

Snow Washing is Now More Difficult in Canada, But at What Cost?

The Effects of the 2021 Annual Budget

Presented by: Kenneth Jull & Ian Spiegel
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Snow Washing

What is it?

- “Snow washing” is a term that refers to the purifying of illegitimate funds through using shell corporations to launder money in Canada
- The term amalgamates snow, which represents purifying (and the Canadian climate), with washing, referring to the often used term “money laundering”
- For many years, Canada has been a haven for those wishing to launder their illegitimate funds

2018 Annual Budget

Update to the *Canada Business Corporations Act* (the “CBCA”)

- Partly as a response to information leaks (e.g. the Panama Papers), the 2018 Annual Budget added section 21.1 to the *CBCA*:

Register

21.1 (1) The corporation shall prepare and maintain, at its registered office or at any other place in Canada designated by the directors, a register of individuals with significant control over the corporation that contains

- (a) the names, the dates of birth and the latest known address of each individual with significant control;
- (b) the jurisdiction of residence for tax purposes of each individual with significant control;
- (c) the day on which each individual became or ceased to be an individual with significant control, as the case may be;
- (d) a description of how each individual is an individual with significant control over the corporation, including, as applicable, a description of their interests and rights in respect of shares of the corporation;
- (e) any other prescribed information; and
- (f) a description of each step taken in accordance with subsection (2).



2018 Annual Budget

Update to the *Canada Business Corporations Act* (the “CBCA”)

- Section 21.1 came into effect on June 13, 2019
- It imposed the requirement for corporations to create a register of every registered or beneficial owner with “significant control” over the corporation
 - Public corporations were exempted

Criticisms of the 2018 Approach

A “Tepid” Response

- The addition of section 21.1 in the CBCA was met with harsh criticism
 - The registry only kicks in with “significant control” which has been described as 25% ownership. This is much higher than the 10% disclosure required of public companies
 - This is not a “report” – the registry is not public. This is a “tepid” response that falls short of other G7 countries
 - <https://www.terracestandard.com/news/canada-slowly-pushes-for-corporate-transparency-as-part-of-anti-corruption-push>.

2021 Annual Budget

Creation of a Public Registry

- The 2021 Annual Budget was released on April 19, 2021
 - The Budget “proposes to provide \$2.1 million over two years to Innovation, Science and Economic Development Canada to support the implementation a publicly accessible corporate beneficial ownership registry by 2025”
- This will provide a significant change to how regulated entities under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the “PCMLTFA”) carry out their Know-Your-Client (KYC) obligations
 - With a public registry, these entities will be able to access beneficial ownership more easily.

Proposed Improvements to the Public Registry

Closer to the other G7 Countries

- With the public registry, Canada moves closer to the other G7 countries in terms of transparency
 - This should significantly improve Canada's attempts to curb money laundering and similar illegal activity

Proposed Improvements to the Public Registry

Closer to the other G7 Countries

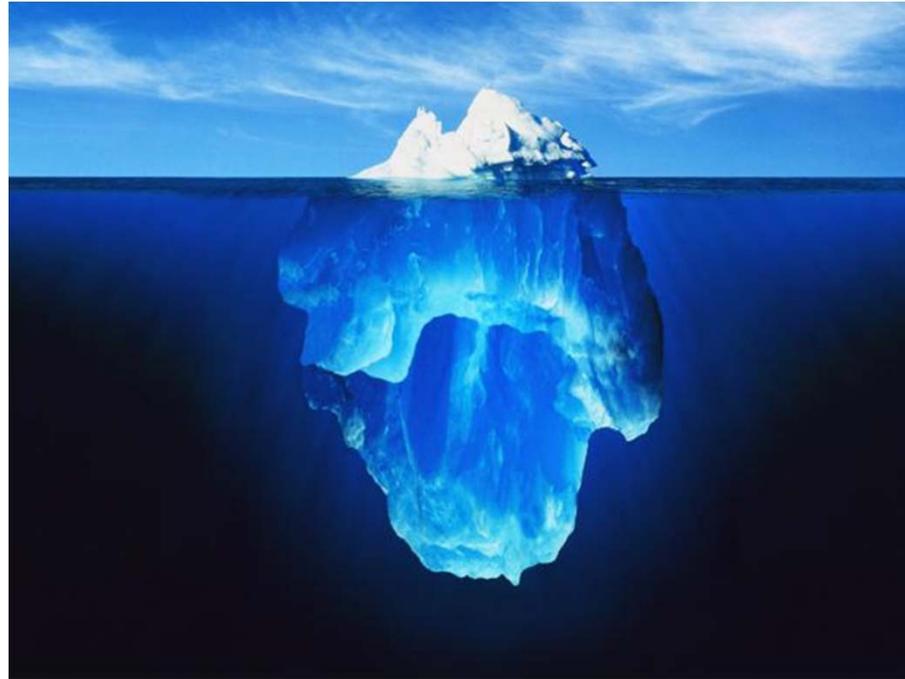
- James Cohen, executive director of Transparency International Canada, suggests these improvements:
 - The registry must be fully accessible and easy to use;
 - The 25% threshold is arbitrary and may be more useful if it was 10%;
 - The registry should include data verification systems and carry penalties for false information;
 - The federal government must work with the provinces and territories to ensure proper use and a tip-line should be set up to bolster investigations; and
 - The registry as proposed is only for private corporations. It should be expanded to include trusts and partnerships
 - <https://ipolitics.ca/2021/05/17/fighting-tax-evasion-and-corruption-with-a-beneficial-ownership-registry/>.

Proposed Risk-Based Approach to Registry

Made by the Financial Action Task Force (FATF) – June 25, 2021

- Risk-based approach for foreign legal persons
 - Cross-border beneficial ownership structures are common
 - FATF suggests limiting the scope of registries to only foreign-registered legal persons with a sufficient link to the country
 - Should countries be required to apply measures to assess the money laundering and terrorist funding risks to all types of legal persons created in the country and also to at least some foreign-created legal persons and take appropriate steps to manage and mitigate the risks?
 - What constitutes a sufficient link with the country? How should countries determine which foreign-created legal persons have a sufficient link with the country? Is there an alternative standard to “sufficient link” that could be used? What are the practical issues met/envisaged regarding the identification and risk assessment of foreign created legal persons?
 - <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/white-paper-r24.html>

Risk



Overview of Risk and Compliance

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

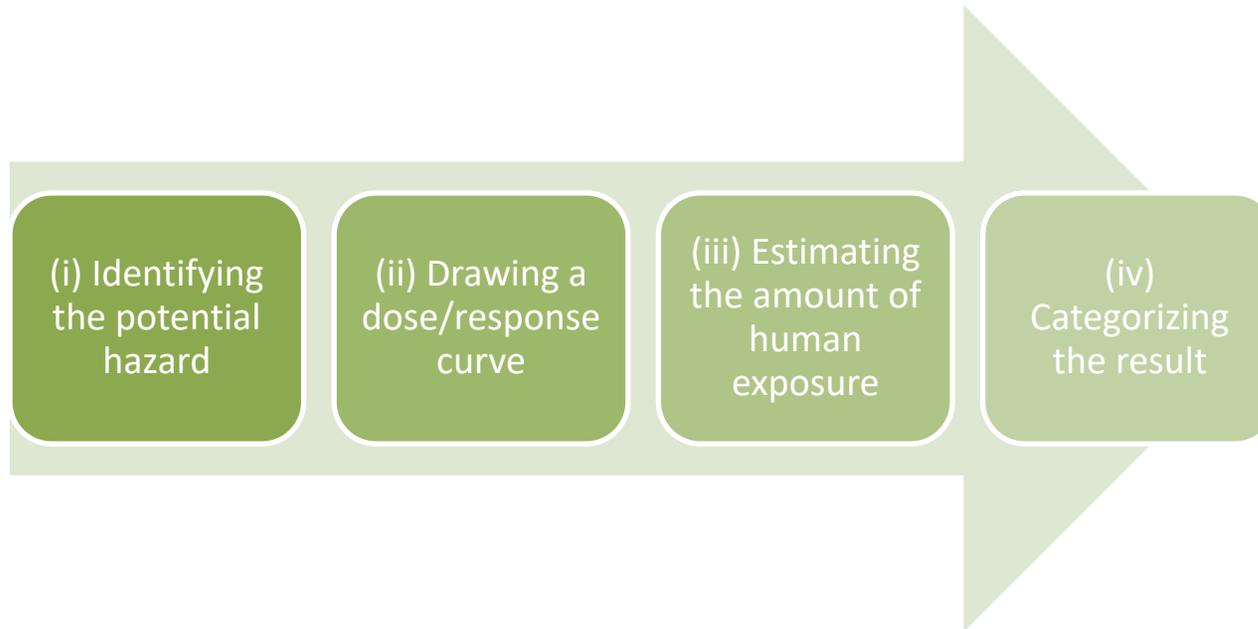
- Compliance program
 - **9.6 (1)** Every person or entity referred to in section 5 shall establish and implement, in accordance with the regulations, a program intended to ensure their compliance with this Part and Part 1.1.
- Risk assessment
 - **(2)** The program shall include the development and application of policies and procedures for the person or entity to assess, in the course of their activities, the risk of a money laundering offence or a terrorist activity financing offence.
- Special Measures
 - **(3)** If, at any time, the person or entity considers that the risk referred to in subsection (2) is high, or in the prescribed circumstances, the person or entity shall take the special measures referred to in the regulations.



Overview of Risk and Compliance

Risk Assessment

- The basic and generally accepted model of risk assessment is divided into four activities:



Overview of Risk and Compliance

Compliance: Behavioural Theory, Gender and Diversity

- The use of matrix analysis is a core concept of risk management and central to this book. The matrix is a mathematical model that was first applied in engineering. Rao Kolluru was a pioneer in the development of a matrix approach to risk management.
- (Risk Assessment and Management Handbook: For Environmental, Health, and Safety Professionals, Rao Kolluru, Editor in Chief (McGraw-Hill, Inc. New York, Toronto, 1996).



Overview of Risk and Compliance

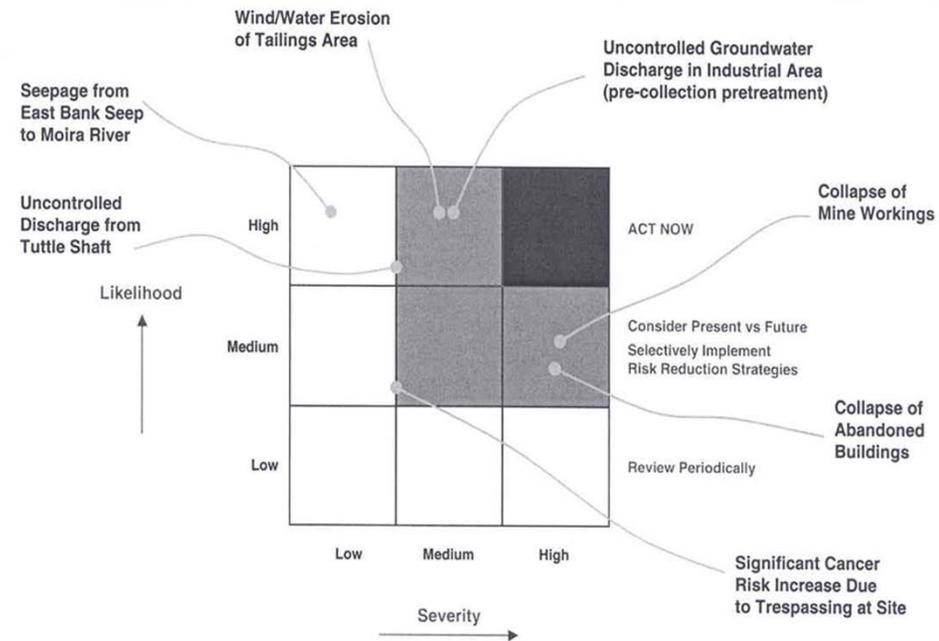
Compliance: Behavioural Theory, Gender and Diversity

- A key insight from this work is that a risk matrix provides priorities for action. The matrix identifies the issue that requires immediate action, and then sequentially identifies those issues with lesser priorities.
 - Todd L. Archibald and Kenneth E. Jull, *Profiting from Risk Management and Compliance* | (Toronto: Thomson Reuters, 2020), Chapter 15. Bribery and Corruption.

Overview of Risk and Compliance

Risk Management Priorities

FIGURE 6
RISK MANAGEMENT PRIORITIES – HISTORICAL SCENARIOS THAT HAVE BEEN MITIGATED



Overview of Risk and Compliance

Risk Management Flowchart

Impact			
<i>Significant</i>	Management effort worthwhile	Significant Management effort required	Act now: Extensive management essential
<i>Moderate</i>	Accept risks with monitoring	Management effort required	Significant Management effort required
<i>Minor</i>	Accept risks	Accept risks with monitoring	Management effort worthwhile
	<i>Low</i>	<i>Medium</i>	<i>High</i>
			Likelihood

Potential Risks of the Public Registry

Regulatory Overreach?

- While theoretically a good thing, is a public registry too far?
- The public registry does not provide:
 - Privacy protection for information on the registry; or
 - Challenges to the release of information

Potential Risks of the Public Registry

Regulatory Overreach?

- Information on the registry could be used for nefarious purposes, endangering businesses and, potentially, lives
 - Lorne Saltman points out the potential danger to the those from a corrupt country whose taxing authority could potentially access public personal information
 - Lorne Saltman, “The New Tax World: No More Secrecy, But Instead, Transparency and the Automatic Exchange of Information”, Presentation to Canadian Association of Management Consultants (February 14, 2019).

Conclusion

- Canada will be on par with other G7 countries in combatting money laundering, terrorism and other illegal activity
- Will there be future amendments to the registry to address the shortcomings and potential dangers outlined today?



Questions?



Contact Us

Kenneth Jull and Ian Spiegel



T 416.865.2964



T 416.865.6658



E kjull@grllp.com



E ispiegel@grllp.com



W grllp.com



W grllp.com



@KennethJull



@IanSpiegel

