

The Role and Effect of Indirect Demand for Proceeds of Corruption*

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I. Introduction

Governments, international organisations and non-governmental organisations derive a considerable part of their understanding of corruption and how to counter it from independent research. So far, the *supply* side of corruption – consisting of those who are requested to provide the funds (and goods, services) in order to have their interests satisfied – has been studied extensively, particularly in the context of international development assistance,¹ while the *demand* aspect has remained comparatively understudied.² A welcome development is Transparency International’s (TI)³ recent attention to the “beneficiary” – the natural person gaining from the corrupt transaction concealed behind the legal person’s veil.⁴ In this paper, I deepen the analysis by examining the outer circle of beneficiaries, those indirectly profiting from, but necessary to, and one step removed from, the primary corrupt transaction.⁵ This paper thus tackles the *indirect demand* side-effect of the corrupt transaction. It focuses on the beneficiary in the residential real estate sector in metropolitan cities who facilitates – deliberately or not, knowingly or not, the laundering hence integration of proceeds of corruption into the housing economy.

* This paper represents a brief summary of selected parts out of a much larger study entitled “The Indirect Demand Aspect of Corruption in the Residential Real Estate Sector: A Matter for Regional Inter-national and Trans-national Cooperation”, available with the author.

¹ These studies have looked at the diverse corrupting ramifications attributed to conduct by donor states’ public sector officials, corporations, transnational criminal organisations, and military and non-military armed groups.

² Michael Robinson, “We need to punish bribe-takers, not just bribe-payers”, *The Globe and Mail*, 31 July 2013, <http://www.theglobeandmail.com/globe-debate/we-need-to-punish-bribe-takers-not-just>, accessed 22 June 2015.

³ Transparency International is a non-governmental organisation, a “global coalition to fight corruption”, <http://www.transparency.org/>, accessed 1 June 2016.

⁴ A beneficial owner is the natural person who directly or indirectly ultimately owns, controls or benefits from a company or trust fund and the income it generates. Whether she is the legal owner is irrelevant, as beneficial ownership — in spite of its name — refers to substantive control, not to formal ownership. The term is used to contrast with the nominee company owners, who might be registered as legal owners of the asset without any benefits. Nominees obscure the real company structure and owners. Professional nominees are paid a fee for their services but otherwise have no interest in the transactions. Nominees can also be family members or friends. Matteo De Simone and Craig Fagan (eds.), “Ending Secrecy to End Impunity: Tracing the Beneficial Owner”, Policy Brief 02/14, Transparency International, p. 2, www.transparency.org, accessed 3 July 2015.

⁵ Matteo de Simone, Corruption on Your Doorstep. How Corrupt Capital Is Used to Buy Property in the UK, Transparency International UK, March 2015, <http://www.transparency.org.uk/publications/corruption-on-your-doorstep/>, accessed 27 May 2016; Transparency International (TI) addresses indirect demand by reference to “facilitators of corruption” (e.g. accountants, lawyers, and professional middle-men) instrumental in “legitimising” proceeds of corruption via real estate purchases and the acquisition of luxury goods. Maira Martini and Maggie Murphy, Just for Show? Reviewing G20 Promises on Beneficial Ownership, Transparency International, 2015, p. 6, http://www.transparency.org/whatwedo/publication/just_for_show_g20_promises, accessed 2 June 2016. They may also serve as nominees who do have an invested interest in this role.

Although developed societies have ranked the lowest on corruption indicators,⁶ their governments having committed to institutionalised cooperation at international and transnational fora, the past decade gives rise to concern. Among the affected areas is the residential real estate sector, especially luxury residences⁷ attributed to massive foreign direct investment in real estate commercial activity and development. Compared with increasing media reporting, there has been scant scholarly study addressing the demand aspect of corruption which is fuelling this growth. There isn't any study addressing the *indirect* benefits accruing to the housing sector satellite industries and to governing institutions inadvertently servicing real estate transactions propelled by proceeds of corruption, and in turn, the demand created for thusly financed real estate transactions. There is no study of the impact exerted on developed societies by indirect demand, nor on efforts to curb it – unilaterally, or collaboratively with likeminded states.

This paper thus queries into uncharted territory. The massive infusion of funds feeding the residential real estate sector in urban metropolitan centres – Sidney and Melbourne, London (United Kingdom), Vancouver and Toronto, New York and San Francisco – has been attributed to the leading emerging economies – in the Pacific Rim – especially to China.⁸ An indirect demand for the imported funds has been emerging in the host jurisdictions, which although 'invisible' has been responsible for the gradual erosion of the relatively equal distribution of material prosperity in local societies.

Unleashing a ripple effect, in Vancouver, the stormy activity in the real estate market has been upsetting the sense of community in affected neighbourhoods, sawing distrust in the solidity of the rule of law underpinning the political governing institutions.⁹ In the face of unprecedented material temptation, the resilience of some economic sectors has exhibited signs of attrition; the executive branches of the political

⁶ Perhaps the most credible and exhaustive corruption indicator is TI's annual Corruption Perceptions Index, the latest is the Corruption Perceptions Index 2015, http://www.transparency.org/whatwedo/publication/cpi_2015, accessed 1 June 2016.

⁷ The definition of luxury is extremely elastic.

⁸ In 2014, the Wall Street Journal set out to conduct a comparative study on the 'empty home' phenomenon, a troubling effect of foreign direct investment in the residential real estate market in Florida, Melbourne, London (UK), and Vancouver. The journal had to cancel the planned series finding it extremely difficult to obtain data and opinion from almost anyone directly involved - municipality, buyers of real estate, real estate agents and companies, neighbours of the properties sold and bought, to mention only a few likely sources. (Author's personal knowledge obtain in interviews) Only in 2015 did the Canadian media engage in a discussion of the complexity of foreign investment in the residential real estate market, in particular, in Vancouver. While statistics and court cases now reflect massive tax evasion facilitated by residential real estate purchases by foreign investors in Canada, and money laundering evading Chinese and Canadian laws, there is only minimal and scattered evidence of corruption, yet abundant rumours. It has taken the courage of an investigative journalist, Kathy Tomlinson, backed by her media employer, to expose the facts. See for instance, *ibid.*, "Foreign Investors Avoid Taxes through Canadian Real Estate. Wealthy Buyers Taking Advantage of Loopholes by Putting Homes in the Name of Relatives or Corporations", *Globe and Mail*, 7 October 2015, <http://www.theglobeandmail.com/report-on-business/economy/housing/the-real-estate-beat/foreign-investors-avoid-taxes-by-buying-real-estate-in-canada/article26683767/?ord=1>, accessed 7 October 2015 [hereafter: Tomlinson October 2015]; Katia Dimitrieva, "Chinese Investment in Canadian Real Estate Set to Increase in 2016", *Globe and Mail*, 13 April 2016, <http://www.theglobeandmail.com/real-estate/the-market/chinese-investment-in-canadian>, accessed 14 April 2016.

⁹ For a recent informative report see Adam Ross, "No Reasons to Hide. Unmasking the Anonymous Owners of Canadian Companies and Trusts", Transparency International Canada, 2016 available also at www.transparencycanada.ca.

governing institutions (municipality, federal and sub-federal levels) have been remiss, first in acknowledging, and then, in withstanding the economic pressure created by money laundered into the country.¹⁰ Only recently, as the staggering adverse effects could no longer be ignored, and as elections at the provincial and municipal levels in British Columbia have been drawing closer, governments were forced (by the media) to introduce some mitigating legislation and regulation. Obviously, British Columbia's receptive economic environment has proven a concern also to the governments suffering tax evasion of funds safely deposited under the false guise of real estate investment. At least since 2015, China has been seeking "under an operation called 'Sky Net'" ¹¹ to repatriate Chinese nationals it had suspected of corruption.

I use the following analysis to emphasise that anti-corruption policies must look beyond countering the immediate elements of corruption. Unless gate-keeping mechanisms are set up to target also indirect demand for proceeds of corruption, the corruptive contagious spillover into the larger society will not be stemmed.

II. Unveiling the Indirect Demand Aspect of Corruption

Even in the absence of data to ascertain the alleged illegality of funds used to purchase and build residential real estate (including luxury real property and other luxury goods), certain hard facts are nevertheless in the public domain. For one, China's law imposes a currency control of a personal annual limit of U.S. \$50,000 to transfer out of China; the regulation provides for exemption requests, an option very infrequently used. This begs the question as to how many of its nationals manage to purchase homes priced at a rate of 50 to over 100 times higher than the limit; carry out expensive residential real estate transactions in an expedited manner; and demolish the pricey homes only to re-build much pricier ones.¹²

¹⁰ David Parkinson, "Ottawa Takes Multi-Level Approach to Address Problems in Housing Sector", *Globe and Mail*, 23 June 2016, <http://www.theglobeandmail.com/real-estate/the-market/morneau-seeks-co-ordinated-approach-to-assess-housing-market/article30571383/>, accessed 24 June 2016; Editorial, "Ottawa's Deep Dive into Housing Waters Feels Like Window Dressing", *ibid.*, <http://www.theglobeandmail.com/opinion/editorials/ottawas-deep-dive-into-housing-waters-feels-like-window-dressing/article30591759/>, accessed 24 June 2016.

¹¹ Rod Nickel, "Immigration Lawyer Says Canada Naïve about China Corruption Cases", *Reuters UK*, 2 June 2015, <http://uk.reuters.com/article/2015/06/02/uk-canada-china-lawyer-idUKKBN00I2QD20150602>, accessed 9 October 2015. Corruption allegations have occasionally transpired from several cases of high profile residential real estate investors who have sought asylum in Canada. In the course of their immigration cases, criminal and corruption issues emerged. The extent of the corruption accusations is however debateable. Some allegations may be politically motivated since corruption prosecution is typical of China's leaderships' dealing with internal rivals and opposition; they may be economically driven as competition for a further opening Canadian market stands to bolster economic ties with China; (*ibid.*) or a combination thereof. David Kilgour, "Prosecuting Perpetrators of Crime against Humanity in China", 15 July 2015, http://www.david-kilgour.com/2015/speech_07152015.pdf, accessed 9 October 2015. Except for publishing the number of corruption cases under investigation, the Royal Canadian Mounted Police (RCMP) and Canada's Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) have been silent on the issue.

¹² *Ibid.*

Another well-established fact is that since the events of 9/11, Canada has instituted a regulation requiring the reporting of any money transfer equal to, and exceeding, \$10,000.¹³ Banks and other financial institutions are legally required to report successive transfers of smaller amounts that within twenty-four hours total \$10,000.¹⁴ This requirement is aimed at intercepting a common yet illegal technique for laundering proceeds of crime (as well as detect funds that do not constitute proceeds of crime) and is known as “structuring”. The method consists of splitting large sums of money into smaller amounts to be deposited in multiple and frequent wire transfers by many individuals (“nominees” – family members and other individuals) who do not have an account with that bank, into the bank client’s (another “nominee”) accounts under the guise of legitimate transactions. Such activity is considered suspicious by, and may be in contravention of, Canadian (and other countries’) law;¹⁵ it is a form of money laundering when a connected to proceeds of crime,¹⁶ which unleashes the adverse effects associated with corrupt practices (social, political, economic, cultural).¹⁷

It is important to note that “corruption” is not a legal term and as such does not figure in Canadian criminal law. Corruption is a political, social, economic, and conspicuously cultural, term representing perceptions according to the moral standards of any given society. Elements of corruption, however, are detailed in criminal law, e.g. money laundering, bribery, etc.

The following discussing distinguishes the most obvious economic sectors susceptible to develop indirect demand.

A. Banks

There exists no extradition treaty between China and Canada, and although the two countries have concluded a Canada-China Foreign Investment Promotion and Protection Agreement (FIPPA) in 2012,¹⁸ it

¹³ Financial Transactions and Reports Analysis Centre Canada, “Large Cash Transactions”, <http://www.fintrac-canafe.gc.ca/reporting-declaration/Info/rptLCTR-eng.asp>, accessed 2 October 2015. FINTRAC is Canada's financial intelligence unit mandated with enabling the detection, prevention and deterrence of money laundering and financing of terrorist activities.

¹⁴ “Suspicious transactions”, “Alternative to Large Cash Transactions”, and “Electronic Funds Transfers”, *ibid.*, at <http://www.fintrac-canafe.gc.ca/reporting-declaration/>, accessed 2 October 2015.

¹⁵ Section 7.6 Transactions involving accounts, Government of Canada, “Guideline 2: Suspicious Transactions”, December 2010, <http://www.fintrac.gc.ca/publications/guide/guide2/2-eng.asp#s7-6>, accessed 9 October 2015.

¹⁶ “Money Laundering Is the Process Used to Disguise the Source of Money or Assets Derived From Criminal Activity.” What Is Money Laundering? *Ibid.*, <http://www.fintrac-canafe.gc.ca/fintrac-canafe/definitions/money-argent-eng.asp>, accessed 2 October 2015.

¹⁷ Charlie Gillis, Chris Sorensen, and Nancy Macdonald, “China Is Buying Canada: Inside the New Real Estate Frenzy”, 9 May 2016, <http://www.macleans.ca/economy/economicanalysis/chinese-real-estate-investors-are-reshaping-the-market/>, 20 May 2016.

¹⁸ Foreign Affairs, Trade and Development Canada, Agreement between the Government of Canada and the Government of the People's Republic of China for the Promotion and Reciprocal Protection of Investments, 9 September 2012, came into force 1 October 2014, <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/fipa-apie/china-text-chine.aspx?lang=eng>, accessed 1 October 2015.

does not include a chapter on corruption (and refers only very generally to mutual transparency commitments). Notably, the treaty exempts taxation measures, tax conventions, and certain information on taxation. Consequently, it is not surprising that Chinese capital flight seeks a Canadian abode and that some Canadian banks have been sought out by wealthy Chinese investors for the purpose of transferring large sums of money to Canada. Since 2012, when China embarked on its anti-corruption campaign, more than 8,200 suspicious transactions have been identified by financial institutions in the Vancouver area, of which 96, mostly suspected for money-laundering, were facilitated by the banks.¹⁹ While the banks are legally required to report to FINTRAC any transaction they deem suspicious, they are not required neither to stop these actions nor to close the accounts. Although FINTRAC collects and analyses the information, most of the cases were not reported to police,²⁰ and in any event, Canadian law enforcement bodies lack the resources to deal with structuring scheme cases.²¹ As mentioned below, recently exposed real estate bad practices bordering on illegality²² have drawn public attention to FINTRAC and doubts as to its effectiveness.²³

More often than not, evidence of corrupt practices emerges by accident, notably in unrelated court cases such as those among the 200 British Columbia divorces and other disputes,²⁴ rather than resulting from suspicion of structuring, money laundering or other forms of corruption, and unlawful or unethical actions. Thus, in *Ogden*²⁵ the issue at trial was whether the employer, the bank, had cause to terminate Ms. Ogden's employment at a time when the value of her clients' portfolio, which exceeded CAN \$233 million,

¹⁹ Kathy Tomlinson, "Canada Banks Bend Rules to Move Money out of China and into Vancouver Real Estate", *Globe and Mail*, 8 September 2015, <http://www.bnn.ca/News/2015/9/8/Canadian-banks-helping-clients-bend-rules-to-move>, accessed 26 September 2015. Data in this article was obtained from the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) through an Access to Information Request.

²⁰ The reason for not reporting is unknown. *Ibid.*

²¹ The 2014 increase in funding for Canadian anti-corruption efforts has been cut shortly afterwards since countering terrorism, and ISIS in particular, were identified as an overriding priority.

²² Kathy Tomlinson, "Vancouver Housing Market 'Vulnerable' to Money Laundering", *Globe and Mail*, 17 March 2016, <http://www.theglobeandmail.com/news/national/vancouver-housing-market-vulnerable-to-money-laundering/article29285770/>, accessed 18 March 2016; *ibid.*, "Vancouver Real Estate Firm's New Ads Feature 'Shadow Flipping' Homes", *Globe and Mail*, 20 April, 2016, <http://www.theglobeandmail.com/real-estate/vancouver-real-estate-firms-advertisements-feature-shadow-flipping-homes/article29704220/>, accessed 21 April 2016; *ibid.*, "Vancouver Realtor Accused of Making Threats", *Globe and Mail*, 13 May 2016, <http://www.theglobeandmail.com/news/british-columbia/bc-realtor-accused-of-making-threats/article30024457/>, accessed 14 May 2016; Mike Hager, "BC Real Estate Seminar Prey on House Hunters, Promise Insider Tips: Lawyer", *Globe and Mail*, 26 May 2016, <http://www.theglobeandmail.com/news/british-columbia/bc-real-estate-seminars-prey-on-house-hunters-promise-insider-tips-lawyer/article30182672/>, accessed 27 May 2016; Kathy Tomlinson, "Realtor Says He Was Targeted After Calling out Unethical Practices", *Globe and Mail*, 30 May 2016, <http://www.theglobeandmail.com/real-estate/vancouver/realtor-says-he-was-a-target-after-calling-out-unethical-practices/article30215834/>, accessed 31 May 2016 [hereafter: Tomlinson 30 May 2015].

²³ David Berman, "Financial Watchdog's Fine Against Canadian Bank Stokes Upwar Over Anonymity", *Globe and Mail*, 6 April 2016, <http://www.theglobeandmail.com/report-on-business/financial-watchdogs-fine-against-bank-stokes-upwar-over-anonymity/article29548687/>, accessed 7 April 2016; Andrea Posadzki, "Anti-Money Laundering Watchdog Boosts Efforts to Educate Real Estate Agents", *Globe and Mail*, 13 April 2016, <http://www.theglobeandmail.com/report-on-business/anti-money-laundering-watchdog-boosts-efforts-to-educate-real-estate-agents/article29620490/>, accessed 14 April 2016.

²⁴ Tomlinson October 2015.

²⁵ *Ogden v. Canadian Imperial Bank of Commerce*, 2014 BCSC 285.

obviously exhibited success in her work performance. When found to have breached the Code of Conduct of the bank's conflict of interest policy, her employment was terminated. Triggering the infraction was Ms. Ogden's acceptance of two wire transfers from third parties in China, which she had first deposited into her personal account, then immediately thereafter transferred into a portfolio account of a client of hers. During court proceedings, the bank admitted to facilitating transfers of funds made in contravention of China's laws,²⁶ yet correctly maintained that it was not bound by the foreign country's laws.

In another case – a divorce of a Chinese nationals' couple – court proceedings exposed abuse of Canadian legal loopholes for tax evasion purposes. A six million dollar home and two luxury cars were registered in the wife's name who was owner of another sixteen properties in British Columbia, the latter subsequently transferred by her husbands to his mother's name.²⁷ Another divorce case involved a wife living in the matrimonial luxury Vancouver home for six years, all the while enjoying an annual maintenance of \$260,000 paid by her absentee husband. According to the latter's testimony, the funds were obtained from family and friends. His own subsistence, evidence of which he failed to establish before the Canadian court by withholding tax and financial records, amounted to a modest annual income of \$19,000.²⁸

B. Real estate

The most visible beneficiary of the housing craze in British Columbia, the real estate sector has understandably been hesitant to comment on the sources and transfer of foreign investment feeding the industry.²⁹ For long, it had markedly under-reported the volume of real estate purchases by Chinese investors, maintaining it was impossible to appraise the size of the market, and denying the glaring fact of the 'empty house' phenomenon. Not until early 2016, when scandals would rock the sector, less than a handful of realtors have come forward admitting the real estate firms' preference of masking the magnitude of the phenomenon and favouring municipal inaction.³⁰

²⁶ In fact, as the judge in the case explained: "As a result of Chinese regulations at the time, each individual was restricted to transferring no more than \$50,000 USD abroad annually out of China. Working around these regulations was a challenge and a complicated process, but it was a practice CIBC supported. There is no issue about this". ¶ 164, *Ibid*.

²⁷ Tomlinson October 2015.

²⁸ *Ibid*.

²⁹ Postmedia, "Chinese Police Run Secret Operations in B.C. to Hunt Allegedly Corrupt Officials and Laundered Money", *The National Post*, 5 March 2015, <http://news.nationalpost.com/news/canada/chinese-police-run-secret-operations-in-b-c-to-hunt-allegedly-corrupt-officials-and-laundered-money>, accessed 29 September 2013.

³⁰ Sam Cooper, "Real-Estate Exec on Chinese Money: 'There Is a Huge Stake for a Lot of Local People in Keeping This Thing Going'", *The Province*, 4 March 2015, http://www.theprovince.com/story_print.html?id=10858619&sponsor, accessed 26 September 2015 [hereafter: Cooper March 2015].

Hierarchically organised, the real estate sector in British Columbia comprises of several bodies tasked with overseeing licensed realtors and governed by the Real Estate Council of B.C. (RECBC). Out of its sixteen members only three are provincial government appointees.³¹ While the Council's mandate is consumer protection, it has independently carried the responsibility for licensing individuals and brokerages engaged in real estate sales, rental and strata property management as well as enforcing entry qualifications, investigating complaints against licensees and imposing disciplinary sanctions in compliance with the relevant Provincial legislation.³² Another pertinent regulatory body consists of the regional real estate boards attending to inter-industry disputes between realtors, which keeps the results of the hearings confidential.³³

In early 2016, a media report on the so-called “shadow flipping” – a method designed to increase the price of a property and at the same time avoid paying the legally required property taxes – has drawn fire to the real estate governing bodies. Albeit legal because permitted under the “contract assignment” regulatory provision,³⁴ shadow flipping is perceived as highly exceptionable and unethical. Not surprisingly, the convenience of contract assignment has spurred further instances of unprofessional conduct. Use of middlemen or dual agency whereby a real estate agent is acting on behalf of both seller and buyer³⁵ was laid bare. It gave rise to concerns regarding conflict of interest, withholding full disclosure and involving false and misleading advertisement, as well as unravelled resort to “predatory”³⁶ sales practices comprising

³¹ “About Us”, Real Estate Council of BC, 2016, <http://www.recbc.ca/about/overview.html>, accessed 20 June 2016.

³² “Mandate”, *ibid.*, <http://www.recbc.ca/about/overview.html>, accessed 20 June 2016.

³³ Mike Hager, “Vancouver Real Estate Board Objects to B.C. Shadow-Flipping Ban”, *Globe and Mail*, 24 March 2016, <http://www.theglobeandmail.com/news/british-columbia/vancouver-real-estate-board-objects-to-bc-shadow-flipping-ban/article29385433/>, accessed 25 March 2016.

³⁴ Kathy Tomlinson, “The Real Estate Technique Fuelling Vancouver’s Housing Market”, *Globe and Mail*, 6 February, 2016, <http://www.theglobeandmail.com/news/investigations/the-real-estate-technique-fuelling-vancouver-housing-market/article28634868/>, accessed 7 February 2016.

³⁵ “B.C. Real Estate Panel to Review Sales Practices, Investigate ‘Risk’ to Public”, Editorial, *Globe and Mail*, 15 March 2016, <http://www.theglobeandmail.com/news/british-columbia/bc-real-estate-advisory-group-looking-into-predatory-sales-practices/article29254320/>, accessed 16 March 2016 [hereafter: BC Real Estate Panel]. At times, dual agency consisted in the agent’s – not company’s – private capacity when the agent is either seller or buyer.

³⁶ *Ibid.*

of undue pressure to sell and buy,³⁷ deliberately inducing price inflations, and in one case — even threats of physical violence against a disputing buyer.³⁸

Cascading media reports exposing irregularities, perceived misconduct, unethical practices by single realtors and shady routine business by real estate firms, have undermined the public trust in the industry and the government's oversight, and propelled vehement criticism also from trade insiders faulting both the RECBC for leniency in dealing with unprofessional conduct by realtors³⁹ and the Real Estate Board of Greater Vancouver.⁴⁰ Eventually, a disinclined provincial government, long in denial of the issues plaguing the sector, was compelled to establish an independent real estate panel to examine the allegations.⁴¹ The resulting damning report had set in motion a governance reform process beginning with the institution of direct governmental oversight over the real estate industry in British Columbia.⁴²

C. Accountant and lawyers

Several Canadian accountants, and real property and tax lawyers, have been drawing attention to the inadequacy of Canada's tax regime in face of the new circumstances wherein massive capital flight from China has been channelled through spouses and children.⁴³ Frequently, housemakers, students, or

³⁷ Since 2015, several straws have broken the proverbial camel's back in Metro Vancouver's real estate service, one of which was reported with a corroborating audio recording available to all:

Some of his [owner of one of the fastest-growing new brokerages in the Vancouver area] suggestions in the course of the night, however, tread the razor-edge between shrewd salesmanship and deception. One tip he drops casually is how to persuade clients – by lying to them – that the best offer they will get is the first one.

'It is only a saying to the homeowner, but actually, it's not true,' [he] says. 'The first offer will never be the best offer, I am sure about this. But you have to say the first offer is the best offer.'

Kathy Tomlinson, "Tricks of the Trade: Inside a B.C. Real Estate Firm That Has Home Sellers Crying Foul", *Globe and Mail*, 12 April 2016, <http://www.theglobeandmail.com/news/investigations/inside-a-fast-growing-bc-firm-that-has-home-sellers-crying-foul/article29578417/> accessed 12 April 2016. An in-depth description of the incident and its reverberations is beyond the scope of this paper.

³⁸ Kathy Tomlinson, "Vancouver Realtor Accused of Making Threats", *Globe and Mail*, 13 May 2016, <http://www.theglobeandmail.com/news/british-columbia/bc-realtor-accused-of-making-threats/article30024457/>, accessed 14 May 2016.

³⁹ Sunny, Dhillon, "Vancouver Realtors Urge Stricter Action against Unprofessional Conduct", *Globe and Mail*, 17 February 2016, <http://www.theglobeandmail.com/news/british-columbia/vancouver-realtors-urge-stricter-action-against-unprofessional-conduct/article28792435/>, accessed 18 February 2016.

⁴⁰ Tomlinson 30 May 2016.

⁴¹ BC Real Estate Panel. The Province's Superintendent of Real Estate who chaired the investigation panel admitted that "[p]ublic confidence in the integrity of the real estate services sector and its regulation has been shaken". Jason Proctor, "B.C. Real Estate Advisory Group Recommending Bigger Penalties, Ban on 'Double Ending'", *CBCNEWS*, 12 April 2016, <http://www.cbc.ca/news/canada/british-columbia/b-c-real-estate-advisory-group-recommending-bigger-penalties-ban-on-double-ending-1.3532855>, accessed 20 June 2016. The real estate sector was expressing concerns that a ban on shadow flipping might adversely impact both the service and the market. Mike Hager, "Vancouver Real Estate Board Objects to B.C. Shadow Flipping Ban", *Globe and Mail*, 24 March 2016, <http://www.theglobeandmail.com/news/british-columbia/vancouver-real-estate-board-objects-to-bc-shadow-flipping-ban/article29385433/>, accessed 25 March 2016.

⁴² Report of the Independent Advisory Group on Conduct and Practices in the Real Estate Industry in British Columbia June 2016, <http://advisorygroupbc.ca/pdf/IAGfinalreport2016.pdf>, accessed 3 July 2016.

⁴³ Tomlinson October 2015. But notably, the tax and auditing firm KPMG has been embroiled in a tax evasion case by a South African Canadian family from Victoria facilitated through a "KPMG tax product in the Isle of Man that targeted 'high net worth'

corporations (and purchasers' self-representation as "business persons") listed in real estate records as property owners have served to conceal the identity of the actual real estate buyer and seller.⁴⁴ According to the CRA, any person with primary residence in Canada must file resident tax returns and report income, and non-resident ownership of real estate property is not exempted from capital gains levies and other taxes on profits accruing from such proprietorship. Therefore, when an owner of a home valued over \$1 million reports no earned income (housemaker, student), or when an owner claims to be non-resident but fails to produce tax return from the foreign jurisdiction, Canada loses income.⁴⁵ This is also the case when foreign legal ownership is transferred within the family or to shareholders within a corporation.⁴⁶ While the real estate self-governing authority maintained that it conducted investigations have been underway, it rarely implemented sanctions.⁴⁷ Moreover, availing themselves of these loopholes requires resort to the knowledge possessed by lawyers and accountants. Canada has yet to legislate a provision barring lawyers from invoking solicitor-client privilege, and prohibit various accountancy practises in order to counter these gaps.

D. Politicians and political parties

The perception of corruption in the residential real estate market owes also to media revelations of private and corporate donations to political parties at all levels of government, associated with the real estate sector. Media accounts have pointed at cases involving the federal Liberal Party of Canada. Notably, a significant donation preceding the 2015 federal elections was made to the Party by a residential property developer in British Columbia. The developer's name was listed along with other Chinese nationals suspected as fugitives wanted on corruption charges by the Chinese government.⁴⁸ The same person made donations also

Canadian residents, promising they would pay 'no tax' on their investments". Harvey Cashore, Dave Seglins and Frederic Zalac, "KPMG Offshore 'Sham' Deceived Tax Authorities, CRA Alleges", *CBC News*, 9 September 2015, <http://www.cbc.ca/news/business/kpmg-offshore-sham-deceived-tax-authorities-cra-alleges-1.3209838>, accessed 7 Oct 2015 [Cashore *et al.* September 2015]. Since then, a Canada Revenue Agency (CRA) settlement with certain KPMG clients has been revealed. Harvey Cashore, Dave Seglins, Frederic Zalac, Kimberly Ivany, "Canada Revenue Offered Amnesty to Wealthy KPMG Clients in Offshore Tax 'Sham'", *CBCNews*, 8 March 2016, <http://www.cbc.ca/news/business/canada-revenue-kpmg-secret-amnesty-1.3479594>, accessed 4 April 2016.

⁴⁴ Tomlinson October 2015. The KPMG Victoria case pursued by the Canada Revenue Agency (CRA) in federal court represents the single exception. Cashore *et al.* September 2015.

⁴⁵ In one case, a Canadian non-resident Chinese national, registered under the British Columbia health care system, reported in 2009 a total income of CAN \$1,254 while at the same time owning wealth in the amount of CAN \$15-20 million with assets spread across family members in Vancouver. *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ Ian Marlow, Craig Offman, and Ian Bailey, "Liberals Distance Themselves from Donor Wanted by China", 30 September 2015, <http://www.theglobeandmail.com/news/politics/liberals-distance-themselves-from-donor-wanted-by-china/article26608408/>, accessed 30 September 2015. Sam Cooper, "Trudeau's Liberals Say No Donation Rules Broken in China Corruption Case", *Globe and Mail*, 30 December 2016, <http://www.ottawacitizen.com/news/trudeau+liberals+donation+rules+broken+china+graft+suspect/12610500/story.html>, accessed 30 December 2016. The allegation of influence peddling involving Chinese nationals, some of whom are Chinese government officials is too long to elaborate on here. See, e.g., Robert Fife and Steven Chase, "Influential Chinese-Canadians

to the Mayor of Vancouver and Metro Vancouver region's municipal politicians including the Mayor of the City of Richmond.⁴⁹

At the provincial level, the surfacing of data on donations to the Liberal Parties in Ontario and British Columbia have given rise to criticism of impropriety unleashed heated debates in both media and the public.⁵⁰ The British Columbia ruling Liberal Party has been in the habit of organising exclusive, closed fundraising events for select wealthy invitees – corporate executives in the natural resources, real estate, and other lucrative economic sectors in the province,⁵¹ with contributions ranging from \$5000-20000 per person.⁵² Carried out throughout the term of government, these events are separate from fundraising during election campaign period. For these fundraising efforts, the Premier was compensated by her party with a \$277,000 “stipend” out of the funds collected during four years since assuming her premiership.⁵³ The province's most noted real estate magnate, who had been entrusted by the Party with the fundraising, bragged to the media of helping raise nearly \$5-million during his four years of service.⁵⁴ In response to concerns about the residential real estate squeeze, he urged Vancouverites to renounce the single family

Paying to Attend Private Fundraising with Trudeau”, *Globe and Mail*, 2 December 2016, <http://www.theglobeandmail.com/news/politics/influential-chinese-canadians-paying-to-attend-private-fundraisers-with-trudeau/article33131597/>, accessed 2 December 2016; *ibid.*, “Ethics Commissioner to Question Trudeau on Cash-for-Access Fundraisers”, *ibid.*, 15 December 2016, <http://www.theglobeandmail.com/news/politics/ethics-commissioner-to-question-trudeau-on-cash-for-access-fundraisers/article33329767/>, accessed 29 December 2016.

⁴⁹ *Ibid.*; Sam Cooper, “Canada and China Signing Deal to Share ‘Corruption’ Assets”, *The Province*, June 5, 2015, <http://www.theprovince.com/news/canada+china+signing+deal+share+corruption+assets/11109802/story.html>, accessed 2 October 2015.

⁵⁰ The Globe and Mail Editorial insisted on clear language, emphasising that there was a reality, not perception, of influence-peddling by Ontario's Liberal Party as well as and British Columbia's, of selling access to wealthy corporate and unions donors. “In Ontario and B.C., Weak Laws Mean Government Access Is for Sale”, *Globe and Mail*, 29 March 2016, <http://www.theglobeandmail.com/opinion/editorials/in-ontario-and-bc-weak-laws-mean-government-access-is-for-sale/article29424119/>, accessed 31 March 2016.

⁵¹ Gary Mason, “Pricey Meetings with Premier Helping Fuel B.C. Liberal Fundraising Machine”, *Globe and Mail*, 28 March 2016, <http://www.theglobeandmail.com/news/national/pricy-meetings-with-clark-helping-fuel-bc-liberal-fundraising-machine/article29413577/>, accessed 30 May 2016; *ibid.*, “Party with the Premier? Not for Any Price”, *Globe and Mail*, 30 March 2016, <http://www.theglobeandmail.com/news/national/pricy-meetings-with-clark-helping-fuel-bc-liberal-fundraising-machine/article29413577/>, accessed 31 March 2016.

⁵² Mason 28 March 2016.

⁵³ In addition, the Premier draws a salary from the province. Justine Hunter and Justin Giovannetti, “Christy Clark Received \$277,000 since 2011 from B.C. Liberals”, *Globe and Mail*, 27 April 2016, <http://www.theglobeandmail.com/news/british-columbia/christy-clark-received-277000-over-five-years-from-bc-liberals/article29781433/>, accessed 28 April 2016. On her last trip to Asia, the Premier was joined by two real estate executives. “B.C. Real Estate Companies Join Christy Clark on Trade Mission to Asia”, 28 May 2016, <http://www.cbc.ca/news/canada/british-columbia/bc-christy-clark-trade-mission-asia-real-estate-1.3604817>, accessed 2 June 2016; “B.C. Premier Has One Too Many Paymasters”, Editorial, *Globe and Mail*, 5 May 2016, <http://www.theglobeandmail.com/opinion/editorials/bc-premier-has-one-too-many-paymasters/article29906509/>, accessed 6 May 2016.

⁵⁴ “Asked about the perception that people with money are buying privileged and potentially financially beneficial access, Mr. Rennie said those paying \$10,000 or more to attend these intimate functions are often business leaders who support what the Liberals are doing and want to help ensure the party stays in power.

He confirmed the party would not release the names of those attending these functions. He said if individual donors want to go public, that is up to them.” *Ibid.*, 28 March 2016.

“Premier Clark is effectively being paid by parties seeking her favour.” “B.C. Liberals Should End Unethical Payments to Premier Clark”, Editorial, *Globe and Mail*, 28 April 2016, <http://www.theglobeandmail.com/opinion/editorials/bc-liberals-should-end-unethical-payments-to-premier-clark/article29791271/>, accessed 29 April 2016.

home dream,⁵⁵ and suggested to the Premier to invest in a transit system to improve transportation from the suburbs into Vancouver rather than encourage housing affordability in the city.⁵⁶

A perception of conflict of interest due to the almost intimate relationship between the City, real estate developers and realtors in Vancouver, has long preceded the current housing market crisis. Coinciding with the revelations on provincial Liberal Party fundraising, the same director of fund raising for the Premier, is reported to also figure among of the most powerful financial backers of the Mayor of Vancouver.⁵⁷

That politicians have been promoting exponential growth in the residential real estate sector is not surprising. Growth secures political rewards in the form of electoral votes, and indirect beneficiaries are numerous: Homeowners who benefit from the rising prices of their homes, realtors, financial institutions, developers, construction and related trades and suppliers, lawyers, accountants and others whose profits have swelled beyond imagination. This may also explains the politicians' reluctance to study the impact of foreign investment on the residential real estate market, thereby signalling that the city, province, and country were open for business.⁵⁸ Indeed, rather than join efforts with other urban metropolitan centres experiencing similar pressures, they preferred to competition.

III. A Brief Conclusion

The year 2016 marked a turning point in the public discussion concerning the residential real estate in Canada. Following the establishment of provincial governmental oversight on the real estate sector in British Columbia; the introduction of a 15 percent tax on foreign real estate purchases;⁵⁹ and a steep penalty on 'empty houses' in Vancouver (subject to voluntary reporting),⁶⁰ the home buying frenzy has moved eastward to Toronto. Yet, 2017 is an election year in British Columbia and current policies may change. It

⁵⁵ "The Early Edition", *CBC News*, 19 May 2015, <http://www.cbc.ca/news/canada/british-columbia/bob-rennie-urges-vancouverites-to-give-up-on-single-family-home-dream-1.3079077>, accessed 20 May 2015.

⁵⁶ "Bob Rennie: 'We Can Never Build another Single Family Home'", *CBC News*, 2 June 2016, <http://www.cbc.ca/news/canada/british-columbia/bob-rennie-housing-affordability-supply-1.3612524>, accessed 3 June 2016. This was shortly followed by the Premier's announcement of a highly controversial road infrastructure project. "Metro Vancouver Majors Reject Replacement of Massey Tunnel with 10-Lane Bridge", *CBC News*, 29 June 2016, <http://www.cbc.ca/news/canada/british-columbia/metro-vancouver-george-massey-tunnel-rejects-1.3658013>, accessed 30 June 2016.

⁵⁷ Sandy Garossino, "Mayor's Speculation Tax Is a Set-up", *Vancouver Observer*, 23 May 2015, <http://www.vancouverobserver.com/opinion/mayors-speculation-tax-set>, accessed 20 June 2016. For instance, Rennie organized and event with the Mayor encouraging the invitees to donate \$25,000 each to the Mayor's municipal political party. Stephanie Ip, "How Much for a Salad? Online Competition Mocks Vancouver Mayor Gregor Robertson's \$25,000 Lunch", *The Province*, 18 March 2014, <http://blogs.theprovince.com/2014/03/18/how-much-for-a-salad-mayor-gregor-robertsons-pricey-fundraiser-mocked-in-25klunch-meme-competitio/>, accessed 20 June 2016.

⁵⁸ UBC geographer David Ley is quoted saying: "Vancouver's political elite [is in] denial of the facts and lack[s] willingness to regulate the real estate market". Cooper March 2015.

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also remains to be seen whether the federal fiscal and financial policies, including limitations on mortgage purchases (applicable to residents and foreigners),⁶¹ and the Canada-China agreement to negotiate an extradition treaty⁶² will prove effective. Notably, the three levels of government did little if anything to target the indirect demand for the funds pouring into, and driving the unsustainable growth in, the residential real estate market,

Thus, it is left for the media, through the perseverance of its diligent journalists, to continue and flag the self-perpetuating spiral originating in the strong incentive to benefit from investors awash with funds seeking safekeeping of, and fast and speculative profit making from, residential real estate. While law enforcement agencies are bound by the limits of a porous law and wanting human resources, relevant research and reform proposals by concerned organisations (e.g. Transparency International Canada), and new case law regarding solicitor-client privilege and maintenance of rules of books and records of account may stimulate executive and legislative corrections.

⁶¹ Douglas Todd, “Vancouver's escalating housing crisis erupted in 2016”, *Vancouver Sun*, 30 December 2016, <http://vancouversun.com/opinion/columnists/douglas-todd-vancouvers-escalating-housing-crisis-erupted-in-2016>, accessed 1 January 2017.

⁶² Editorial, “China Wants and Extradition Treaty. Ottawa Should Say No”, *Globe and Mail*, 20 September 2016, <http://www.theglobeandmail.com/opinion/editorials/china-wants-an-extradition-treaty-ottawa-should-say-no/article31975466/>, 20 September 2016.