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October 3, 2023

Via email: [banc@sen.parl.gc.ca](mailto:banc@sen.parl.gc.ca)

The Honourable Pamela Wallin, O.C., S.O.M.  
Chair, Standing Senate Committee on Banking, Trade and Commerce  
Senate of Canada  
Ottawa ON K1A 0A4

Dear Senator Wallin:

**Re: Bill C-42, *Canada Business Corporations Act* amendments (beneficial ownership registry)**

We are writing on behalf of the Canadian Bar Association's Business Law and Privacy and Access Law Sections and the Anti-Corruption Team (CBA Sections) to comment on Bill C-42, *An Act to amend the Canada Business Corporations Act and to make consequential and related amendments to other Acts*.

The CBA is a national association of 37,000 lawyers, Québec notaries, law teachers and students, with a mandate to promote improvements in the law and the administration of justice.

The CBA Business Law Section's mandate covers the law governing corporate entities and includes securities regulation, commercial law and consumer law. The CBA Privacy and Access Law Section's mandate is to review and influence privacy and access to information law and policy. The Anti-Corruption Team comprises members from the Business, Criminal Justice, Construction and Infrastructure, Charities and Not-for-Profit, Competition and International Law Sections, the Canadian Corporate Counsel Association and the Ethics and Professional Responsibility Subcommittee. It advocates on behalf of the legal profession to end corrupt practices.

### **Concerns with Public Access to the Beneficial Ownership Registry**

It is important to state at the outset that we fully support government efforts to combat financial crime and ensure corporate vehicles are not used for nefarious purposes. We recognize that money laundering and terrorist financing pose serious threats to the integrity of the Canadian economy and the security of its residents.

However, the approach to public access to beneficial ownership information proposed in Bill C-42 does not adequately take into account legitimate and sensitive reasons for individuals wishing to maintain their privacy and confidentiality.

The overarching purpose of a beneficial ownership registry is that the data it contains is accurate and allows law enforcement and other relevant authorities to better detect when corporate vehicles are used for financial crimes. Canada's federal beneficial ownership registry should serve as a national model, and appropriately balance individual rights and the public interest. In its current form, we are concerned that Bill C-42 will disproportionately impair the privacy and personal security rights guaranteed by the *Canadian Charter of Rights and Freedoms*.

Individuals have legitimate personal and business reasons for not publicly disclosing sensitive personal information of beneficial owners. Canada should be mindful that businesses will look carefully at the requirement to make information public and determine how and in which jurisdiction they want to structure their corporations.

Public disclosure of additional corporate information may deter corruption and money laundering, and frustrate the efforts of fraudsters to use sham corporate vehicles for criminal purposes. However, it may also increase identity theft (as recently observed in schemes to defraud the government of COVID-19 relief funds) which could undermine the anti-fraud rationale of the registry. We urge the government to carefully consider the policy intent of Bill C-42 to ensure it meets its stated objective.

### **Balancing Public Interest and Privacy Rights**

In 2022, the [Court of Justice of the European Union](#) (CJEU) examined an anti-money-laundering directive (a 2019 Luxembourg law) establishing a Register of Beneficial Ownership where some information on the beneficial owners was accessible to the general public. The CJEU held that the directive was invalid because the public's access to information on beneficial ownership constituted a serious interference with the fundamental rights to respect for private life and to the protection of personal data. The CJEU held that the interference was neither limited to what is strictly necessary nor proportionate to the objective pursued.

In response, in May 2023 the European Parliament announced a revised directive (see [6th Anti-Money Laundering Directive](#)) on the use of the financial system for the purposes of money laundering or terrorist financing. The new directive establishes that persons with a "legitimate interest," such as journalists, researchers and civil society organisations, should be able to access the registry. Once established, their access right will be valid for at least two and a half years.

The example in Europe demonstrates the careful balance required between the right to public information and the right to privacy.<sup>1</sup>

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<sup>1</sup> The [Open Ownership Principles](#) could also be a potential source of guidance. The Principles are intended to support governments implementing beneficial ownership transparency reforms. That said, the registry should be based on the Canadian legal framework, where privacy rights may be stronger than in other jurisdictions.

## **Ensuring Accurate, Reliable Data**

The focus of the registry should be to ensure accurate and reliable data. In this regard, we recommend defining the following terms in the *Canada Business Corporations Act* to ensure the registry contains relevant and uniform data:

- “direction” [section 2.1(1)a)(iii)]
- “direct or indirect influence” [section 2.1(1)b)]
- “control in fact” [section 2.1(1)b)]
- “in concert” [section 2.1(2)b)]
- “fair market value” [section 2.1(3)b)]. Note: The CBCA uses two types of value: “fair market value” [section 2.1(3)b)] and “fair value” [sections 175, 183, 188 to 190 and 206].

We would be pleased to work with the government to develop these definitions.

## **Conclusion**

In our view, the general public should not be granted unfettered access to personal and sensitive information in the beneficial ownership registry. Individuals should demonstrate a “legitimate interest” to access the registry. This could include journalists, researchers and civil society organisations, upon application. The access should be time-limited (valid for a reasonable amount of time) and scope-limited (where a person could request access about a group or family of companies but not granted bulk access).

Thank you for the opportunity to comment on Bill C-42. We trust our comments are helpful and would be pleased to offer further clarification.

Yours truly,

*(original letter signed by Marc-André O’Rourke for Arlene D. O’Neill, Caroline Deschênes and Norm Keith)*

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