

Land Owner Transparency Act White Paper:
Draft Legislation with Annotations

June 2018



Ministry of
Finance

Foreword from the Honourable Carole James, Minister of Finance and Deputy Premier

In Budget 2018, the B.C. government launched [Homes for BC: A 30-Point Plan for Housing Affordability in British Columbia](#). This comprehensive plan to address the housing crisis includes new measures to tackle foreign and domestic speculation, close real estate and tax loopholes, protect renters, crack down on tax fraud and boost housing supply.

The 30-point plan commits to end hidden ownership in real estate to prevent tax avoidance and evasion. For too long, people have used legal entities to hide the true ownership of real estate in B.C. The use of entities such as numbered companies, offshore and domestic trusts, and corporations has made it difficult to expose tax frauds and those engaged in money laundering.

This problem is well documented. In 2016, Transparency International Canada released a report indicating that of the 100 most valuable residential properties in Greater Vancouver, nearly one-third were owned by shell companies. Furthermore, data leaks such as the Panama Papers and the Paradise Papers have provided examples of Canada's reputation as an attractive place to create anonymous companies and hide wealth.

While other jurisdictions have sought to apply land transfer tax to transfers of beneficial ownership, these policies have not necessarily resulted in improved transparency to prevent tax avoidance and evasion. In order to prevent tax evasion, fraud and money laundering, the provincial government needs to end hidden ownership, ensuring the ability to look through legal entities, like offshore trusts, and find out who is behind them.

We need immediate, comprehensive and forward-looking action and that is why we are tackling hidden ownership by creating a new, publicly accessible, beneficial ownership registry.

This registry will be the first-of-its kind in Canada and will provide valuable information about the true ownership of real estate in B.C. It will hold public records on the individuals behind numbered companies, offshore and domestic trusts, and corporations. As a result, the registry will help give tax auditors, law enforcement agencies and federal and provincial regulators the information they need to conduct their investigations. It will also help those government agencies to crack down on tax frauds and those engaged in money laundering.

The beneficial ownership registry complements other initiatives we are undertaking to crack down on tax fraud and close tax loopholes. For instance, our government is moving to require additional information about beneficial ownership on the Property Transfer Tax form to support tax audit and enforcement. We are also working with the federal government and other provinces and territories to amend corporate legislation so corporations are required to hold accurate information on beneficial owners in their own records office.

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This White Paper sets out policy recommendations for the proposed land owner transparency registry and includes an annotated copy of the draft legislation together with discussion questions. We want to hear how this registry may impact you; your comments and feedback will help make this registry as effective as possible. The legislation will be finalized after we have considered the received feedback.

I want to thank you in advance for engaging with us as we work to end tax evasion and hidden ownership in B.C. I look forward to hearing your comments on the draft legislation in this White Paper. Together, our work to establish a beneficial ownership registry will help return a sense of fairness to B.C.'s real estate market.

Sincerely,

Carole James

Minister of Finance and Deputy Premier

How to Participate

This White Paper is provided for public discussion and comment.

Comments on the White Paper are open until the end of the day, September 19, 2018 and should be directed, in electronic form to fcsp@gov.bc.ca or mailed to:

Financial and Corporate Sector Policy Branch
Ministry of Finance
PO Box 9418 Stn Prov Govt
Victoria BC V8W 9V1

Public Nature of Consultation Process

The Ministry of Finance will share comments it receives with other branches of government and the Land Title and Survey Authority, which will be responsible for the administration of the new Act.

Unless confidentiality is specifically requested, comments received electronically will be posted on the Ministry of Finance website to add to the transparency and interactivity of the process. Other written comments may be placed or referenced on the website. Although responses requesting confidentiality will not be placed on the website, freedom of information legislation may require that responses be made available to members of the public who request access.

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Summary

The draft legislation in this White Paper sets out a framework for the *Land Owner Transparency Act* (Act). The purpose of the Act is to increase transparency of landownership in BC by eliminating the ability to hide ownership through vehicles like trusts and shell corporations. Under the Act, corporations, trustees and partners (reporting bodies) will be required to identify the individuals that have a beneficial interest in land, that have a significant interest in the landowning corporation or that have an interest in land through a partnership. This disclosure requirement will apply to all land in BC unless specifically excluded.

The framework under the Act creates new disclosure requirements for reporting bodies in three situations:

- on any application to register an interest land in the name of a reporting body;
- any time there is a change of interest holders or beneficial owners (even when this does not result in a transfer of legal title to the land); and
- during an initial transition period all those holding an interest in land for a beneficial owner will be required to file a disclosure report.

The information to be collected varies depending on the type of entity that owns the land; however, in all cases, the intent of the legislation is to identify the individual(s) who fundamentally own and control the land. For corporations, information that must be disclosed includes:

- identification information about the corporation itself (including name, head office and business or incorporation number);
- identification information about each individual (including name, citizenship and place of residence) who directly or indirectly owns or controls 25% or more of the shares or otherwise falls under the definition of a “corporate interest holder”;
- each corporate interest holder’s date of birth, social insurance number or individual tax number, and the nature of the interest in the reporting corporation; and
- information about the person completing the report (including name, position name or title, and contact information).

Where the legal owner of the land is a trustee:

- identification information about the trustee, beneficial owner(s) and settlor(s);
- date of birth and social insurance number or individual tax number of beneficial owner(s) and settlor(s); and
- information about the person completing the report.

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For partnerships:

- identification information about the partnership (including name, head office and business number);
- identification information about individuals that have an interest as a partner in the interest in the land or are a corporate interest holder in a corporation that is a partner;
- date of birth and social insurance number or individual tax number of these individuals; and
- information about the person completing the report.

The legislation recognizes that corporate or other structures used to own land can be very complicated and, in some cases, the reporting body may not be able to determine or confirm the identity of the individuals who ultimately own or control the corporation. In these cases, the reporting body is required to take steps to try and determine the identity of the individuals who control the corporation, outline the steps that were taken to identify the appropriate individuals, and provide the reasons the identity could not be confirmed.

The proposed legislation seeks to preserve and maintain the integrity of the land title system by clarifying that persons dealing with legal interests in land are not affected by transparency declarations and disclosure reports filed under the legislation and that these documents are not records filed under the *Land Title Act*.

The basic identification information disclosed under the Act will be publicly available. Transparency is a core element of this legislation and is a key part of the government's efforts to crack down on tax fraud and close loopholes. A publicly available database will help to foster accurate reporting by registered land owners. In addition, a publicly accessible data base of beneficial ownership may be important for tenants, contractors and others who deal with land owners. A public database of beneficial ownership of land could also help financial institutions, lawyers, notaries, real estate agents and others who have a statutory or professional duty to inquire into and confirm the beneficial ownership identity.

One of the key priorities of the legislation is to balance the need for increased transparency with the privacy concerns associated with a public database. The proposed Act includes a number of provisions to address these concerns including the following:

- restricting the information that is available to the public and allowing more sensitive information such as social insurance numbers and dates of birth to be available only to authorized entities such as law enforcement agencies and tax authorities;
- automatically omitting information relating to individuals under the age of 19 or those legally incapable of managing their financial affairs;
- creating the ability for vulnerable individuals (e.g. victims of domestic violence) to apply to have their personal information omitted from the publicly accessible information;
- requiring that the person filing the report contact corporate interest holders, beneficial owners and/or partnership interest holders in writing to advise them of the right to apply to omit information from the publicly accessible information; and

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- creating a mandatory 30 day waiting period before making information in the disclosure report publicly available to provide an opportunity for vulnerable individuals to make an application to omit information.

Other key proposals in the draft legislation include provisions relating to compliance and enforcement.

Examples include:

- requiring the registrar of land titles to refuse to accept an application to register an interest in land if a completed transparency declaration and, if applicable, a completed disclosure report is not provided;
- creating administrative penalties up to \$50,000 for designated contraventions of the Act;
- creating criminal offences with penalties up to \$100,000 for designated contraventions of the Act; and
- giving the administrator the power to conduct inspections in order to determine whether the Act and the regulations have been complied with.

Discussion questions

Are there ways to make the legislation more effective or more efficient?

Does the draft legislation strike an appropriate balance between transparency and privacy?

Are there any other entities that might be used to hide ownership that are not addressed in the draft legislation?

Are there any other comments on the draft legislation?

Does the draft legislation strike an appropriate balance between effectiveness and the compliance requirements for land owners?

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LAND OWNER TRANSPARENCY ACT

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PART 1 – DEFINITION, INTERPRETATION AND APPLICATION

Part 1: Definition, Interpretation and Application

This Part sets out key definitions used in the proposed legislation, including “beneficial owner,” “corporate interest holder,” “interest in land,” “partnership interest holder” and “reporting body.” It also incorporates certain definitions from the *Land Title Act* and clarifies that documents submitted under this Act are not documents filed under the *Land Title Act*. The Part details the identification information required to be disclosed in relation to corporations, individuals and partnerships.

Definitions

1 In this Act:

“**administrator**” means an administrator or deputy administrator appointed under section 47 [*appointment of administrator and deputy administrators*];

“**agreement for sale**” means a contract for the sale of an interest in land under which the purchaser agrees to pay the purchase price over a period of time, in the manner stated in the contract, and on payment of which the vendor is obliged to transfer the interest in land to the purchaser;

“**beneficial owner**”, in relation to an interest in land, means an individual who, in respect of the interest in land, is a beneficial owner within the meaning of section 2 [*meaning of “beneficial owner”*];

“**corporate interest holder**”, in relation to a relevant corporation, means an individual who, in respect of the relevant corporation, is a corporate interest holder within the meaning of section 3 [*meaning of “corporate interest holder”*];

“**corporation**” means a company, a body corporate, a body politic and corporate, an incorporated association or a society, however and wherever incorporated, but does not include a municipality or a corporation sole;

“**disclosure report**” means a report

- (a) required to be filed under section 12 [*disclosure report required with application to register*], 14 [*disclosure report required from pre-existing owner*] or 15 [*disclosure report required on change of interest holders*], or
- (b) permitted to be filed under section 16 [*filing of new disclosure report to correct previous report*];

“**electronic disclosure report**” means a disclosure report in electronic format;

“**electronic transparency declaration**” means a transparency declaration in electronic format;

“**identification information**” means the following:

- (a) in respect of a corporation or limited liability company, the information described in section 7 [*identification information in respect of corporations*];
- (b) in respect of an individual, the information described in section 8 [*identification information in respect of individuals*];
- (c) in respect of a relevant partnership, the information described in section 9 [*identification information in respect of relevant partnerships*];

“**interest holder**” means a beneficial owner, corporate interest holder or partnership interest holder;

“**interest in land**” means any of the following:

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- (a) an estate in fee simple referred to in section 23 (2) [*effect of indefeasible title*] of the *Land Title Act*;
- (b) a life estate in land;
- (c) a right to occupy land under a lease, if the term of the lease is 10 years or more;
- (d) a right under an agreement for sale to
 - (i) occupy land, or
 - (ii) require the transfer of an estate in fee simple referred to in section 23 (2) of the *Land Title Act*;
- (e) a prescribed estate, right or interest;

“law enforcement” means any of the following:

- (a) policing, including criminal intelligence operations;
- (b) investigations that lead or could lead to a penalty or sanction being imposed;
- (c) proceedings that lead or could lead to a penalty or sanction being imposed;

“limited liability company” has the same meaning as in the *Business Corporations Act*;

“parcel identifier” means a permanent parcel identifier assigned to a parcel of land under section 58 [*description of land*] of the *Land Title Act*;

“partner” means the following:

- (a) in relation to a partnership referred to in paragraph (a) or (b) of the definition of “relevant partnership” in this section, a partner in the partnership;
- (b) in relation to a legal relationship described in paragraph (c) of the definition of “relevant partnership” in this section, a person who, in respect of the legal relationship, has powers and duties similar to those of a partner referred to in paragraph (a) of this definition;

“partnership interest holder”, in relation to an interest in land that is partnership property registered or to be registered in the name of a partner of a relevant partnership, means an individual who, in respect of the interest in land, is a partnership interest holder within the meaning of section 4 [*meaning of “partnership interest holder”*];

“partnership property” means the following:

- (a) in relation to a partnership referred to in paragraph (a) or (b) of the definition of “relevant partnership” in this section, property that is “partnership property” within the meaning of the *Partnership Act*;
- (b) in relation to a legal relationship described in paragraph (c) of the definition of “relevant partnership” in this section, property that, in respect of the legal relationship, is similar to partnership property referred to in paragraph (a) of this definition;

“permanent resident of Canada” means a permanent resident as defined in the *Immigration and Refugee Protection Act* (Canada);

“personal information” has the same meaning as in Schedule 1 of the *Freedom of Information and Protection of Privacy Act*;

“principal residence” means the usual place where an individual makes his or her home;

“publicly accessible information” means the identification information that, under section 28 (1) (b) [*administrator’s duty to make information available*], is required to be made available for search and inspection by any person;

“relevant corporation” means a corporation or limited liability company but does not include

- (a) a person or entity referred to in Schedule 1, or
- (b) a person or entity added by regulation to Schedule 1;

“relevant partnership” means any of the following:

- (a) a general partnership, limited partnership, limited liability partnership, professional partnership or foreign partnership within the meaning of the *Partnership Act*;
- (b) a prescribed partnership;
- (c) a legal relationship, created in another jurisdiction, that is similar to a legal relationship referred to in paragraph (a) or (b)

but does not include

- (d) a prescribed partnership, or
- (e) a prescribed legal relationship;

“relevant trust” means

- (a) an express trust,
- (b) a prescribed trust, or
- (c) a legal relationship, created in another jurisdiction, that is similar to a legal relationship referred to in paragraph (a) or (b)

but does not include

- (d) a trust referred to in Schedule 2,
- (e) a trust added by regulation to Schedule 2, or
- (f) a legal relationship, created in another jurisdiction, that is similar to a legal relationship referred to in paragraph (d) or (e);

“reported information” means the records and information that, under section 28 (1) (a), are required to be made available for search and inspection by the government, taxing authorities, police forces and financial sector regulators;

“reporting body” means a relevant corporation, a trustee of a relevant trust or a partner of a relevant partnership that is required to file a disclosure report under section 12 or 14;

“settlor”, in relation to an interest in land registered or to be registered in the name of a trustee of a relevant trust, means a person that

- (a) is a settlor of the relevant trust,
- (b) is not a trustee of the relevant trust, and
- (c) is not a beneficial owner of the interest in land;

“transparency declaration” means the declaration required to be filed under section 10 (1) [*transparency declaration required with application to register*];

“true copy” means

- (a) in relation to a paper document, an exact copy of the document, and

- (b) in relation to an electronic disclosure report or electronic transparency declaration, or in relation to the electronic form of any other document required or permitted to be submitted, filed or otherwise given to the registrar or administrator under this Act, a legible paper copy of the electronic document containing every material provision and particular contained in the original;

“trustee” means the following:

- (a) in relation to a trust referred to in paragraph (a) or (b) of the definition of “relevant trust” in this section, a trustee of the trust;
- (b) in relation to a legal relationship described in paragraph (c) of the definition of “relevant trust” in this section, a person who, in respect of the legal relationship, has powers and duties similar to those of a trustee referred to in paragraph (a) of this definition.

Meaning of “beneficial owner”

- 2 Subject to the exclusions, if any, in the regulations, an individual is a beneficial owner in respect of an interest in land registered or to be registered in the name of a trustee of a relevant trust if any of the following apply:
 - (a) the individual has a beneficial interest in respect of the interest in land;
 - (b) the individual has the power to revoke the relevant trust and receive the interest in land;
 - (c) the individual is a corporate interest holder in respect of a relevant corporation that has
 - (i) a beneficial interest in respect of the interest in land, or
 - (ii) the power to revoke the relevant trust and receive the interest in land;
 - (d) the individual has a prescribed interest.

Meaning of “corporate interest holder”

- 3 (1) Subject to the exclusions, if any, in the regulations, an individual is a corporate interest holder in respect of a relevant corporation if any of the following apply:
 - (a) the individual has legal or beneficial ownership or control, directly or indirectly, of
 - (i) shares of the relevant corporation representing 25% or more of the value of the equity of that corporation, or
 - (ii) 25% or more of the voting rights in respect of the relevant corporation;
 - (b) the individual has the right, directly or indirectly, to appoint or remove from office the majority of the board of directors of the relevant corporation;
 - (c) the individual has the right to exercise or does exercise, under a unanimous shareholders’ agreement or otherwise, significant influence or control over the relevant corporation;
 - (d) the individual has a prescribed right or interest.
- (2) For the purposes of subsection (1) (a) or (b), a direct or indirect interest, power or right includes an interest, power or right that an individual has
 - (a) alone,
 - (b) together with one or more persons with common interests, or

- (c) through
 - (i) a corporation,
 - (ii) a trustee of a relevant trust, or of any other trust,
 - (iii) a personal or legal representative,
 - (iv) an agent, or
 - (v) any other intermediary.

Meaning of “partnership interest holder”

- 4** Subject to the exclusions, if any, in the regulations, an individual is a partnership interest holder in respect of an interest in land registered or to be registered in the name of a partner of a relevant partnership if the interest in land is partnership property and either of the following applies:
- (a) the individual has an interest, as a partner in the relevant partnership, in the interest in land;
 - (b) the individual is a corporate interest holder in respect of a relevant corporation that is a partner in the relevant partnership and the relevant corporation has an interest, as a partner in the relevant partnership, in the interest in land.

Application of *Land Title Act*

- 5** (1) Unless the context indicates otherwise, and subject to subsection (2), in this Act,
- (a) “**electronic**”, “**owner**”, “**parcel**”, “**register**”, when used as a verb, “**registrar**” and “**transferee**” have the same meaning as in section 1 [definitions] of the *Land Title Act*, and
 - (b) “**electronic signature**” and “**subscriber**” have the same meaning as in section 168.1 [definitions] of the *Land Title Act*.
- (2) Transparency declarations, disclosure reports, applications and any other documents submitted to the registrar or filed with or given to the administrator under this Act are not instruments, records or documents deposited, filed, registered, kept or lodged under the *Land Title Act*.

Land excluded from application of Act

- 6** This Act does not apply in relation to any of the following:
- (a) treaty lands;
 - (b) Nisga’a Lands, and Category A Lands and Category B Lands, as defined in the Nisga’a Final Agreement;
 - (c) Sechelt lands, as defined in the *Sechelt Indian Band Self-Government Act* (Canada);
 - (d) a reserve, as defined in section 2 (1) [definitions] of the *Indian Act* (Canada);
 - (e) prescribed land.

Identification information in respect of corporations

- 7** If a provision of this Act requires a reporting body to provide identification information in respect of a corporation or limited liability company, the reporting body must do the following:

- (a) provide the corporation's or company's
 - (i) name,
 - (ii) registered office address, and
 - (iii) head office address;
- (b) if the corporation or company has a business number within the meaning of the *Income Tax Act* (Canada), provide the business number;
- (c) identify the jurisdiction in which the corporation or company was incorporated, organized or formed;
- (d) if the corporation or company has been continued or transferred into another jurisdiction, identify the jurisdiction into which the corporation or company was most recently continued or transferred;
- (e) provide the incorporation, continuation, amalgamation or other identifying number or designation given to the corporation or company by the jurisdiction referred to in paragraph (c) or (d), as applicable;
- (f) provide prescribed information.

Identification information in respect of individuals

- 8** If a provision of this Act requires a reporting body to provide identification information in respect of an individual, the reporting body must do the following:
- (a) provide the individual's name;
 - (b) state whether or not the individual is a Canadian citizen or permanent resident of Canada;
 - (c) if the individual is not a Canadian citizen or permanent resident of Canada, identify the foreign country or state of which the individual is a citizen;
 - (d) if the individual's principal residence is in Canada, identify the city and province in which that principal residence is located;
 - (e) if the individual's principal residence is not in Canada, identify the city and country in which that principal residence is located;
 - (f) provide prescribed information.

Identification information in respect of relevant partnerships

- 9** If a provision of this Act requires a reporting body to provide identification information in respect of a relevant partnership, the reporting body must do the following:
- (a) if the partnership has a registered business name, provide the name;
 - (b) if the partnership has a business number within the meaning of the *Income Tax Act* (Canada), provide the business number;
 - (c) by reference to a class of partnership referred to in the definition of "relevant partnership" in section 1, indicate the class of partnership that applies to the partnership;
 - (d) provide, as applicable,
 - (i) the registered office address of the partnership,
 - (ii) the head office address of the partnership, or
 - (iii) the address of the partnership's principal business premises;

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- (e) identify the jurisdiction the laws of which govern the partnership or, if the partnership has a partnership agreement, the interpretation of the partnership agreement;
- (f) if the jurisdiction referred to in paragraph (e) has issued an identifying number to the partnership, provide the number;
- (g) provide prescribed information.

Discussion questions

Are the definitions and interpretation provisions clear?

Are any other interpretative provisions needed?

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PART 2 – TRANSPARENCY DECLARATIONS AND DISCLOSURE REPORTS

Part 2: Transparency Declarations and Disclosure Reports

This Part establishes the principal disclosure obligations imposed on transferees and land owners.

DIVISION 1 – TRANSPARENCY DECLARATIONS

Division 1: Transparency Declarations

This Division requires all transferees of an interest in land to file with the Administrator of the Act a declaration indicating whether or not the interest in land is to be registered in the name of a corporation, trustee or partner of a partnership that is required to file a disclosure report. The disclosure report must be certified and must usually be submitted electronically in accordance with the electronic filing procedures set out in the *Land Title Act*, along with the required filing fee. If the transparency declaration is not submitted or signed, the Registrar of Land Titles must refuse to accept the application to register the interest in land.

Transparency declaration required with application to register

- 10** (1) On an application to register an interest in land, the transferee must file with the administrator a declaration indicating whether or not the interest in land is to be registered in the name of
- (a) a relevant corporation,
 - (b) a trustee of a relevant trust, or
 - (c) a partner of a relevant partnership
- that is required to file a disclosure report under section 12 [*disclosure report required with application to register*].
- (2) For the purpose of filing a transparency declaration with an application to register an interest in land, a transferee must
- (a) certify the declaration in accordance with section 23 [*certification of transparency declarations and disclosure reports*], and
 - (b) if the application to register is submitted under Part 10.1 [*Electronic Filing*] of the *Land Title Act*,
 - (i) sign the declaration in accordance with section 24 [*electronic signing of transparency declarations and disclosure reports*],
 - (ii) submit the declaration to the registrar in an electronic format, together with the application to register, and
 - (iii) pay the applicable filing fee by an electronic means.
- (3) If the application to register referred to in subsection (2) is not submitted under Part 10.1 of the *Land Title Act*,
- (a) the requirements set out in subsection (2) (b) do not apply, and
 - (b) the transferee must instead sign and submit the transparency declaration, and pay the applicable filing fee, in the manner required by the administrator.

Refusal of registration if transparency declaration not filed or signed

- 11** (1) If a transferee does not submit a transparency declaration with an application to register an interest in land, the registrar must refuse to accept the application to register the interest in land.
- (2) If a transparency declaration is submitted with an application to register an interest in land but the declaration is not signed or, in the case of an electronic transparency declaration, is not signed in accordance with section 24 [*electronic signing of transparency declarations and disclosure reports*], the registrar must refuse to accept
- (a) the application to register the interest in land, and
 - (b) the transparency declaration.

DIVISION 2 – DISCLOSURE REPORTS

Division 2: Filing of Disclosure Reports

Division 2 requires relevant corporations, trustees and partners (“reporting bodies”) to file completed disclosure reports at the time of an application to register an interest of land. A corporation that is registering an interest in land as a trustee or partner generally must file under the provisions requiring disclosure by trustees or partners. If the disclosure report is not submitted or signed, the Registrar of Land Titles must refuse to accept the application to register the interest in land.

This Division also requires the filing of disclosure reports where there is no legal transfer of an interest in land in two circumstances:

1. Existing owners of land that are relevant corporations, trustees and partners will be required to file a disclosure report by no later than a date to be prescribed. The purpose of this requirement is to have a complete picture of beneficial ownership of land in British Columbia available in the land owner transparency registry at that date.
2. Reporting bodies will also be obligated to file an update disclosure report within two months of becoming aware of a change in beneficial ownership.

Required fees must be paid for the filing of all disclosure reports.

Disclosure report required with application to register

- 12** (1) On an application to register an interest in land in the name of
- (a) a relevant corporation,
 - (b) a trustee of a relevant trust, or
 - (c) a partner of a relevant partnership,
- the corporation, trustee or partner must file with the administrator a disclosure report completed in accordance with Divisions 3 [*Reasonable Efforts Requirements for Reporting Bodies*] and 4 [*Content of Disclosure Reports*].
- (2) If a trustee of a relevant trust is also a relevant corporation and the interest in land referred to in subsection (1) is or will be held in trust, the trustee must comply with the provisions of Divisions 3 and 4 as those provisions are required to be applied

in respect of a trustee of a relevant trust, and not as those provisions are required to be applied in respect of a relevant corporation.

- (3) The requirement for a trustee to file a disclosure report under subsection (1) (b) applies whether or not a trust instrument is or will be filed with the registrar under section 180 [*recognition of trust estates*] of the *Land Title Act*.
- (4) If a partner of a relevant partnership is also a relevant corporation and the interest in land referred to in subsection (1) is or will be partnership property, the following rules apply:
 - (a) unless paragraph (b) of this subsection applies, the partner must comply with the provisions of Divisions 3 and 4 as those provisions are required to be applied in respect of a partner of a relevant partnership, and not as those provisions are required to be applied in respect of a relevant corporation;
 - (b) if all partners of the relevant partnership are relevant corporations and the interest in land is or will be registered in the name of all of those relevant corporations, each of those partners must comply with Divisions 3 and 4 as those provisions are required to be applied in respect of a relevant corporation, and not as those provisions are required to be applied in respect of a partner of a relevant partnership.
- (5) Despite subsection (1) (c), a partner of a relevant partnership is not required to file a disclosure report if all partners of the relevant partnership are individuals and the interest in land is or will be registered in the name of all of those individuals.
- (6) For the purpose of filing a disclosure report with an application to register an interest in land, a reporting body must do the following:
 - (a) certify the report in accordance with section 23 [*certification of transparency declarations and disclosure reports*];
 - (b) if the application to register is submitted under Part 10.1 [*Electronic Filing*] of the *Land Title Act* ,
 - (i) sign the report in accordance with section 24 [*electronic signing of transparency declarations and disclosure reports*],
 - (ii) submit the report to the registrar in an electronic format, together with the application to register, and
 - (iii) pay the applicable filing fee by electronic means.
- (7) If the application to register referred to in subsection (6) is not submitted under Part 10.1 of the *Land Title Act*,
 - (a) the requirements set out in subsection (6) (b) do not apply, and
 - (b) the reporting body must instead sign and submit the disclosure report, and pay the applicable filing fee, in the manner required by the administrator.

Refusal of registration if disclosure report not filed or signed

- 13** (1) If a transferee submits a transparency declaration that indicates that an interest in land is to be registered in the name of a reporting body but a disclosure report and filing fee are not submitted with the declaration, the registrar must refuse to accept
 - (a) the application to register the interest in land, and
 - (b) the transparency declaration.

- (2) If a disclosure report is submitted with an application to register an interest in land but the report is not signed or, in the case of an electronic disclosure report, is not signed in accordance with section 24, the registrar must refuse to accept
 - (a) the application to register the interest in land,
 - (b) the transparency declaration, and
 - (c) the disclosure report.

Disclosure report required from pre-existing owner

- 14** (1) If, immediately before the coming into force of this section,
- (a) a relevant corporation,
 - (b) a trustee of a relevant trust, or
 - (c) a partner of a relevant partnership
- is a registered owner of an interest in land, the corporation, trustee or partner must file with the administrator a disclosure report completed in accordance with Divisions 3 [*Reasonable Efforts Requirements for Reporting Bodies*] and 4 [*Content of Disclosure Reports*].
- (2) Sections 12 (2) to (5) [*disclosure report required with application to register*] applies in respect of a disclosure report required to be filed under this section.
 - (3) Despite subsection (1), a relevant corporation, trustee of a relevant trust or partner of a relevant partnership is not required to file a disclosure report under this section if the interest in land referred to in subsection (1) is registered in the name of another owner on or before the date prescribed for the purpose of subsection (4).
 - (4) For the purpose of filing a disclosure report under this section, the reporting body must, on or before the prescribed date,
 - (a) certify the report in accordance with section 23 [*certification of transparency declarations and disclosure reports*];
 - (b) sign the report in accordance with section 24 [*electronic signing of transparency declarations and disclosure reports*],
 - (c) submit the disclosure report to the registrar in an electronic format, and
 - (d) pay the applicable filing fee by electronic means.
 - (5) The registrar must refuse to accept a disclosure report submitted under this section if
 - (a) the filing fee is not paid, or
 - (b) the report is not signed in accordance with section 24.

Disclosure report required on change of interest holders

- 15** (1) Within 2 months after a reporting body becomes aware that the previous disclosure report filed by the reporting body no longer discloses the current interest holders, the reporting body must file with the administrator a new disclosure report completed in accordance with Divisions 3 [*Reasonable Efforts Requirements for Reporting Bodies*] and 4 [*Content of Disclosure Reports*].

- (2) Section 12 (2) to (5) *[disclosure report required with application to register]* applies in respect of a disclosure report required to be filed under this section.
- (3) Despite subsection (1), a reporting body is not required to file a disclosure report under this section if the reporting body is no longer the registered owner of the interest in land to which the previous disclosure report relates.
- (4) For the purpose of filing a disclosure report under this section, the reporting body must
 - (a) certify the report in accordance with section 23 *[certification of transparency declarations and disclosure reports]*;
 - (b) sign the report in accordance with section 24 *[electronic signing of transparency declarations and disclosure reports]*,
 - (c) submit the report to the registrar in an electronic format, and
 - (d) pay the applicable filing fee by electronic means.
- (5) The registrar must refuse to accept a disclosure report submitted under this section if
 - (a) the filing fee is not paid, or
 - (b) the report is not signed in accordance with section 24.

Filing of new disclosure report to correct previous report

- 16** (1) In addition to filing a new disclosure report as required under section 15, a reporting body may, at other times the reporting body considers necessary in order to complete or correct information provided in the previously filed disclosure report, file with the administrator a new disclosure report completed in accordance with Divisions 3 *[Reasonable Efforts Requirements for Reporting Bodies]* and 4 *[Content of Disclosure Reports]*.
- (2) Sections 12 (2) to (5) *[disclosure report required with application to register]* and 15 (4) and (5) apply in respect of a disclosure report permitted to be filed under this section.

DIVISION 3 – REASONABLE EFFORTS REQUIREMENTS FOR REPORTING BODIES

Division 3: Reasonable Efforts Required

This Division requires reporting bodies to make reasonable efforts to obtain and confirm the accuracy of identification information and other key information about interest holders and, in the case of a trustee, information about settlors of the trust. Reporting bodies must make reasonable efforts to notify interest holders about the right of an individual to apply to request that their identification information be omitted or obscured from the publicly accessible information under Part 3. The reporting bodies must make reasonable efforts to provide each interest holder with an extract of the completed disclosure report showing the information that will be disclosed about them.

Identification information and other information

- 17** (1) For the purpose of preparing a disclosure report, a reporting body must make reasonable efforts to obtain and confirm the accuracy of the following information in respect of each interest holder:

- (a) the interest holder's identification information;
 - (b) the interest holder's date of birth;
 - (c) the interest holder's social insurance number or the individual tax number assigned to the interest holder by the Canada Revenue Agency, as applicable;
 - (d) prescribed information.
- (2) In addition to the information referred to in subsection (1), a reporting body that is a trustee of a relevant trust must make reasonable efforts to obtain and confirm the accuracy of the following information in respect of each settlor of the relevant trust:
- (a) the settlor's identification information;
 - (b) if the settlor is an individual, the information referred to in subsection (1) (b) and (c);
 - (c) prescribed information.

Identification of interests held by interest holders

- 18** (1) For the purpose of preparing a disclosure report, a reporting body that is a relevant corporation must make reasonable efforts, in respect of each corporate interest holder, to
- (a) identify, by reference to the rights and interests described in section 3 (1) [*meaning of "corporate interest holder"*], the rights and interests that the corporate interest holder has in respect of the relevant corporation, or
 - (b) obtain extracts from corporate records disclosing the rights and interests referred to in paragraph (a) of this subsection.
- (2) For the purpose of preparing a disclosure report, a reporting body that is a trustee of a relevant trust must make reasonable efforts, in respect of each beneficial owner, to
- (a) identify, by reference to the interests and powers described in section 2 [*meaning of "beneficial owner"*], the interests and powers that the beneficial owner has in respect of the interest in land to which the report relates, or
 - (b) obtain extracts from relevant records disclosing the interests and powers referred to in paragraph (a) of this subsection.
- (3) For the purpose of preparing a disclosure report, a reporting body that is a partner of a relevant partnership must make reasonable efforts, in respect of each partnership interest holder, to
- (a) identify, by reference to the interests described in section 4 [*meaning of "partnership interest holder"*], the interests the partnership interest holder has in respect of the interest in land to which the report relates, or
 - (b) obtain extracts from the partnership agreement or other relevant records disclosing the interests referred to in paragraph (a) of this subsection.

Identification of incapacity

- 19** (1) For the purpose of preparing a disclosure report, a reporting body must make reasonable efforts to identify whether any of the interest holders are individuals in

respect of whom a court or qualified professional has determined that the individual is incapable of managing that interest holder's financial affairs.

- (2) In addition to making reasonable efforts to identify interest holders under subsection (1), a reporting body that is a trustee of a relevant trust must make reasonable efforts, in respect of settlors who are individuals, to identify whether any of those settlors are individuals in respect of whom a determination referred to in that subsection has been made.

Notice to interest holders

- 20** (1) For the purpose of preparing a disclosure report, a reporting body must make reasonable efforts to give written notice of the following to each interest holder:
- (a) the purposes for which the information referred to in this Division is being sought;
 - (b) the right of an individual under section 38 [*application to omit information if health or safety at risk*] to request that some or all of the individual's identification information be omitted or obscured from publicly accessible information that may be searched and inspected under Part 3 [*Access to Information Provided in Disclosure Reports*];
 - (c) that unless the individual makes a request under section 38 within 30 days after the filing of the report, the individual's identification information will be publicly accessible after the end of that 30-day period.
- (2) In addition to making reasonable efforts to given notice to each interest holder under subsection (1), a reporting body that is a trustee of a relevant trust must make reasonable efforts, in respect of each settlor who is an individual, to give written notice to the settlor of the matters referred to in that subsection.
- (3) After completing a disclosure report, a reporting body must make reasonable efforts to provide each interest holder or settlor, as applicable, with an extract from the completed report showing the information that will be disclosed in respect of that interest holder or settlor.

DIVISION 4 – CONTENT OF DISCLOSURE REPORT

Division 4: Content of Disclosure Report

This Division sets out the content requirements for the disclosure reports, including the reporting body's identification information, the identification information about interest holders (which will be publicly accessible under Part 3) and other confidential information (which will only be available to the government and tax, law enforcement and regulatory authorities). Reporting bodies that are unable to obtain or confirm the identity of interest holders must summarize the efforts made to do so.

Content requirements

- 21** (1) A reporting body must include all of the following in a disclosure report:
- (a) the reporting body's identification information;
 - (b) subject to section 22,
 - (i) the information referred to in section 17 (1) [*identification information and other information*] and, if applicable, section 17 (2);

- (ii) the information referred to in section 18 (1) [*identification of interests held by interest holders*] and, if applicable, section 18 (2) and (3);
 - (c) subject to section 22, if the reporting body, under section 19 (1) or (2) [*identification of incapacity*], identifies any individuals for whom a determination of incapacity has been made, a statement indicating that the individual has that incapacity;
 - (d) the parcel identifier assigned to the parcel of land to which the report relates;
 - (e) the name, position name or title, telephone number and email address of the individual certifying the report;
 - (f) prescribed information.
- (2) A reporting body that is a trustee of a relevant trust must, if a trust instrument in respect of a relevant trust has been registered under section 180 [*recognition of trust estates*] of the *Land Title Act*, also include in the disclosure report the reference number of the trust instrument.
- (3) A reporting body that is a partner of a relevant partnership must also include in the disclosure report identification information in respect of the relevant partnership.

Requirements if reporting body unable to obtain information

- 22**
- (1) If a reporting body that is a relevant corporation or a partner of a relevant partnership is unable, despite reasonable efforts, to identify any individuals who are corporate interest holders or partnership interest holders, as applicable, the relevant corporation or partner must indicate that outcome in the report.
 - (2) If a reporting body that is a trustee of a relevant trust is unable, despite reasonable efforts, to identify any individuals who are beneficial owners, the trustee must include in the report a description of each class of beneficiaries of the relevant trust.
 - (3) If a reporting body is unable, despite reasonable efforts, to obtain or confirm some or all of the information referred to in section 17 [*identification information and other information*], 18 [*identification of interests held by interest holders*] or 19 [*identification of incapacity*] in respect of an interest holder or settlor, as applicable, the reporting body must, in the disclosure report,
 - (a) provide the information, if any, that the reporting body obtained in respect of the interest holder or settlor,
 - (b) if the reporting body was not able to obtain some or all of the information in respect of the interest holder or settlor, summarize the efforts made to do so,
 - (c) if the reporting body was not able to confirm the accuracy of some or all of the information obtained in respect of the interest holder or settlor, summarize the efforts made to do so, and
 - (d) provide prescribed information.
 - (4) If a reporting body is unable, despite reasonable efforts, to give notice to each interest holder or settlor, as applicable, of the matters referred to in section 20 (1) [*notice to interest holders*], the reporting body must, in the disclosure report,
 - (a) identify the interest holders or settlors to whom notice was given, or
 - (b) if the reporting body was not able to give notice to an interest holder or settlor, summarize the efforts made to do so.

DIVISION 5 – CERTIFICATION AND ELECTRONIC SIGNATURES

Division 5: Certification and Electronic Signatures

Division 5 requires transparency declarations and disclosure records to be certified to be complete and correct by the transferee or reporting body or someone with personal knowledge of the matters and with authority. The Division adopts the subscriber process used for filing of land title documents and property transfer tax returns.

Certification of transparency declarations and disclosure reports

- 23**
- (1) A transparency declaration or disclosure report from a transferee or reporting body must, if the transferee or reporting body is a corporation, be certified to be complete and correct by an individual who has
 - (a) personal knowledge of the matters certified, and
 - (b) actual authority to certify the declaration on behalf of the transferee or reporting body.
 - (2) A transparency declaration or disclosure report from a transferee or reporting body must, if the transferee or reporting body is an individual, be certified to be complete and correct by
 - (a) the transferee or reporting body, or
 - (b) an agent of the transferee or reporting body who has personal knowledge of the matters certified.

Electronic signing of transparency declarations and disclosure reports

- 24**
- (1) An electronic transparency declaration or electronic disclosure report is signed when the electronic signature of a subscriber has been incorporated into the electronic transparency declaration or electronic disclosure report in accordance with the policies established by the administrator.
 - (2) A subscriber must not incorporate the subscriber's electronic signature into an electronic transparency declaration or electronic disclosure report unless
 - (a) a true copy of the electronic transparency declaration or electronic disclosure report has been certified in accordance with section 23, and
 - (b) the true copy referred to in paragraph (a), or a copy of that true copy, is in the possession of the subscriber.
 - (3) The incorporation of the electronic signature of a subscriber into an electronic transparency declaration or electronic disclosure report in accordance with this section is a certification by the subscriber of the facts referred to in subsection (2) (a) and (b).
 - (4) A transferee or reporting body on whose behalf an electronic transparency declaration or electronic disclosure report has been filed under this Act, or any other person specified in the policies established by the administrator, must
 - (a) retain the true copy of the electronic transparency declaration or electronic disclosure report referred to in subsection (2) (a), or a copy of that true copy, for the period established by the administrator, and
 - (b) produce it to the administrator for inspection if requested by the administrator.

Prohibition against wrongful incorporation of electronic signature

25 A person must not

- (a) incorporate the person's electronic signature into an electronic transparency declaration or electronic disclosure report without first complying with the provisions of this Division, or
- (b) incorporate the electronic signature of another person into an electronic transparency declaration or electronic disclosure report.

Discussion questions

Do the disclosure reports capture the appropriate information about beneficial interests in land?

Is there other information that should be disclosed?

Are there changes that would make this Part more effective?

Are there changes to this Part that would increase efficiency for land owners?

PART 3 – ACCESS TO INFORMATION PROVIDED IN DISCLOSURE REPORTS

Part 3: Use of Information Provided in Disclosure Reports

This Part sets out the conditions and manner of conducting searches of the publicly accessible information (section 35) and searches for tax, law enforcement and regulatory purposes (sections 29, 30 and 31). Any person may search the publicly accessible information in the land transparency registry generally in the same way they may now search information contained in the land title registry. Searches may be made by land parcel identifier or by name. They must be made using the form established by the Administrator and be accompanied by the required fee.

The publicly accessible information is the identification information in respect of reporting bodies (relevant corporations, trustees and partners) that are currently registered owners of interests in land and identification information in respect of individuals who have a legal or beneficial interest in relation to those bodies or interests in land. Identification information about individuals includes name, city and province or country of residence and citizenship information (as set out in section 8).

Tax, law enforcement and regulatory agencies will be able to search all the information filed including additional information about interest holders such as date of birth, social insurance number, the nature of their beneficial interest and information about the person certifying the report.

This Part also provides for the mandatory omission of information about minors and incapable individuals from the publicly accessible information. It provides a procedure by which an individual may apply to the administrator to omit or obscure information if the person believes that making the information available could reasonably be expected to threaten the safety or mental or physical health of the individual or a member of the individual's household. A person may also request a reporting body to file a new disclosure report if the person believes the current report is incomplete or inaccurate. If the reporting body fails to do so, the person may apply to the Administrator to correct or change the information.

Definitions for Part 3

26 In this Part:

“**financial sector regulator**” means any of the following:

- (a) the British Columbia Securities Commission continued under the *Securities Act*;
- (b) the Financial Institutions Commission established under the *Financial Institutions Act*;
- (c) the Financial Transactions and Reports Analysis Centre of Canada established under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada)*;

“**law enforcement**” means any of the following:

- (a) policing, including criminal intelligence operations;
- (b) investigations that lead or could lead to a penalty or sanction being imposed;
- (c) proceedings that lead or could lead to a penalty or sanction being imposed;

“**police force**” means any of the following:

- (a) the provincial police force within the meaning of the *Police Act*;

- (b) a municipal police department within the meaning of the *Police Act*;
- (c) the Royal Canadian Mounted Police;

“taxing authority” means an employee or officer of the government or the government of Canada who is responsible for administering or enforcing an enactment of the Province or Canada that provides for the imposition and collection of a tax or duty;

“transparency record” means either of the following:

- (a) a transparency declaration that has been filed with the administrator under Division 1 [*Transparency Declarations*] of Part 2 [*Transparency Declarations and Disclosure Reports*];
- (b) a disclosure report that has been filed with the administrator under Division 2 [*Disclosure Reports*] of Part 2.

Administrator’s duty to keep records

- 27** Subject to and in accordance with this Act and the regulations, the administrator must keep and maintain the following:
- (a) transparency records;
 - (b) applications under section 35 (3) (b) [*conditions and manner of conducting searches*];
 - (c) applications made under section 38 [*application to omit information if health or safety at risk*];
 - (d) applications made under section 41 [*application to correct or change information*];
 - (e) notices and submissions under section 61 [*payment or dispute of administrative penalty*];
 - (f) all other documents received by the administrator under this Act.

Administrator’s duty to make information available

- 28** (1) Subject to and in accordance with this Act and the regulations, the administrator must do the following:
- (a) make transparency records and information provided in transparency records available for search and inspection by the government, taxing authorities, law enforcement agencies and financial sector regulators;
 - (b) make the following information provided in transparency records available for search and inspection by any person:
 - (i) identification information in respect of reporting bodies that are currently registered as owners of interests in land;
 - (ii) identification information in respect of individuals who are interest holders in relation to the reporting bodies or interests in land referred to in subparagraph (i);
 - (iii) prescribed information.
- (2) Identification information in respect of an individual who is an interest holder must not be made publicly accessible under subsection (1) (b) until at least 30 days

after the disclosure report that includes that identification information has been accepted by the registrar for filing with the administrator.

Searches for tax purposes

- 29** A taxing authority may search and inspect transparency records and reported information for the following purposes:
- (a) administering or enforcing an enactment of the Province or Canada that provides for the imposition and collection of a tax or duty;
 - (b) assisting another jurisdiction in or outside Canada in respect of the administration or enforcement of an enactment of that jurisdiction that provides for the imposition and collection of a tax or duty.

Searches for law enforcement purposes

- 30** A constable, officer or employee of a police force may search and inspect transparency records and reported information for the following purposes:
- (a) conducting a specific investigation, in Canada,
 - (i) that is undertaken with a view to a law enforcement proceeding, or
 - (ii) from which a law enforcement proceeding is likely to result;
 - (b) assisting another law enforcement agency in Canada in a specific investigation described in paragraph (a);
 - (c) assisting an agency in a jurisdiction in or outside Canada, under an arrangement, written agreement, treaty or provincial or Canadian legislative authority, in respect of a law enforcement proceeding.

Searches by financial sector regulators

- 31** An officer or employee of a financial sector regulator may search and inspect transparency records and reporting information for the following purposes:
- (a) administering or enforcing legislation for which the financial sector regulator is responsible;
 - (b) assisting another agency in Canada in the administration or enforcement of legislation that is similar to legislation for which a financial sector regulator is responsible;
 - (c) assisting an agency outside Canada, under an arrangement, written agreement, treaty or provincial or Canadian legislative authority, in the administration or enforcement of legislation that is similar to legislation for which a financial sector regulator is responsible.

Restrictions on searches

- 32** The regulations may impose restrictions on searches and inspections authorized under
- (a) section 29 [*searches for tax purposes*],
 - (b) section 30 [*searches for law enforcement purposes*], or
 - (c) section 31 [*searches by financial sector regulators*].

Copy of transparency record as evidence

- 33** (1) A copy of a transparency record, application, notice or any other document referred to in section 27 [*administrator's duty to keep records*] that is

- (a) obtained from the administrator, and
 - (b) certified by the administrator to be a true copy of the transparency record, application, notice or document
- is conclusive evidence of the transparency record, application, notice or document and is admissible in court as if it were the original.
- (2) A certification of the administrator under subsection (1) in respect of the electronic form of a transparency record, application, notice or other document is conclusive evidence that
 - (a) the technology and procedure used by the administrator to receive, store, retrieve and copy the electronic form of the transparency record, application, notice or document is capable of recording and reproducing all significant details of that transparency record, application, notice or document, without any additions, deletions or changes, and
 - (b) the electronic form of the transparency record, application, notice or document was received, stored, retrieved and copied by the administrator in the usual and ordinary course of business.
 - (3) Copies of transparency records, applications, notices or other documents certified under this section may be given to any of the following:
 - (a) the government;
 - (b) a taxing authority;
 - (c) a police force;
 - (d) a financial sector regulator;
 - (e) a prescribed person.

Fees for searches

- 34** (1) Unless exempted under this section or the regulations, a person must pay the applicable fees before the person does either of the following:
- (a) searches or inspects transparency records, reported information or publicly accessible information;
 - (b) obtains from the administrator copies of or extracts from transparency records, reported information or publicly accessible information.
- (2) The following are exempt from paying fees referred to in subsection (1):
- (a) the government;
 - (b) a taxing authority, if the taxing authority is searching, inspecting or obtaining copies or extracts for the purposes referred to in section 29 [*searches for tax purposes*];
 - (c) a police force, if the police force is searching, inspecting or obtaining copies or extracts for the purposes referred to in section 30 [*searches for law enforcement purposes*];
 - (d) a financial sector regulator, if the financial sector regulator is searching, inspecting or obtaining copies or extracts for the purposes referred to in section 31 [*searches by financial sector regulators*];

- (e) a prescribed person or entity, if the prescribed person or entity is searching, inspecting or obtaining copies or extracts for the purposes specified in the regulations.

Conditions and manner of conducting searches

- 35** (1) Publicly accessible information is open to search and inspection on reasonable conditions the administrator may impose.
- (2) The administrator must provide for the following searches of publicly accessible information:
- (a) a search of the parcel identifier for a parcel of land to ascertain the individuals who, in relation to the parcel of land, are
 - (i) corporate interest holders in respect of relevant corporations that are currently registered as owners of interests in land,
 - (ii) beneficial owners or settlors in respect of interests in land that are currently registered in the name of a trustee of a relevant trust, or
 - (iii) partnership interest holders in respect of interests in land that are currently registered in the name of a partner of a relevant partnership;
 - (b) a search of the name of an individual to ascertain the interests in land in relation to which the individual is an interest holder or settlor;
 - (c) a prescribed search.
- (3) The administrator may direct the following:
- (a) the manner of conducting searches or inspections of transparency records, reported information and publicly accessible information;
 - (b) that a search or inspection of transparency records, reported information or publicly accessible information be accompanied by an application that contains the information and is completed in the manner required by the administrator.

Prohibition against misuse of publicly accessible information

- 36** A person who obtains information from publicly accessible information must not use or disclose the information
- (a) to solicit persons by telephone, mail or other means,
 - (b) to harass persons, or
 - (c) for prescribed purposes.

Mandatory omission of information from publicly accessible information

- 37** (1) If a disclosure report indicates that
- (a) an individual is under 19 years of age, or
 - (b) a court or qualified professional has determined that an individual identified in the report is incapable of managing the individual's financial affairs,
- the administrator must omit or obscure that individual's identification information from publicly accessible information.

- (2) The administrator must omit or obscure the following from publicly accessible information:
 - (a) identification information specified in an application made under section 38 unless, after the end of the 30-day period referred to in section 39 (3) [*determination of application to omit information*], the administrator decides under section 39 (1) (b) to cease omitting or obscuring that information;
 - (b) prescribed information.

Application to omit information if health or safety at risk

- 38**
- (1) An individual may apply to the administrator for some or all of the individual's identification information to be omitted or obscured from publicly accessible information if the individual believes that making that information publicly accessible could reasonably be expected to threaten the safety or mental or physical health of
 - (a) the individual, or
 - (b) a member of the individual's household.
 - (2) An individual who makes an application under this section must do the following:
 - (a) submit the application to the registrar;
 - (b) pay the applicable fee;
 - (c) specify in the application the particular information the individual seeks to have omitted or obscured and explain why the individual seeks to have that information omitted or obscured;
 - (d) specify in the application the address at which the individual is to be notified of the administrator's decision under section 39;
 - (e) submit to the registrar any records, information or verifications that the administrator may require.
 - (3) Promptly after an application has been submitted under this section, the administrator must omit or obscure from publicly accessible information the information specified under subsection (2) (c).

Determination of application to omit information

- 39**
- (1) After considering an application by an individual for specified information to be omitted or obscured from publicly accessible information, the administrator may do either of the following:
 - (a) continue omitting or obscuring the specified information;
 - (b) if the administrator considers that making some or all of the specified information publicly accessible could not reasonably be expected to threaten the safety or mental or physical health of the individual or a member of the individual's household, and subject to subsection (3), cease omitting or obscuring that information.
 - (2) The administrator must notify the individual who made the application of a decision made under this section.

- (3) If the administrator makes a decision referred to in subsection (1) (b), the administrator may not cease omitting or obscuring the information until at least 30 days after giving notice under subsection (2).

Request to reporting body to correct or change information

- 40** By written request to the reporting body that provided the information, a person who believes that reported information or publicly accessible information includes information in relation to the person that is incomplete or inaccurate may request that the reporting body file a new disclosure report under section 16 [*filing of new disclosure report to correct previous report*] that includes the corrections or changes requested by that person.

Application to correct or change information

- 41** (1) A person may apply to the administrator for the administrator to make corrections or changes in respect of a filed disclosure report, or to reported information or publicly accessible information, if
- (a) the person has requested the corrections or changes under section 40, and
 - (b) the reporting body to whom the request was made has not, within 3 months after receiving the request, filed a new disclosure report that includes the requested corrections or changes.
- (2) A person who makes an application under this section must do the following:
- (a) submit the application to the registrar;
 - (b) pay the applicable fee;
 - (c) include in the application a copy of the request made under section 40;
 - (d) specify in the application the particular corrections or changes requested by the person;
 - (e) specify in the application the address at which the individual is to be notified of the administrator's decision under section 42;
 - (f) submit to the registrar any records, information or verifications the administrator may require.

Determination of application to correct or change information

- 42** (1) In respect of an application for specified corrections or changes to be made in respect of a disclosure report, the administrator may, after considering the application, do either of the following:
- (a) annotate the disclosure report so that some or all of the specified corrections or changes are noted in a way that does not conceal the original content of that disclosure report;
 - (b) make no annotations to the disclosure report.
- (2) In respect of an application for specified corrections or changes to be made to reported information or publicly accessible information, the administrator may, after considering the application, do any of the following:

- (a) make changes to, remove information from or add information to reported information or publicly accessible information to reflect some or all of the corrections or changes specified in the application;
 - (b) annotate reported information or publicly accessible information so that some or all of the specified corrections or changes are noted in a way that does not conceal the previous content of that information;
 - (c) make no changes, removals, additions or annotations to reported information or publicly accessible information.
- (3) The administrator must notify the person who made the application of a decision made under this section.

Omissions, changes or annotations on administrator's initiative

- 43** The administrator may, on the administrator's own initiative, do any of the following:
- (a) omit or obscure information from publicly accessible information if the administrator considers that making that information publicly accessible could reasonably be expected to threaten the safety or mental or physical health of an individual;
 - (b) annotate a filed disclosure report in a way that does not conceal the original content of the disclosure report;
 - (c) make changes to, remove information from or add information to reported information or publicly accessible information;
 - (d) annotate reported information or publicly accessible information.

Registrar not required to inquire into information

- 44** The registrar is not required, for completeness, accuracy or otherwise, to inquire into information included in
- (a) transparency records, applications or any other document submitted to the registrar under this Act, or
 - (b) reported information or publicly accessible information.

Records vest in Land Title and Survey Authority

- 45** (1) Transparency records, and all other documents filed with or received by the administrator under this Act, vest in the Land Title and Survey Authority.
- (2) The following are not subject to any process of attachment, execution or seizure:
- (a) transparency records and documents referred to in subsection (1);
 - (b) reported information;
 - (c) publicly accessible information.
- (3) Despite any Act, agreement or court order, a receiver must not exercise custody or control over any of the records, documents or information referred to in subsection (2).

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Disposal of records

- 46** (1) Transparency records, and all other documents filed with or received by the administrator under this Act, must be kept in the location approved by the board of directors of the Land Title and Survey Authority.
- (2) Transparency records and documents referred to in subsection (1) may be destroyed or disposed of only in accordance with
- (a) the bylaws of the Land Title and Survey Authority, or
 - (b) section 3 [*status of assets if Authority is dissolved*] of the *Land Title and Survey Authority Act*.

Discussion questions

Does the draft legislation strike an appropriate balance between transparency and privacy?

Are there concerns about disclosing any category of information, either as part of the publicly accessible information or as part of the information available only to tax, law enforcement and regulatory agencies?

Do the provisions in the Part provide adequate tools to vulnerable people to have information obscured or omitted?

Are there other factors the government should be considering respecting access to information provided to the public and/or government and agencies?

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PART 4 – ADMINISTRATION AND ENFORCEMENT

Part 4: Administration and Enforcement

This Part provides for the appointment of the Administrator and Deputy Administrators who are responsible for the administration of the legislation. Broad inspection powers are provided to the Administrator to investigate and make determinations about whether the Act is being complied with, including the power to enter a place where a reporting body carries on business or where records relating to a reporting body are kept. It provides the Administrator with the power to require a person who may have relevant information to answer questions or to otherwise provide that information.

The Administrator is also provided with the authority to impose administrative penalties on a person who has contravened specified requirements of the legislation, such as failing to file an updated disclosure report (section 15), failing to make reasonable efforts to obtain and confirm beneficial ownership information (section 17) or providing false or misleading information (section 69). Maximum administrative penalties that can be imposed by the Administrator are \$50,000 for a contravention by a corporation and \$25,000 for an individual. The Part provides a procedure for a person to dispute an administrative penalty.

Division 1 – Administration

Appointment of administrator and deputy administrators

- 47** The chief executive officer of the Land Title and Survey Authority
- (a) must appoint an employee of the Land Title and Survey Authority as the administrator, and
 - (b) may appoint employees of the Land Title and Survey Authority as deputy administrators.

General responsibilities of administrator

- 48** (1) Without limiting other powers or duties of the administrator under this Act, and subject to general policy direction given by the minister, the administrator is responsible for the general administration of this Act and the regulations.
- (2) The administrator may develop and provide public information and education respecting this Act and the regulations.

Administrator must report to minister

- 49** The administrator must report to the minister, as required by the minister, on
- (a) the administration and enforcement of this Act and regulations, and
 - (b) other matters the minister considers necessary in relation to this Act and the regulations.

Delegation of administrator's powers and duties

- 50** (1) The administrator may delegate to an employee or class of employees of the Land Title and Survey Authority any power or duty of the administrator under this Act, except the power to delegate under this section.
- (2) A delegation under subsection (1)
- (a) must be in writing,

- (b) may be to a named person or class of persons, and
 - (c) may contain any conditions or restrictions the administrator considers appropriate.
- (3) If the administrator has made a delegation of a power or duty, a reference to the administrator in relation to that power or duty includes the delegate.

Division 2 – Inspections

Inspection powers

- 51** (1) For the purpose of conducting inspections to determine whether this Act and the regulations are being or have been complied with, the administrator may, subject to this section, do any of the following:
- (a) enter at any reasonable time a place where
 - (i) a reporting body carries on business, or
 - (ii) records relating to the reporting body are kept;
 - (b) examine records and things that may be relevant to the inspection;
 - (c) require a person to produce or provide access to records and things that are in the person's possession or control and may be relevant to the inspection;
 - (d) require a person who may have information, including personal information, relevant to the inspection to answer questions and otherwise provide that information;
 - (e) remove a record referred to in paragraph (b) for the purpose of examining the record or making copies or extracts.
- (2) Except as authorized by a warrant issued under section 52, the administrator may enter a place occupied as a private residence only with the consent of the owner or occupier of the private residence.
- (3) When conducting an inspection, the administrator must
- (a) carry and present identification on request, and
 - (b) advise the owner, manager or person apparently in charge of the place in which the inspection is being conducted of the reason for the inspection.
- (4) If the administrator removes a record or thing from a place, the administrator must
- (a) provide a receipt for the record or thing, and
 - (b) return the record or thing within a reasonable time.

Warrant to enter place to conduct inspection

- 52** If satisfied by evidence on oath or affirmation that there are reasonable grounds to believe that there are, in a private residence or in any other place, records or things relevant to determining whether this Act and the regulations are being or have been complied with, a justice may issue a warrant authorizing a person named in the warrant to enter the place in accordance with the warrant in order to exercise the powers under section 51.

Records in possession of lawyer

- 53** Except in accordance with the regulations, the power under section 51 [*inspection powers*] to inspect records and things must not be used to inspect a record in the

possession of a lawyer if the lawyer at that time claims that a particular client or particular former client of the lawyer has solicitor-client privilege in relation to the record.

Prohibition against interfering with inspection

- 54** (1) In this section and sections 55 and 56 [*certified copies of records as evidence*], “**administrator**” includes a person other than the administrator who is authorized to exercise powers under a warrant issued under section 52 [*warrant to enter place to conduct inspection*].
- (2) If the administrator is conducting an inspection under this Division, a person must not do any of the following:
- (a) obstruct the administrator in conducting the inspection;
 - (b) withhold, destroy, conceal or refuse to provide or produce information, records or things required by the administrator for the purposes of the inspection;
 - (c) provide false or misleading records or information to the administrator.

Administrator not compellable

- 55** The administrator must not disclose or be compelled to disclose any information, record or thing that is obtained in the course of an inspection unless the disclosure is necessary in the administration of this Act, or is otherwise required by law.

Certified copies of records as evidence

- 56** A copy or extract certified by the administrator as being a true copy of a record or extract examined or obtained by the administrator under this Division is admissible in evidence to the same extent as, and has the same evidentiary value as, the original record or thing without proof of the signature of the administrator.

Division 3 – Administrative Penalties

Imposition of administrative penalty

- 57** The administrator may give written notice to a person requiring the person to pay an administrative penalty if the administrator determines, based on information obtained from an inspection or any other source, that the person has contravened any of the following:
- (a) a provision of Part 2 [*Disclosure Reports*], other than a provision of
 - (i) section 10 [*transparency declaration required with application to register*], or
 - (ii) section 12 [*disclosure report required with application to register*];
 - (b) section 36 [*prohibition against misuse of publicly accessible information*];
 - (c) section 54 [*prohibition against interfering with inspection*];
 - (d) section 68 [*prohibition against misuse of information obtained by reporting body*];
 - (e) section 69 [*prohibition against providing false or misleading information*];
 - (f) a prescribed provision of this Act or the regulations.

Factors administrator must consider

- 58** Before the administrator imposes an administrative penalty on a person for a contravention, the administrator must consider the following:
- (a) previous enforcement actions against the person under this Act;
 - (b) the gravity and magnitude of the contravention;
 - (c) whether the contravention was repeated or continuous;
 - (d) whether the contravention was deliberate;
 - (e) the person's efforts to correct the contravention.

Notice of administrative penalty

- 59** A notice of administrative penalty for a contravention must specify all of the following:
- (a) the contravention;
 - (b) the amount of the administrative penalty;
 - (c) a person's option under section 61 [*payment or dispute of administrative penalty*] to either pay or request an opportunity to dispute the administrative penalty within the 14-day period referred to in that section.

Amount of administrative penalty

- 60** An administrative penalty for a contravention must not exceed
- (a) \$50 000, in the case of a contravention by a corporation or limited liability company, or
 - (b) \$25 000, in the case of a contravention by an individual.

Payment or dispute of administrative penalty

- 61** (1) Within 14 days after a person receives notice of an administrative penalty for a contravention, the person must do one of the following:
- (a) pay the administrative penalty;
 - (b) give written notice to the administrator requesting an opportunity to dispute the contravention or the amount of the administrative penalty.
- (2) Subject to subsection (3), a person who gives notice under subsection (1) (b) requesting an opportunity to dispute a contravention or the amount of an administrative penalty person must deliver written submissions to the administrator within 30 days after receiving notice of the administrative penalty.
- (3) If the amount of an administrative penalty specified in a notice of administrative penalty is
- (a) \$10 000 or more, in the case of an administrative penalty imposed on a corporation or limited liability company, or
 - (b) \$5 000 or more, in the case of an administrative penalty imposed on an individual,
- the person to whom the notice was given may request under subsection (1) (b) that the person be given the opportunity to dispute the administrative penalty by way of an oral hearing.
- (4) If a person requests an oral hearing under subsection (1) (b), the administrator must hold the oral hearing within a reasonable time after receiving the request.

- (5) Within a reasonable time after receiving written submissions or holding an oral hearing in respect of an administrative penalty for a contravention, the administrator
 - (a) must by order confirm whether the person committed the contravention, and
 - (b) if commission of the contravention is confirmed under paragraph (a), may by order
 - (i) confirm the penalty specified in the notice of administrative penalty,
 - (ii) impose a lesser penalty, or
 - (iii) impose no penalty.
- (6) An order made under subsection (5) must specify all of the following, as applicable:
 - (a) the contravention;
 - (b) the amount of the administrative penalty;
 - (c) the requirement under section 62 to pay the penalty;
 - (d) the right to commence a judicial review application within the 30-day period referred to in section 62 (2).
- (7) The administrator may exercise the powers under subsection (5) in the absence of a person who requests an oral hearing if the person fails to appear at the time scheduled for the oral hearing.
- (8) The administrator must give a copy of an order made under subsection (5) to the person to whom the order relates.

Payment or judicial review of administrator's order

- 62** (1) A person in respect of whom an administrative penalty is confirmed or imposed by order under section 61 (5) must pay the penalty within 30 days after receiving the order.
- (2) If a person makes an application for judicial review of an order made under section 61 (5), the application must be commenced within 30 days after the date on which the person received a copy of the order.

Relationship between administrative penalties and offences

- 63** (1) If the administrator imposes an administrative penalty on a person, a prosecution for an offence under this Act for the same contravention may not be brought against the person.
- (2) A person who has been charged with an offence under this Act may not be subject to an administrative penalty in respect of the circumstances that gave rise to the charge.

Administrative penalty against officers or directors of corporation

- 64** If a corporation or limited liability company contravenes a provision referred to in section 57 [*imposition of administrative penalty*], the administrator may, in accordance with this Division, impose an administrative penalty on an officer, director, manager or agent of a corporation or limited liability company who authorized, permitted or

participated in the contravention.

Time limit for imposing administrative penalty

- 65** (1) Notice of an administrative penalty for a contravention must not be given more than 2 years after the date on which the administrator first learned of the act or omission to which the contravention relates.
- (2) A certificate purporting to have been issued by the administrator certifying the date referred to in subsection (1) is proof of that date.

Enforcement of administrative penalty

- 66** (1) If a person fails to pay the full amount of an administrative penalty required to be paid under this Act, the administrator may issue a certificate setting out the unpaid amount of the administrative penalty and the name of the person who owes it.
- (2) A certificate issued under subsection (1) may be filed with the Provincial Court or Supreme Court.
- (3) A certificate filed under subsection (2) has the same force and effect, and all proceedings may be taken on the certificate, as if it were a judgment of the court in favour of the Land Title and Survey Authority for the recovery of a debt in the amount specified in the certificate against the person named in the certificate.

Payment of administrative penalty

- 67** (1) An administrative penalty must be paid to the Land Title and Survey Authority.
- (2) Administrative penalties paid to the Land Title and Survey Authority may be expended only for
- (a) educating or providing information to reporting bodies and the public respecting this Act and the regulations, and
 - (b) purposes specified by written authorization of the minister.

Discussion questions

Does the Act provide for the appropriate investigation powers for the Administrator?

Are the maximum administrative penalties appropriate for contraventions of the Act?

PART 5 – GENERAL

Part 5: General

This Part provides general prohibitions against misuse of information and against providing false or misleading information. It provides immunity protection for individuals responsible for administering the statute. The Part also provides for the form and manner of submitting documents, paying fees and service of documents.

Prohibition against misuse of information obtained by reporting body

- 68** A reporting body that obtains personal information for the purposes of this Act in respect of an interest holder or settlor must not disclose or use the personal information except as follows:
- (a) for the purpose of filing transparency declarations and disclosure reports with the administrator;
 - (b) for the purpose of providing information to the administrator for the purpose of an inspection under Part 4 [*Administration and Enforcement*];
 - (c) with the consent of the individual to whom the information relates;
 - (d) as required or authorized by law;
 - (e) for prescribed purposes.

Prohibition against providing false or misleading information

- 69** (1) A person must not provide false or misleading information in any of the following:
- (a) a transparency declaration;
 - (b) a disclosure report;
 - (c) an application made under section 38 [*application to omit information if health or safety at risk*];
 - (d) an application made under section 41 [*application to correct or change information*];
 - (e) a written submission or oral hearing under section 61 [*payment or dispute of administrative penalty*].
- (2) A person who omits a material fact from the information provided in a transparency declaration, disclosure report, application, written submission or oral hearing referred to in subsection (1) contravenes that subsection if the omission of the material fact makes the information provided false or misleading.

Personal liability protection for administrator and deputy administrators

- 70** (1) In this section, “**protected person**” means any of the following:
- (a) the administrator;
 - (b) a deputy administrator;
 - (c) a person acting under authority of a warrant issued under section 52 [*warrant to enter place to conduct inspection*].

- (2) Subject to subsection (3), no legal proceeding for damages lies or may be commenced or maintained against a protected person because of anything done or omitted
 - (a) in the exercise or intended exercise of any power under this Act, or
 - (b) in the performance or intended performance of any duty under this Act.
- (3) Subsection (2) does not apply in relation to anything done or omitted by a protected person in bad faith.
- (4) Subsection (2) does not absolve the Land Title and Survey Authority from vicarious liability arising out of anything done or omitted by a protected person for which the Land Title and Survey Authority would be vicariously liable if this section were not in force.

Form and manner of submitting documents

- 71** (1) The following must be submitted, filed or given in the form and manner required by the administrator:
- (a) transparency declarations, except to the extent expressly provided for in section 10 (2) [*transparency declaration required with application to register*];
 - (b) disclosure reports, except to the extent expressly provided for in
 - (i) section 12 (6) [*disclosure report required with application to register*],
 - (ii) section 14 (4) [*disclosure report required from pre-existing owner*], or
 - (iii) section 15 (4) [*disclosure report required on change of interest holders*];
 - (c) applications under section 35 (3) (b) [*conditions and manner of conducting searches*];
 - (d) applications under section 38 [*application to omit information if health or safety at risk*];
 - (e) applications under section 41 [*application to correct or change information*];
 - (f) notices and submissions under section 61 [*payment or dispute of administrative penalty*].
- (2) Without limiting subsection (1), requirements respecting the form and manner of submitting, filing or giving transparency declarations, disclosure reports, applications and other documents referred to in that subsection
- (a) may provide that specified provisions of the *Land Title Act* or the *Property Transfer Tax Act* apply, in whole or in part, with any additions and modifications that the administrator considers appropriate, and
 - (b) may impose requirements on officers, subscribers and other persons in relation to the form and manner of
 - (i) submitting, filing or giving the documents in an electronic format,
 - (ii) certifying, signing, attesting to, witnessing or proving execution of the documents, and
 - (iii) verifying the identity of persons
 - (A) who are submitting, filing or giving the documents, or
 - (B) on whose behalf the documents are submitted, filed or given.

Manner of paying fees

- 72** (1) The following must be paid at the time and in the manner required by the administrator:
- (a) filing fees for transparency declarations and disclosure reports;
 - (b) fees for searches, inspections, copies or extracts referred to in section 34 (1) *[fees for searches]*;
 - (c) fees for applications under section 38 *[application to omit information if health or safety at risk]* or 41 *[application to correct or change information]*.
- (2) The board of directors of the Land Title and Survey Authority may set fees referred to in subsection (1).

Service of documents

- 73** (1) A notice, order or other document required or permitted to be given to or by the administrator under any of the following must be given in accordance with the regulations:
- (a) section 39 (2) *[determination of application to omit information]*;
 - (b) section 42 (3) *[determination of application to correct or change information]*;
 - (c) Division 3 *[Administration Penalties]* of Part 4 *[Administration and Enforcement]*;
 - (d) a prescribed provision of this Act or the regulations.
- (2) A notice, order or other document given in accordance with subsection (1) is conclusively deemed to be received, in relation to a specified method of service, as provided in the regulations.

Discussion questions

Are there any concerns about this Part of the legislation?

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PART 6 – OFFENCES

Part 6: Offences

This Part sets out the offences for which a person may be prosecuted. Maximum fines that can be imposed by the courts in respect of a prosecution for an offence are \$100,000 for a contravention by a corporation and \$50,000 for an individual.

Offences relating to disclosure reports

- 74** A person who contravenes any of the following commits an offence:
- (a) section 14 (1) *[disclosure report required from pre-existing owner]*;
 - (b) section 15 (1) *[disclosure report required on change of interest holders]*;
 - (c) section 21 (1), (2) or (3) *[content requirements]*;
 - (d) section 22 (1), (2), (3) or (4) *[content if reporting body unable to obtain information]*;
 - (e) section 25 (a) or (b) *[prohibition against wrongful incorporation of electronic signature]*.

Other offences

- 75** A person who contravenes any of the following commits an offence:
- (a) section 36 *[prohibition against misuse of publicly accessible information]*;
 - (b) section 54 *[prohibition against interfering with inspection]*;
 - (c) section 68 *[prohibition against misuse of information obtained by reporting body]*;
 - (d) section 69 *[prohibition against providing false or misleading information]*;
 - (e) a prescribed provision of the regulations.

Penalties for offences

- 76** (1) A corporation or limited liability company that commits an offence under this Act is liable to a fine of not more than \$100 000.
- (2) An individual who commits an offence under this Act is liable to a fine of not more than \$50 000.

Offence by officer or director of corporation

- 77** If a corporation or limited liability company commits an offence under this Act, an officer, director, manager or agent of a corporation or limited liability company who authorizes, permits or participates in the commission of the offence also commits an offence, whether or not the corporation or limited liability company is prosecuted or convicted.

Time limit for prosecuting offence

- 78** (1) The time limit for laying an information for an offence under this Act is
- (a) 6 years after the date on which the act or omission that is alleged to constitute the offence occurred, or

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- (b) if the administrator issues a certificate described in subsection (2), 2 years after the date on which the administrator learned of the act or omission referred to in paragraph (a).
- (2) A certificate purporting to have been issued by the administrator certifying the date referred to in subsection (1) (b) is proof of that date.

Section 5 of *Offence Act* does not apply

- 79** Section 5 [*general offence*] of the *Offence Act* does not apply to this Act or the regulations.

Discussion questions

Are the maximum fines appropriate for contraventions of the Act?

PART 7 – REGULATIONS

Part 7: Regulations

This Part provides broad authority to the government to make regulations contemplated under the new legislation. This includes very broad exemption powers in sections 81 and 83 to exclude types of corporations, trusts/trustees and partnerships from the disclosure requirements under the legislation and to make other exclusions from the legislation. Given the diversity of land ownership and business arrangements used in the province, further regulatory exemptions could be necessary. For example, certain types of ownership (time shares and fractional resort property ownership interests) or business arrangements (e.g., broadly held limited liability partnership interests) may be considered for exclusion from the some or all disclosure requirements under the legislation.

General regulation-making authority

- 80**
- (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.
 - (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:
 - (a) respecting any matter for which regulations are contemplated by this Act;
 - (b) defining any word or expression used but not defined in this Act.
 - (3) The authority to make regulations under another provision of this Act does not limit subsections (1) and (2).
 - (4) In making a regulation under this Act, the Lieutenant Governor in Council may do one or more of the following:
 - (a) delegate a matter to a person;
 - (b) confer a discretion on a person;
 - (c) make different regulations in relation to
 - (i) different persons, trusts, partnerships, places, interests in land, reports, information, things, circumstances or transactions, or
 - (ii) different classes of persons, trusts, partnerships, places, interests in land, reports, information, things, circumstances or transactions;
 - (d) establish or define classes of persons, trusts, partnerships, places, interests in land, reports, information, things, circumstances or transactions.

Regulations in relation to Schedules 1 and 2

- 81**
- (1) For the purposes of paragraph (b) of the definition of “relevant corporation” in section 1 [*definitions*], the Lieutenant Governor in Council may make regulations amending Schedule 1 by adding persons or entities to that Schedule.
 - (2) For the purposes of paragraph (e) of the definition of “relevant trust” in section 1 [*definitions*], the Lieutenant Governor in Council may make regulations amending Schedule 2 by adding trusts to that Schedule.
 - (3) A regulation under this section may do any of the following:
 - (a) in the case of a regulation under subsection (1),
 - (i) add persons or entities to Schedule 1 by adding new provisions to that Schedule, or

- (ii) delete persons or entities from Schedule 1 by amending or repealing provisions added under subparagraph (i);
- (b) in the case of a regulation under subsection (2),
 - (i) add trusts to Schedule 2 by adding new provisions to that Schedule, or
 - (ii) delete trusts from Schedule 2 by amending or repealing provisions added under subparagraph (i).

Regulations in relation to lawyers' records

- 82** (1) In this section, "**lawyer's record**" means a record or part of a record to which all of the following apply:
- (a) the record or part is in the possession of a lawyer;
 - (b) the record or part is about to be
 - (i) examined or removed for the purposes of an inspection under Division 2 [*Inspections*] of Part 4 [*Administration and Enforcement*], or
 - (ii) seized for the purposes of the investigation of an offence under Part 6 [*Offences*];
 - (c) at the time the record or part is about to be examined, removed or seized, the lawyer, in respect of that record or part, makes a claim of solicitor-client privilege for a client or former client.
- (2) The Lieutenant Governor in Council may make regulations in relation to lawyers' records as follows:
- (a) establishing procedures for allowing a lawyer's record to be retained or seized and held in a secure manner until
 - (i) the claim of solicitor-client privilege is waived by the lawyer's client or former client, or
 - (ii) the claim is determined, or the lawyer's record is otherwise dealt with, on application to the Supreme Court in accordance with the regulations;
 - (b) establishing a right to apply to the Supreme Court to resolve a claim of solicitor-client privilege regarding a lawyer's record retained or seized under paragraph (a), and establishing how the court is to deal with such an application.

Regulations in relation to exemptions

- 83** Despite any other provision of this Act, the Lieutenant Governor in Council may make regulations providing for exemptions, in whole or in part, from one or more provisions of this Act or the regulations, including, without limitation, regulations doing one or more of the following:
- (a) exempting a person from a requirement to
 - (i) file a transparency declaration or disclosure report,
 - (ii) include or disclose specified information in a disclosure report, or
 - (iii) pay a fee under this Act;
 - (b) establishing circumstances in which an exemption applies;
 - (c) setting conditions of, or limitations on, the application of an exemption.

Discussion questions

Are the proposed regulation-making powers appropriate for the legislation?

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PART 8 – CONSEQUENTIAL AMENDMENTS

Part 8: Consequential Amendments

This Part provides for several consequential amendments to the *Land Title Act* and the *Land Title and Survey Authority Act*. For example, the proposed amendments clarify that legal title is not affected by disclosures under this proposed legislation and provide the necessary authority for the Land Title and Survey Authority to administer the new legislation.

84 Section 29 of the Land Title Act, R.S.B.C. 1996, c. 250, is amended by adding the following subsections:

- (5) A person contracting or dealing with, taking from or proposing to take from a registered owner, an estate or interest in land, or a transfer or assignment of an estate or interest in land, is not affected by a transparency declaration or disclosure report filed with the administrator under the *Land Owner Transparency Act*, or by reported information or publicly accessible information made available for search under that Act, whether or not the person had express, constructive or implied notice or knowledge of the transparency declaration, disclosure report, reported information or publicly accessible information.
- (6) The fact that the person who is contracting with, dealing with, taking from or proposing to take from a registered owner under subsection (2) had knowledge of a transparency declaration, disclosure report, reported information or publicly accessible information referred to in subsection (5), or that the person could have obtained knowledge of the transparency declaration, disclosure report, reported information or publicly accessible information by carrying out a search authorized under the *Land Owner Transparency Act*, is not evidence of fraud or bad faith for the purposes of subsection (2).

85 Section 168.1 is amended in the definition of “subscriber” by adding the following paragraph:

- (f) electronic disclosure reports, electronic transparency declarations and the electronic form of any other documents that are required or permitted to be submitted, filed or otherwise given to the registrar or administrator under *Land Owner Transparency Act*;

86 Section 168.1 is amended in paragraph (b) of the definition of “electronic signature”

(a) by striking out “and” at the end of subparagraph (i.1),

(b) by adding “, and” at the end of subparagraph (ii), and

(c) by adding the following subparagraph:

- (iii) electronic disclosure reports, electronic transparency declarations and the electronic form of any other documents that are required or permitted to be submitted, filed or otherwise given to the registrar or administrator under the *Land Owner Transparency Act*;

87 Section 168.1 is amended in the definition of “subscriber” by adding the following paragraph:

- (f) electronic disclosure reports, electronic transparency declarations or the electronic form of any other documents that are required or permitted to be submitted, filed or otherwise given to the registrar or administrator under the *Land Owner Transparency Act*;

- 88 Section 168.79 is amended by striking out “For the purposes of this Act” and substituting “For the purposes of this Act, the *Land Owner Transparency Act*”.**
- 89 Section 168.8 (b) (iii) is amended by striking out “contemplated by this Part” and substituting “contemplated by this Part, the *Land Owner Transparency Act*”.**
- 90 Section 168.81 (2) is amended by striking out “the administrator under the *Property Transfer Tax Act*” and substituting “the administrator under the *Land Owner Transparency Act* or the *Property Transfer Tax Act*”.**
- 91 Section 168.82 is amended by striking out “under this Act” and substituting “under this Act, the *Land Owner Transparency Act*”.**

Land Title and Survey Authority Act

- 92 Section 1 of the *Land Title and Survey Authority Act*, S.B.C. 2004, c. 66, is amended in the definition of “senior officer”**
- (a) by striking out “and” at the end of paragraph (b),**
- (b) by adding “, and” at the end of paragraph (c), and**
- (c) by adding the following paragraph:**
- (d) the administrator under the *Land Owner Transparency Act*;
- 93 Section 4 (1) is amended**
- (a) by striking out “and” at the end of the paragraph (b.1),**
- (b) by adding “, and” at the end of the paragraph (c), and**
- (c) by adding the following paragraph:**
- (d) to carry on necessary or advisable activities contemplated under the *Land Owner Transparency Act* related to the administration and enforcement of that Act and regulations under that Act, including, without limitation, managing, operating and maintaining information systems for the purposes of that Act and those regulations.
- 94 Section 5 (1) is amended**
- (a) by striking out “and” at the end of paragraph (b.1),**
- (b) by adding “, and” at the end of paragraph (c), and**
- (c) by adding the following paragraph:**

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- (d) transparency records, and all other documents filed with or received by the administrator under the *Land Owner Transparency Act*.

95 Section 19 (1) is amended by adding the following paragraphs:

- (d.1) authorize the destruction of transparency records, and all other documents filed with or received by the administrator under the *Land Owner Transparency Act*;
- (e.1) set fees payable under the *Land Owner Transparency Act* for
 - (i) filing transparency declarations and disclosure reports,
 - (ii) searching, inspecting or obtaining copies of or extracts from transparency records, reported information or publicly accessible information, and
 - (iii) other services provided by the administrator under that Act;

Discussion questions

Are the proposed consequential amendments appropriate?

Are any other consequential amendments needed to appropriately give effect to the proposed legislation?

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SCHEDULES 1 AND 2

SCHEDULES 1 AND 2

These schedules set out types of corporations and trusts that are exempted from reporting under the proposed legislation. Entities are excluded because they are unlikely to be used to obscure ownership of land in the province or they are already subject to disclosure and/or ownership oversight under other legislation. This includes government controlled corporations and publicly traded corporations which must generally disclose significant control persons under securities legislation. It also excludes regulated financial institutions from the requirement to report as a corporation (but not when they act as a trustee) and also excludes various types of trusts, such as charitable and testamentary trusts, from the reporting requirements under the Act.

SCHEDULE 1

(Note: see section 1, definition of “relevant corporation”)

Exclusions under paragraph (a) of definition of “relevant corporation”

- 1 For the purposes of paragraph (a) of the definition of “relevant corporation” in section 1 [definitions], a person or entity that is any of the following is not a relevant corporation:
 - (a) a government reporting entity as defined in the *Budget Transparency and Accountability Act*;
 - (b) a government body as defined in the *Financial Administration Act*;
 - (c) a local public body as defined in the *Freedom of Information and Protection of Privacy Act*;
 - (d) a body referred to in Schedule 2 [Public Bodies] of the *Freedom of Information and Protection of Privacy Act*;
 - (e) a corporation incorporated by a municipality under section 185 [ownership of corporations] of the *Community Charter*;
 - (f) a corporation incorporated by a regional district under section 265 [inspector approval required for incorporation or acquisition of corporations] of the *Local Government Act*;
 - (g) a public company as defined in the *Business Corporations Act*;
 - (h) a corporation incorporated or continued by an enactment;
 - (i) a water utility as defined in the *Water Utility Act*;
 - (j) a designated airport authority as defined in the *Airport Transfer (Miscellaneous Matters) Act* (Canada);
 - (k) a port authority as defined in the *Canada Marine Act* (Canada);
 - (l) an independent school as defined in the *Independent School Act*;
 - (m) a strata corporation as defined in the *Strata Property Act*;
 - (n) a savings institution;
 - (o) an insurance company;
 - (p) a trust company;
 - (q) a pension fund society within the meaning of the *Pension Fund Societies Act*.

SCHEDULE 2

(Note: see section 1, definition of “relevant trust”)

Exclusions under paragraph (d) of definition of “relevant trust”

- 1 For the purposes of paragraph (d) of the definition of “relevant trust” in section 1 [definitions], the following are not relevant trusts:
 - (a) a charitable trust;
 - (b) a testamentary trust;
 - (c) an alter ego trust or joint spousal or common-law partner trust, as defined in the *Income Tax Act* (Canada);
 - (d) a trust the trustee of which is the Public Guardian and Trustee;
 - (e) a trust in respect of a pension plan registered under a pension enactment of the Province or under the pension legislation of another province or Canada;
 - (f) a trust in respect of a pooled registered pension plan within the meaning of the *Pooled Registered Pension Plans Act*;
 - (g) a trust in respect of which each beneficiary is, or is a citizen or member of, one or more of the following:
 - (i) a treaty first nation;
 - (ii) the Nisga’a Nation;
 - (iii) a band as defined in the *Indian Act* (Canada);
 - (iv) the Sechelt Indian Band as established under the *Sechelt Indian Band Self-Government Act* (Canada);
 - (v) the Westbank First Nation as defined in the agreement approved under the *Westbank First Nation Self-Government Act* (Canada);
 - (vi) a prescribed person or entity;
 - (h) property vested in a person licensed or appointed under the *Bankruptcy and Insolvency Act* (Canada);
 - (i) a mutual fund trust within the meaning of the *Income Tax Act* (Canada);
 - (j) a real estate investment trust as defined in the *Income Tax Act* (Canada);
 - (k) a SIFT trust as defined in the *Income Tax Act* (Canada).

Discussion questions

Are the proposed exclusions appropriate?

Are there any types of corporations listed that should not be exempted from the reporting requirements?

Are there types of corporations that should be added to Schedule 1?

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Are the proposed exclusions from the definition of “relevant trust” set out in Schedule 2 appropriate?

Are there any types of trusts listed that should not be exempted from the reporting requirements?

Are there types of trusts that should be added to Schedule 2?