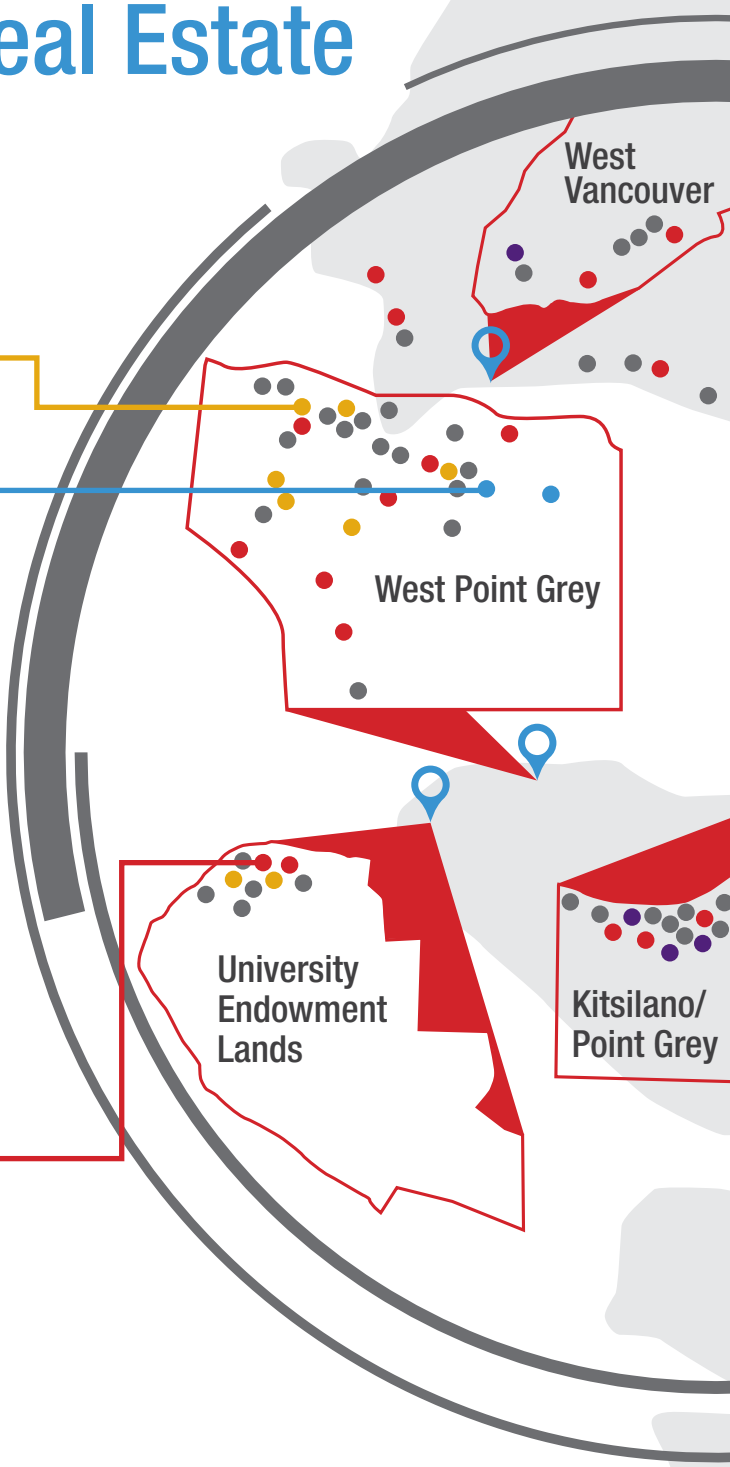
TI Canada has no reason to believe that the prevalence of shell companies, trusts and nominees in luxury real estate is unique to Vancouver. A similar assessment of high-value properties in other major Canadian cities was not possible within the scope of this report, given the costs associated with retrieving land title records. TI Canada would welcome further research into this area.

TI Canada Investigation Into Vancouver Luxury Real Estate

4833 Belmont Ave made headlines in May 2016 when it was bought for C$31 million by a student. Its true beneficial owner could not be identified.

4707 Belmont Ave is a C$57 million property owned through an anonymous shell company in the BVI.

5695 Newton Wynd is owned through a BC numbered company that's only director is a Vancouver lawyer. The owner of that company, and the property, are anonymous and sheltered by legal privilege.



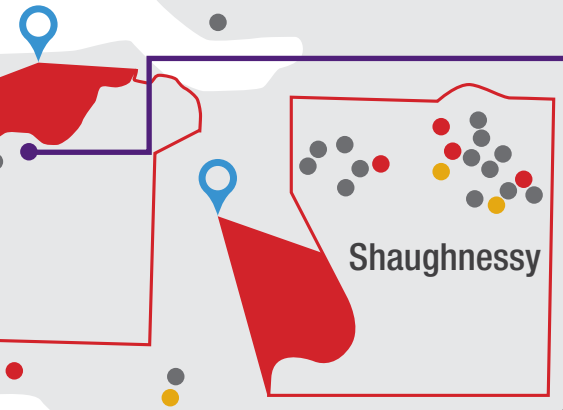
PROPERTY TYPES:

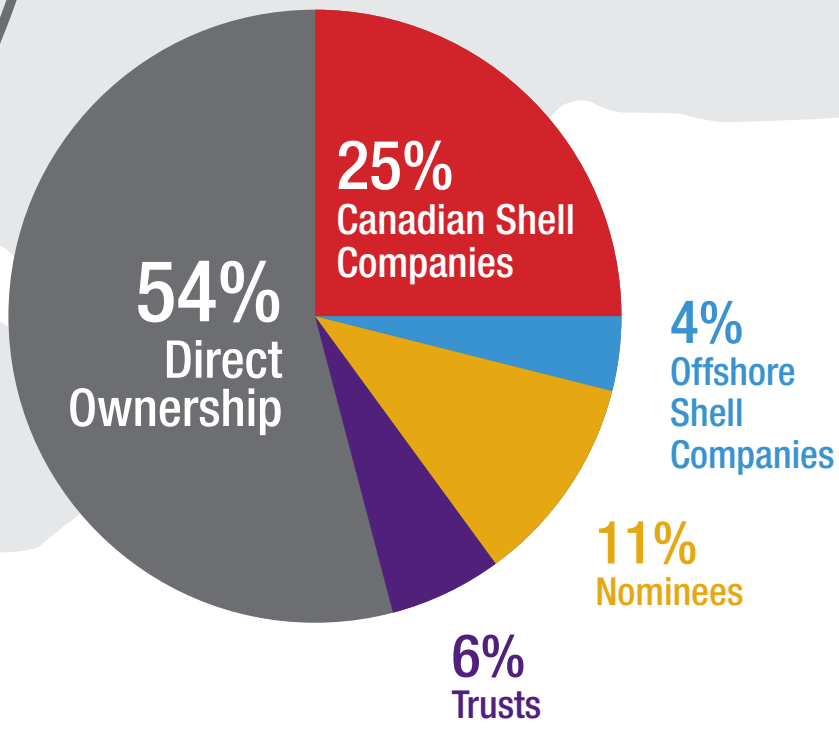
- Direct Ownership
- Domestic Company
- Offshore Company
- Nominee
- Trust

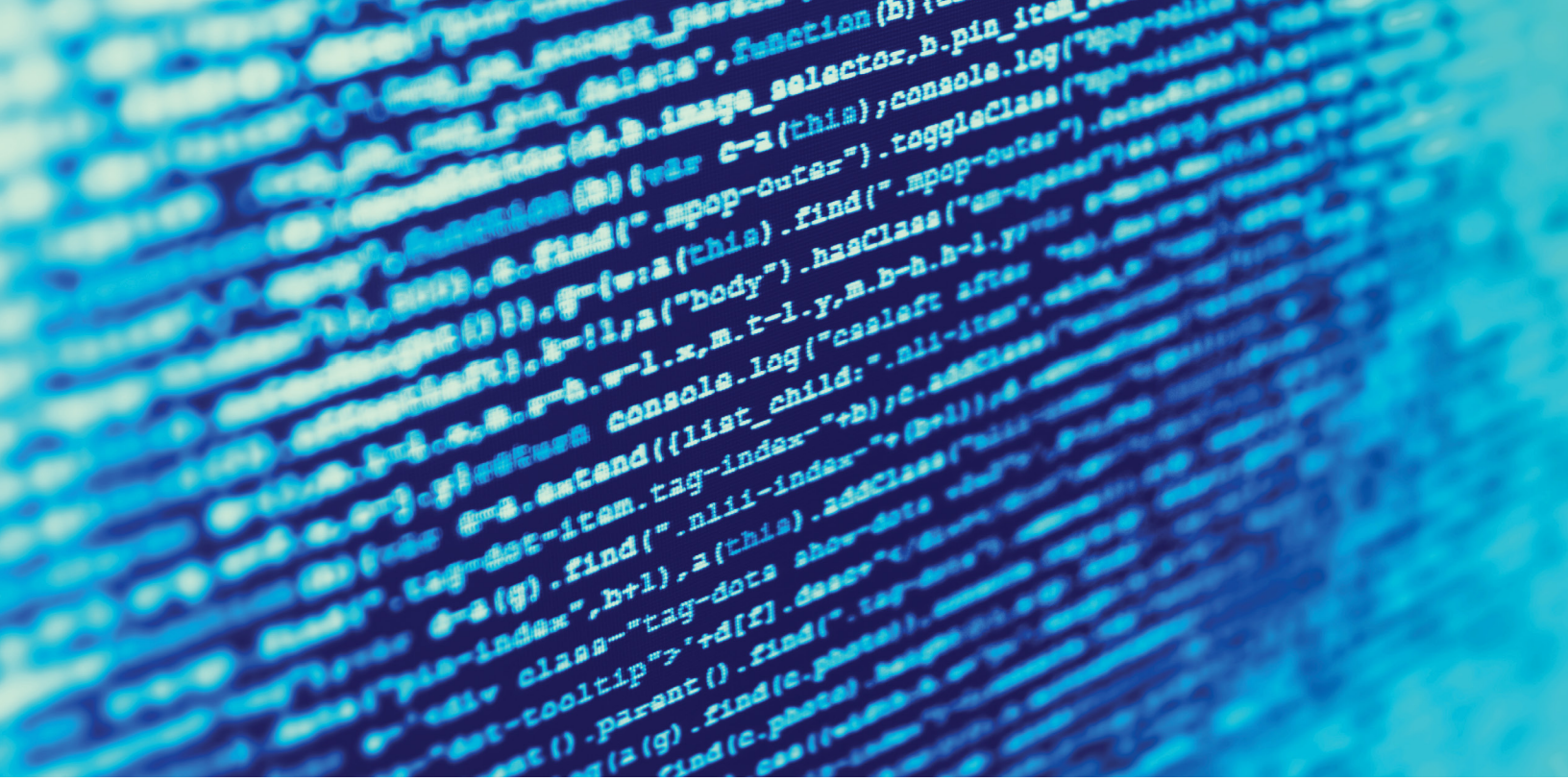
GREATER VANCOUVER

1011 Cordova St has two penthouse suites that are owned through a company registered in a Free Trade Zone in the United Arab Emirates. Their anonymous owner paid C$40 million for the apartments in 2013.

2531, 2925, 2999 and 3287 Point Grey Rd are all owned through express trusts, the beneficiaries of which are not disclosed.







5 The Case for a Public Registry of Companies and Trusts

TI Canada believes that the best way to address the numerous problems caused by the misuse of legal entities and arrangements is to create a publicly available registry that includes details on beneficial ownership. This low-cost, high-impact solution has the support of an extraordinarily broad coalition of stakeholders, and is already being implemented by several of the world's leading economies.

A public registry of companies, trusts and their beneficial owners would be of immense benefit to law enforcement, regulators, tax authorities, businesses, financial institutions, investors and the general public.

Among other benefits, an open, public registry would:

- **Cut red tape for law enforcement and speed up investigations.** Anonymous shell companies and nominees are a common obstacle for law enforcement, and cause many investigations to hit dead ends. If ownership information is only available on demand, or with a court order, criminals risk being tipped off. For cross-border investigations the current system of mutual legal assistance requests is time consuming and expensive, with even straightforward requests taking months, if not years. This has led to calls from public prosecutors[108] and law enforcement associations[109,110] for public registries that include beneficial ownership information.

- **Save the government money.** Anonymous companies and trusts deprive treasuries of billions of dollars in tax revenues each year, add considerable cost to law enforcement, and hinder asset recovery. When the US tabled legislation to require companies to disclose their beneficial owners, the Department of Justice and the Treasury were so supportive of the idea that they offered US$30 million to pay for its implementation.[111] The UK government[112] and the European Commission[113] conducted cost-benefit analyses and found that beneficial ownership registries could be a money saver. The UK study concluded that £30 million (about C$55 million) would be saved annually in police time alone, which would recover the cost of rolling out the policy change in its first year. Such efforts would also help to level the playing field, ensuring that responsible taxpayers do not shoulder the burden for those seeking to skirt the system. TI Canada encourages the Government of Canada to conduct a cost-benefit analysis of a central and publicly available registry of beneficial ownership information in order to better understand the economics of such a policy change in Canada.

- **Help the private sector meet its AML obligations.** Compliance with AML/TF regulations places a huge cost on reporting entities. A public registry would enable financial institutions and other regulated businesses and professionals to more effectively meet their AML/TF obligations while cutting costs.[114,115] The largest banking associations in the US[116] and Europe[117] are in favour of beneficial ownership registries, and executives at leading Canadian banks have expressed frustration with the current lack of transparency. The Chief Anti-Money Laundering Officers of two of Canada's largest banks have publicly acknowledged that their institutions are often unable to independently verify beneficial ownership information – a shortcoming attributed to the absence of publicly available data on beneficial ownership.[118] A public registry would enhance Canada's AML/TF regime, enabling reporting entities (including DNFBPs with limited resources) to conduct due diligence and verify beneficial ownership information.

- **Enable better investments and business decisions.** Most businesses and investors conduct due diligence before engaging with a third party. Doing so reduces the risk of violating laws, damaging their reputation and making poor decisions based on a lack of information. In a 2016 survey by consultancy EY, 91 percent of senior executives stated that it was important to know who beneficially owns the companies they do business with.[119] This opinion is shared by a group of institutional investors managing over US$740 billion,[120] and by a coalition of international business leaders,[121] both of which have called for laws mandating beneficial ownership disclosure.

- **Enhance trust and confidence.** By introducing a public registry with beneficial ownership information, the government would enable journalists, academics and civil society to scrutinize who owns companies and other legal structures. A public registry would reduce corruption and improve the functioning of high-risk sectors such as public procurement and lobbying. It would enhance Canada's reputation both internationally and at home, and improve public trust in government.

The benefits derived from beneficial ownership disclosure will be much greater if that information is made public in an open format. This can be done while preserving privacy rights and personal security, and without being burdensome on Canadian businesses and professionals.

- **Privacy.** TI Canada believes that a central public beneficial ownership registry can function while ensuring that legal rights to privacy are upheld, and would welcome more research in this area to determine the appropriate balance. In order for a registry to be effective, companies and trusts should be required to disclose the full name, nationality, government identification number and address of each beneficial owner. No more information than necessary should be collected. Personal data such as social insurance numbers should not be made public, nor should any documentation used to verify identity. A precedent for such a system exists in the UK, where residential addresses, identification numbers and complete dates of birth are kept from public view.

- **Security.** Criminal extortion is exceedingly rare in Canada. Disclosure of beneficial ownership information would not suddenly make wealthy individuals targets for extortion. Personal details such as government identification and street addresses would remain private in corporate registries, as would financial statements for private companies. Nonetheless, a tightly defined exemption for those with legitimate security concerns could be included in legislation.

- **Red Tape.** Making beneficial ownership information public will not involve much red tape. The responsibility for disclosure should rest with the directors of legal entities and the trustees of legal arrangements. Canadian companies are already required to keep records of their shareholders. Shareholders and beneficial owners are the same for the vast majority of privately owned companies – around 99 percent of them by some official estimates[122] – so the added disclosure requirements will not be a burden to them.

6 Recommendations

Beneficial ownership disclosure is not a silver bullet, but it is a key measure that is urgently needed to address the scourge of corruption and other crimes. There are several steps that the Canadian government can take to meet its international commitments to improve transparency, enable more effective law enforcement and tax collection, and deter the corrupt from using Canada as a safe haven.

Key Recommendation:

The Government of Canada should work with the provinces to establish a central registry of all companies and trusts in Canada, and their beneficial owners. The registry should be available to the public in an open data format. Corporate directors and trustees should be responsible for submitting beneficial ownership information and keeping it accurate and up to date.

Recommendations to Government and Law Enforcement

Companies

- All government authorities in Canada should require beneficial ownership disclosure as a prerequisite for companies seeking to bid on public contracts.
- Companies should be required to submit a contact form and official photo identification for each director, officer and beneficial owner upon incorporation and at the time of any change of control/ownership. This personal data should be kept securely by the applicable corporate registry and shared with the authorities when required.
- Corporate registries should be given adequate resources and a mandate to independently verify the information filed by legal entities, including the identities of directors and shareholders. Registries should be granted authority to apply sanctions for non-compliance with reporting requirements.
- Nominee directors and shareholders should be identified as such in corporate filings. They should be required to name the natural person on whose behalf they are acting. Nominees should keep contact details for that individual and ensure they are accurate and up to date.
- The Government of Canada should revise the *Canada Business Corporations Act* to eliminate bearer shares and instruments. Existing bearer shares should be converted to registered shares. The same should be done in any province that still permits bearer instruments.

Trusts

- Trustees should be required to keep accurate and up-to-date information on settlors and beneficial owners. They should be obliged to provide tax and law enforcement authorities with information related to any trust, regardless of that trust's confidentiality provisions.
- The Government of Canada should set up a central registry of trusts that identifies beneficiaries, settlors and trustees. This information should be made available to the public, after appropriate measures are taken to protect personal data.

Real Estate

- Beneficial ownership information should be included on property title documents, and no property deal should be allowed to proceed without that disclosure. In cases where a property is held through a nominee, this should be explicitly stated and the identity of the beneficiary should be disclosed.

- The Government of Canada should amend the PCMLTFA and associated regulations to make it mandatory for all reporting sectors – including real estate professionals – to identify beneficial ownership before conducting transactions.

Sanctions and Enforcement

- The Government of Canada should establish and apply dissuasive and proportionate sanctions for non-compliance with beneficial ownership disclosure. Those sanctions should include both criminal and civil penalties, and should be applied to ensure that beneficial ownership information is truthful, accurate and filed in a timely manner. Reporting obligations – and sanctions for non-compliance – should focus on those in control of legal entities and arrangements (i.e. directors and trustees) as well as beneficial owners themselves.

- Law enforcement and regulatory authorities should be more active in enforcing and punishing PCMLTFA violations by real estate professionals. Efforts should be taken to ensure that real estate professionals prioritize their AML compliance obligations.

- The Government of Canada should work to ensure that members of the legal profession (and Quebec notaries) are included in Canada's AML/TF regime in a constitutionally compliant manner.

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