



**Submission of the  
Federation of Law Societies of Canada  
to the Department of Innovation, Science and  
Economic Development and Department of Finance  
in response to the consultation on a public beneficial  
ownership registry**

**July 29, 2022**

## **Introduction**

1. The Federation of Law Societies of Canada (the “Federation”) appreciates the opportunity to provide written comments to Innovation, Science and Economic Development Canada (“ISED Canada”) and Finance Canada on the consultation of phase two of the federal government’s legislative plan to implement a public beneficial ownership registry for federally-incorporated private corporations. This submission supplements the information provided to you by Federation staff in our meeting on July 6, 2022 and the Federation’s written submissions dated May 15, 2020.
2. The Federation is the coordinating body of the 14 governing bodies of the legal profession in Canada. Our member law societies are mandated by provincial and territorial legislation to regulate more than 136,000 lawyers across the country, 4,200 notaries in Quebec and nearly 10,600 licensed paralegals in Ontario in the public interest. An important role of the Federation is to develop consistent anti-money laundering and terrorist financing rules for implementation by the regulators of the legal profession.
3. As stated in our prior submission, the Federation supports a federal public beneficial ownership registry. If implemented properly, it could be a valuable tool for legal professionals – lawyers, Quebec notaries and regulated paralegals – to mitigate money laundering and terrorist financing risks.

## **The registry must provide legal professionals with sufficient information**

4. The Federation’s key consideration for the registry is ensuring that legal professionals have access to sufficient information to accurately identify beneficial owners as part of the rigorous client identification and verification (or ‘know your client’) requirements imposed by the law societies.
5. To achieve this, the federal legislation must authorize the collection of sufficient data about the beneficial owners so they may be individually identified. The legislation must also authorize the disclosure of that information to legal professionals for the purpose of verifying the identity of beneficial owners.
6. The Federation takes no definitive position on what specific data points would be necessary to ensure beneficial owners are accurately identified. It is likely, however, that collecting only minimal information, such as the name of the individual, the date they became an owner, and the nature of their ownership, would not be sufficient. Failing to ensure that sufficient data is collected to accurately identify beneficial owners would undermine the goal of the registry: providing greater corporate transparency to facilitate efforts to fight financial crimes such as money laundering.
7. As mentioned in our prior submissions, the absence of a central registry led the Federation to stop short of including a mandatory requirement to identify beneficial owners in the model

anti-money laundering and terrorist financing rules developed by the Federation and implemented by the law societies. Rather, the rules require legal professionals to make reasonable efforts to do so. In the absence of access to reliable data in a central beneficial ownership registry, it will remain difficult for law societies to move to a mandatory requirement that legal professionals identify beneficial owners.

8. Although legal professionals are exempt from certain provisions of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (“PCMLTFA”) and its regulations, they are subject to comprehensive due diligence requirements imposed by the law societies that closely track the federal anti-money laundering regulations. The law society rules and regulations are intended to mitigate the money-laundering risks that arise in the practice of law. To ensure that legal professionals can fulfil their obligations under these important requirements it is imperative that they have at least the same access to information in the registry as reporting entities under the federal regime. Whether the information or data points available to legal professionals (and reporting entities) should also be made available to the public is a separate issue and beyond the scope of our submission.
9. The Federation appreciates the need to balance an effective registry with the privacy interests of individuals. As outlined in our previous submissions, this may require a tiered approach to access to the information in the registry with different categories (e.g. law enforcement, legal professionals and reporting entities, and the public) being granted different levels of access. For instance, legal professionals and reporting entities may have access to more data points than the public. There may also be merit in phasing-in access over time.
10. The registry must also be easily accessible for legal professionals. It is recommended that the information in the registry be accessible and searchable online.

### **Ensuring the accuracy of the information in the registry**

11. For the registry to fulfil its goals, mechanisms must be in place to ensure that the information it contains is accurate. This could include requiring that corporations appoint and name an individual(s) responsible for reporting information, imposing fines and other penalties for failing to report required information or providing incorrect information, or allowing that information be shared with other government entities to verify that the information is accurate.
12. To the extent that the government may consider imposing obligations on third parties to flag potential errors in the registry, that is, a person or entity that is not a representative of the corporation or the beneficial owner, it is important to underline that legal professionals cannot be compelled, directly or indirectly, to report information protected by solicitor-client privilege or professional secrecy to government authorities without the client’s consent. The registry regime must be designed and implemented in a manner that respects the

constitutional protections for solicitor-client privilege and professional secrecy recognized by the Supreme Court of Canada.

### **Preventing the misuse and abuse of information in the registry**

13. The Federation recognizes that it is important to guard against the misuse or abuse of information contained in the registry. The Federation continues to support the use of exemptions for vulnerable persons exposed to a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation.<sup>1</sup>
14. One possible safeguard may be to include specific limits in the statute or its regulations on how and for what purposes the information in the registry may be used. For legal professionals this should include using the information for the purpose of determining beneficial ownership as required to fulfil due diligence obligations in law society rules. The government may wish to allow for additional permitted uses by legal professionals that align with the policy goals of the legislation, perhaps as prescribed in the regulations.
15. Using a system of tiered access to information in the registry, possibly implemented in phases, as suggested above and in our previous submissions, could also reduce the risk of misuse and abuse.

### **Conclusion**

16. The Federation supports the federal government's proposed public beneficial ownership registry. To meet the goal of greater corporate transparency and to assist legal professionals and reporting entities in fulfilling their regulatory due diligence obligations in the fight against money laundering and terrorist financing, the registry must contain sufficient data points to accurately identify individual beneficial owners. Balancing this need with protecting legitimate privacy and security interests may require a system of tiered access as legal professionals (and reporting entities) may require more information than members of the public. There must also be mechanisms to ensure the accuracy of information in the registry, but such mechanisms must not purport to compel legal professionals to report information protected by solicitor-client privilege or professional secrecy to government authorities without the client's consent.
17. We look forward to further engagement with the federal government on this important issue.

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<sup>1</sup> *European Union Fifth Directive*, para. 36: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2018.156.01.0043.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.156.01.0043.01.ENG).

Since the regulation of corporations is an area of shared responsibility, federal, provincial and territorial jurisdictions should adopt a consistent approach to beneficial ownership registries. The Federation recommends that ISED Canada and Finance Canada work closely with their provincial and territorial counterparts in this regard to develop a national, unified registry or a series of linked registries accessible through a single portal.