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eNews – February 22, 2024
STEP Canada Public Policy Committee

**RE: Bill C-42, Canada Business Corporations Act amendments
(public disclosure of the beneficial ownership register)**

Public disclosure of sensitive and personal information is now law for federally incorporated companies, as well as for Quebec corporations and entities with activity in Quebec no matter where in the world they were formed. In a time when identity theft, virtual extortion, online theft, and other cybercrimes are daily occurrences, new government rules that make previously private information public seem counterintuitive. The attached submission expresses STEP Canada's public policy concerns about this disclosure of sensitive information.^[1]

Why is this disclosure being legislated? Governments around the world feel that the information will:

- assist in combatting money laundering;
- curtail the incidence of tax evasion; and
- assist in detecting terrorist financing.

In addition to these three objectives, some parties argue that disclosing this information will allow business owners to operate on a more level playing field by having more knowledge about the companies with whom they are contracting.

Bill C-42 requires the government, for federally incorporated companies, to “make available to the public certain information on individuals with significant control over a corporation.” Among other things, for each individual with significant control (ISC), the following information will be made public:

- their name;
- their residential address (but only an address for service, if provided, will be made public); and
- their interest in the corporation, including significant trust interests providing control of the management of the corporation.

[Appendix A of the attached submission](#) lists all the information that will be publicly available on the Corporations Canada website. It is our understanding that the government is considering making this information accessible with a simple “name search” engine. Notably, there is no mention of controls to identify or monitor who is accessing the information.

Quebec already has in force similar legislation (with searchability by an individual’s name beginning July 31, 2024).

While STEP Canada supports the government’s attempts to prevent and detect illegal activities, we question how public disclosure of sensitive information is in the best interests of Canadians. We are of the view that whatever benefits are achieved in terms of combatting money laundering, reducing tax evasion, or detecting terrorist financing, they will not outweigh the cost of making cybercrime easier to commit. Not tracking who is viewing specific information is also a serious shortcoming.

We are not alone in our concerns. The November 22, 2022 decision of the European Union’s highest court, the European Court of Justice (ECJ), in the case of [WM and Sovim v. Luxembourg Business Registers](#) reflects these concerns.

Keeping the beneficial ownership register private is also consistent with the recently stated views of the Office of the Privacy Commissioner of Canada. It will be interesting to see if the legislation is challenged on the basis of privacy law or by way of a Charter challenge.

Informed discourse on this matter is seriously lacking, and we encourage you to circulate this release outside our STEP community.

[1] We thank Daniel Frajman for producing the detailed submission and Henry Shew and Ian Lebane for their editing and contributions.




Rachel Blumenfeld, LLB, TEP
Chair, STEP Canada



Peter Weissman, FCPA, FCA, TEP, CEA
Chair, STEP Canada Public Policy Committee

About STEP: The Society of Trust and Estate Practitioners is the leading international organization for trust and estates professionals. Headquartered in London, England, it has more than 22,000 members worldwide in over 100 countries.

STEP Canada, founded in 1998, has over 3,500 members with branches in the following cities and regions: Atlantic, Montreal, Ottawa, Toronto, Winnipeg, Calgary, Edmonton, and Vancouver, with chapters in Okanagan Valley, Saskatchewan, and Southwestern Ontario. STEP is a multidisciplinary organization with the most experienced and senior practitioners in the field, including lawyers, accountants, financial planners, insurance advisors, and trust professionals. They provide domestic and international advice on trust and estates, including planning, administration, and related taxes.



February 21, 2024

Genevieve Gobeil
Acting Senior Policy Manager
Innovation, Science and Economic Development Canada
C.D. Howe Building
235 Queen Street, Room 1043A
Ottawa, ON K1A 0H5



Via email: ic.corporationscanada.ic@ised-isde.gc.ca

Re: Bill C-42, Canada Business Corporations Act amendments (public disclosure of the beneficial ownership register)

Dear Ms. Gobeil,

The Society of Trust and Estate Practitioners (Canada) (“STEP Canada”) is writing to provide our comments regarding the amendments to the *Canada Business Corporations Act* (CBCA) contained in Bill C-42. The amendments received royal assent on November 2, 2023^[1] and were proclaimed in force effective January 22, 2024.

Bill C-42 provides for public disclosure of information about individuals with significant control (ISCs) of private CBCA corporations.^[2] We note that much of the required information is already publicly available with a simple Industry Canada search for CBCA corporations. While disclosure of the additional private information to governmental, regulatory, and investigative bodies may be in the public interest, such disclosure to the general public is not. It is contrary to the federal government’s own public policy concerning transparency and is an unjustified invasion of privacy. A notable current example of the government refraining from making taxpayer data public is in regard to the sensitive trust data now being collected by the Canada Revenue Agency. Consistent with the government’s traditional and appropriate policy, this information is not being made available to the public.

STEP Canada is part of STEP Worldwide, the leading international organization for trust and estate professionals. Its mandate is to provide a forum for discussion and to advance practitioners’ knowledge of tax, accounting, administrative, statute, and case law through regular branch seminars, symposia, and an annual national conference. STEP Canada also makes representations of a technical nature to government, policy makers, and related professional bodies, with the goal of promoting better understanding of trusts and estates and improving related law and policy. There are approximately 22,000 members worldwide and over 3,500 members in Canada, operating as professionals in the trust, legal, accounting, financial planning, and insurance industries. Many members of STEP Canada and STEP Worldwide are engaged in advising clients on matters relating to the control and ownership, including beneficial ownership, of private corporations.

Given STEP Canada’s large community of professionals in several disciplines related to beneficial ownership, we can provide important insight to help inform the government’s policy regarding the public disclosure of the information required in Bill C-42.

Yours very truly,

A handwritten signature in black ink, appearing to read "Rachel Blumenfeld".

Rachel Blumenfeld, LLB, TEP
Chair, STEP Canada

A handwritten signature in blue ink, appearing to read "Peter Weissman".

Peter Weissman, FCPA, FCA, TEP, CEA
Chair, STEP Canada Public Policy Committee

^[1] S.C. 2023, c. 29.

^[2] Including beneficial ownership through trusts.

Executive Summary

Bill C-42 provides for a public register that will make public most of the information in private CBCA corporations' own respective ISC registers (see new section 21.303 CBCA under Bill C-42). We are strongly of the view that this level of transparency is not in the public interest. We do, however, agree that other recently proclaimed-in-force provisions of the CBCA that oblige disclosure of that information to the government should be brought into force.^[3]

Seeking transparency of private corporations and their shareholders, including trusts, is laudable in the context of the government's policy goals of combatting public ills such as tax evasion, unreasonable tax avoidance, money laundering, and terrorist financing. The corporate beneficial ownership register is consistent with these objectives and includes much information that is already available to the public. Making the additional information collected under Bill C-42 available to governmental and regulatory authorities and investigative bodies that have a constructive interest in the information may be good public policy. However, placing this information in a public register is not.

Our position is consistent with the government's new trust disclosure reporting rules and the current tendency worldwide, to require disclosure of beneficial ownership information to competent authorities, without public disclosure, in pursuit of the policy goals of combatting tax evasion, unreasonable tax avoidance, money laundering, and terrorist financing.

Public disclosure of corporate beneficial ownership registers would be a serious breach of the fundamental right to privacy and the protection of personal data. This interference is unreasonable because it is unnecessary and disproportionate with respect to combatting any of the above-mentioned public ills.^[4] With no monitoring of, or control over, how the public accesses the information, it becomes more likely that the information will be inappropriately used for nefarious purposes. The November 22, 2022 decision of the European Union's highest court, the European Court of Justice (ECJ), in the case of [WM and Sovim v. Luxembourg Business Registers](#) ("Sovim") reflects these concerns. Not making the beneficial ownership register public appears also to be consistent with recently stated views of the Office of the Privacy Commissioner of Canada.

Since the provisions of Bill C-42 are in force as of January 22, 2024, we ask that the publicly searchable information on the corporate beneficial ownership register not include the names of individuals who are such owners or controllers. Rather, to protect the privacy of these individuals, searchability should continue to be limited to the names of reporting corporations only.

Our observations and concerns are laid out under the following rubrics: (1) the principal CBCA provisions involved; (2) the request on the public searchability function; (3) the underlying public policy at the federal level in Canada and other jurisdictions; (4) the need to protect privacy; and (5) our conclusion.

1. Principal CBCA provisions

Note that the CBCA uses the term "individuals with significant control" (ISCs) when referring to information about so-called beneficial owners to be disclosed under the CBCA.

The principal CBCA provisions concerning ISCs can be briefly described as follows:

^[3] Those other recently proclaimed provisions that should be brought into force are principally at sections 21.21 and 21.301 CBCA, which received royal assent on June 23, 2022 under *Budget Implementation Act, 2022, No. 1*, and came into force on January 22, 2024. See Appendix A to this letter, which itemizes the ISC/beneficial ownership information to be disclosed to Corporations Canada, and the ISC/beneficial ownership information that would be posted publicly.

^[4] There is an additional policy goal stated in some jurisdictions, but apparently not in Canada, to the effect that beneficial ownership registers are also meant to increase knowledge of beneficial ownership among transactional counterparties so as to combat the private ill of fraud that may be perpetrated by one such party against another.

1.1 Provisions in force prior to January 22, 2024

- Section 2.1 CBCA in essence defines ISCs with regard to private corporations formed under the CBCA as individuals who directly hold or directly or indirectly control or direct at least 25% of the votes or value, or who have control in fact, of the CBCA corporation in question;
- section 21.1(1) CBCA requires private CBCA corporations to maintain in their internal corporate records a register of ISCs (“ISC register”) for the corporation that identifies ISCs by name and describes how they are an ISC, including, as applicable, a description of their interests and rights in respect of shares of the corporation; and
- section 21.31 CBCA allows investigative bodies—defined essentially as any police force, the Canada Revenue Agency (CRA), any provincial body that has responsibilities similar to those of the CRA, and related prescribed bodies (there are as yet no such prescribed bodies)—in the context of a serious investigation to obtain from a CBCA corporation a copy of its ISC register.

1.2 Provisions that came into force on January 22, 2024

- Section 21.21 CBCA indicates that a corporation shall send to Corporations Canada information in its ISC register on incorporation, amalgamation, and continuance on an annual basis (even if there has been no change to the information over the previous year) and when a change in the information occurs;
- section 21.301 CBCA indicates that Corporations Canada may provide all or part of the information in a corporation’s ISC register to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), the investigative bodies referred to in section 21.31 CBCA, or to any prescribed entity (there are as yet no such prescribed entities);
- section 21.302 CBCA authorizes Corporations Canada to provide all or part of the information in a corporation’s ISC register to a provincial corporate registry or a provincial government department or agency that is responsible for corporate law in that province; and
- section 21.303 CBCA provides that the principal information in a corporation’s ISC register shall be made available on the Corporations Canada website.

2. Request on the public searchability function

As stated above, a public register for ISCs of corporations incorporated under the CBCA will be made available on the Corporations Canada website. Although the provision for such a public register is already in force, the manner in which the search function is implemented and monitored is crucial, because it may directly compromise privacy rights. The features of this search function should be carefully considered and must be supported by the underlying public policy objectives behind this required disclosure. Any unnecessary features, or features that are implemented contrary to the underlying policy, should not be made available to the public. In this context, it is important first to examine the rationale for implementing a public register.

The current tendency worldwide is to oblige disclosure of corporate beneficial ownership information to governmental authorities and related competent authorities, rather than obliging disclosure on a public register. This is because the public policy rationale for the disclosure of such information—essentially, the need to combat public ills such as tax evasion, unreasonable tax avoidance, money laundering, and terrorist financing—is served by disclosure to governmental and related competent authorities. We believe that this public policy rationale applies as well to the ISC registers under the CBCA, and has been referred to throughout by the federal government in relation to ISC registers.

In cases where a jurisdiction publicly discloses this information, we have observed that the jurisdiction usually expresses a consistent policy view that such public disclosure will increase knowledge of beneficial ownership among transactional counterparties and therefore improve economic relations among such mostly private parties and/or help to combat the private ill of fraud perpetrated by one such party against another. Whether such a policy achieves these goals is debatable. The use of public disclosure to support private economic relations arguably does not provide that support. Requiring public disclosure interferes with the natural progress of negotiations in an open market, and, except for cases of actual fraud, which arise in a very small minority of transactions, there appears to be no private ill that is addressed by making beneficial ownership information publicly accessible. We note that the new information regarding trusts being collected by the CRA but not being made publicly available is consistent with good public policy.

We also note that much of the information that may be helpful to private transactional counterparties is already publicly available through a search of information about CBCA corporations on the Industry Canada website. Furthermore, to the extent that the disclosure of beneficial ownership information is useful, well-advised counterparties could make beneficial ownership disclosure a condition of closing a transaction and build in appropriate consequences for misrepresentation. And in the consumer context, consumer protection legislation and code of conduct regimes already protect unsophisticated parties where circumstances warrant.^[5] In any event, the objective of supporting and improving economic relations among private counterparties is notably absent from the justifications cited by the federal government as a reason for public disclosure. This further supports our position that although ISC registers should be given to governmental and investigative bodies, the information should not be made public.

Since the provisions of Bill C-42 are in force as of January 22, 2024, we ask that any public database of CBCA corporations never be searchable by the names of individuals who are owners or controllers of such corporations. Instead, we believe that the search function should be limited to the name of the CBCA corporation. Even if there is an additional unstated policy objective of enhancing economic relations among transactional counterparties through public disclosure of beneficial ownership information, such a goal can still be attained by allowing a party to search only the ISC information of the other counterparty by the name of the corporation. In other words, the ISC information about a party to a transaction should be limited to the information accessible through a search based on the corporation's name, not the ISC's name. The reasoning behind this approach is that a transactional party requires knowledge only of the ISC information specific to the other counterparty involved, rather than information about all other CBCA corporations controlled by the particular ISC. Introducing a public search function based on individuals' names may result in the disclosure of more information than is necessary to the other counterparty, which could run contrary to the underlying rationale for establishing a public register and could violate privacy rights (addressed in more detail below).

We also note that there is no mention of oversight of access and use of the public register. Ideally, requiring users to create an account, including contact information, in order to search the register would help to screen out "curious" access. At a minimum, the government and law enforcement should be able to monitor who accesses the register and what information they view. Such information will help to ensure that there is a digital trail that authorities could follow if information appears to have been used nefariously.

[5] For instance, article 4 of the National Association of Realtors' Code of Ethics provides that realtors "shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner's agent or broker. In selling property they own, or in which they have any interest, REALTORS® shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative." <https://www.nar.realtor/about-nar/governing-documents/code-of-ethics/2023-code-of-ethics-standards-of-practice>

3. Summary of federal, provincial, territorial, and foreign public policy statements

Despite the potential policy goal of assisting private transactional counterparties through publicly available beneficial ownership information, there has been inconsistent support for this goal. This can be seen in policy statements emanating from various jurisdictions in recent years, including the following:

3.1 The federal government

In December 2017, the federal government announced that the federal, provincial, and territorial finance ministers had agreed on the importance of ensuring that appropriate safeguards are in place to prevent the misuse of corporations and other legal entities for tax evasion and other criminal purposes, such as money laundering, corruption, and terrorist financing. The ministers therefore agreed in principle to amend their respective corporate statutes by July 2019 to require corporations to hold accurate and up-to-date information on beneficial owners and to make such information available to law enforcement and to tax and other authorities.

In November 2018, the federal Standing Committee on Finance published its report “Confronting Money Laundering and Terrorist Financing: Moving Canada Forward.” The first of its 32 recommendations was that the federal government work with the provinces and territories to create a pan-Canadian beneficial ownership registry of all entities with significant control. However, it did not recommend that this registry be publicly accessible. Specifically, recommendation 1 states, *inter alia*, that the registry should not be publicly accessible, but that it can be accessed by certain law enforcement authorities, the CRA, FINTRAC, authorized reporting entities, and other public authorities.

The federal government met the deadline of July 2019 by enacting the above-mentioned CBCA provisions, currently in force, that oblige federal private corporations to have an internal ISC register; those provisions first came into force in June 2019. The remaining provinces (other than Alberta) have individually brought into force similar legislation for corporations formed in their jurisdiction that largely duplicates the text of the currently in-force CBCA provisions so as to provide for an internal ISC register. (British Columbia’s legislation is drafted differently but has substantially the same effect, and Quebec’s legislation, discussed further below, provides for public disclosure on the website of the Quebec corporations branch.) It may be that whatever principal amendments that were made or will be made to the federal ISC legislation as it read when it first came into force in 2019 will eventually be taken up in whole or in part in the seven provinces that have already largely duplicated the text of the original federal ISC legislation.

Over time, since June 2019, the federal government has issued statements that may show a desire to also promote better economic relations and/or combat fraud among private parties, but these statements and the subsequent legislative steps taken by the federal government relating to the CBCA (detailed above) have not been clear in this regard, which may demonstrate that the federal government itself is not comfortable with public disclosure of corporate beneficial ownership information. For example:

The federal government held a public consultation from February to May 2020 on the creation of publicly accessible corporate beneficial ownership registers. In a report on the consultation issued on April 6, 2021, the federal government indicated that “public access was not considered by the majority of stakeholders as essential to achieving the policy objectives of combatting the misuse of corporations, considering the accompanying privacy and security risks. Furthermore, some parties expressed caution about the impact that public registries could have on investment, particularly given Canada’s proximity to the United States. At the time of the

consultation, the United States was considering a registry only accessible to authorized government authorities, an approach that has now been adopted.”^[6]

Following the report on this consultation, differing proposals and policy rationales began to emanate from the federal government. Days after the release of the report, the April 19, 2021 federal budget contained a proposal to implement a publicly accessible corporate beneficial ownership registry by 2025, asserting that such a register would be beneficial to all Canadians regardless of socio-economic status. Then, at the December 2021 Summit for Democracy in Washington, DC, and in the March 2022 supply and confidence agreement between the federal Liberal Party and the New Democratic Party, the goal of having a national public beneficial ownership register in Canada by the end of 2023 was stated to be a priority.

The April 7, 2022 federal budget referred to a goal of having the CBCA ISC register made public by the end of 2023 and made scalable so that the provinces could join it. This was followed shortly afterward, on April 28, 2022, by the tabling of *Budget Implementation Act, 2022, No. 1*, which stated in its notes that as “first steps” to a public CBCA ISC register, the existing information from internal CBCA ISC registers would have to be sent to Corporations Canada, which then could provide it to stated governmental and investigative bodies, through new sections 21.21 and 21.301 CBCA tabled that day (those sections, referred to above, received royal assent on June 23, 2022 and came into force on January 22, 2024). As for the policy behind these provisions to have information from CBCA corporations’ ISC registers sent to Corporations Canada, the notes accompanying the legislation indicated that this new rule was meant to “help counter illegal activities, including money laundering, corruption and tax evasion.” No mention was made of promoting better economic relations and/or combatting fraud among private parties.

On March 22, 2023, the federal government tabled Bill C-42 and its above-mentioned provisions providing for a public beneficial ownership registry. The federal government’s news release accompanying Bill C-42 stated, “The Government of Canada is committed to protecting Canadians against money laundering and terrorist financing, deterring tax evasion and tax avoidance, and making sure that Canada is an attractive place to conduct business.” That statement includes an allusion, tentative at best, to the goal of promoting better economic relations and/or combatting fraud among private parties.

On October 11, 2023, the federal government issued its order in council setting the in-force date of January 22, 2024 for the requirement to give ISC information (principally the names of ISCs and a description of their significant control) to Corporations Canada. Statements then made by the federal government may be interpreted as signaling a pull-back from its goal of enacting the public register, and a request for additional comment from the public on this point, as can be seen from the following statements made on or about October 11, 2023: (1) as indicated in the October 2023 explanatory note to the order in council, “these amendments will help law enforcement agencies and federal tax authorities investigate activities such as money laundering and tax evasion” (that is, with no mention of promoting better economic relations and/or combatting fraud among private parties); it was also indicated in the notes that “Innovation, Science and Economic Development Canada (ISED) has actively engaged with key stakeholders ... ISED also continues to engage key stakeholders as well as the general public throughout the implementation process”; and (2) in a public statement issued on October 12, 2023 relating to the January 2024 in-force date, Corporations Canada indicated that the potential future implementation of a public beneficial ownership register under Bill C-42 was not assured. Rather, Corporations Canada stated that the ISC registers will be made public “if the legislative proposals set out in [Bill C-42] are adopted in

^[6] The federal government’s April 6, 2021 consultation report, titled “Public Consultations on Strengthening Corporate Beneficial Ownership Transparency in Canada: What We Heard,” is available at <https://ised-isde.canada.ca/site/consultation-strengthening-corporate-beneficial-ownership-transparency-canada/en/public-consultations-strengthening-corporate-beneficial-ownership-transparency-canada-what-we-heard>.

their current form,” and also that the ISC information “*could* be made available to the public.” On a linked template ISC register, it indicated that certain “ISC information will soon need to be filed with Corporations Canada and some of the information *may soon* be made public on Corporations Canada’s website” (emphasis added).

On December 18, 2023, Corporations Canada announced that it would adopt the legislative proposals from Bill C-42 in their current form effective January 22, 2024, and stated that the ISC information would be made public on its website.

Other jurisdictions have been more consistent than the federal government in stating the policy behind their particular corporate beneficial ownership registers. The following sections outline the positions of jurisdictions that share the federal government’s interest in maintaining information about individuals who control at least 25% of the votes or value of, or who control in fact, the underlying corporation.

3.2 Quebec

Note that this section discussing Quebec’s policy will also refer to some particular issues concerning the Quebec rules that are relevant in considering Bill C-42. These rules relate to the public nature of the register, which may lead to a slower and more costly process for the collection of relevant information; the apparent ability of the Quebec government to access and use the beneficial ownership information submitted to it regardless of whether the information is made public; the apparent fact that Quebec’s rule providing for requests that public availability of beneficial ownership information be suppressed for safety reasons are granted only in limited circumstances; and a public beneficial ownership register tending to promote a whistleblowing role for the public in relation to inaccuracies on the register, which may not be desirable.

Since March 31, 2023, Quebec’s *Act respecting the legal publicity of enterprises* (“the *Legal Publicity Act*”) requires all private corporations and other entities, including partnerships, with activity in Quebec, no matter where in the world they are formed, to list their “ultimate beneficiaries” (Quebec’s term for ISCs) on the corporation’s or other entity’s registration on the public website of the Registre des entreprises du Québec (REQ), the province’s corporations branch. Starting with the consultation on transparency carried out by Quebec in October 2019, right up to the Act’s March 2023 in-force date, the government of Quebec has consistently stated that fighting fraud generally in the context of interactions among private parties is an added policy purpose of its legislation. This policy of fighting fraud is stated in new section 0.1 of the *Legal Publicity Act*, as follows: “The purpose of the Act is to enhance the protection of the public by providing public access to certain information contained in the register, particularly in the context of socio-economic relations. A further purpose of the Act is to prevent and fight tax evasion, money laundering and corruption.”

Given these purposes, it is perhaps not surprising that Quebec enacted a public register. It is noteworthy that the supporting wording used by Quebec—to the effect that socio-economic relations (that is, economic relations among counterparties, it appears) are being enhanced—was used by the federal government in the April 2021 budget, but not since.

Lawyers in Quebec who have been working on submitting on behalf of corporations and other entities the ultimate beneficiary information that is to be made public on the Quebec REQ website have suggested that registrants (primarily private corporations and partnerships) are sometimes slow to provide information, owing perhaps to its public nature, thereby increasing transaction costs. Furthermore, it appears that REQ personnel, as they have indicated when asked, have begun to review submitted information closely, and will be actively contacting registrants (possibly beginning only in June 2024, after an apparent grace period ends) to question information that appears to be erroneous, incomplete, or contradictory. This does, however, lead many to conclude that if the ultimate beneficiary information were simply submitted to the REQ and not made public, the REQ would still be able to review the information and contact registrants to clarify or correct apparent errors or incomplete or contradictory matters.

Lawyers in Quebec have also noted that some ultimate beneficiaries would like to suppress from the public register their beneficial ownership information because disclosure poses a serious threat to their safety. (In some jurisdictions, public knowledge of the ownership of shares or other signs of asset ownership can be a safety risk, a phenomenon that has been observed in the literature.^[7]) However, a request in Quebec to suppress information from the public register in such circumstances apparently can only rarely succeed, because a very specific safety risk, rather than a general yet widespread fear, must be shown. (Section 100 of the *Legal Publicity Act* provides for this often ineffective right to apply to suppress information for serious safety reasons. A similar mechanism for applying to suppress information for serious safety reasons is provided in section 21.303(3) CBCA under Bill C-42, but that federal provision may end up being as difficult to use as the Quebec provision.) This is a very problematic aspect of the public beneficial ownership register in Quebec, and the same may be the case under Bill C-42 if its provisions relating to a public federal ISC register are proceeded with.

Quebec has acknowledged that the public nature of its register does create a potential whistleblower function among the general public with respect to spotting and reporting inadvertent or intentional inaccuracies on the register. (For example, a question-and-answer page on the REQ website, posted from early 2021 until October 2022 but now taken down, stated, “The public can better protect themselves by consulting the register with a user-friendly search tool to access information in order to facilitate their socioeconomic exchanges and flag potential errors.”) Federal Bill C-42, in section 266.1 CBCA, also alludes to a whistleblower function among the public if the federal ISC register becomes public. It indicates that a person who submits information about wrongdoing in relation to the CBCA cannot have their identity revealed by Corporations Canada without their consent (although their identifying information can be provided to FINTRAC). In our view, the potential benefits of improved information resulting from corrections submitted by the public may be outweighed by potential negative aspects of whistleblowing, especially if, in any event, the information is submitted to and then vetted by the government agency in question.

3.3 The United Kingdom

In 2016 the United Kingdom became the first jurisdiction with a public register of corporate beneficial owners, and it continues to have a public register. The UK term for ISCs is “people with significant control.”

The United Kingdom has been consistent in referring to the public policy behind its public register, citing both the need to combat tax evasion and other public ills, and the benefits to counterparties of knowing with whom they are dealing. For example, then UK Prime Minister David Cameron stated in 2013, “Illegality ... is bad for Britain’s economy ... as people evade their taxes through untraceable trails of paperwork. ... There are [also] wider benefits to making this information available to everyone. It’s better for businesses here—who will be able to better identify who really owns the companies they’re trading with.”^[8] We note that providing benefits to counterparties was not cited as motivating factor in enacting the Canadian legislation, and that the United Kingdom may well become an outlier with respect to public disclosure given EU developments (referred to below).

3.4 The European Union

The European Union’s anti-money-laundering directives (AMLDs) have over time undergone distinct changes in approach. As beneficial ownership registers were first beginning to appear, the

^[7] See, for example, Godwin Okafor and Obiajulu Ede, “Kidnapping Rate and Capital Flight: Empirical Evidence from Developing Countries” (July 2023) 28:3 *International Journal of Finance & Economics* 2590-2606 (<https://doi.org/10.1002/ijfe.2551>).

^[8] “Register Revealing Firms’ True Owners Will Be Open to the Public, Says Cameron,” *The Guardian*, October 31, 2013 (<https://www.theguardian.com/business/2013/oct/31/public-register-firms-secret-owners-cameron>).

4th AMLD of 2015 stated that company registers should be non-public, but would be given to competent governmental authorities, with third parties being given limited access on the basis of legitimate interest. The 5th AMLD of 2018 stated that company registers should be public, apparently as an additional tool in combatting tax evasion, money laundering, and other public ills.

Changes have since been made as a result of the above-mentioned November 2022 decision of the ECJ in *Sovim*, which found that the public nature of Luxembourg's register was a disproportionate interference with privacy rights. As a result, the 6th AMLD of 2023 returns to a rule similar to that under the 4th AMLD (beneficial ownership register being given to the government, with third parties being given limited access on the basis of legitimate interest).

3.5 The United States (at the federal level)

As the Canadian federal government noted in its April 2021 report on its beneficial ownership consultation, the United States had adopted a beneficial ownership register that would not be public. This is indeed the case. The US federal rules on corporate beneficial ownership registers, found in the *Corporate Transparency Act (USCTA)*, were enacted in 2021 and came into force on January 1, 2024. The rules apply to US domestic corporations and limited liability companies (LLCs), and to foreign corporations registered to do business in the United States. Authorized representatives with access to the register include US government agencies at various levels, financial institutions carrying out customer due diligence, and certain foreign authorities such as foreign law enforcement and central authorities. The United States has been clear that the register is not public. FinCEN, a bureau of the US Department of the Treasury, is the entity charged with collecting beneficial ownership information. It described the purpose of the register as follows: “[The final rules under the USCTA] will enhance U.S. national security by making it more difficult for criminals to exploit opaque legal structures to launder money, traffic humans and drugs, and commit serious tax fraud and other crimes.”^[9]

It is also notable that the USCTA, although requiring the submission of the name, date of birth, and address of a material beneficial owner, does not require a description of the beneficial owner's interest, which is an important factor in limiting the disclosure of private business information.

3.6 British Columbia, New York, and California

British Columbia's *Business Corporations Amendment Act, 2023*, enacted in May 2023, will make available to the public by 2025 transparency information for “significant individuals” (broadly similar to ISCs) that is currently internal to BC corporations. When this legislation was introduced earlier in 2023, the BC Minister of Finance stated, “By creating a registry for beneficial owners, we're rooting out money laundering and strengthening how we detect, deter and relentlessly disrupt illegal activity in BC.”

British Columbia is thus a jurisdiction that supports having a public beneficial ownership register, but without having an express policy objective of fighting fraud generally and/or promoting economic relations among private parties. In our view, the public disclosure aspect of the BC regime is vulnerable to legal challenges.

There are at least two US states that have pending legislation, either not yet enacted or not fully in force, with an underlying policy that, as in Quebec and the United Kingdom, includes private-party contractual concerns in the reasoning for having public beneficial ownership registers. One of these states is New York, where the State Senate and Assembly approved the *LLC Transparency Act*, which would require public disclosure of information about beneficial owners (using the USCTA's definition of beneficial owners) of LLCs formed or qualified to do business in New York. The other state is California, where a bill (SB 594) (Durazo) would require corporations, LLCs, and real estate investment trusts to publicly report information about beneficial owners.

^[9] FinCEN Beneficial Ownership Information Reporting Rule Fact Sheet, September 29, 2022 (<https://www.fincen.gov/beneficial-ownership-information-reporting-rule-fact-sheet>).

Regarding these initiatives in New York and California, lawmakers have referred to a desire to reduce abuse by residential landlords through public disclosure of their beneficial ownership. (New York's legislation was ultimately signed by the state governor in December 2023 with public access removed, apparently to address privacy and security concerns that were raised; the legislation may be in force by the end of 2024.)

4. Privacy rights

We believe that a public beneficial ownership register as mandated under Bill C-42 would be a serious and unreasonable interference with the fundamental right to privacy and the protection of personal data.

As noted above, the European Union's highest court, the ECJ, held just that in the November 2022 *Sovim* decision.^[10] Luxembourg's then public beneficial ownership register was found to be in violation of privacy rights under EU human rights legislation. The ECJ considered whether the register's interference with the fundamental right to privacy was a proportionate interference and concluded that it was not. It said that principles of transparency do not override a finding that information about the identity of beneficial owners of public companies should not be subject to unrestricted public scrutiny. As a result, several EU nations have withdrawn the public nature of their corporate beneficial ownership registers. A further result of the *Sovim* decision is the above-mentioned issuance by the EU in 2023 of the 6th AMLD, which returns the EU to a rule similar to that under the 4th AMLD (beneficial ownership register being given to the government, with third parties being given limited access on the basis of legitimate interest).

We submit that similar rights to privacy are fundamental in Canada, and that the public beneficial ownership register as mandated under Bill C-42 would also be found to be a disproportionate interference with privacy rights under the Canadian *Charter of Rights and Freedoms*. The federal government should amend the law, especially given that a federal law that appears equally effective in combatting tax avoidance, unreasonable tax avoidance, money laundering, and terrorist financing is already in force as of January 22, 2024—namely, the above-mentioned CBCA provisions requiring private CBCA corporations to give their ISC information to Corporations Canada, which in turn can give it to investigative bodies. Furthermore, the fact that seven provinces have ISC legislation that textually is almost identical to that put in force under the CBCA in June 2019 is a further justification for the federal government to repeal provisions of a law (the public beneficial ownership register as mandated under Bill C-42) that may not withstand constitutional scrutiny.

It follows that we strongly disagree with the federal government's Charter statement with regard to Bill C-42 that was tabled in the House of Commons on April 18, 2023. The Charter statement says in part that the public disclosure of ISC information under Bill C-42 does not violate the right to be secure against unreasonable search or seizure (under section 8 of the Canadian *Charter of Rights and Freedoms*) because, *inter alia*, "the creation of a central and publicly accessible registry would align with international best practices," and "privacy interests in this information are diminished given the limited information involved and the commercial and regulatory context, in which privacy expectations are generally lower."

The Charter statement refers to "international best practices." Such best practices appear not to be reflected in Bill C-42, but as set out in the ECJ's *Sovim* decision, and in the subsequent closing by several EU nations of public beneficial ownership registers in favour of submission of beneficial ownership information only to investigative bodies. The United States has taken a similar approach with its *Corporate Transparency Act*. In our view, rules like these, rather than those in Bill C-42, should apply to CBCA corporations.

^[10] A good summary of the *Sovim* decision is provided by Paolo Panico, "The Debate Rages On: What Next for Public Access to UBO Registers in Europe Following the ECJ *Sovim* Decision?" (June 2023) 2 *Trust and Estate Quarterly* (www.step.org/tqr/tqr-june-2023).

The Charter statement also refers to the beneficial ownership information to be disclosed under Bill C-42 as “limited,” and claims that “privacy expectations [with regard to this information] are generally lower.” To the contrary, making public information about beneficial ownership and control of corporations is a significant, not a limited, invasion of privacy, and the fact that such information has not previously been made public suggests that it is not subject to low privacy expectations. In this regard, we wish to reiterate the comments of STEP Canada opposing public beneficial ownership registers, which we sent to Innovation, Science and Economic Development Canada on June 29, 2020, in response to its beneficial ownership transparency consultation, when we wrote as follows:

Privacy protections should not be lightly cast aside merely because an individual’s financial and business affairs involve corporate structures;

The harm resulting from public disclosure can far outweigh the mischief that a public register is intended to remedy (for example, readily available personal information can be used for nefarious purposes, by facilitating other crimes such as identity theft, scams, fraud and extortion);

Public beneficial ownership information will result in beneficial owners being named in litigation related to private corporations, regardless of whether they are proper parties to such litigation, given the separate legal existence of a corporation; and

It cannot be good policy to put into force legislation [such as Bill C-42] that will be a significant intrusion on privacy without evidence that public access to such information is proportional to the desired results.

Consistent with the views of STEP Canada, it is notable that the Office of the Privacy Commissioner of Canada (OPC) in its August 10, 2023 submission to the Department of Finance in response to the department’s June 2023 consultation on Canada’s anti-money-laundering and anti-terrorist-financing regime, in the context of reviewing the possible public beneficial ownership register under Bill C-42, stated that necessity and proportionality must be considered in relation to a beneficial ownership regime, and that access to beneficial ownership information should not be unfettered, as through a public register, but limited on the basis of legitimate interest. This view of the OPC is not surprising when one considers the importance of privacy in Canada—for example, as expressed by the Supreme Court of Canada in *Lavigne v. Canada*, 2002 SCC 53, at paragraph 25, where the court confirmed that under Canadian law “the protection of privacy is necessary to the preservation of a free and democratic society.”

As regards entities and persons with a legitimate interest in accessing beneficial ownership information, we submit that they are the investigative bodies referred to in Bill C-42. It has been observed, including by the Canadian Bar Association in its June 2023 assessment of Bill C-42, that those with such an interest could include journalists, researchers, and civil society organizations, upon application, which is similar to the access that is provided in several EU jurisdictions. Notably, in the United States under the *Corporate Transparency Act*, financial institutions are considered to have a legitimate interest in accessing beneficial ownership information for the purpose of carrying out customer due diligence. In our view, limiting access of non-governmental actors to those who may have a legitimate interest in accessing beneficial ownership information merits further review.

The Corporations Canada website’s database of CBCA corporations is currently searchable by the name of the incorporated corporation (such searchability has been left unchanged under Bill C-42), and we submit that this search method should remain the only way that the public can access the registry. Such a limit on searchability would help to preserve the privacy of ISCs. Corporations Canada would still have the ISC information and presumably would itself be able to internally search the database by name of ISC. In contrast, public searchability by name of ISC would, in our view, be a disproportionate invasion of privacy.

5. Conclusion

It is clear that the international trend, as exemplified by recent developments in the United States and the European Union, is to not proceed with public corporate beneficial ownership registers and to discontinue existing registers. The trend, rather, is to proceed with the submission by private corporations of their beneficial ownership information to a governmental body, which can in turn provide that information to bodies with a clear interest in accessing the information. We therefore support the provisions requiring the submission of beneficial ownership information of private CBCA corporations to Corporations Canada, and we furthermore call for the federal government to repeal those provisions in Bill C-42 that would establish a public beneficial ownership register of such information. This position is consistent with the public policy of combatting the public ills of tax evasion, unreasonable tax avoidance, money laundering, and terrorist financing, and would preserve the privacy and protection of personal data of the individuals in question.

Alternatively, in the event that the federal government disagrees with our view that a publicly accessible beneficial ownership register is not sound public policy for Canada, at the very least, any database of CBCA corporations should never be publicly searchable by the names of individuals with significant control, but rather should remain searchable by the name of the corporation only.

We would be pleased to discuss our comments with you at your convenience, and to meet with you in this regard. We would welcome the opportunity to work with you to bring together stakeholders for collective consideration of this very important issue.

APPENDIX A
Information to Be Disclosed

Briefly stated, with regard to individuals with significant control (ISCs)^[11] in relation to subject private CBCA corporations:

- A. Information that must be submitted to Corporations Canada (and could be given by Corporations Canada to the Financial Transactions and Reports Analysis Centre of Canada [FINTRAC], the Canada Revenue Agency [CRA], Revenu Québec, other similar provincial bodies, or police forces, especially in the context of a serious investigation), and that will be made public on the Corporations Canada website:
- Full name
 - Date the individual became an ISC, and ceased to be an ISC as applicable
 - Description of the ISC's significant control
 - Address for service (if one is provided)
 - Residential address (if no address for service is provided)
- B. Information that must be submitted to Corporations Canada (and could be given by Corporations Canada to FINTRAC, the CRA, Revenu Québec, other similar provincial bodies, or police forces, especially in the context of a serious investigation), and that will not be made public on the Corporations Canada website:
- Date of birth
 - Country (or countries) of citizenship (this information, though not posted publicly, apparently will have to be filed only with Corporations Canada)
 - Country (or possibly countries) where the ISC is considered a resident for tax purposes
 - Residential address (if an address for service is provided)

^[11] In brief and generally : the individuals with significant control (or ISCs) with regard to a subject private CBCA corporation are the individuals, after looking through intervening corporations, trusts and nominees, holding or controlling at least 25% of the votes or value, or with control in fact, of the underlying corporation in question; regarding trusts, if a trust has that 25% or control in the underlying corporation, the trustees of the trust would also be ISCs (trust beneficiaries having that 25% or control in the underlying corporation through a bare trust would also be ISCs).