

Privacy v transparency: the battle rages on

MARGARET O'SULLIVAN ASSESSES CANADA'S RECENT MOVES TOWARDS TRANSPARENCY

IN THE PAST few years, government initiatives to ensure greater transparency in order to combat money laundering, the financing of terrorist activity and tax evasion have been prolific. In my home jurisdiction of Canada, they form a backdrop to recent legislative proposals and changes.

In 2018, Canada's federal government introduced legislation that will likely come into effect later in 2019 to amend the *Canada Business Corporations Act*, and will require that corporations collect and keep a register of specified information regarding individuals who have 'significant control'. This will include registered shareholders, beneficial owners of shares and persons who have direct or indirect influence, and as a result are deemed to have control over the corporation.

At this point, the information will not be publicly available, but will be available to directors, shareholders and creditors of the corporation. This appears to be the first step towards a public register, in line with similar developments in the EU, the UK and elsewhere.

Further, in July 2018, Canada introduced new trust reporting rules, effective after 31 December 2021, that require that the identity of settlors, trustees and beneficiaries (as well as those who have control over trustee decisions to pay income or capital, such as a protector) to be reported to the government. Additionally, trusts, with certain exceptions, must file a tax return. Previously, a trust would file a tax return only if it received income or made distributions to beneficiaries in a tax year. As a result of these measures, the government will have a mother lode of information on private trusts that it previously did not have.

On the real estate front, the Canadian province of British Columbia has proposed legislation to create a new public registry of beneficial ownership of real estate in the province. Corporations, trustees and partners will be required to provide

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specified information on those who have a beneficial interest in land or a significant interest in a corporation that owns land, or those who own an interest in land through a partnership, with certain restrictions. The stated intention of the registry is to prevent tax evasion, fraud and money laundering by ending anonymous or hidden ownership of real estate. It remains to be seen whether this initiative will head east and roll out through other Canadian jurisdictions.

Technology, in particular the internet and social media, has developed far faster than our ability to understand its full implications and effects. It has certainly developed too fast for our lawmakers to properly regulate and legislate for.

Over the past year, we have seen a number of scandals around significant data breaches and hacking, involving corporate behemoths as well as foreign governments, each illustrating how personal information is being surreptitiously obtained and illegally traded for corporate gain, or used for political intelligence and influence.

PUBLIC OR PRIVATE?

Our private worlds are becoming smaller, and the public domain larger. Big questions remain about what value and role personal privacy should, and will, have in future, and where the lines should be drawn from a societal viewpoint. Are the benefits of transparency proportional to the loss of privacy? Is it a good idea to put so much information into the hands of a government?

Public registers and the resulting transparency at least ensure a democratic sharing of information and put the individual and the state on an even keel. The argument can be made that, in order to protect our individuality, privacy exists as an intrinsic value. The lines between the public and the private have dramatically shifted in the last few years. Where should, and where will, they ultimately be drawn?