

**PROCEEDINGS AT HEARING  
OF  
DECEMBER 18, 2020**

**COMMISSIONER AUSTIN F. CULLEN**

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**December 18, 2020**  
**(Via Videoconference)**

**(PROCEEDINGS COMMENCED AT 9:30 A.M.)**

THE REGISTRAR: Good morning. The hearing is now resumed. Mr. Commissioner.

MR. MCGOWAN: Good morning, Mr. Commissioner. The witness today will be Mr. Tawtel of the Civil Forfeiture Office.

THE COMMISSIONER: Thank you, Mr. McGowan.

MR. MCGOWAN: Madam Registrar.

**PHIL TAWTEL, a witness  
called for the  
commission, affirmed.**

THE REGISTRAR: Please state your full name and spell your first name and last name for the record.

THE WITNESS: Philip Victor Tawtel, P-h-i-l-i-p, last name T-a-w-t-e-l.

THE REGISTRAR: Thank you.

**EXAMINATION BY MR. MCGOWAN:**

Q Good morning, Mr. Tawtel.

A Good morning. And good morning, Mr. Commissioner.

Q Can you hear me?

A I can.

Q If that changes at any point, please just let us know.

1                    Sir, you're currently the executive director  
2                    of the British Columbia Civil Forfeiture Office  
3                    and also the Director of Civil Forfeiture  
4                    appointed pursuant to the statute?

5                    A        That's correct.

6                    Q        I wonder if you'd just take a few minutes and  
7                    walk the Commissioner through your relevant  
8                    background and experience both prior to and  
9                    during your time with this office.

10                  A        I was with the RCMP for approximately 25 years.  
11                  I spent two thirds of my service in the RCMP in  
12                  the financial crime units. So of the 16 years I  
13                  spent eight years with the Integrated Proceeds  
14                  of Crime Sections in both Edmonton and Calgary  
15                  as well as eight years with the commercial crime  
16                  sections in Edmonton and Calgary. So that  
17                  was -- my service with the RCMP was between 1982  
18                  and 2007.

19                  In 2007 I joined a private firm, an  
20                  international foreign exchange firm headquartered  
21                  in Victoria called Custom House Limited, and my  
22                  role with that firm, I was the director of  
23                  anti-money laundering and regulatory compliance  
24                  for the US operations of that firm. The firm was  
25                  involved in providing foreign exchange services

1                   to corporations around the world, to transfer  
2                   payments and to provide hedging services with  
3                   regards to foreign exchange products.

4                   That firm was purchased by Western Union in  
5                   the United States in 2009. I stayed with the  
6                   newly named firm, which was Western Union  
7                   Business Solutions, until 2011. In April of 2011  
8                   I joined the Civil Forfeiture Office in the role  
9                   of the Deputy Director, which was the number two  
10                  position behind the executive director. And  
11                  approximately a year later I took over as the  
12                  acting executive director and then shortly  
13                  thereafter became the executive director.

14                 Q     Thank you. The civil forfeiture regime in  
15                   British Columbia was introduced in approximately  
16                   2006 with the introduction of the *Civil*  
17                   *Forfeiture Act*?

18                 A     That's correct.

19                 Q     I wonder if you'd just take a moment and briefly  
20                   outline the regime as it operates in British  
21                   Columbia for the Commissioner.

22                 A     So as you've noted, the act was passed in 2005.  
23                   The office was operationalized in 2006, so its  
24                   first fiscal year of operations was a 06/07  
25                   year. The office is now in its 15th year of

1 operations. The office has steadily grown year  
2 over year. It's essentially -- the office is  
3 located primarily in Victoria. There are two  
4 positions that are currently in Vancouver  
5 seconded within police departments. One within  
6 the RCMP and one within the Vancouver Police  
7 Department.

8 So the day-to-day functions of the office  
9 consist of files being referred from police  
10 departments across British Columbia. These files  
11 are assessed and reviewed, logged into the  
12 system, assigned and will go down one of two  
13 streams if accepted. One is the administrative  
14 forfeiture stream and one is the judicial  
15 forfeiture stream.

16 There is an office staff that looks after  
17 the administrative forfeiture stream, since there  
18 is no need to engage the Attorney General at that  
19 point. And if the file is accepted for judicial  
20 forfeiture, then the office uses a different  
21 ministry, the Attorney General. So the office  
22 has no counsel within itself. It goes -- the  
23 office reports to the community safety and crime  
24 prevention branch within the Ministry of Public  
25 Safety and Solicitor General, but obtains its

1                   legal services from the Ministry of the Attorney  
2                   General.

3                   And so a director looks after -- a CFO  
4                   director will look after the management as the  
5                   instructing client for all judicial forfeiture  
6                   proceedings. And with respect to administrative  
7                   forfeiture proceedings, once the notices are  
8                   issued, there is no oversight until a response is  
9                   received from the interest holders in that  
10                  matter.

11                 Q    Thank you. Civil forfeiture proceedings in  
12                   British Columbia are in rem proceedings?

13                 A    That's correct.

14                 Q    And the act authorizes your office to seek  
15                   forfeiture of both instruments of criminal  
16                   activity and proceeds of unlawful activity?

17                 A    That's correct.

18                 Q    And the act provides certain -- for lack of a  
19                   better word, defences to interest holders?

20                 A    That's correct.

21                 Q    Include an uninvolved interest holder, which  
22                   proceeds relief for someone who holds an  
23                   interest in property but who is not involved in  
24                   the criminal activity?

25                 A    That's correct.

1 Q And then was similarly unaware of it?

2 A That's correct.

3 Q And the act also provides for relief where the  
4 interests of justice favour such relief?

5 A That's correct.

6 Q The limitation period in the act provides that  
7 your office can seek to forfeit assets in  
8 relation to offences committed up to 10 years  
9 ago?

10 A That's correct.

11 Q And the jurisdiction of your office is limited  
12 to assets located within the province of British  
13 Columbia?

14 A That's correct. The offence can have taken  
15 place anywhere outside of British Columbia, but  
16 the property must be located in British  
17 Columbia.

18 Q You mentioned administrative forfeiture regime,  
19 and that applies to qualifying asset worth less  
20 than \$75,000?

21 A That's correct. Also where it's not real  
22 property and also where there is no registered  
23 interest against that property.

24 Q Thank you. And assets that qualify for  
25 administrative forfeiture are taken through a

1                   much more streamlined process so long as it's  
2                   uncontested?

3           A       Well, the initial process is identical. So the  
4                   file is reviewed, judicial considerations and  
5                   administrative considerations. The file review  
6                   process and the criteria for acceptance is  
7                   identical. So whether the file proceeds down  
8                   one stream or the other, the reviewer will  
9                   assess the evidence and apply the same criteria.  
10                  And the criteria is the strength of the  
11                  evidence; the interests of justice, so the  
12                  fairness and proportionality of accepting it;  
13                  the public interest, and there are a number of  
14                  criteria we consider critical to assessing a  
15                  file whether there is a high public interest,  
16                  that might involve weapons and violence; and  
17                  finally there's a cost-benefit analysis applied  
18                  to the files.

19           Q       If an administrative forfeiture proceeding is  
20                   uncontested when the notice is issued, there's  
21                   no need to commence a proceeding in the Supreme  
22                   Court; is that fair?

23           A       That's correct.

24           Q       And if a file does not qualify for  
25                   administrative forfeiture or the notice is



1                   contested, you proceed by a way of notice of  
2                   civil claim in Supreme Court?

3           A        If there is a dispute received from an interest  
4                   holder, the director has the opportunity to  
5                   review the file at that time, which is done  
6                   again, and determine whether or not it's  
7                   appropriate to initiate civil forfeiture  
8                   proceedings. So it's not a guarantee that that  
9                   will happen. There is a pause where it's  
10                  reviewed, and then a decision is made. And if  
11                  the decision is made to proceed, then you're  
12                  right, it would go in the normal judicial  
13                  forfeiture stream.

14          Q        And the practice in this province is to commence  
15                   those proceedings by way of notice of civil  
16                   claim?

17          A        That's correct.

18          Q        Sir, you've prepared an affidavit as part of  
19                   your evidence today that addresses the structure  
20                   and resources of the Civil Forfeiture Office,  
21                   the Civil Forfeiture Office's is relationship  
22                   with law enforcement and some of the work your  
23                   office does under the authority that's governing  
24                   statute to pursue forfeiture of assets in  
25                   British Columbia?

1           A     I have.

2           MR. MCGOWAN:  If you could display that affidavit,  
3                     please Madam Registrar.

4           Q     This is the affidavit you've prepared, sir?

5           A     It is.

6           MR. MCGOWAN:  If that could be the next exhibit,  
7                     please, Mr. Commissioner.

8           THE COMMISSIONER:  Exhibit 389.

9           THE REGISTRAR:  Exhibit 389.

10                           **EXHIBIT 389:  Affidavit of Philip Tawtel**

11          MR. MCGOWAN:  Thank you.  That can come down now.

12          Q     I'd just like to ask you a few questions about  
13                     the staffing and structure of your office.  You  
14                     indicated that you're the director -- the  
15                     executive director of the Civil Forfeiture  
16                     Office but also the statutory director.  I  
17                     wonder if you could just explain the difference  
18                     between those two roles.

19          A     Yes.  So the executive director is a government  
20                     position.  It is the position that leads the  
21                     office.  It is a physical person and a  
22                     government established position.  The director  
23                     is a statutory creature or actor within the  
24                     confines of the *Civil Forfeiture Act*.  Generally  
25                     speaking the executive director and the director



1 practice to delegate that to individuals  
2 referred to as Deputy Directors?

3 A It was referred to as Deputy Directors. Today  
4 it's simply referred to as directors. So two  
5 directors report to the executive director.  
6 They are government positions. Those two  
7 positions have the full authority of the  
8 statutory director.

9 Q Because you've delegated them that authority?

10 A That's correct.

11 Q And in your positions as executive director and  
12 director, who do you report to?

13 A Sorry, can you repeat the question again.

14 Q Who do you report to?

15 A So the executive director reports to the  
16 Assistant Deputy Minister of the community  
17 safety and crime prevention branch. And that  
18 Assistant Deputy Minister reports to the Deputy  
19 Solicitor General, who in turn reports to the  
20 Solicitor General.

21 Q Thank you. You've indicated that there are two  
22 positions that are not located in Victoria but  
23 instead in Vancouver, and those are positions  
24 associated with the Vancouver Police Department  
25 and the RCMP?

1           A     That's correct.

2           Q     And what is below those two individuals?

3           A     Well, there are, I suppose, three facets to  
4                 those roles. The first is the program  
5                 manager -- we'll call them the police program  
6                 managers that have been seconded into those  
7                 departments. The first responsibility or duty  
8                 they have is to be a primary point of contact  
9                 for the police within that department to  
10                facilitate the police's understanding of the  
11                Civil Forfeiture Office and how the process to  
12                make a referral can be done.

13                         Those positions also facilitate the  
14                         referrals of files from that department to the  
15                         CFO, albeit indirectly. They cannot make a  
16                         direct referral from them to the CFO. They are a  
17                         CFO staff member. What they can do is they can  
18                         compile the necessary package for review by a  
19                         member of that police department who's authorized  
20                         to make a referral. So they work alongside other  
21                         police officers who are assigned to the asset  
22                         forfeiture unit, and then that -- their role is  
23                         to, first and foremost, facilitate a referral to  
24                         our office.

25                                 The second role they have is to assist the

1 office, our office, with going back to those  
2 police departments if there are questions or  
3 followup. So they're a point of contact for the  
4 director as well, and they may know who to reach  
5 out to within that department to follow up with  
6 the director's question.

7 And finally, as I mentioned earlier, their  
8 last role is really to act as an educator and to  
9 facilitate an understanding of the office to the  
10 police officers in that department.

11 Q Okay. And how are those positions staffed?

12 A Well, as a government position, there would be a  
13 competition held, similar to all other  
14 government positions in the BC government.  
15 There would be applications, a panel, a  
16 successful candidate and then that person would  
17 be, as the successful candidate, seconded into  
18 the department pursuant to an agreement.

19 Q Okay. They're employees of your office seconded  
20 to the police department to fulfill that role?

21 A That's correct. And that is a consistent  
22 business model for other provincial employees  
23 who may be seconded into police departments. So  
24 it's not specifically new to the CFO model; it  
25 is also done with other provincial staff as

1 well.

2 Q Thank you. What is the size of your office, the  
3 staff in Victoria? So leaving those two  
4 individuals aside, how many other people form  
5 your staff?

6 A We have 10 staff members located in Victoria.

7 Q And does that include the other two directors?

8 A Yes. The executive director, the two directors,  
9 a program manager that has oversight for the  
10 administrative forfeiture program and six  
11 administrative staff who support the  
12 administration and operational function of the  
13 office.

14 Q And are those essentially legal assistants or  
15 paralegals?

16 A They don't have the title of legal assistants or  
17 paralegals, but they do have a good, strong  
18 working knowledge of legal documents and police  
19 files and management. That's correct.

20 Q Okay. Do you have on your staff any forensic  
21 accountants?

22 A We do not.

23 Q Do you have any investigators on your staff?

24 A We do not.

25 Q Do you have anybody on your staff aside from

1                    yourself with specific AML training or  
2                    experience?

3            A        I would say the two program managers that are  
4                    currently seconded into the police departments  
5                    both have a background.  The program manager for  
6                    the RCMP, his focus and his background was on  
7                    drug investigations.  But with drug  
8                    investigations there's always a proceeds  
9                    component.  And the program manager seconded to  
10                  the VPD has a good -- very strong working  
11                  knowledge of AML as well.  And the director that  
12                  works here who is not -- that reports to me has  
13                  been with the office for 10 years and has a very  
14                  strong wealth of experience with regards to AML  
15                  based on his experience working at the office.

16            Q        And the two individuals who are seconded to the  
17                    RCMP and the Vancouver Police Department  
18                    respectively, are they former police officers?

19            A        They are.  The program manager for the RCMP is a  
20                    former RCMP officer and the program manager for  
21                    the VPD is a former VPD officer.

22            Q        Thank you.  You've indicated that you don't have  
23                    lawyers on your staff, but you do have lawyers  
24                    with whom you regularly work to pursue actions  
25                    when that's called for.



1           A     That's correct.

2           Q     Okay.  They're employed by the Attorney  
3                 General's ministry, but are there essentially a  
4                 contingent of lawyers who work in a position  
5                 that would be -- appear from the outside to be  
6                 akin to in-house counsel for your office?

7           A     I wouldn't describe them as in-house counsel; I  
8                 would describe them more as dedicated counsel to  
9                 civil forfeiture work.  So there is seven  
10                counsel within the legal services branch of the  
11                Ministry of the Attorney General who are solely  
12                dedicated to conducting civil forfeiture work.  
13                Which facilitates the ability of the instructing  
14                client to deal with very experienced counsel,  
15                not just experienced with civil law but  
16                experienced with the particular nuances of the  
17                *Civil Forfeiture Act*.  And in addition to that  
18                the dedicated legal team does have the option  
19                when there is a capacity issue to also engage  
20                private firms in Vancouver and Victoria to  
21                ensure that when there is an excess volume of  
22                files, those can be assigned to counsel.  And  
23                these firms are experienced with civil  
24                forfeiture matters as well.  They are not  
25                dedicated to civil forfeiture work.  It's simply

1 a piece of their portfolio.

2 Q Thank you. What percentage of civil forfeiture  
3 actions commenced by your office are handled by  
4 the dedicated Attorney General lawyers?

5 A I don't have an exact percentage, but I would  
6 say it's the vast majority are handled by the  
7 dedicated team. So I don't know if it's  
8 90 percent or somewhere in that range, but  
9 it's -- a very high proportion is handled  
10 internally.

11 Q Okay. And what factors are considered to  
12 determine which files are handled by that  
13 dedicated team and which are assigned to private  
14 firms?

15 A One is capacity. So if the team is fully at  
16 capacity, then that file, the next incoming file  
17 will be assigned out the door to ensure that  
18 it's addressed immediately.

19 But there might also be cases where we're  
20 looking for someone has a particular experience  
21 in a particular area. And that is left to the  
22 team leader of the civil forfeiture legal team to  
23 make a determination whether it might be  
24 appropriate in a certain circumstance to match  
25 the file to the counsel with that skill set. So

1                   in a perfect working world every lawyer has that  
2                   exact file that meets exactly their experience  
3                   level.

4           Q        Thank you. I see we have Mr. Lawless here  
5                   today. And he's one of the dedicated lawyers  
6                   with a significant degree of experience handling  
7                   cases such as this?

8           A        That's correct.

9           Q        Aside from Mr. Lawless, what's the average years  
10                   of experience or average level of call of the  
11                   lawyers you have dedicated to handling civil  
12                   forfeiture files?

13          A        Again, I don't have the exact metrics for you,  
14                   but I could say that the ideal team for us is  
15                   one that has the variety of experience. So I'll  
16                   use numbers, if that helps. Sort of a level 1,  
17                   where it's the basic legal counsel; level 2, the  
18                   more complex files; and level 3, is most complex  
19                   files. So a team -- an ideal team for the  
20                   office is one that has a split of all of those.  
21                   So very simple entry-level files could be  
22                   managed by a level 1 counsel and does not  
23                   require to be escalated a level 3 counsel. And  
24                   then far more complex files that have a lot of  
25                   moving parts can be assigned and managed by a

1 level 3 counsel.

2 So it would be fair to say the current civil  
3 forfeiture legal team has that spectrum that we  
4 need to do our operations.

5 Q Okay. Other than the general training that all  
6 lawyers receive through their law school and  
7 professional legal training course, do any of  
8 the lawyers on your team have specific proceeds  
9 of crime or money laundering training?

10 A To my knowledge we have provided and afforded  
11 them the opportunity to attend sessions run by  
12 the police with regards to proceeds of crime  
13 training as well as special courses that were  
14 held across the country as well that may be  
15 available to them. I can think of one that was  
16 held in Alberta where our counsel attended a  
17 seminar on proceeds of crime and money  
18 laundering. So there is a variety of experience  
19 of counsel that has taken some training.

20 Q Thank you. Am I correct that the Civil  
21 Forfeiture Office receives its files perhaps  
22 exclusively by way of referrals from law  
23 enforcement or other regulatory agencies?

24 A Yes. It would be fair to say it is exclusively  
25 that way. The office does not initiate

1 investigations on its own. Even though it may  
2 receive requests from the public, we will not  
3 commence proceedings in that regard. It all  
4 comes from law enforcement agencies, primarily  
5 police departments. There are referrals that we  
6 will take from, for example, the BC Securities  
7 Commission, from the Ministry of Finance, but  
8 the vast majority come from law enforcement  
9 agencies in BC.

10 Q Essentially police detachments, either municipal  
11 police detachments or RCMP police detachments  
12 operating in various municipalities around the  
13 province?

14 A That's correct. There's really two sort of  
15 streams for us. One is the RCMP, which is both  
16 municipal police, provincial police and federal  
17 police, as well as on the other side, all the  
18 municipal police departments. That's correct.

19 Q Okay. You said that you don't self-generate  
20 files. Is there anything in the legislation, to  
21 your understanding, that prevents you from doing  
22 that?

23 A There isn't anything that specifically prevents  
24 the office from doing that. It's more that  
25 the -- you would need the tools to do that. So

1                   there are no tools that would -- as you can  
2                   imagine, a successful police investigation  
3                   requires the ability to meet with confidential  
4                   informants to conduct surveillance, to issue  
5                   special types of orders, tracking orders or  
6                   surreptitious search warrants. So there is a  
7                   whole infrastructure that would be required for  
8                   the office to do that and the office simply does  
9                   not have the tools or the legal structure for  
10                  that.

11                 Q     Okay. So is it fair to say that at present the  
12                   assets and through those assets the  
13                   organizations or individuals that your office  
14                   targets is dictated by the priorities and the  
15                   focus of the referring law enforcement agencies?

16                 A     I don't know. I can't speak for what the  
17                   priorities of the law enforcement agencies are.  
18                   I can say that we receive file referrals from  
19                   the police at different spectrums of what a  
20                   criminal organization looks like. So we receive  
21                   a low volume of exceptionally high-value files.  
22                   We receive a medium volume of medium complex  
23                   files and we receive a high volume of low-value  
24                   files. So very much the way a criminal  
25                   organization is structured where you have many

1 street workers, street crews on the ground.  
2 Well, we also correspondingly receive a high  
3 volume of work associated to that.

4 So it very much -- the work we receive from  
5 the police, the referrals we receive, very much  
6 reflect the structure of what criminal  
7 organizations look like.

8 Q But your organization, because you operate  
9 solely on the basis of referrals, at present  
10 doesn't have the ability to direct what your  
11 focus will be in terms of organizations or  
12 targets. You take what you're given; is that  
13 fair?

14 A That is very fair. And we can often see trends  
15 not from our own concerns, but we can see the  
16 trends of what the police are working on based  
17 on the type of files that are coming in the  
18 door.

19 Q And based on what you've said, is it fair to say  
20 that the majority of individuals or assets that  
21 you target are at the low- and mid-level as  
22 opposed to the high level of high value?

23 A Well, again, we're not targeting assets  
24 ourselves. We are receiving file referrals from  
25 the police. Based on what we get, we would

1           expect to see a high volume of low-value files  
2           because that is how criminal organizations work.  
3           They have a high volume of people at the bottom  
4           working the street in low-value items. And then  
5           what we would expect to see is -- and they would  
6           be the least insulated people in a criminal  
7           organization. And then we would expect to see  
8           the low-volume referral but extremely high-value  
9           and highly complex files referred to us as well.

10                        So we are receiving from the police the  
11           10 million dollar file, the \$100,000 file and  
12           the \$1,000 file because that's a reflection of  
13           the work they're doing at all levels of the  
14           criminal organization structure.

15           Q    Thank you. I've looked over some of the  
16           statistics of referral rates from various  
17           detachments and it struck me that there is a  
18           significant variation between detachments in  
19           terms of the rate of referrals. Is that  
20           consistent with your observation?

21           A    You're referring to the RCMP detachments as  
22           opposed to the RCMP and the municipals?

23           Q    I'm referring to both, but ...

24           A    Oh, okay. So I would say there is a variance,  
25           and I would say that there is a natural cycle



1                   that go with that. For a period of time there  
2                   can be a high volume of referrals, say, from  
3                   Kelowna or Prince George. And then the  
4                   referrals may cool off and may pick up  
5                   elsewhere. I can say from a macro level across  
6                   the board referrals have been increasing year  
7                   over year by approximately 10 to 15 percent. So  
8                   across the board referrals are going up. But  
9                   you're correct that at a micro level there may  
10                  be spikes inside an individual department where  
11                  there'll be a high volume at one point and then  
12                  a low volume over the course of the next time  
13                  period.

14                Q    Have you through assessment or just through your  
15                    observation come to any conclusions about what  
16                    factors influence the rate at which a particular  
17                    detachment or officer will refer files to your  
18                    office?

19                A    The only anecdotal piece of information I can  
20                    provide is for municipal departments that don't  
21                    have a dedicated asset forfeiture unit, which is  
22                    the majority. So the only one that has a fully  
23                    dedicated asset forfeiture unit to my knowledge  
24                    is the Vancouver Police Department. Very much  
25                    what we'll see is if there is an officer who has

1                   had a very positive experience and is now  
2                   familiar with the civil forfeiture program, we  
3                   will see a spike in referrals for a period of  
4                   time that that officer is in the drug unit, for  
5                   example. And then as typically happens,  
6                   officers will be transferred or officers may  
7                   retire. And we will see a corresponding  
8                   decrease. So we do see a greater inconsistency  
9                   in the level of referrals when there is not a  
10                  dedicated infrastructure.

11                Q    You commenced a little bit over a thousand  
12                   actions last year; is that correct?

13                A    That would be both judicial forfeiture  
14                   proceedings and administrative forfeiture  
15                   proceedings. That's correct.

16                Q    That's combined, then?

17                A    Yes.

18                Q    Have you done an assessment to determine what  
19                   percentage of cases that ought to be referred to  
20                   you are in fact being referred to your office?  
21                   So to what extent are the detachments, both RCMP  
22                   and municipal, referring files they ought to be  
23                   referring to your office?

24                A    That's a very good question. We don't know the  
25                   metric of -- so we know the number of files we

1           receive. That we know. We also know the number  
2           of files for the Vancouver Police Department and  
3           RCMP that were referred by police officers but  
4           may not have been forwarded to us. So we know  
5           that metric, but just for those two departments.

6                        So there are certain files the RCMP and VPD  
7           may receive, they'll look at and they may be  
8           turned down for consideration of referral to the  
9           office. Now, if you take one further step back  
10          is what's the total population of work out there  
11          that isn't being referred? That's an unknown.

12          Q       Looking through the chart of referral numbers  
13                for last year, I see some detachments are  
14                referring 25 or 30 or 40 and some sort of mid-  
15                to moderately-sized communities are referring  
16                only one or two files. Does that sort of raise  
17                for you a concern that there may be a  
18                significant number of files where there are  
19                assets your office could target that aren't  
20                being referred?

21          A       What you say is true. What we have been doing  
22                is tracking the metrics to the best of our  
23                ability and based on that, we have been focusing  
24                our outreach educational sessions to those  
25                locations where we feel that, as you've noted,



1                   especially market files, financial files are  
2                   extremely complex.

3                   So I think that we would expect to see a  
4                   lower volume of files from specialized units, but  
5                   we would expect to see they would be highly  
6                   complex and high value.

7           Q       Is it of any concern to you that you received  
8                   only one from that unit over the span of an  
9                   entire year?

10          A       Well, I wouldn't say it would be an overly --  
11                   concern, but it would be something that we might  
12                   bring up. We would reach out again to them the  
13                   way we'd reach out to, say, the BC Securities  
14                   Commission, to reach out the Ministry of Finance  
15                   to say, we haven't heard from you in a long  
16                   time; we haven't seen any referrals. But  
17                   suffice it to say that there is a significant  
18                   amount of work coming in the door, so it's not  
19                   like we're waiting for the work. We will  
20                   certainly do the outreach, but due to the volume  
21                   of work, the fact that there's only one may not  
22                   preclude the fact that there's three referred  
23                   next year.

24          Q       There's no limit to the size of your staff that  
25                   you -- the number of people that you could

1                   employ or the number of counsel that you could  
2                   engage to pursue cases; is that fair?

3           A       No, I don't think that's entirely fair. I think  
4                   certainly under a self-funding model, we have  
5                   more flexibility to -- because we don't have to  
6                   seek a funding appropriation from government,  
7                   but we still have to make the business case,  
8                   both the CFO would and the Attorney General --  
9                   the legal services branch would, have to go and  
10                  make the case that a legal -- a position is  
11                  justified and how it's going to be paid for. So  
12                  the business case still has to be made, but I  
13                  would agree that what we've seen year over year  
14                  is not just a growth in the CFO staff but an  
15                  approved growth of the legal team as well.

16          Q       Maybe let me ask it another way. As your  
17                   caseload increases you have the ability to  
18                   increase your staffing and access to counsel to  
19                   address those files?

20          A       Yes.

21          Q       I notice that in 2019 there was only a single  
22                   referral from the Canada Border Services Agency.  
23                   Is that an agency you would hope to be referring  
24                   a higher volume of files to your office?

25          A       Well, the CBSA has its own internal forfeiture



1 speakers that will include prosecutors on the  
2 criminal forfeiture side, the Canada Revenue  
3 Agency, experts in police techniques and so  
4 we'll have -- and we'll extend the invitation  
5 broadly across the spectrum to all departments  
6 to come and learn over these two-day workshop.

7 We'll also hold individual sessions as small  
8 as just one detachment that will run  
9 approximately an hour and will run through what  
10 is civil forfeiture, how does it work, how do you  
11 make a referral. A very basic understanding.  
12 And we've also run extremely tight and small  
13 presentations to platoons of police officers just  
14 going on shift who may be shifting off, say, a  
15 municipal department. We will show up and  
16 provide a brief presentation right before shift  
17 as well.

18 So we're trying to get the message out the  
19 best we can. Where we can be incorporated  
20 directly into the training sessions, so the  
21 police have normal training sessions for  
22 everything from baton training to -- whatever it  
23 is, we will try to see if we can secure some time  
24 to be part of that annualized training session as  
25 well.



1           Q     Thank you.  To what -- you mentioned to the  
2                   Commissioner earlier in your evidence that while  
3                   the assets you target must be located in British  
4                   Columbia, the unlawful activity that grounds the  
5                   action could have been committed elsewhere?

6           A     That's correct.

7           Q     And that -- under the current legislation, that  
8                   unlawful activity could have been committed in  
9                   another province in Canada?

10          A     Yes.  And even outside of Canada.  So we have  
11                 received referrals from other police departments  
12                 across Canada and in the United States.  And in  
13                 those cases what we've tried to do is secure an  
14                 information-sharing agreement, have the file  
15                 referred to us, assess the file on the same  
16                 criteria that would be -- we would assess a file  
17                 had it occurred and been referred in BC and then  
18                 where appropriate commence proceedings.

19          Q     To what extent are you conducting outreach for  
20                 the purposes of educating law enforcement  
21                 authorities outside of Canada, so in the United  
22                 States or other foreign jurisdictions?

23          A     So each -- as you may be aware, there are  
24                 separate civil forfeiture offices that operate  
25                 in each of the other provinces.  And those

1                   offices provide their own educational outreach  
2                   to their departments, much the same way BC does  
3                   here.

4                   In terms of providing educational outreach  
5                   in the US, that has been very sort of sporadic.  
6                   It's extremely difficult to do. We have  
7                   participated in joint sessions with the other  
8                   provinces and we are a representative of the  
9                   CARIN network, so we can participate in that.  
10                  That's an international group of -- an  
11                  organization where different countries can assist  
12                  each other in understanding -- they have a point  
13                  of contact when there is a question on asset  
14                  forfeiture. So -- but in terms of reaching out  
15                  to the US, I would say that it is a difficult  
16                  challenge to do that. It generally involves the  
17                  US department realizing there's been a crime,  
18                  reaching out to their colleagues in Canada, which  
19                  is generally the RCMP, and the RCMP saying, we  
20                  have -- you have the option of potentially  
21                  referring this to the Civil Forfeiture Office.  
22                  And that's typically how we've received that  
23                  referral.

24                  Q     Okay. Thank you. Have you reached out to the  
25                  association of chiefs of police with a view to

1                   having those officers in charge of both  
2                   municipal units and RCMP detachments making a  
3                   directive to their members to require them to  
4                   review each file with a view to assessing  
5                   whether there are assets that might be pursued  
6                   by your office?

7           A       We have not. I provided presentations -- about  
8                   every 18 months I appear before the BC  
9                   Association of Chiefs of Police to provide an  
10                  overview of the program, how the program's  
11                  performing, and we may receive questions on how  
12                  that individual department is -- are they making  
13                  referrals. The goal is to get buy-in through  
14                  the voluntary basis. I think -- and it has been  
15                  working. We're seeing file referrals going up  
16                  significantly. We're seeing police officers  
17                  that had not heard of the program before  
18                  becoming essentially program champions within  
19                  their detachment or within their department. So  
20                  we think that the approach we're taking right  
21                  now is the right one. I don't know what a  
22                  mandatory framework would look like and whether  
23                  it would be as successful as the path we're on  
24                  right now.

25           Q       Thank you. Your office has a file acceptance

1 policy?

2 A That's correct.

3 Q It's exhibit E to your affidavit?

4 A That's correct.

5 MR. MCGOWAN: Madam Registrar, I wonder if you could  
6 just turn that up.

7 Q This is that policy?

8 A That's correct.

9 Q Sir, you made -- you outline the criteria, the  
10 general criteria that are considered, being the  
11 public interest, the strength of the case,  
12 financial considerations and the interests of  
13 justice for the Commissioner earlier.

14 A That's correct.

15 Q The financial considerations, is that  
16 essentially a cost-benefit analysis?

17 A It is. As a self-funding office, we have a  
18 responsibility to be judicious in how we make  
19 our decisions. So it is important that we cover  
20 our costs, so that's important. And while the  
21 costs aren't excessive and typically forfeitures  
22 far exceed the costs of running the office, we  
23 still take a close look and we scrutinize the  
24 value of the asset against the likely cost of  
25 the litigation.

1                    Now, that said, where the public interest is  
2                    high, we will take on files where it's  
3                    relatively clear from the outset that the cost  
4                    is going to exceed the recovery.

5            Q        I wonder if you could give the Commissioner some  
6                    examples of when your office will pursue an  
7                    asset in the face of a recognition that the cost  
8                    of pursuing the asset will likely exceed the  
9                    value of the asset that might be realized at the  
10                   conclusion of the proceeding?

11           A        So the actual example -- and it's easy to give  
12                    one because it's happened more than a handful of  
13                    times -- would be the nuisance house in the  
14                    community where there's a high volume of  
15                    attendance of calls by the police, there's been  
16                    serious crime, there's been drug trafficking,  
17                    there's been assaults, there's been a number of  
18                    very bad crimes taking place on the property,  
19                    and those properties are frequently underwater.  
20                    The value of the property is less than the  
21                    mortgage. And in those cases we will look at  
22                    pursuing forfeiture, paying out the innocent  
23                    interest holder, and getting that community --  
24                    that house out of that community the best we  
25                    can.

1                   Now, as noted, we know from the outset that  
2                   there is going to be either no equity or a very  
3                   small amount of equity to be taken from the  
4                   property, and the legal costs will far exceed  
5                   that. That said we consider that a tremendous  
6                   win for the community, and the anecdotal feedback  
7                   we've had from the community is that was  
8                   important to do.

9           Q       Okay. In assessing the case you're directed by  
10           this policy to look at the available  
11           information, and one of the pieces of  
12           information, 3(b). Is accessing open-source  
13           information subscription services available to  
14           your office.

15           MR. MCGOWAN: I wonder if you could scroll down a  
16           little bit Madam Registrar, so we can see 3(b).

17           Q       What subscription services are being referred to  
18           there?

19           MR. MCGOWAN: No, you've gone too far, Madam  
20           Registrar. 3(b) is what we're looking at.

21           A       So the open-source information that's being  
22           referred to is in order -- the director has a  
23           legal obligation pursuant to the act to serve  
24           notice on registered interest holders as well as  
25           those individuals who the director believes may

1           have a beneficial ownership in the property.  
2           And to fulfill that obligation it's necessary,  
3           for example, on land titles, to figure out who  
4           owns the property. In the initial referral it  
5           may be a consideration that it's only the  
6           suspect or the defendant that is the interest  
7           holder, but the hand titles may quite clearly  
8           reveal that there is more than one interest  
9           holder. And as well there may be an uninvolved  
10          interest holder which would be, say, for  
11          example, the bank.

12                 So accessing land titles allows us to  
13          fulfill that obligation by properly serving.  
14          Similarly, the access to the personal property  
15          registry with respect to vehicles will give us an  
16          indication of who lawfully owns the vehicle as  
17          well as any interest holders as well. As does  
18          ICBC. ICBC will tell us who owns the vehicle,  
19          and the time that -- when the vehicle was  
20          purchased.

21                 So this type of information assists the  
22          director when commencing administrative or  
23          judicial forfeiture proceedings by ensuring that  
24          everyone that might have an interest is properly  
25          named and served.

1           Q     So you're using this open-source and  
2                    subscription-based services to identify  
3                    potential interest holders?

4           A     That's correct.

5           Q     Does your office also use these open-source  
6                    information and subscription services to  
7                    identify other assets that it might seek to  
8                    target? For example, if a file is referred to  
9                    you where a significant quantity of drugs was  
10                   seized from a vehicle and the referral relates  
11                   to the vehicle, does your office go, for -- and  
12                   the subject of the investigation has no apparent  
13                   source of income, does your office go to the  
14                   Land Title Office to determine if, for example,  
15                   the individual might own a multi-million dollar  
16                   home that could be subject to targeting by your  
17                   office through a civil forfeiture action?

18          A     Yes, the office does do that. Frequently that  
19                   information may be included in the police file  
20                   referral, but regardless the director does his  
21                   own over and on top of that.

22          Q     And is the investigation of other assets that  
23                   might be available limited to reviewing  
24                   open-source information and subscription  
25                   services?



1           A     It is.

2           MR. MCGOWAN: I wonder if we could just turn to  
3           page 3, please.

4           Q     Just staying with what we were speaking about.  
5           Is that sort of review of open-source and  
6           subscription services with a view to identifying  
7           other assets that might be targeted done in  
8           every case?

9           A     So if there's a small value referral associated  
10          to a thousand dollars cash and a car that has  
11          been used to dial-a-doping, would we go and run  
12          land titles on that, the answer is no, we would  
13          not. That would be a transactional event. We  
14          would not go a do a full background on land  
15          titles.

16                 We would tend to do that on the high complex  
17          where it's quite apparent that there is a  
18          proceeds investigation being conducted. Where  
19          it's simply an instrument referral, we don't  
20          broaden the scope of the examination to do a full  
21          background on that individual.

22          Q     Okay. What proportion of cases would you  
23          estimate that your office does a deeper dive  
24          with a view to attempting to identify additional  
25          assets that might be targeted?

1           A     I don't have an exact number for you, but I  
2                    think it would be fair to say that that would be  
3                    done from those files that we would deem to be  
4                    sort of medium complex to high complex.  Again,  
5                    those would be a lower volume of files referred  
6                    to the office.  The high volume files that are  
7                    the administrative forfeiture ones, we would not  
8                    be doing a deep dive and trying to determine all  
9                    the other assets of that individual.

10          Q     Thank you, sir.  Just looking at number 6(c),  
11                    and this is -- if we could just scroll up a  
12                    little bit.  There we go.  Under "Source of the  
13                    File":

14                                "Files arising out of criminal  
15                                investigations will be considered where."

16                    And (c) says:

17                                "Where the criminal proceedings have  
18                                concluded for any reason without criminal  
19                                forfeiture."

20                    And I take it that includes situations where  
21                    there's a stay of proceedings and acquittal or a  
22                    conviction but where criminal forfeiture has not  
23                    been pursued; is that fair?

24          A     That's fair.

25          Q     So these -- this section of the policy refers to

1 files that were referred to Crown counsel and a  
2 prosecution was conducted and there was some  
3 conclusion to that criminal proceeding; is that  
4 right?

5 A So you're referring -- just so I'm clear, you're  
6 referring specifically to 6(c)?

7 Q Well, maybe let me ask my question another way.  
8 It was an awkward question.

9 Your office will pursue forfeiture in  
10 relation to referrals where there is no criminal  
11 prosecution?

12 A Yes. Absolutely.

13 Q And where there is a criminal prosecution and  
14 there's a possibility that there will --  
15 criminal forfeiture will be pursued, you defer  
16 to that criminal forfeiture process?

17 A That's correct. So when we're aware that the  
18 Crown is seeking criminal forfeiture against  
19 property, we will not be involved in that. That  
20 is completely in their wheelhouse. That said,  
21 there are times where the Crown will pursue  
22 criminal forfeiture proceedings and at a point  
23 in time for whatever reason those proceedings  
24 may stop, and that referrals can be made to the  
25 office at that point in time now that the

1 criminal proceedings and the criminal forfeiture  
2 proceedings have stopped.

3 Q Okay. Do you have a process in place for either  
4 the Crown or the referring police agency to  
5 track files that went down the criminal process  
6 with a view to monitoring whether there is a  
7 stay or an acquittal or a failure to pursue  
8 criminal forfeiture?

9 A No, we don't. And I don't know if that could be  
10 really managed in an effective way. We are  
11 focused on the property that is referred to us,  
12 pure and simple. Whether criminal charges  
13 arise, whether criminal charges are stayed,  
14 whether criminal charges are added after the  
15 fact is not a consideration for the director.  
16 We focus exclusively on the evidence that's  
17 provided to us at the time with respect to the  
18 property, and we make -- we follow our file  
19 acceptance policy as to whether or not it's  
20 appropriate to commence proceedings or not. So  
21 we really aren't tracking what is going on on  
22 the criminal side.

23 Q Have you pursued outreach to either the  
24 provincial Crown counsel office or the public  
25 prosecution service with a view to educating

1           them about the presence of your office and also  
2           with a view to encouraging them to refer files  
3           that come across your desk where there are  
4           assets that might be pursued by your office?

5           A     So there's I guess two parts to the question.  
6           One is have we conducted outreach and the second  
7           is would we recommend that they send files to  
8           us. The first question is we have informally  
9           spoken to Crown more on a one-to-one basis when  
10          they've inquired about the information. Crown  
11          has attended the sessions, the workshops that  
12          we've organized and at that point in time, they  
13          are -- they can be made aware of how civil  
14          forfeiture works.

15                 On the second part, we would never instruct  
16          Crown to send us files. They are not, from our  
17          point of view, a referral agency. That is a  
18          matter between the police and the Crown. We will  
19          only accept a referral from the police agency.  
20          So there are no -- there are no circumstances  
21          where we would see the Crown making a referral to  
22          our office.

23          Q     Thank you. Is it -- would I be correct in  
24          understanding that the vast majority of  
25          referrals to your office relate to unlawful

1 activity that occurred in British Columbia?

2 A Yes.

3 Q And would I be correct in my understanding that  
4 the majority of those have a predicate offence  
5 that is something other than possession of  
6 proceeds of crime or money laundering?

7 A The majority of the referrals that we receive  
8 are based on a drug investigation, the  
9 trafficking of drugs. And where it is an  
10 instrument, there is no -- it's not being  
11 referred as a proceeds. But where it is, for  
12 example, cash, it will be referred to as both an  
13 instrument and a proceeds.

14 When we're dealing at the more complex level  
15 where we're dealing with high-value assets, then  
16 of course the money laundering component comes  
17 with the proceeds component. It travels with it.  
18 They're referring it as a proceeds, not  
19 necessarily naming it as money laundering, but  
20 what they're saying is if the money from the drug  
21 trafficking was used to purchase the high-value  
22 vehicle, then we're aware that it is being  
23 considered a referral that its proceeds were  
24 money laundering as well as an underlying  
25 predicate offence.

1           Q     In many of your cases you plead both the  
2                   instrument and proceeds provisions, but is it  
3                   fair to understand that in the vast majority of  
4                   cases the real focus, at least historically of  
5                   the cases your office has pursued, has been the  
6                   instrument provisions?

7           A     I would say historically you're correct. In the  
8                   early years of the program it was very  
9                   transactional. It was an instrument being  
10                  referred, and the director was focused on  
11                  seeking the forfeiture of that instrument. The  
12                  exception being cash and high-value vehicles,  
13                  which we might see, and -- but not so much  
14                  properties. It would be fair to say in the last  
15                  five years we've seen a change in the tone, in  
16                  the complexity of the files that is now more  
17                  proceeds focused. And with proceeds there is an  
18                  examination of bank accounts and a larger  
19                  examination of how the funds have moved from  
20                  point to point. So that has entailed a  
21                  broader -- a broadening of our litigation as  
22                  well where we're not just looking just  
23                  transactionally at commencing proceedings  
24                  against what was referred, but we're now looking  
25                  at a full tracing as well so -- to make sure

1           that we're capturing not just the assets that we  
2           were referred, but also assets which may not  
3           have been referred as well.

4           Q     Who was doing this full tracing?

5           A     Right now it is -- because these were early days  
6           with the new tools that were provided. That is  
7           being done between the director and director's  
8           counsel. So in the case of the section 22  
9           notices, that's being done by the director.  
10          With respect to the court orders being sought,  
11          that's being done by the director's counsel.

12          Q     Have you considered the possibility that your  
13          capacity to conduct this tracing and the  
14          effectiveness of that tracing might be enhanced  
15          if your office were to add to its complement of  
16          staff analysts, investigations and forensic  
17          accountants?

18          A     I would say that now that we have the tools, now  
19          that we've explored working with the tools,  
20          which was essential for us to understand,  
21          it's -- you're exactly correct. That's the  
22          piece of the puzzle that's missing. Between the  
23          director and counsel there was a piece missing,  
24          and that piece missing is financial  
25          investigators and analysts who could facilitate





1                    anything. The director could delegate powers to  
2                    issue those notices. The analyst could receive  
3                    that information and compile that information,  
4                    sort it and provide direction on next steps  
5                    based on the analysis. But in terms of  
6                    conducting more robust investigations, we would  
7                    have to see what that looks like and whether or  
8                    not changes would have to be made to the act.

9                    Q    I may come back and ask you a few more questions  
10                    about that, but let me ask you this. Over the  
11                    past 15 years with the files that -- or at least  
12                    your time with the office, the files that you  
13                    receive, for example, where a criminal  
14                    organization is tied to illegal activity or  
15                    where there's a substantial drug bust, to what  
16                    extent are you seeing the investigating force,  
17                    the force investigating the drug offence, taking  
18                    the next step and conducting investigations with  
19                    a view to identifying assets tied to that  
20                    individual or organization that might be subject  
21                    to forfeiture by your office?

22                    A    I would say that operates on a spectrum. So  
23                    where the department has the demand width, has  
24                    the resources to drill into just what you said,  
25                    to actually conduct asset tracing, to issue

1 production orders, to look at the bank accounts,  
2 to make the FINTRAC requests, then it's done.  
3 So the files we're seeing in some cases are done  
4 extremely well and they've covered a lot of  
5 bases.

6 In other cases the police do not have the  
7 bandwidth to drill down into that. So you may  
8 just see the seizure of the bank statement and  
9 the department simply doesn't have the resources  
10 to conduct a full proceeds of crime investigation  
11 that needs to be done. And in those cases we're  
12 seeing the bare minimum come in not because the  
13 officers don't want to do it; they simply don't  
14 have the resources to do it. And in those cases  
15 we take what we get and we try and build out the  
16 best case we have and conduct the asset tracing.  
17 We start the investigation at that point in time.

18 Q Okay. You've worked in your time as a police  
19 officer with one of the IPOC units?

20 A I worked for both the Edmonton and the Calgary  
21 IPOC units.

22 Q And were those units that had the bandwidth to  
23 follow the money with a view to pursuing an  
24 investigation of proceeds and money laundering  
25 offences?

1           A     Yes, very robustly. I would say during my time  
2                   with both those units there was no issues  
3                   pursuing the funds out of province nationally  
4                   and internationally. We had the resources, the  
5                   bandwidth and the investigators' knowledge to go  
6                   after those assets and work with our counterparts  
7                   in other provinces around the world to do that.  
8                   So the -- they were very effective in terms of  
9                   identification and getting the charges laid. The  
10                  challenges of course always lie in getting  
11                  everything through the court properly. There was  
12                  a lot of challenges with that. But in terms of  
13                  launching the investigation and tracing, I think  
14                  the units were quite successful.

15           Q     And to what extent do the files that are being  
16                   referred to your office now evidence whether  
17                   policing in British Columbia today has the  
18                   resources, capacity and expertise to follow the  
19                   money in that same way?

20           A     I think that's probably a better question --  
21                   I've been out of it for some time, so I think  
22                   it's probably a better question for the police.  
23                   But that said, again, I'll go back to my answer  
24                   on spectrum. We are seeing files that are done  
25                   and drilled very well. They are doing some

1                   brilliant asset tracing going from account to  
2                   account to account where that department has the  
3                   bandwidth to do it. And the smaller departments  
4                   are more challenged to get that done as well.  
5                   And again it also depends on whether that  
6                   well-resourced department -- how many files it  
7                   can take on. I think there's always more work  
8                   than there is resources, so I think even the  
9                   well-staffed departments who conduct those deep  
10                  investigations can be resource challenged and  
11                  have to triage files because of the amount of  
12                  work that there is out there.

13                Q    Which referring units or detachments in recent  
14                    years have evidenced the most effective asset  
15                    tracing to your observation? Based on your  
16                    review of the files that are referred to your  
17                    office.

18                A    I would say the specialized units like the  
19                    Federal Serious and Organized Crime Agency of  
20                    the RCMP, they have dedicated units to doing  
21                    that. And we have seen large file referrals  
22                    coming to us that are highly complex where there  
23                    has been forensic accountants engaged to -- so  
24                    it gives you an indication on the level of  
25                    robustness that they've taken when you're seeing

1 forensic accountants show up on the file to  
2 compile and do those type of investigations  
3 which are completely necessary. You have to  
4 have that level of expertise. And the Vancouver  
5 Police Department as well. We have seen where  
6 they have conducted robust investigations,  
7 engaged forensic accounting services on these  
8 complex files.

9 Now, it's not to say that the other smaller  
10 municipal departments or smaller detachments have  
11 not done excellent work. I think they've done  
12 excellent work with the resources and budgets  
13 they have.

14 Q Thank you. Is one of the challenges you face in  
15 pursuing assets the requirement to tie the asset  
16 to a particular criminal offence?

17 A Yes, very much. I mean, the higher up you go in  
18 an organization, the more the wealth is  
19 insulated. So it's easy to tie in a thousand  
20 dollars taken off a drug trafficker on the  
21 street who's in a car with score sheets, guns  
22 and the drugs beside him. I mean, the cash is  
23 right literally physically in proximity to the  
24 trafficker. It's far more difficult when you're  
25 going up the ladder to the top echelon and they

1            have purposely, not accidentally, created the  
2            insulation that's needed so that their assets  
3            are not the target of either criminal or civil  
4            forfeiture proceedings. And so in order to  
5            pursue that, there is a significant amount of  
6            work, whether it's criminal or civil forfeiture,  
7            a significant amount of work that needs to be  
8            done to trace that and show that in fact those  
9            homes, those bank accounts are in fact the  
10           proceeds of unlawful activity and that money  
11           laundering techniques were employed to purposely  
12           evade forfeiture.

13           Q    Have you turned your mind to whether an  
14           unexplained wealth order regime would assist in  
15           targeting higher level illicit assets located  
16           within British Columbia?

17           A    So I'm familiar with unexplained wealth orders,  
18           and the office has turned its mind to it. So we  
19           do see it as a potential other tool in the  
20           toolbox the way we did with administrative  
21           forfeiture in 2011, the way we did with the new  
22           asset tracing forfeiture provisions. We start  
23           turning our mind to it, what would it look like,  
24           how could we operationalize it. And so  
25           unexplained wealth orders are sort of in that

1           infancy of trying to figure out what that looks  
2           like pragmatically when the rubber hits the  
3           road. So we understand other jurisdictions have  
4           passed unexplained wealth orders, we understand  
5           at least one other province is certainly looking  
6           at it and we know that British Columbia is  
7           turning its mind to it and is making the  
8           research that's needed to decide what that might  
9           look like to operationalize something like that.

10          Q    We understand from some evidence given earlier  
11           that the province is considering developing an  
12           unexplained wealth order regime. Have you been  
13           asked for input on the advisability or nature of  
14           that regime?

15          A    Yes. The office is not leading that initiative,  
16           but the office is participating in that  
17           initiative with the Ministry of Finance.

18          Q    I wonder if you could share with the  
19           Commissioner your views on the advisability of  
20           introducing such a regime, and if you think it's  
21           a good idea, what features such a regime should  
22           have to make it most effective and most fair.

23          A    That's a very challenging question because I  
24           really don't feel I have myself the -- all of  
25           the information I would want to be able to say





1                    functionality and systems for pursuing  
2                    forfeiture. So I think that that tool is there  
3                    and it's operating. It's just a question of how  
4                    does it integrate with something like an  
5                    unexplained wealth order.

6                    Q    Thank you. If your office was tasked with  
7                    administering an unexplained wealth order  
8                    regime, do you have any sense of what you'd need  
9                    to terms of additional capacity?

10                  A    I don't. I really don't know what that would  
11                  look like yet.

12                  Q    You've discussed with the Commissioner the  
13                  administrative forfeiture regime we have and  
14                  you've outlined the criteria. Maybe I'll just  
15                  summarize it and you can tell me if I've got it  
16                  right. These are assets in the hands of a  
17                  government agency worth less than \$75,000 where  
18                  there is not a charge and excluding real  
19                  property?

20                  A    That's correct.

21                  Q    And are you able to tell the Commissioner  
22                  whether the introduction of this regime was  
23                  motivated in part by the large number of lower  
24                  value cases your office was being referred?

25                  A    No. I would say -- and, again, I think it's

1                   important to put this in historical context. I  
2                   arrived at the office in 2011 literally as we  
3                   were looking to operationalize administrative  
4                   forfeiture. So a lot of the decisions had  
5                   already been made prior to my arrival. That  
6                   said, I was interested in understanding some of  
7                   the historical context. My understanding was  
8                   that the purpose of pursuing and building an  
9                   administrative forfeiture framework was around  
10                  the fact that a high number of interest holders  
11                  or defendants were simply not participating in  
12                  the litigation process which meant that the  
13                  office had to instruct counsel to go and make  
14                  applications for default of this property. It  
15                  was onerous, it was expensive for the office and  
16                  it was certainly tying up the courts to go and  
17                  get this done.

18                  So the idea was is there -- was it possible  
19                  to engage the interest holders outside the court  
20                  process in a manner that was cost effective for  
21                  the director and, as a natural by-product, cost  
22                  effective for the interest holder. So by issuing  
23                  a notice to the interest holder, the director  
24                  could confirm at a very cost effective -- in a  
25                  very cost effective way whether the interest

1 holder was interested in participating and  
2 asserting that the asset was neither a proceeds  
3 or an instrument. And the interest holder could  
4 participate at an extremely low cost as well by  
5 simply filing a response, attaching documents and  
6 mailing it back to the director. And the  
7 director could assess the information that was  
8 provided by the police and provided by the  
9 interest holder and make a decision whether to  
10 proceed with judicial forfeiture proceedings or  
11 not.

12 What we found is that the level of  
13 non-responsiveness regardless of administrative  
14 forfeiture or not, it was about the same. There  
15 was -- approximately four fifths of people  
16 served, whether it was judicial forfeiture or  
17 administrative forfeiture, simply did not  
18 respond. So the advantage is -- in that fact  
19 that we didn't really move the numbers at all.  
20 The advantage is it's more cost effective for the  
21 director. And there has been a significant  
22 amount of time made available for the court that  
23 didn't otherwise exist. So instead of sending  
24 counsel in for a thousand judicial forfeiture  
25 default applications, 800 of them approximately

1 don't exist. Which provides access to justice  
2 for those who do wish to participate. So those  
3 who do wish to be involved in the process and  
4 participate now have greater access than before.  
5 So really it's important that it wasn't so much  
6 the value of the assets, it was the lack of  
7 participation on the interest holders that drove  
8 that.

9 Q Historically and even today a high proportion of  
10 low-value cases are not defended; is that fair?  
11 Both administrative forfeiture and judicial  
12 forfeiture cases.

13 A Yes. Again, the number of cases coming in that  
14 are low volume exceed those that are medium  
15 value and high value simply because that's the  
16 nature of how criminal organizations are  
17 structured like a pyramid. So most of the files  
18 we receive are at the low-value spectrum and  
19 most of those go into administrative forfeiture  
20 where appropriate and most of those are not --  
21 no one participates -- the majority do not  
22 participate and those are -- those items are  
23 administratively forfeited.

24 Q And do you have a sense of whether that lack of  
25 participation is motivated by recognition that

1                   the cost of defending the case may exceed the  
2                   cost of the asset?

3           A       Well, again, I'll go back to my previous comment  
4                   that the cost of providing a response at the  
5                   administrative level is extremely low. It's  
6                   getting one document sworn and then photocopying  
7                   any documents that may be in support of why you  
8                   feel it's inappropriate to seek forfeiture and  
9                   then mailing the document to the office. So the  
10                  ability to -- as an entry point for an interest  
11                  holder at administrating forfeiture, the cost is  
12                  very low. If that matter proceeds to a judicial  
13                  forfeiture, then I would agree that there would  
14                  be costs. But if you're asking me do I think  
15                  that's the primary motivation, if you're asking  
16                  my opinion, I would suggest that the reason is  
17                  simply it is a cost of doing business for  
18                  criminal organizations, pure and simple.

19                         It is no different than legitimate  
20                         organizations that have an account line that  
21                         talk about inventory loss, spoilage and theft.  
22                         They're prepared to lose their inventory. Drug  
23                         traffickers are -- accept that sometimes they're  
24                         going to lose their product -- their drug  
25                         product. That's just going to be seized and

1                   that's a write-off. Similarly cash. Similarly  
2                   weapons. Similarly cars. It's just a cost of  
3                   doing business. And so the idea of  
4                   participating in an exploratory process would  
5                   not help the organization. Better just to write  
6                   it off and walk away.

7           Q       Thank you. There's no access in this province  
8                   to legal aid for a defendant who wishes to  
9                   defend a civil forfeiture action; is that your  
10                  understanding?

11          A       That is my understanding, yes.

12          Q       And similarly there's no provision in the act  
13                   that would allow a defendant to access the value  
14                   of a restrained asset to assist in defending the  
15                   case?

16          A       That is how the act is structured. Yes, that's  
17                   correct.

18          Q       In many cases, especially those involving real  
19                   property -- or a number of cases involving real  
20                   property, the defendant's largest asset may be  
21                   restrained and unavailable to them in the  
22                   context of a civil forfeiture proceeding; is  
23                   that fair?

24          A       I'm sorry. Could you repeat the question. I  
25                   just want to -- if you don't mind. Thank you.

1           Q     Certainly.  Maybe I'll try rephrasing it.  It  
2                     was an awkward question.  I apologize.

3                     In your experience there are cases where  
4                     your office is pursuing the forfeiture of real  
5                     property in circumstances where that real  
6                     property is by far the largest asset owned by the  
7                     owner of the property.

8           A     That's correct.  And there was some add-on to  
9                     your earlier question about access.  I would say  
10                    in the vast majority of cases, if not every  
11                    case, where the director seeks a preservation  
12                    order on real property, the director does not  
13                    seek that the homeowner or the person who  
14                    normally resides in the property vacate the  
15                    property.  Quite the opposite.  There are no  
16                    issues.  The only thing the director asks for is  
17                    the right of inspection during the course of the  
18                    proceedings.  So although a preservation order  
19                    may be placed on the property, the director is  
20                    not asking for -- that the property be vacated.

21           Q     Yes.  In the vast majority of cases preservation  
22                     orders in this province provide for the owner to  
23                     continue to enjoy the typical rights of  
24                     ownership with certain obligations to maintain  
25                     the property?



1           A     That's correct.

2           Q     Do you have a view as to whether the involvement  
3                 of defence counsel in judicial forfeiture cases  
4                 that are pursued brings an enhanced level of  
5                 fairness to the proceeding?

6           A     I think any time someone is represented,  
7                 certainly -- it's very rare that we see defence  
8                 counsel not involved in judicial forfeiture  
9                 proceedings. It happens. It's extremely rare.  
10            I know for myself, I know for counsel, we would  
11            certainly prefer to deal with counsel on the  
12            other side. In those cases where there is a  
13            self-respected litigant, I know that extra steps  
14            are taken to ensure that every fairness is  
15            afforded that self-represented litigant. So --  
16            but fortunately what we're seeing, at least in  
17            practice, is that in the vast majority of cases  
18            there is defence counsel on the other side.

19          Q     Thank you. What percentage of cases where you  
20                 pursue either administrative or judicial  
21                 forfeiture does the office realize some level of  
22                 forfeiture? So in what percentage of cases do  
23                 you actually end up having some success?

24          A     So I guess maybe we'll deal with administrative  
25                 forfeiture first. As I mentioned earlier, there

1           is a high rate of non-response from the interest  
2           holders, so the number changes over time. It  
3           can drop as low as, say, 80 percent, rise to  
4           90 percent. So depending on a point in time.  
5           But let's use an average number of, say,  
6           80 percent. So 80 percent of the admin  
7           forfeiture cases go to default in terms of --  
8           they go to administrative forfeiture. They  
9           administratively forfeit. So the remaining  
10          20 percent involve where there is a notice of  
11          dispute.

12                   And in those cases where there's a notice of  
13          dispute, in the majority of cases, judicial  
14          forfeiture proceedings are commenced. And in  
15          those cases where judicial forfeiture  
16          proceedings are commenced, a significant number  
17          go to default again. So we're back where we  
18          started. But in other cases where they don't go  
19          to default and the defendant wishes to  
20          participate, then those files are generally  
21          settled in a high volume. Very rare does it go  
22          to trial. I would say pretty much that  
23          remaining 20 percent that was never -- that was  
24          responded to is fully settled on some level.  
25          There is a distribution between -- of the net

1                   proceeds between the director and the defendant.  
2                   So that's the administrative forfeiture side.

3                   On the judicial forfeiture side, it is  
4                   extremely rare for the director to go to trial.  
5                   I understand that it's -- it is probably similar  
6                   to what takes place with normal civil law that  
7                   most files settle between plaintiff and  
8                   defendant. I understand that our metrics are  
9                   probably about the same as it is in normal  
10                  industry.

11                  The majority of files that we have on the  
12                  judicial forfeiture side will settle by consent  
13                  forfeiture orders, an agreement between the  
14                  plaintiff and the defendant to settle the file.  
15                  The next largest number would be those that go by  
16                  default, and the last very small conclusion would  
17                  be those that go to trial. But that's extremely  
18                  rare.

19                  Q    Is it fair to say in the vast majority of cases  
20                        your office realizes some level of forfeiture if  
21                        a proceeding is commenced?

22                  A    Yes, both obviously on the administrative side  
23                        and certainly on the judicial side. That's  
24                        correct.

25                  Q    In paragraph 60 of your affidavit -- and I

1                   should say the document that's up can be taken  
2                   down.

3                   And I don't need you to go to paragraph 60,  
4                   but you outline that since its inception the  
5                   Civil Forfeiture Office has obtained  
6                   approximately \$114 million in forfeited assets.  
7                   And you outline that 55 million of that was  
8                   distributed in crime prevention grants and  
9                   \$1.7 million went to victim compensation.

10                  A     That's correct.

11                  Q     Do I take it, then, that the remainder of the  
12                       114 million went to operating costs?

13                  A     So --

14                  Q     [Indiscernible] I'm missing.

15                  A     No, I think what you're saying is very accurate.  
16                       So the 114 million is where we sit today. We  
17                       have not issued grants for today for this year,  
18                       for this fiscal.

19                       So typically 50 cents on the dollar -- what  
20                       we've seen is 50 cents on the dollar of  
21                       everything the office has forfeited has gone back  
22                       out into the communities in the form of crime  
23                       prevention grants. So the 50 percent that has  
24                       not gone out in crime prevention grants is the  
25                       cost of running the office. So typically about

1                   35 percent of the expense for the year will go to  
2                   legal costs, 15 percent to run the office --  
3                   salary, paper, you name it -- and then 50 percent  
4                   goes out the door as crime prevention grants.

5                   So it's highly effective and efficient in  
6                   terms of the fact that it does not cost the  
7                   government per se to run the program and yet the  
8                   government communities within BC benefit by the  
9                   fact that 55 -- 50 cents on the dollar goes back  
10                  out into those communities

11                Q     Right. Now 114 million familiars over 15 years  
12                   is significant. But do you believe it's of a  
13                   significant -- a sufficient magnitude that it  
14                   would have any significant deterrent effect on  
15                   organized crime either operating or parking  
16                   their assets in this jurisdiction?

17                A     That's a large, macro question as to what is the  
18                   level of impact this is having. I can only  
19                   speak to what we've taken off the street. Is --  
20                   \$114 million in potential future drug purchases,  
21                   weapon purchases, does that make a difference.  
22                   I would say yes. To what degree, I'm not clear.  
23                   I think that between criminal forfeiture, civil  
24                   forfeiture, government programs that divert  
25                   young people out of gangs and support that, I

1 think there's various initiatives. We are  
2 simply one of those initiatives. The good news  
3 is the program is continuing to grow. It is  
4 continuing to take the proceeds and instruments  
5 off the streets and out of the communities, and  
6 invest back into the communities. What the  
7 macro impact is, I don't know.

8 Q You've talked about the fact that the referrals  
9 to your office sort of mirror criminal  
10 organizations with a high volume of low-level  
11 referrals and then a moderate volume of  
12 medium-level referrals and a much smaller volume  
13 of high-value referrals. And you're referred to  
14 the fact that these low-volume referrals often  
15 go by way of default because they're just the  
16 cost of doing business. And I gather the reason  
17 that we've got this sort of pyramid shaped  
18 referral relates to the nature of policing and  
19 the sort of high volume of low-level arrests and  
20 the much lower volume of high-level arrests. Is  
21 that fair?

22 A I think you're on the right track. A lot of the  
23 referrals we're receiving, the high volume,  
24 low-value referrals, are not coming from special  
25 sections. They're coming from uniformed

1           officers doing their day-to-day work, doing  
2           smart police work, pulling the vehicle over,  
3           forming the grounds, pulling the evidence  
4           together and then proceeding from there, looking  
5           to potentially make a submission to Crown for  
6           criminal charges and potentially criminal  
7           forfeiture and that file making its way to us.  
8           So you're right, there is more uniforms out on  
9           the street conducting that work, that good  
10          police work that's needed to -- where you're  
11          dealing with the public directly and, as I said,  
12          where often the evidence, the drugs, the  
13          weapons, the cash is all in proximity to each  
14          other. It's very transparent what's taken  
15          place. Whereas as you move up in the structure,  
16          more sophisticated tools are required. These  
17          are specialized sections with surveillance  
18          requirements, tracking warrants, and it's much  
19          more prolonged.

20                 So a typical administrative forfeiture  
21          referrals from a uniform officer is something  
22          that happens over, you know, night and is  
23          referred to us a week later. A typical  
24          medium-level file is one that is worked on for  
25          maybe a month by a section and referred to us

1                    maybe a week or a month later. But complex  
2                    files, those low-volume, high-value files, those  
3                    are long and prolonged investigations. They can  
4                    go months, if not over a year, to get done  
5                    involving many, many officers and a lot of  
6                    sophisticated techniques. So it would be fair  
7                    to say that in those cases more work needs to be  
8                    done to tie in with these, and they tend to be  
9                    proceeds files.

10                  Q    Okay. Is it fair to say that the targeting and  
11                    ultimate forfeiture of these high value assets  
12                    would go a significant degree further in terms  
13                    of disrupting criminal organizations and  
14                    deterring them from placing their assets in this  
15                    jurisdiction as compared to the lower and  
16                    medium-value targets?

17                  A    I mean, based on my experience as an officer --  
18                    a former police officer and as the director  
19                    here, I would say yes, it does disrupt when the  
20                    head of an organization is taken down. It  
21                    doesn't mean that criminal activity is going to  
22                    stop across the province, but it does mean it  
23                    does have an impact. It does cause the  
24                    organization to have to break apart and  
25                    restructure. And I think the police could



1                   probably give you a better sense of what that  
2                   looks like. But generally speaking yes, there  
3                   is an impact to those organizations when the --  
4                   when there are convictions and when the assets  
5                   are forfeited, there is an impact.

6           Q        Cryptocurrency is something that is coming into  
7                   greater focus in recent years. Has your office  
8                   had occasion to pursue cases where the asset  
9                   being sought through the litigation or  
10                  administrative forfeiture was cryptocurrency?

11          A        Yes. Yes, we have.

12          Q        I wonder if you can address the commission on  
13                   any challenges that arise in cases where you're  
14                   pursuing cryptocurrency.

15          A        Yeah, and there are many challenges. We're  
16                   dealing with something that's very, very hard to  
17                   understand at the best of times. One of the  
18                   challenges, of course, is where is the asset.  
19                   Because you're dealing with the assets being  
20                   located on servers somewhere in the world. So  
21                   payments -- obviously cash has to go in to buy a  
22                   crypto, and then at some point in time you want  
23                   to bring it out again to purchase the asset or  
24                   turn it into cash.

25                   So it would be fair to say that we're in the

1           early days of understanding how the assets are  
2           stored when they're in an electronic wallet.  
3           How does the office -- how does the Civil  
4           Forfeiture Office take the necessary steps to  
5           secure that, and where -- how do you define  
6           where the wallet is. So we know how to define  
7           where a bank account is. It's where the person  
8           goes into a bank and opens the account. But  
9           where is an electronic wallet stored, and does  
10          the office -- is it considered in British  
11          Columbia.

12                        So I think those are sort of early-day  
13           questions. I don't think we have a sufficient  
14           number of files under our belt, but I can say  
15           from the initial probes we've done with  
16           referrals we realize we're dealing with a great  
17           deal of complexity. We also realize that  
18           organized crime is using cryptocurrency.  
19           Absolutely.

20           Q     Do you within your office -- do your staff and  
21           the counsel that are dedicated to pursuing these  
22           files have in your view sufficient training and  
23           expertise to pursue files where cryptocurrency  
24           is the asset being sought?

25           A     Not in house, but certainly what we do is

1                   whether -- when you need an expert, you go out  
2                   and you go find those experts, and that's what  
3                   we've done. We have reached out not just in the  
4                   province but outside the province, outside the  
5                   country to understand the nature of it. The US  
6                   has far more experience. They were the ones  
7                   that initiated the massive silk road  
8                   investigations, one of the largest  
9                   cryptocurrency investigations in North American  
10                  history. And so certainly we have seen touch  
11                  points of silk road here in British Columbia,  
12                  and we have reached out to our colleagues  
13                  elsewhere to get a better understanding of what  
14                  the nature of forfeiting those proceeds might  
15                  look like.

16                Q    Thank you. You've told us that your office  
17                    doesn't employ investigations or forensic  
18                    accountants at least on staff. Do you have the  
19                    opportunity to take advantage of police  
20                    resources to, for example, conduct surveillance,  
21                    question witnesses or pursue other avenues of  
22                    investigation using open source or other  
23                    avenues?

24                A    No. So the office does not in any way make a  
25                    request, nor would we make a request for the

1                    police to do work on behalf of the director.  
2                    But we would employ a forensic accountant on our  
3                    own, as you said, that's not on staff. We would  
4                    engage -- in consultation with counsel we would  
5                    look at engaging a forensic accountant,  
6                    attaching that accountant to a file. That does  
7                    take place. Certainly on the most complex files  
8                    at the top of the pyramid, we will do that so we  
9                    have a better understanding of the tracing  
10                   that's needed and that expertise.

11                                But the work -- the only thing we might go  
12                                back to the police for would be in the event we  
13                                become aware of the existence of another  
14                                investigation that may have been concluded and is  
15                                relative to the existing proceedings, we will ask  
16                                that police department for their file, a copy of  
17                                their file in support. And then it's up to the  
18                                police department whether it chooses to provide  
19                                that file or not.

20                    Q    Okay. You've told us that the act provides for  
21                                you to seize assets located within British  
22                                Columbia that were generated by crime committed  
23                                elsewhere, both in other jurisdictions in Canada  
24                                and internationally?

25                    A    That's correct.

1           Q     But that the vast majority of referrals you  
2                    receive because of the referral model relate to  
3                    crimes committed within this jurisdiction?

4           A     I don't know if that's because of the referral  
5                    model, but it would be fair to say that what  
6                    we're seeing across the country and certainly  
7                    here is the majority of referrals come from  
8                    within the province.

9           Q     They come from police detachments operating in  
10                   British Columbia --

11          A     That's correct.

12          Q     -- investigating crime in British Columbia.

13          A     That's correct.

14          Q     So inevitably the referrals you receive relate  
15                   to criminal activity in British Columbia?

16          A     That's correct.

17          Q     You're I'm sure aware that there are significant  
18                   concerns in this province about the possibility  
19                   that illicit funds from crimes committed both in  
20                   Canada and abroad are parked in, for example,  
21                   the British Columbia real estate market and that  
22                   British Columbia institutions, such as casinos  
23                   or money services businesses, have been used to  
24                   facilitate the laundering vast quantities of  
25                   cash in this province. But aside from seeking

1           to forfeit residences or assets that are  
2           identified through investigation of British  
3           Columbia crime, has your office undertaken any  
4           efforts to get at the heart of this problem,  
5           disgorge illicit wealth that's parked in British  
6           Columbia or being laundered through sectors of  
7           the BC economy?

8           A     So it would be fair to say the foundation of  
9           where we go in our proceedings is based on the  
10          file referrals we get from police. So that's  
11          the starting point. And we have received  
12          massive files from the police based on criminal  
13          investigations done here in BC where money has  
14          been funneled into real estate. And we have  
15          received file referrals from external agencies  
16          where the net proceeds of crime have been  
17          funneled into real estate in British Columbia.  
18          So we have extant actions going on in both  
19          cases.

20                 In terms of sort of the broader question of  
21          how -- do we have a sense of are we supporting  
22          the broader initiative of combatting money  
23          laundering. Based on the files we receive, the  
24          answer would be yes. We are pursuing that to the  
25          nth degree, but we are not a proactive

1                   investigative agency; we are essentially a  
2                   reactive investigative agency. It's based upon  
3                   the foundation of the referral that is sent to  
4                   us.

5           Q       So to the extent international organized crime  
6                   is parking the proceeds of its criminal activity  
7                   in British Columbia, unless this comes to you  
8                   through a referral primarily from a BC-based  
9                   police agency, this is not something that's  
10                  going to come into the purview of your office?

11          A       That's correct. Again, just adding that  
12                  qualifier that when a foreign agency is aware  
13                  that the proceeds have been parked in BC, that  
14                  foreign agency can reach out to us directly or  
15                  alternatively can get our contact information  
16                  through the RCMP or through a police department  
17                  here in BC.

18          Q       How many high-value referrals has your office  
19                  received from foreign agencies, say, over the  
20                  past five years?

21          A       Less than a handful. But -- they're high-value  
22                  items, but they're less than a handful.

23          Q       Do you consider that the mandate of your office  
24                  includes disrupting organized crime operating in  
25                  British Columbia?

1           A     Well, the focus is on disgorging and forfeiting  
2                    the proceeds of unlawful activity, deterring the  
3                    use of instruments to create proceeds or cause  
4                    bodily harm or death and to fund crime  
5                    prevention and victim compensation. That is the  
6                    mandate, the objectives, the goals of the  
7                    office. In doing those things does that  
8                    accomplish the goals of disrupting crime? I  
9                    believe it does, but, you know, that's again a  
10                   macro question which is difficult to answer in a  
11                   broad sense.

12           Q     Does your mandate include and does your office  
13                    seek to make British Columbia a jurisdiction  
14                    that is less desirable for organized crime as a  
15                    jurisdiction to place its assets?

16           A     Again, that's a bit of a macro question. I  
17                    would see that we are -- we have a very narrow  
18                    focus. The focus is making sure that the police  
19                    are aware of our existence and can send us  
20                    files, that we can forfeit the proceeds and  
21                    instruments and that we do it in a fair and  
22                    transparent way in accordance with the act and  
23                    in accordance with civil roles. If in fact that  
24                    supports the broader initiative, that's great,  
25                    but we're a very narrow focused organization and



1 agency.

2 Q Thank you. In your affidavit you speak about  
3 powers police officers have such as the power to  
4 get search warrants. And you note that your  
5 office does not have the same powers as police  
6 officers to pursue those. It's fair, is it not,  
7 that you do have the ability, like any litigant  
8 does, to conduct investigations to gather  
9 evidence to assist them in the prosecuting of  
10 their case?

11 A Yes, that's correct.

12 Q And you can do so through open source avenues or  
13 through certain government databases that you  
14 have access to?

15 A That's correct.

16 Q And there's nothing that prevents you from  
17 hiring investigators, analysts or forensic  
18 accountants to assist you in pursuing  
19 investigations to further the prosecution of a  
20 case?

21 A I just want to clarify the question. Is that to  
22 launch an investigation cold from square one or  
23 are you saying to take a basic referral and take  
24 it where it needs to go? I wasn't clear about  
25 the question.

1           Q     Take a basic referral and take it where you  
2                    think it needs to go.

3           A     So the answer is yes, and I'll just qualify one  
4                    thing with respect to the investigators. I  
5                    don't see an issue employing analysts. I don't  
6                    see an issue employing forensic accountants.  
7                    That is currently being done on our files.

8                    I would say that, again, it depends on what  
9                    the scope of the investigators' work would be.  
10                  So if you're talking about we're sending  
11                  investigators out to do surveillance, that opens  
12                  up a whole Pandora's box of things that needs to  
13                  be addressed where we would have to examine  
14                  whether it's appropriate for the office to do  
15                  that and what the scope of that work would be.

16          Q     I wonder if you could address for the  
17                  Commissioner what some of those considerations  
18                  are.

19          A     Well, obviously if you're putting investigators  
20                  out on the street to conduct surveillance,  
21                  there's a whole host of things that you will  
22                  have to look at, which is are they peace  
23                  officers; what powers do they have; what  
24                  protection do they have; what infrastructure do  
25                  they have; when they -- do these seize things;

1                   when they seize things, do they become exhibits.  
2                   So you're almost photocopying very much a  
3                   policing model into the office. You have to  
4                   have that infrastructure. And is that really  
5                   what -- and also one of the things is you don't  
6                   want to be -- you don't want to be stepping  
7                   on -- and I'll use that word "stepping on"  
8                   ongoing other investigations that you may not be  
9                   aware of that police departments are doing.

10                   So it's easy for a police -- one police  
11                   department to know what another police  
12                   department may be working on because they have  
13                   that natural integration, they can see what's  
14                   going on on PRIME, they have a sense that they  
15                   won't step on another investigation. If the  
16                   office goes down this sort of investigative  
17                   capacity issue, we have to be careful that we  
18                   aren't doing that. We don't want to ever be in  
19                   a position where we're stepping on an ongoing  
20                   criminal investigation. That's very important  
21                   to us. And so I think we -- there's going to  
22                   have to be a lot of examination of what the  
23                   scope and framework would be for an  
24                   investigative capacity for the office.

25                   Q     Thank you. You mentioned in the -- sort of in

1           the preface to answering that question you  
2           sought to clarify whether I was talking about a  
3           referral or a self-generated file. And you've  
4           been very clear your evidence today that your  
5           office, it seems like under no circumstances,  
6           will self-refer. Do I -- have I understood your  
7           evidence?

8           A    Yes. Yes, you have. We do not initiate a civil  
9           forfeiture administrative or judicial  
10          proceeding. Everything comes from a referred  
11          file. Now that said, in the last few years  
12          we've seen an uptick in the number of requests  
13          from the public to say, I have criminal  
14          information; I have information; you need to go  
15          after these assets, and long letters containing  
16          large amounts of information that didn't really  
17          exist five years ago. And so what we're doing  
18          in those cases is we are informing the person  
19          that this is your police agency of jurisdiction;  
20          we suggest and we recommend that you contact  
21          your police department and inform them of that.  
22          And we in turn will reach out to that police  
23          department to say you can expect a call, we  
24          think, from this individual who has articulated  
25          this to us. But that in no way will cause us to

1                   initiate civil forfeiture proceedings.

2           Q       I wonder if you can explain to the Commissioner  
3                   your rationale for not self-referring in  
4                   circumstances where you have information that  
5                   might ground an action.

6           A       Well, I think I'll go back to sort of what we  
7                   just talked about earlier, which is in order to  
8                   sort of qualify the information that's provided  
9                   that's essentially -- information from the  
10                  public is sort of information received from a  
11                  Crime Stoppers or information received from a  
12                  confidential informant. On its face it has -- I  
13                  don't want to say no value, but it has limited  
14                  evidentiary value. It is simply a statement, a  
15                  broad statement. What the police do when they  
16                  receive confidential informant information or  
17                  Crime Stoppers tip is that launches them to go  
18                  and gather the evidence to see if it can be  
19                  corroborated.

20                         So I would go back to saying if we were to  
21                         be a self-generating office when that  
22                         information was received, you would need to go  
23                         and take all those steps, investigative steps,  
24                         to gather the evidence to determine whether or  
25                         not there's merit to what the person asserted.

1           Q     You've made reference in your evidence to some  
2                   relatively new powers that have been provided to  
3                   your office through amendments to the act.

4           A     I did. The two new ones were the asset tracing  
5                   provisions and the rebuttable presumption  
6                   provisions.

7           Q     I wonder if you can outline those legislative  
8                   developments for the Commissioner.

9           A     Certainly. So maybe we'll start with the asset  
10                  tracing ones. So this is to target the top  
11                  parts of the organization that we talked about  
12                  in terms of the pyramid. One of the things the  
13                  director was really not doing -- I'm looking for  
14                  a word here -- was maybe squeezing the juice out  
15                  of the orange is being able -- when you receive  
16                  a referral to actually determine what is out  
17                  there in those sophisticated criminal  
18                  organization.

19                         And so what we needed to do was the director  
20                         needed to gather the basic information in terms  
21                         of bank information, which is obviously where the  
22                         proceeds are often navigating their way through  
23                         but also the purchase of high-value items such as  
24                         vehicles. So the director now has a power to  
25                         deliver a notice to a financial institution under

1 a form 5, and that form 5 compels the financial  
2 institution to deliver certain non-financial  
3 information to confirm the existence of a bank  
4 account so that the director is not wasting  
5 valuable time or the court's time in pursuing  
6 closed bank accounts.

7 So it simply confirms the existence of the  
8 account, open or closed, whose name it's in, and  
9 the address of the account. So the basic  
10 information that would be required to go to a  
11 court and say to the court, we wish to restrain  
12 something and it's not any and all bank accounts;  
13 it's a specific account held by this individual  
14 that is an active account. So it informs the  
15 court, it informs the director and informs the  
16 director's counsel that we can make better  
17 decisions as we pursue the tracing of these  
18 proceeds. We're not tracing closed accounts;  
19 we're tracing money in open accounts.

20 And if we're satisfied that there are active  
21 accounts that are open, then we can move to the  
22 next step, which is seeking an order from the  
23 court -- and that's before, during or after  
24 proceedings have been commenced -- in order to go  
25 in and look at the financial information. And,

1                   again, a case will have to be made before the  
2                   court that that is something that is appropriate  
3                   under the circumstance based on the director's  
4                   evidence at hand. And if the court grants that,  
5                   then the director can now look at the financial  
6                   information going on.

7                   The concern with bank accounts is very much,  
8                   as you're no doubt aware, that the instantaneous  
9                   transfer of wealth is a major inhibitor to the  
10                  program. If real estate and vehicles can be sold  
11                  in days, banks can be emptied in seconds. So  
12                  obviously it's important for the director to be  
13                  able to look at this in a way that doesn't  
14                  facilitate the assets being dissipated. So these  
15                  new asset tracing provisions allows the director  
16                  to move forward and analyze the information  
17                  properly. And if appropriate, to seek an order  
18                  from the court not only in looking at the  
19                  information but also restraining the assets so  
20                  they can't be dissipated, sent out of province  
21                  where the director has no ability to secure  
22                  forfeiture.

23                  So that's -- I don't know if you have any  
24                  questions on the asset tracing before I move on  
25                  to the next --



1           Q     Yeah, just a couple of questions on the asset  
2                   tracing. It's been in place -- is it a little  
3                   over a year now?

4           A     Correct.

5           Q     In how many cases has your office taken  
6                   advantage of those provisions?

7           A     So I don't have, again, the exact numbers, but  
8                   for sure the form 5 and form 6 notices which  
9                   have been issued, there have been quite a number  
10                  issued. And so we -- the directors have now  
11                  familiarized themselves with the process. The  
12                  good news is the response from either the banks  
13                  or the registered interest holders is, I  
14                  believe, a hundred percent compliant. So the  
15                  banks have been highly responsive and the  
16                  registered interest holders have been highly  
17                  responsive responding within the appropriate  
18                  time.

19                         With respect to the court orders there have  
20                         been far less of them done, but they have been  
21                         done successfully. They're a little more  
22                         complicated, but the office has pursued and  
23                         received some feedback from the court as to how  
24                         the process is to be integrated. So again it's a  
25                         new form that the court is seeing for the first

1                   time and the court is going to provide feedback  
2                   as to the structure and framework for making  
3                   future applications.

4           Q       Based on your limited experience so far, to what  
5                   extent do you think these provisions are going  
6                   to assist your office with those high-level  
7                   targets and assets to, in your words, squeeze  
8                   the juice from the orange?

9           A       I think it's -- we're early days, but it'd fair  
10                   to say I think we're on the right track. I  
11                   think what we're again struggling with is not  
12                   that the tools aren't appropriate. The tools  
13                   are bang on. What was provided to us was  
14                   working and is responsive both from the notice  
15                   perspective of the banks and the registered  
16                   interest holders responding and the courts  
17                   confirming this. So that's the good news.

18                               The bad news is -- which we discussed  
19                   earlier, is the more you uncover, the more work  
20                   you have, and so you need the resources to be  
21                   able to take on that work. So I think the  
22                   directors and counsel are doing their best for  
23                   now. But that is just the nature of proceeds  
24                   work is you need the bandwidth to continue to  
25                   pursue.

1           Q     Thank you. Does your office have access to  
2                   information regarding declared income from any  
3                   source other than through the discovery process  
4                   that comes with litigation? And I'm thinking  
5                   perhaps through the province's records of  
6                   declared income.

7           A     No, we do not. Our exclusive way of securing a  
8                   baseline and an understanding of an individual's  
9                   income or a corporation's income is through the  
10                  discovery process.

11          Q     Would the ability of your office to access  
12                   information regarding declared income assist you  
13                   in fulfilling your function?

14          A     Very much. I think any time we have an  
15                  understanding of what the reported income is of  
16                  an individual or corporation, it assists the  
17                  office with understanding the baseline of what  
18                  we're dealing with as to what is the legitimate  
19                  or so-called declared legitimate income.

20          Q     And does your office receive information  
21                   directly from FINTRAC? Is it able to receive  
22                   information from FINTRAC?

23          A     So the short answer is no. We have made  
24                  inquiries with FINTRAC, and the short answer  
25                  from them is we do not meet the test of an

1                   entity that they could provide that information  
2                   to as structured. It's not to say whether or  
3                   not they want to or not. It's just the way the  
4                   legislation is structured at the federal level  
5                   that we would not meet that test. That said,  
6                   when police departments on their own seek to  
7                   obtain these FINTRAC reports pursuant to their  
8                   investigations, FINTRAC has taken no position  
9                   and has no issue with the report being provided  
10                  as part of the referral package from the law  
11                  enforcement agency to the Civil Forfeiture  
12                  Office.

13                Q     So to the extent that FINTRAC disclosure is  
14                    contained within the police investigative file  
15                    it can flow -- or has flow flowed to you?

16                A     That's correct.

17                Q     And is it common that you see this in police  
18                    referral files or is it an unusual feature?

19                A     Certainly never at the bottom of the pyramid.  
20                    Infrequently at the top and at the medium  
21                    levels. It does happen, but it's infrequent.

22                Q     And in those small number of files where you  
23                    have had access to disclosures from FINTRAC, how  
24                    helpful has that information been?

25                A     Very helpful. It is a treasure trove of

1 information that assists our understanding of  
2 the activity you would not normally see. So it  
3 gives you insight into something that is not on  
4 the surface, and it is extremely helpful.

5 Q Would the ability of your office to access  
6 financial intelligence of the type you've seen  
7 in FINTRAC disclosures assist you in fulfilling  
8 your mandate?

9 A Certainly on the proceeds and instrument  
10 tracing. Absolutely.

11 Q Through your office -- we've talked about the  
12 fact and you've given evidence to the  
13 Commissioner about the fact that the vast  
14 majority of files you pursue are predicate  
15 offences committed within British Columbia,  
16 largely drug offences.

17 A That's correct.

18 Q How many files has your office pursued where the  
19 underlying offence grounding the action is money  
20 laundering?

21 A None I can think of. Money laundering is, for  
22 me and for the office is simply the result of  
23 the predicate offence. So you have drug  
24 trafficking. The drug trafficking generates  
25 cash. The cash has to go somewhere. It goes

1                   into the financial system or it goes into an  
2                   asset. You have the money laundering taking  
3                   place at that point. So money laundering is the  
4                   downstream event. It's not the initial event.

5           Q       We've heard some evidence about professional  
6                   money launderers who aren't themselves involved  
7                   in predicate offences but instead are involved  
8                   in money laundering for criminals or criminal  
9                   organizations. Do I take it from your answer  
10                  that to date at least your office has not sought  
11                  to disgorge assets from a professional money  
12                  launderer or money laundering operation?

13           A       Not entirely. There have been a small number of  
14                   referrals where unfortunately the assets to seek  
15                   forfeiture of were not there, but the case that  
16                   was referred was -- as you've articulated, it  
17                   was -- the target was not the drug trafficker  
18                   but the person facilitating the transfer of  
19                   wealth from Canada into the US. And that was  
20                   the general nature of the investigation. That  
21                   he is a money launderer, he is not a drug  
22                   trafficker, but he is connected to the money  
23                   laundering component. He's the financial arm of  
24                   the pyramid that sits to the side and doesn't  
25                   get his hands dirty with the drug trafficking.

1                   So the challenge in that case was not that  
2                   it wasn't an excellent file. It's that when we  
3                   went looking for that person's assets, what the  
4                   police and what we were able to identify was the  
5                   assets weren't there.

6           Q       Did you in that case engage analysts and  
7                   forensic accountants to do a deep dive with a  
8                   view to ascertaining whether that individual had  
9                   within British Columbia other assets that might  
10                  be targeted?

11          A       Well, you raise sort of a second issue which is  
12                  a really important issue, which is we typically  
13                  think if we can target the individual looking  
14                  for proceeds and how the money has been  
15                  laundered by that person's name or that person's  
16                  direct identify through a corporation that we're  
17                  somehow going to find the wealth that's been  
18                  hidden. As I talk about -- as I mentioned  
19                  earlier, the sophisticated criminals are  
20                  insulating themselves by the use of nominees.

21                        So it's insufficient simply to go hunting  
22                        and looking for that person in a registry with  
23                        the hopes that the house, the cars and the  
24                        businesses are under that person's name. That's  
25                        certainly not what we're seeing over the past

1 decade, and more so in the past five years is  
2 we're seeing the sophisticated employment of  
3 nominees. And unless you can anchor yourself  
4 through the course of your inquiries to a --  
5 that nominee, you may be unsuccessful in  
6 tracking the wealth of the individual that was  
7 the original target of your investigation.

8 Q If your office had access to beneficial land and  
9 corporate registries, would that assist you in  
10 accomplishing that?

11 A I think it would help. I think it would  
12 definitely help. Again, the data is only going  
13 to be helpful if it's accurate and it hasn't,  
14 again, been compromised and it's hidden. So it  
15 would have to be reliable and verifiable. But  
16 if it is, then absolutely it would definitely  
17 make a difference.

18 MR. MCGOWAN: Okay. Madam Registrar, I wonder if we  
19 might have paragraph 57 of the affidavit  
20 displayed. There we go. Page 11.

21 Q Okay. So I'm just going to read to you  
22 paragraph 57. You say:

23 "Additional resources will be required as  
24 the Civil Forfeiture Office continues to  
25 evolve from an entity that initially



1                   reactively focused on instrument-based  
2                   cases to an entity that proactively  
3                   focuses on proceeds based money-laundering  
4                   cases. In particular, the Civil  
5                   Forfeiture Office will need individuals  
6                   who are trained in conducting financial  
7                   investigations."

8                   So does this -- you've seen that -- obviously  
9                   you've seen that paragraph. You put it in your  
10                  affidavit. Does this paragraph evidence an  
11                  intention to transition or at least add to the  
12                  complement of cases you pursue, money laundering  
13                  cases, and to add to the complement of resources  
14                  you have investigators to assist you in pursuing  
15                  such cases?

16                A    That's correct. So we're essentially trying to  
17                  be responsive to the files we receive. So we  
18                  have built out an office, both by resource and  
19                  by systems, that can accommodate the high volume  
20                  of administrative forfeiture files being  
21                  referred to us. So we build out the  
22                  infrastructure to allow that. Similarly, the  
23                  files we've been most recently receiving over  
24                  the last five years have transitioned, as I  
25                  mentioned earlier, from these reactive

1 instrument cases to, here's the foundation of a  
2 good proceeds case which probably involves money  
3 laundering. There is the -- there is a clear  
4 element that you have a starting point on the  
5 file. And again, to be responsive to those  
6 files, you need to have the tools, the legal  
7 tools, which we now have, but you're also going  
8 to need the resources to do that work.

9 So similarly -- the way we hired additional  
10 staff to deal with administrative forfeiture, we  
11 will likely have to turn our mind to getting the  
12 right staff in place to deal with these -- this  
13 latest evolution as files continue to change as  
14 they come to us. Again, the latest evolution  
15 are these more proceeds and money-laundering  
16 focused files.

17 Q Okay. So is the idea now where historically if  
18 10 kilograms of cocaine were seized from a  
19 vehicle or a residence you might seek to forfeit  
20 the vehicle or the residence as an instrument --  
21 well, let me ask you this. Historically, going  
22 back in time, was that sort of the approach that  
23 was taken with referrals in your office?

24 A Very much. It was careful what's being referred,  
25 A, B and C, and we will forfeit A, B and C. And

1                   if during preliminary we identify D, then we'll  
2                   certainly add that. But there were very  
3                   reactive instrument cases.

4                   Today what we're seeing is the police  
5                   departments are in their search warrants and what  
6                   they're seeking is not simply the drugs, the  
7                   score sheets, but there is this higher level of  
8                   sophistication to understand that the real gain  
9                   is pursuing the proceeds, the money laundering.  
10                  Where it is going; how are they connected to  
11                  other corporations; why are these documents here.  
12                  So these -- this information is now being  
13                  included in the information to obtains, so the  
14                  officers are entitled to secure that information  
15                  in furtherance of criminal forfeiture  
16                  investigations, so -- and proceeds  
17                  investigations.

18                  So when that -- when there's an indication  
19                  that they won't be pursuing criminal forfeiture,  
20                  then that information in its entirety can come to  
21                  the office and we will see that there is bank  
22                  accounts, corporations and other things that  
23                  don't on the surface appear to be associated with  
24                  the individual. And that gives us sort of a  
25                  starting point.

1                   That did not exist a decade ago, that sort  
2                   of starting point for the office. Today there is  
3                   a much better jumping-off point for the office in  
4                   these proceeds files than there was a decade ago.

5           Q       Today -- or is it the hope going forward that a  
6                   referral of, say, a 10 kilogram fentanyl bust  
7                   will be the starting point of a tracing  
8                   investigation by your office with a view to  
9                   identifying as many assets to pursue as  
10                  possible?

11          A       Well, it would be fair to say that we will apply  
12                   a deeper examination on the files that appear to  
13                   be closer to the top of the pyramid.  
14                   Absolutely.

15          Q       I wonder if you can address the Commissioner on  
16                   what additional tools or resources your office  
17                   is going to need moving forward if it hopes to  
18                   transition, as you indicate in paragraph 57, to  
19                   a more proactive agency focused on proceeds  
20                   based money-laundering cases.

21          A       Well, as you had mentioned earlier, and I think  
22                   it's important, we need the analysts and  
23                   forensic accountants. Now, again, forensic  
24                   accountants can be outsourced and we have  
25                   outsourced and they are working extremely well.

1                   Would there be a value at some point in time to  
2                   bringing them in house similar to what the IPOCs  
3                   had back in the day? The answer is yes, that  
4                   may actually happen. Again, it's developing  
5                   that expertise and keeping that expertise to  
6                   conduct financial investigations. The idea  
7                   behind the IPOCs was to build out a strong small  
8                   group of experts that conduct these  
9                   investigations. The CFO similarly is going down  
10                  the path of trying to build out that expertise  
11                  that can successfully conduct civil forfeiture  
12                  proceedings where money laundering techniques  
13                  were employed to hide the proceeds of the  
14                  unlawful activity.

15                         So I think we've covered in terms of that's  
16                         sort of the next iteration. If you're saying  
17                         what else is out there, it's sort of hard to  
18                         guess what else is out there until you've sort  
19                         of covered that next natural step. So the first  
20                         step was do you get the tools in place. The  
21                         government has provided us with the legislative  
22                         tools. Now to get the resources, now to run the  
23                         files, and then to determine wow, we're still  
24                         missing this. And it's at that point in time I  
25                         could probably add to the list.

1           Q     Thank you. That document can come down.

2                     And, sir, I wonder, you've talked about some  
3                     recent legislative amendments. I wonder if  
4                     there are any additional amendments to the  
5                     legislation you think ought to be considered  
6                     with a view to enhancing the capacity or  
7                     abilities of your organization?

8           A     So I apologize, but I did not move on to sort  
9                     of -- we talked about asset tracing, and I  
10                    failed to move on sort of the second part, which  
11                    is the --

12          Q     I think I [indiscernible] --

13          A     -- rebuttal presumptions. I apologize for that.

14                    So the purpose of the asset tracing  
15                    provisions was to attack the top of the pyramid  
16                    and to go after them. They're the ones that  
17                    really have the wealth. They're the ones that  
18                    are insulated. The purpose of the rebuttable  
19                    presumptions was conversely to go after the  
20                    bottom of the pyramid. Those people that are on  
21                    the streets every day in the communities selling  
22                    drugs, with guns, with a sophisticated cellphone  
23                    system where they're constantly going around and  
24                    delivering literally drugs to the house. So the  
25                    rebuttable presumptions were designed to take on

1           the street crews and to go after those. And what  
2           the police were facing problems were is that the  
3           cars weren't even stopping. The police sirens  
4           would go on and they don't care; out they go.

5           So the presumptions were designed to deal  
6           with that level. And basically there are now new  
7           presumptions where cash that is valued in excess  
8           of \$10,000 found in proximity to drugs, there is  
9           a rebuttable presumption that, unless anything  
10          else is brought forward, that cash is related to  
11          the activity of trafficking drugs. As is the  
12          car, but certainly as is the cash.

13          As well, there's the presumption that if  
14          there are unlawful firearms in a vehicle or drug  
15          paraphernalia in a vehicle that vehicle is  
16          presumed to be -- again on a rebuttable level  
17          that it is an instrument of unlawful activity.

18          And similar to those vehicles that fail to  
19          stop, which has become a major problem and major  
20          threat to the communities because they take off  
21          at high speed, vehicles that do not pull over for  
22          the police and are causing the risk of serious  
23          bodily harm or death to those in the general  
24          public, those are similarly assumed to be  
25          instruments of unlawful activity similar to what

1 the gangs use.

2 So again a very sophisticated answer for a  
3 very concentrated problem at the bottom end of  
4 the pyramid. So the asset tracing at the top,  
5 the rebuttal at the bottom.

6 Q And are there any further legislative amendments  
7 that you think ought to be considered with a  
8 view to enhancing the abilities of your office  
9 to fulfill its mandate?

10 A We're exploring them right now. We're very much  
11 in the early stages, so I really can't comment  
12 on them because it's so early. We're just  
13 fleshing them out. But suffice it to say that  
14 the government has been very supportive of  
15 making sure that from a legislative perspective  
16 the office has what it needs to get the job  
17 done. So we feel fully supported in that  
18 regard.

19 Q Yes. I don't want you to talk about your  
20 internal deliberations with counsel but simply  
21 your own views as to are there maybe not  
22 specific provisions, but areas of legislative  
23 amendment that might, as I say, assist your  
24 office in fulfilling its mandate?

25 A I can't think of something that's sort of



1                   tangible where we can say right now this is the  
2                   piece of the puzzle that's missing. So I don't  
3                   have any feedback in that regard.

4           MR. MCGOWAN: Thank you. Mr. Commissioner, I am  
5                   close to or at the conclusion of my questions.  
6                   I wonder if this might be a convenient time for  
7                   the break.

8           THE COMMISSIONER: Yes. We'll take 15 minutes,  
9                   Mr. McGowan. Thank you.

10          THE REGISTRAR: This hearing is adjourned for a  
11                   15-minute recess until 11:51 a.m.

12                   **(WITNESS STOOD DOWN)**

13                   **(PROCEEDINGS ADJOURNED AT 11:36 A.M.)**

14                   **(PROCEEDINGS RECONVENED AT 11:50 A.M.)**

15                                           **PHIL TAWTEL, a witness**  
16                                           **for the commission,**  
17                                           **recalled.**

18          THE REGISTRAR: Thank you for waiting. The hearing  
19                   is now resumed. Mr. Commissioner.

20          THE COMMISSIONER: Yes. Thank you, Madam Registrar.  
21                   Yes, Mr. McGowan.

22          MR. MCGOWAN: Yes, Mr. Commissioner.

23                   Mr. Tawtel, thank you for taking the time to  
24                   answer my questions. Mr. Commissioner, I don't  
25                   have any further questions for this witness.

1 THE COMMISSIONER: Thank you.

2 THE WITNESS: Thank you.

3 THE COMMISSIONER: I'll now ask Ms. Roos on behalf of  
4 the BC Lottery Corporation to ask her questions.  
5 And I understand Ms. Roos has been allocated  
6 10 minutes.

7 MS. ROOS: Thank you, Mr. Commissioner. I have no  
8 questions for the witness.

9 THE COMMISSIONER: Thank you. Ms. Dickson on behalf  
10 of the Criminal Defence Advocacy Society, who  
11 has been allocated 20 minutes.

12 MS. DICKSON: Thank you, Mr. Commissioner.

13 **EXAMINATION BY MS. DICKSON:**

14 Q Mr. McGowan comprehensively covered most of the  
15 areas I intend to explore, but I hope,  
16 Mr. Tawtel, that you're able to clarify a few  
17 points for the Commissioner.

18 You indicated that a vast majority of  
19 referrals that result in further action by your  
20 office are channelled through the administrative  
21 scheme.

22 A That's correct.

23 Q And that includes the low- to medium-value  
24 assets, the majority of which you've indicated,  
25 as I understand your evidence, are the low-value

1 assets.

2 A That's correct.

3 Q And as I understand your evidence, 80 percent of  
4 those files result in forfeiture simply because  
5 no notice of dispute is filed in response?

6 A Approximately, yes. That figure varies, but I  
7 would say that's correct.

8 Q And so when this occurs obviously the cost  
9 savings associated with avoiding judicial  
10 forfeiture is significant.

11 A That's correct. For every dollar we save not  
12 going to court to essentially get the same  
13 outcome, a default order -- for every dollar we  
14 save not standing in front of a court doing  
15 that, that dollar goes to a crime prevention  
16 grant. So there's a bonus to that that the  
17 money can go where it can best be spent.

18 Q So with that in mind, when your office turns its  
19 mind to the referral acceptance factors pursuant  
20 to the financial acceptance policy, given that  
21 no dispute is filed in the vast majority of  
22 cases and that this of course results in  
23 significant cost savings, that's certainly a  
24 consideration that tends to support pursuing  
25 low- to medium-value assets?

1           A     We get the files we get.  It's as simple as  
2                   that.  We don't dictate which files come to us.  
3                   So that's the first thing is those files simply  
4                   come to us.

5                   The second issue is that those files are  
6                   adjudicated, reviewed and assessed on the same  
7                   threshold as if they were going down the civil --  
8                   the judicial forfeiture stream.  So someone  
9                   reviewing that administrative forfeiture file for  
10                  \$5,000 and a car has to imagine and foresee that  
11                  it could become a judicial forfeiture file, that  
12                  they could be subject to examination, that this  
13                  could go to trial.  So I think it's important  
14                  when they review that they take it with that  
15                  level of seriousness, they have a responsibility  
16                  under the act to do that.  They have to have a  
17                  reason to believe.  And based on the evidence  
18                  there, they have to assume that they would be  
19                  going all the way to trial on that.  So it's --  
20                  again, it's not up to them to pick and choose  
21                  which files to get, it's what's coming through  
22                  the door.

23                Q     But the understanding that most do not result in  
24                    judicial forfeiture is a factor among many  
25                    others that are considered at that stage?

1           A     You're saying that the majority that do not  
2                    respond, that's correct. The majority that go  
3                    out the door, again, approximately 80 percent,  
4                    we do not receive responses back from the  
5                    interest holders, and that's consistent not just  
6                    over time, so it was -- as I mentioned to  
7                    Mr. McGowan earlier, that failure to respond is  
8                    consistent with what took place over time before  
9                    administrative forfeiture. There was that level  
10                  of non-response. It's carried through in  
11                  administrative forfeiture and perhaps,  
12                  interestingly, it's also consistent across  
13                  space. So when you look at Alberta, when you  
14                  look at Saskatchewan, when you look at Manitoba,  
15                  their level of non-participation is -- I don't  
16                  want to say identical, but within a percentage,  
17                  so it's very consistent.

18           Q     And sorry, I don't think I asked that question  
19                    very clearly. What I was intending to ask is  
20                    that the level of non-participation or the  
21                    non-response rate, if you will, is a factor  
22                    among many other factors that are included in  
23                    the cost-benefit analysis?

24           A     No, I would disagree. The fact that something  
25                    is going to be responded to or not responded to

1 is not at all included in the analysis. The  
2 analysis is limited to the file acceptance  
3 policy, pure and simple.

4 Q I note, Mr. Tawtel, in the exhibits --

5 A I'm sorry. Just for clarification, the last  
6 name is Tawtel.

7 Q Okay. Sorry. My apologies.

8 A Not a problem.

9 Q Mr. Tawtel -- did I get that?

10 A You've got it.

11 Q Thank you. I note from the exhibits attached to  
12 your affidavit that many of the amounts that are  
13 forfeited pursuant to the administrative scheme  
14 are quite small. And I saw one standalone file  
15 that admittedly appears to be a bit of an  
16 outlier, but that amounted to \$80.80. And then  
17 when I reviewed the list there's certainly many  
18 others, as you indicated in your evidence  
19 earlier, that fall below \$1,000 or amount to  
20 multiple hundreds of dollars, small amounts.  
21 And the Commissioner has heard evidence this  
22 week from other experts in international  
23 jurisdictions whereby in their civil forfeiture  
24 schemes there's a minimum threshold below which  
25 they will not seek those assets.

1                   And I just wondered if you've turned your  
2                   mind to the possibility of a minimum threshold to  
3                   potentially add greater balance and  
4                   proportionality so that your office can pursue  
5                   its legitimate purposes while also preventing  
6                   against, you know, involving individuals with no  
7                   moral culpability. I wonder if you could provide  
8                   -- whether you've turned your mind to that or if  
9                   you have some information you might share.

10           A       So it's a very good question. And the answer is  
11                   yes, we have turned our mind to it more so due  
12                   to the high volume we've been receiving. And  
13                   it's important to remember that the \$80 file  
14                   that's sort of sitting out there, that it has  
15                   context to it. So it may well be sitting there  
16                   as a point of data saying that you're referring  
17                   to, saying, well, \$80, that's makes no sense.  
18                   But that may be an offender who has been a  
19                   consistent problem in the community that may be  
20                   tied to 12 other files, \$1,000, \$1,000, \$800 and  
21                   then this \$80. So it's very hard for me to say  
22                   at any point, we'll just apply the threshold  
23                   when you're dealing often with perpetual  
24                   offenders. We're seeing people coming into the  
25                   system consistently. And that is a bit of a

1 challenge to say that we'll accept only this,  
2 but we won't accept that when the aggregate  
3 value is \$12,000. So I think it's important to  
4 remember that -- to take a point of data at a  
5 point in time is difficult to respond to to say  
6 that there should be a threshold.

7 Now, that saying, I think there is some  
8 value for the office to say, should there be a  
9 threshold. I think it's a legitimate question  
10 to again. But again I would go back to the  
11 interest of justice, you know, does -- if you  
12 set the threshold and you have someone  
13 trafficking fentanyl next to a high school,  
14 should that -- should we say sorry, it didn't  
15 make the cut. Sorry you stabbed someone as you  
16 were doing this; it didn't make the cut; we have  
17 cuts.

18 So I think it's important that yes, we do  
19 consider the value, but it has to be done in the  
20 context of, one, the aggregate factor of who  
21 we're dealing with and the property that  
22 continues to come through and also the public  
23 interest. I think that's a big factor.

24 MS. DICKSON: Thank you, Mr. Tawtel. And thank you,  
25 Mr. Commissioner. Those are my questions.



1 THE COMMISSIONER: Thank you, Ms. Dickson.

2 Now Ms. Magonet for the British Columbia  
3 Civil Liberties Association.

4 MS. MAGONET: Thank you, Mr. Commissioner.

5 **EXAMINATION BY MS. MAGONET:**

6 Q Just to start, I want to clarify the  
7 pronunciation of your name. Is it Mr. Tawtel or  
8 Mr. Tawtel?

9 A It's Tawtel, like jaw and bell. So it's law and  
10 tell, so it's Tawtel.

11 Q Brilliant. That will help me remember. Thank  
12 you, Mr. Tawtel.

13 A You're welcome.

14 Q Many of my questions were addressed by  
15 Mr. McGowan, but I have a few that are  
16 remaining.

17 I first have some questions about data  
18 collection by the CFO. Do you know if the CFO or  
19 any other body collects data on the income level  
20 of individuals against whom civil forfeiture is  
21 sought?

22 A First of all, do we collect data on -- no.  
23 Again, our focus is on property. So we're  
24 looking to see whether the property that's  
25 referred by the police is either a proceeds or

1 an instrument and the evidence that surrounds  
2 that. So we really have no insight into the  
3 income level. Whether someone is a  
4 multi-millionaire or whether they have no  
5 income, we are simply looking at the property,  
6 the interest in the public -- the asset and the  
7 public interest. So until we get to the stage  
8 of judicial forfeiture proceedings and through  
9 the discovery process, we're looking at a list  
10 of documents being provided in which the tax  
11 records are provided. Up to that point we have  
12 no visibility.

13 Q And do you know if any other body collects that  
14 type of data?

15 A Do you mean bodies as in other civil forfeiture  
16 offices or within the province?

17 Q Oh, no. Within the province.

18 A I don't. I actually don't know if there's any  
19 other body. I suppose the Ministry of Finance  
20 for the purposes of provincial taxation would  
21 collect the record of people's income, but that  
22 would be to be, to my knowledge, the only other  
23 body.

24 Q Do you know if the CFO or any other government  
25 body collects race-based, indigenous or other

1                   disaggregated data regarding individuals who are  
2                   affected by civil forfeiture legislation?

3           A        So, again, our office does not. Our office is  
4                   focused on the property and the name of the  
5                   individual that we have to serve and the address  
6                   where they have to be served. That's really the  
7                   extent of it. We collect no other information  
8                   beyond that.

9                                As to other bodies in the province, I'm not  
10                   aware.

11          Q        Thank you. I now have a few questions related  
12                   to evidence that you gave earlier that I just  
13                   wanted to make sure I had down correctly. So is  
14                   it the case that even in the civil forfeiture as  
15                   opposed to the administrative forfeiture stream,  
16                   in approximately 80 percent of those cases they  
17                   result in default judgment?

18          A        I just want to clarify. You're asking about  
19                   judicial forfeiture versus --

20          Q        Yes.

21          A        What is the outcome or judicial forfeiture?

22          Q        Yes. Sorry, that's what I meant. Not civil  
23                   forfeiture.

24          A        Sorry. So for judicial forfeiture there are  
25                   three outcomes in a proceeding, assuming the

1 proceeding goes to its logical conclusion and  
2 the office chooses not to discontinue, which is  
3 a potential. But certainly the majority of  
4 cases settle. They can -- they settle by a  
5 consent forfeiture order. I don't have the  
6 metric at hand as to what percentage that is,  
7 but it's significant. It would be the vast  
8 majority. Then there's a portion that goes to  
9 default. That would be the second largest  
10 group. And then the last group would be  
11 conclusion by way of trial. That's extremely  
12 rare. I think maybe 10 to 15 trials in  
13 15 years. So very rare. So those are the three  
14 outcomes barring the issue of discontinuance by  
15 the director, which is rare as well.

16 Q And do you have any idea of what percentage  
17 results in default judgment?

18 A Again, I don't have the metric as to what  
19 percentage of those three conclusions defaults  
20 represents. I don't have that.

21 Q That's fine. Thank you. You mentioned earlier  
22 that many referrals that the CFO receives are --  
23 pertain to drug-related offences. Is it also  
24 the case that a high percentage of the files  
25 that the CFO accepts are related to drug

1                   offences?

2           A        I'm not clear. I may not understand the  
3                   question. Can you say the question again.

4           Q        Certainly. So I believe you said earlier that  
5                   most of the referrals that the CFO receives from  
6                   police departments, et cetera, pertain to a drug  
7                   related offence as the predicate offence.

8           A        That's correct.

9           Q        And is it also the case that the -- a large  
10                   percentage of the files that the CFO accepts are  
11                   also drug related?

12          A        I would say absolutely. That's correct.

13          Q        Thank you. Under the CFO's file acceptance  
14                   policy, can the CFO accept a file where the  
15                   individual who owns the asset has been acquitted  
16                   in criminal proceedings?

17          A        As I mentioned to Mr. McGowan earlier, we really  
18                   don't pay much attention to the issue of the  
19                   outcome on the criminal side. There may be  
20                   individuals who are charged and acquitted.  
21                   There may be individuals who are found guilty  
22                   and sentenced. We really don't track that. We  
23                   certainly don't track it in our system. We may  
24                   learn of what happens anecdotally in passing,  
25                   but generally speaking our complete focus is on

1                   the property and the civil proceeding, and we  
2                   don't really track what is happening on the  
3                   criminal side.

4           Q        So certainly your file acceptance policy, then,  
5                   would not prevent you from pursuing forfeiture  
6                   in such a case?

7           A        That's correct.

8           Q        Thank you. I now have a few questions about the  
9                   funding model of the CFO. So you've explained  
10                  that it's a self-funding organization. Is it  
11                  also the case that the CFO has an annual budget  
12                  target that it sets?

13          A        So all government departments regardless of  
14                  whether they operate under a special account  
15                  model, which is the self-funding model, and the  
16                  appropriated model all have budgets. So maybe  
17                  I'll just pause and explain the different  
18                  between the two models. A special account model  
19                  starts the year with a zero balance. So on  
20                  April 1st there is no money in the CFO account.  
21                  And then -- or any other department that  
22                  operates on this model. And then throughout the  
23                  year there are recoveries. A portion of those  
24                  recoveries are used to run the program, whatever  
25                  program that is, and certainly is in our case,

1           our program. And then in our case the year  
2           finishes -- must finish with a zero balance.  
3           And so in order to finish with a zero balance we  
4           disburse all of the funds that exist above our  
5           costs, we disburse those as crime prevention  
6           grants. So that's a special account model.

7                     An appropriate -- versus an appropriated  
8           model. The department would start with a  
9           certain budget of, say, \$10 million and then it  
10          would burn down that fund throughout the year  
11          until it achieves zero at the end of the year of  
12          the year. So the special account model  
13          contrasts with that.

14                    So even though it's a special account model,  
15          there is still a budget set. So the office has a  
16          budget set of \$7.5 million per year. And of that  
17          \$7.5 million per year, approximately \$4.5 million  
18          is non-discretionary. So that's the nuts and  
19          bolts of covering the cost of the office. So  
20          about \$3 million goes to legal costs and about  
21          1.5 million goes to the cost of the office. So  
22          it's a very low threshold. The annual  
23          forfeitures are running above 10 million. So to  
24          set the non-discretionary level at 4.5 million,  
25          that's usually surpassed in Q1 or Q2. So there's

1           no pressure on the office that's -- we simply  
2           achieve that just by the natural order of the  
3           office.

4           The additional 3 million that we're allotted  
5           within budget is for the disbursement of grants.  
6           So we don't have to go to the government to  
7           request permission to disburse the 3 million in  
8           grants. So there's your 7.5 million. 4.5  
9           million to run the office and legal services and  
10          3 million to send out the door in grants. So the  
11          problem for the office is in some years -- well,  
12          in just about every year we exceed the 7.5  
13          million, we forfeit 10 million or 12 million. So  
14          there's that delta, that different between the  
15          7.5 million and whatever we've actually  
16          forfeited. And that excess we do have to go to  
17          the government, we have to go to Treasury Board,  
18          and seek permission to spend it all on grants in  
19          order to get us down to that zero balance.

20          So over the last decade we've gone to  
21          Treasury Board every year to spend that money on  
22          grants, and each and every year it's been  
23          approved. So we've been able to get that account  
24          balance down to zero.

25          Q       Thank you. That answer leads well into my next



1                   series of questions, which is about the  
2                   allocation of proceeds of forfeiture in British  
3                   Columbia.

4                   It's my understanding that under section 9  
5                   of the *Civil Forfeiture Act* regulation that the  
6                   director may make payments out of the civil  
7                   forfeiture account for the purpose of  
8                   compensating a government that's provided support  
9                   or cooperated in the forfeiture proceedings. Is  
10                  that correct?

11                 A     That is correct.

12                 Q     And are you able to tell me whether that  
13                        provision has been used ever?

14                 A     It has, but it's a very infrequent event. I  
15                        believe there was a proceeds sharing with  
16                        another government -- provincial government as  
17                        well as a US state. So in that case it's not up  
18                        to the director to simply grant it out. The  
19                        director must get the permission of the minister  
20                        to go and do that. So the purpose of this is if  
21                        other departments know there is a  
22                        proceeds-sharing provision, they may be  
23                        incentivized to send us the file. So if they  
24                        have a \$10 million property, we'll do the  
25                        litigation, but it was their investigation that

1 supported the drug trafficking in the state of  
2 California and we forfeited the property in  
3 Whistler. We split the -- for example, we split  
4 the property 50/50, and they would receive  
5 50 percent of the net proceeds; we would keep  
6 50 percent of the net proceeds. That  
7 incentivizes other governments to send us their  
8 referrals which aren't mandatory to send. But  
9 again it's not the director that can authorize  
10 that sharing. It's within the act, but the  
11 director under the act must go to the minister  
12 to say, we think there's a business case to  
13 share these proceeds; would you consent to that.

14 Q And that's in the act that it says the director  
15 must seek the minister's permission?

16 A It's not directly stated there, but if you would  
17 like, I can take you to the act and the  
18 provision within that. So if you want to open  
19 up the *Civil Forfeiture Act* and if you want to  
20 go to the area for disbursements, which I'll  
21 give you here in a second.

22 So under part 6, "The Distribution of  
23 Proceeds," you'll see section 27, which is the  
24 payment out of the account.

25 Q Yes.

1           A     So you can see 27, you can see (a), (b), (c) and  
2                   (d). So those are very narrow expense  
3                   authorizations. Run the program, do it this  
4                   way. You can see there's nothing about cost  
5                   sharing in there, but what it does fall under is  
6                   other prescribed purposes and that would require  
7                   the permission of the minister.

8           Q     Thank you. So you mentioned that section 9 can  
9                   have the effect of incentivizing other levels of  
10                  government to forward files to the CFO. Is  
11                  that -- does this operate in a similar way to  
12                  equitable sharing in the United States?

13          A     So just to clarify, it's not other levels of  
14                  government within BC or -- and it's not  
15                  municipal and it's not the federal government.  
16                  It's other governments outside of BC. So it  
17                  would be the State of California or the Province  
18                  of Ontario. It would be something outside of  
19                  British Columbia. So just to clarify on that  
20                  issue.

21                         And then your second question -- I wasn't  
22                         clear what the second part was.

23          Q     Sorry. Yeah, there was a lot in that question.  
24                  Are you familiar with the equitable sharing  
25                  model in the United States?

1           A     Not specifically, no.  Maybe if you can just  
2                     maybe flesh that out a bit more, I may be able  
3                     to answer the question.

4           Q     Perhaps -- I think I'm going to skip this  
5                     question, then, if that's all right with you.

6           A     Not a problem.

7           Q     Thank you.  So in your affidavit you explain  
8                     that up to 10 percent of grants can go to police  
9                     services for special equipment and the like.  
10                    And you mentioned that -- in one of the exhibits  
11                    to your affidavit that there is a list of grants  
12                    distributed by the CFO at exhibit H.

13          MS. MAGONET:  Perhaps if I could ask, Madam  
14                     Registrar, if you could please call up that  
15                     exhibit.

16          THE REGISTRAR:  Sorry, Ms. Magonet, do you have the  
17                     page number of exhibit H?

18          MS. MAGONET:  I do not.  But give me just a moment.  
19                     Oh, actually, it's the very last page of the  
20                     affidavit that I'm interested in.  So it's  
21                     page 286.

22          Q     I just wanted to clarify that this is -- my  
23                     understanding is this is a sample of some of the  
24                     grants that have been granted to police  
25                     agencies.  It's not all of them that have

1 received CFO funding; is that correct?

2 A That's correct.

3 Q Okay. Thank you. Would you agree that the CFO  
4 is able to retain proceeds on an annual basis  
5 for a rainy day fund to cover the cost of future  
6 operating expenses?

7 A There has been -- any funds that aren't zeroed  
8 out at the end of the year would go into what's  
9 called an accumulated surplus account. It  
10 remains a fenced account, so it can't be used  
11 for any other purpose, as you said, for a rainy  
12 day down the road.

13 The office did have an accumulated surplus  
14 that was run up as I arrived here in 2011 and  
15 continued to grow. And then over the last four  
16 years it has been used to expend on crime  
17 prevention grants, so it is now almost back down  
18 to zero. And I don't know if I would say that it  
19 was created for a rainy day fund per se, although  
20 it would make sense to do that in the event that  
21 someone -- we faced an expensive trial, a massive  
22 trial. But the truth was it was -- my understanding  
23 is the government can make a decision to not  
24 allow the office -- in other words, as I  
25 mentioned earlier to Mr. McGowan or earlier about

1                   the fact that the office -- over \$7.5 million the  
2                   office must seek permission from the Treasury  
3                   Board. If the Treasury Board denied that, the  
4                   funds would go into a surplus account awaiting  
5                   another day when it would be approved. So the  
6                   past that did take place where the fund built up,  
7                   but it has since been depleted back down, all of  
8                   it being spent on crime prevention grants.

9                   MS. MAGONET: Thank you. If I could now ask Madam  
10                   Registrar if you're able to pull up the article  
11                   I situated written by Patrick Daley, and I  
12                   believe the title is "Civil Asset Forfeiture:  
13                   An Economic in Ontario and British Columbia."  
14                   Thank you.

15                  Q     And I'm just going to get the page reference.  
16                   Or actually -- sorry. First of all, Mr. Tawtel,  
17                   are you familiar with this article?

18                  A     I may have -- I may have looked through this  
19                   article some time ago. I'm not recently  
20                   familiar with it.

21                  Q     Okay. Thank you. Well, if you're all right  
22                   with it, I'd still like to take you to a  
23                   statement in it. And if you don't feel like you  
24                   can provide evidence on it, that's totally fine  
25                   as well.

1 MS. MAGONET: Madam Registrar, if you could please go  
2 to the bottom of page 9. And sorry, I'm just  
3 realizing it is page 9 of the document, but it's  
4 page 11 in the PDF. Thank you.

5 Q So, Mr. Tawtel, this article looks at --  
6 undertakes an analysis of economic incentives in  
7 both BC's legislation and Ontario's legislation  
8 for civil forfeiture. And the author takes the  
9 position at the bottom of page 9:

10 "It is evident that the institutional  
11 framework of the CFO has several  
12 interrelated incentives: The dual  
13 financial incentives of for profit  
14 operation coupled with its self-sufficient  
15 funding structure; and the necessary  
16 independence and discretion to decide  
17 which case files to pursue, which  
18 constitutes a procedural incentive."

19 Would you agree that the self-funding nature of  
20 the CFO and the fact that it has a budget target  
21 can create an incentive to pursue more  
22 forfeitures?

23 A Okay. So there's sort of two questions in  
24 there, so maybe I'll just unpack them. The  
25 first is do I agree that it creates an

1           incentive. So my answer would be no. And the  
2           reason it's no is simply because the budget that  
3           we need to achieve in order to be a self-funding  
4           office is so low relative -- it's two and a half  
5           times lower or three times lower than what we  
6           typically achieve in forfeiture. So there is  
7           literally no incentive. We can focus on the  
8           file and the integrity of the file. And that's  
9           what we do. We just look at the file as it  
10          comes in the door, we examine it through the  
11          lens of the file acceptance policy. And then  
12          the file is accepted or declined regardless of  
13          its value. It has to be -- I mean, we do  
14          consider the cost-benefit analysis, but again,  
15          we also put it through the lens of the public  
16          interest. So, again, because of the threshold  
17          of \$4.5 million in order to cover our costs, we  
18          typically far exceed that every single year in  
19          the last decade. It's not really what I would  
20          call -- it doesn't incentivize the office.

21                 And the second issue is your reference to a  
22          target. Again, there's a difference between a  
23          target and a budget. All governments have --  
24          all government departments have budgets. You  
25          have to sort of be accountable, whether it's an



1                   appropriated budget or a special account model  
2                   budget. And I outlined our budget earlier as to  
3                   what that consists of, that 7.5 million.

4                   So I would agree with you that if we  
5                   achieved \$12 million in forfeiture last year and  
6                   the government demanded 13 million and the next  
7                   year, that's a target. And, boy, there would be  
8                   a lot of concern about achieving that. That has  
9                   never happened. We have never gone beyond -- it  
10                  has been a flat-line ask for the last seven  
11                  years of 4.5 million. It hasn't changed.

12                  So really there is no pressure on the office  
13                  other than to look at the quality of the file,  
14                  assess it through that lens and commence  
15                  proceedings based on that.

16                  MS. MAGONET: Thank you. Mr. Commissioner, I wonder  
17                  if it would be possible to have this marked as  
18                  the next exhibit.

19                  THE COMMISSIONER: Very well. I think we are at 390,  
20                  Madam Registrar.

21                  THE REGISTRAR: Yes, exhibit 390.

22                  THE COMMISSIONER: Thank you.

23                                 **EXHIBIT 390: Civil Asset Forfeiture: An**  
24                                 **Economic Analysis of Ontario and British Columbia**

25                  MS. MAGONET:

1           Q     Mr. Tawtel, I now have a few questions about the  
2                   effectiveness of BC's *Civil Forfeiture Act*. Do  
3                   you know if there's ever been a provincial  
4                   auditor's review of BC's civil forfeiture  
5                   regime?

6           A     To my knowledge there has not been.

7           Q     And has the CFO ever assessed the effectiveness  
8                   of the regime in deterring organized crime and  
9                   money laundering?

10          A     That is a massive macro question. So if you're  
11                 asking if we've instituted a study as to the  
12                 impact of civil forfeiture on the broader  
13                 criminal environment in BC, the answer would be  
14                 no. That's way outside our scope and I don't  
15                 think we would have the bandwidth or expertise  
16                 to do that. It would be fair to say we do track  
17                 internal metrics. How much is forfeited each  
18                 year, what those consist of, where the money has  
19                 gone. So very narrow and micro data. And that  
20                 we continue -- the good news is that we continue  
21                 to see file referrals increase year over year.  
22                 That is a good sign. We continue to see very  
23                 positive commentary from the court. That is a  
24                 good sign. And we continue to see modifications  
25                 to the act to keep the act evolving and current

1                   and responsive to organized crime and money  
2                   laundering and proceeds in the province. So  
3                   those are the indicators I could narrowly  
4                   comment on but certainly the broader one I could  
5                   not.

6                   Q     Thank you. In your affidavit you provide  
7                   evidence about the allocation of proceeds of  
8                   forfeiture at paragraph 60, and would you  
9                   agree -- and I can take you there if that would  
10                  be helpful, but that -- according to that  
11                  evidence that you provide, less than 2 percent  
12                  of the proceeds of forfeiture were allocated to  
13                  victim compensation since the CFO was created?

14                  A     So I just want to provide some context. So I  
15                  think it's helpful to understand the context of  
16                  victim compensation. So victim compensation,  
17                  it's eligible victim compensation and it's  
18                  almost exclusively related to frauds against  
19                  seniors. So we will get a referral from a  
20                  police department that is either in BC or  
21                  outside of BC where a group of victims, seniors,  
22                  have been defrauded through these scam schemes  
23                  you're probably familiar with. For whatever  
24                  reason we're able to locate those funds, lock  
25                  down those funds and forfeit those funds. And

1           fortunate we've been able to in some cases get a  
2           hundred percent of what was available there, not  
3           the total loss. So the victims may have lost in  
4           total a million dollars and we've been able to  
5           locate \$500,000.

6                        So in those cases, once we've done that and  
7           we've achieved forfeiture, we can run a  
8           compensation program. We go back to the  
9           victims, the ones -- if we have their names and  
10          addresses and we also do an open call through a  
11          newspaper. Anybody that has been victimized by  
12          company A, please step forward; you have 90 days  
13          or whatever.

14                       When we receive all of the applications, we  
15          go through them and we ensure that the losses can  
16          be verified, what was lost per person, and that  
17          it relates to this fraud where the money was  
18          forfeited. And then the funds are prorated back.  
19          So if there was a million dollar loss and we  
20          recovered \$500,000, everybody's getting back 50  
21          cents on the dollar. And it's prorated. So  
22          obviously somebody that lost \$80,000 is going to  
23          receive back more than somebody that lost  
24          \$40,000.

25                       So when you see that 1.7 million, that's 1.7

1 million in multiple fraud schemes we were able to  
2 find, we were able to lock down the funds, we  
3 were able to find the victims and we were able to  
4 send all the money back. And we have done that  
5 without taking our costs off the top. So we'll  
6 eat the costs. We'll eat the cost of our  
7 lawyers, we'll eat the cost of the director,  
8 we'll eat the cost of sitting down and doing all  
9 the accounting, dividing all the money up and  
10 we'll get all the money out of the door sort of  
11 as a public service to these seniors. It's a  
12 good-news story for the seniors, they're getting  
13 as much as we can get them back, and it's a good  
14 news story for the program. But, again, it only  
15 relates to these fraud schemes generally  
16 perpetrated against seniors.

17 Q Thank you. I just have a few last questions.

18 Earlier today you provided evidence about  
19 the fact that employees of the CFO can be  
20 seconded to the RCMP and the VPD to facilitate  
21 the referral of files from those agencies; is  
22 that correct?

23 A That's correct.

24 Q Are you aware that in a recent decision the  
25 BC Supreme Court raised constitutional concerns

1           about the potential of these arrangements to  
2           blur the line between the criminal law and civil  
3           proceedings? And I can give you the case name,  
4           if that would be helpful.

5           A     Yes, that would be helpful. Sure.

6           Q     It was in one of the many Angel Acres cases.

7           MS. MAGONET: And I could also ask, Madam Registrar,  
8           if you could please pull this up. I circulated  
9           it when I provided notice of cross-examination.  
10          It's *Angel Acres Recreation and Festival*  
11          *Property Ltd. v. British Columbia*. And the --  
12          actually perhaps, Madam Registrar, if you could  
13          go to paragraph 158 as that is -- it's in  
14          paragraph 158 and 159 where these concerns are  
15          raised.

16                         So the court writes:

17                         "With respect to disclosure issues that  
18                         the operational relationship between the  
19                         CFO RCMP Program Manager and the RCMP's  
20                         Operations Support Group Federal Serious  
21                         and Organized Crime Asset Forfeiture Unit  
22                         not only in sharing physical office space  
23                         but in pursuing their shared objectives  
24                         has the potential to blur the distinction  
25                         between police powers of investigation for

1 criminal law enforcement purposes (with  
2 attendant criminal law protections  
3 afforded to an accused person under the  
4 Code and the Charter) and the CFO's powers  
5 to impact citizen's property interests  
6 under a civil regime.

7 Accordingly, while I find that  
8 entering into the MOU with the RCMP by the  
9 Director and the creation of the CFO RCMP  
10 Program Manager Position was lawfully  
11 authorized, I am also satisfied that, in  
12 some circumstances, the relationship  
13 between the police and the CFO with the  
14 attendant possibility of conflict arising  
15 from the intersection of criminal law  
16 substance and procedure and civil  
17 forfeiture law substance and procedure may  
18 require not only evidentiary oversight by  
19 the Court but also engage Charter  
20 scrutiny."

21 Are you familiar with this decision?

22 A I am. This was my case, so I am familiar.  
23 These are extant proceeding, so I want to be  
24 careful. They are extant as this is the matter  
25 of subject of appeal, so I want to be careful





1 International Coalition, who has been allocated  
2 15 minutes

3 MR. RAUCH-DAVIS: Thank you.

4 **EXAMINATION BY MR. RAUCH-DAVIS:**

5 Q Mr. Tawtel, can you hear me okay?

6 A I can. Good morning.

7 Q I understand from your evidence this morning  
8 that open-source information is used by the CFO  
9 to assist the director in identifying other  
10 assets, and I believe your wording was to ensure  
11 that the civil forfeiture action goes where it  
12 needs to. Is that correct?

13 A I would back it up a bit and say the first  
14 reason we are going and acquiring information  
15 from secured and sourced databases is to ensure  
16 that we understand who may have a registered  
17 interest in property. So the director has  
18 obligations within the act to ensure notice is  
19 served on all interested parties. So that's the  
20 first reason we're diving into that.

21 The second reason is, as you've noted, we  
22 need to have a better understanding from an  
23 investigative perspective as to who owns the  
24 assets, what other assets may be out there and  
25 where the litigation may go beyond the initial

1 scope of the referral.

2 Q And I think your evidence was that that type of  
3 process is usually done for the more -- medium  
4 and higher complex files, and I guess the higher  
5 value as well. That's right?

6 A That's correct.

7 Q And then you gave some evidence as well that  
8 complex corporate structures can distort that  
9 tracing process. Is that right?

10 A Well, not just the corporate structures, but,  
11 again, I will say two things on the idea of  
12 insulation and creating a lack of transparency  
13 for the purposes of money laundering assets.

14 The targets will not only put the assets in  
15 other people's names in order to obfuscate the  
16 ability of the director to find the association  
17 between the asset and the target, but they will  
18 use as well corporations. And the corporations,  
19 as you're no doubt aware, have limited  
20 information, and the corporations may be owned by  
21 a corporation that may be owned by a corporation.  
22 So, again, there's not only layering going on and  
23 insulating between people but between the people  
24 and through corporations.

25 Q Right. And in addition to corporations I'm sure

1                   your office encounter complex trust systems as  
2                   well; right?

3           A        That's correct, yes.

4           Q        Yeah, where the beneficial owner of a trust or  
5                   the beneficiary under a trust is also -- it's  
6                   distorted or not obvious.

7           A        That's correct.

8           Q        And so I think your evidence this morning was  
9                   that a beneficial land and corporate registry  
10                  would assist if the information was accurate or  
11                  valid; right?

12          A        Very much. Not just for the sense of knowing  
13                  who the interest holders are but for the  
14                  purposes of asset tracing and taking the  
15                  litigation where it needs to go. And, again,  
16                  it's good to say that the information being  
17                  there is helpful, and it is. But it also has to  
18                  be reliable and verifiable.

19          Q        And are you aware of the new landowner  
20                  transparency legislation?

21          A        I am at a high level, yes.

22          Q        And are you anticipating that being of high  
23                  utility to your office?

24          A        I would anticipate that in addition to the  
25                  existing source databases we need to do our

1 business, that will be the next one.

2 Q And isn't -- I mean, the Province should be  
3 commended for bringing in this type of  
4 legislation, but isn't one of the major flaws in  
5 the *Land Owner Transparency Act* the fact that  
6 there's no requirements to verify the identity  
7 of the beneficial owner?

8 A Again, I would say it's sort of like the civil  
9 forfeiture program. You start with the basics  
10 and you get it out on the road, and once it's  
11 out on the road, you can make modifications down  
12 the road. So for sure I think that the whole  
13 idea is to get it started, and then once it's  
14 started to look at down-the-road improvements.

15 Certainly the way the act -- our act has  
16 evolved, I expect many government legislative  
17 initiatives do the same thing.

18 Q And would -- but to your mind would an  
19 identification, verification system -- a robust  
20 identification verification system further  
21 enable the effectiveness of that act and in turn  
22 your office?

23 A Absolutely. No question.

24 Q I'd next like to focus on -- or actually keeping  
25 in line with that, part of the evidence that

1           this commission has heard was in relation to a  
2           corporate beneficial ownership registry, and I  
3           take it you would agree that the same client ID  
4           verification systems should apply in a corporate  
5           registry as well?

6           A     Yes.  As you may have heard earlier, I was the  
7           director of compliance for an international  
8           foreign exchange firm.  And for our North  
9           American clients where the client was a  
10          corporation, we had an obligation to drill into  
11          an understanding of who the beneficial owners  
12          were in order -- as an anti-money laundering  
13          provision, both in Canada and the US, and to run  
14          PEP searching as well, which you may be familiar  
15          with, the politically exposed persons.

16                 So there's no question that the ability to  
17          drill into an understanding of the corporation  
18          as an anti-money laundering initiative is  
19          important and would certainly facilitate us  
20          expanding the civil forfeiture proceedings.

21          Q     Thank you.  At paragraph 59 of your affidavit  
22          you mentioned that the act authorizes the CFO to  
23          disburse funds from a CFO special account for  
24          the purpose of administration of the office and  
25          the operational costs.

1 A Yes.

2 Q I'm wondering about these operational costs.

3 Does the CFO ever cover costs by the  
4 information-gathering agencies? So in -- as an  
5 example, like the VPD or RCMP, if they submitted  
6 a bill for disbursements or costs would the  
7 CFO's budget allow -- enable them to pay those  
8 costs?

9 A No, we do not pay operational police expenses.  
10 If the police are hosting an asset forfeiture  
11 workshop and inviting all the other police  
12 departments to an asset forfeiture workshop that  
13 they're organizing, we might make a grant  
14 contribution under the police to say look, we'll  
15 buy the lunch and we'll buy the theatre and off  
16 you go. So we will support that initiative.  
17 But in terms of, could you give us \$100,000 to  
18 run a drug operation, that never happens.

19 Q But that's not prohibited by the wording of the  
20 act to extend funding to an information-  
21 gathering source?

22 A Sorry, I'm not clear what the question is there.

23 Q May be I'll clarify. If the CFO had an  
24 information-gathering source, like the police,  
25 and the police requested funding from the CFO,

1           would that be prohibited by the act? Does the  
2           legislation prohibit you from making that type  
3           of funding?

4           A     Sorry, I don't know if there's a nexus between  
5           the ISA, which is one issue, and the ability for  
6           the police to request funding an operation as  
7           being another issue. The purpose of the ISA is  
8           for the Civil Forfeiture Office to receive  
9           information, the referrals from the police  
10          department, in a framework. That's really what  
11          it is. In a way it's a one-way door. Nothing  
12          goes back out the door; it only comes in the  
13          door. So that's the ISA.

14                 The police of course are welcome to ask for  
15                 a grant for an operation or something, but they  
16                 know we're going to decline it, so we don't see  
17                 it. We might see a one-off when fentanyl  
18                 turned -- started to really ravage. We saw  
19                 fentanyl appearing in the files and we saw it  
20                 becoming a concern. Well in advance of when the  
21                 government declared it an emergency we were  
22                 seeing it in the police files, and the police  
23                 were very concerned that they be able to run  
24                 some workshops for first responders, ambulance  
25                 and police, and would the civil forfeiture

1                   provide that, and we did. We funded, I think,  
2                   six or seven major workshops across the province  
3                   to fund first responders' knowledge of fentanyl,  
4                   so we did that. But that's -- to us that's not  
5                   operational. That was more administration for  
6                   the safety of the officers.

7                   Q     Thank you. I think another aspect of your  
8                   evidence this morning was that the forfeiture of  
9                   smaller assets in the administrative context,  
10                  the actors whose assets are being forfeited, you  
11                  speculated that it was kind of just a cost of  
12                  doing business mentality and that's why they  
13                  weren't opposing these types of order. They  
14                  were prepared to lose their inventory to some  
15                  effect. Do I have your evidence right on that?

16                 A     All but the speculation points. I don't want to  
17                  say I speculate. I draw that from my years of  
18                  experience in the police world debriefing  
19                  confidential informants and drug traffickers and  
20                  everything and they're very transparent about  
21                  it. It's a cost of doing business. We lose a  
22                  load, with we lose a load. We lose cash, we  
23                  lose cash.

24                                 So I may be drawing the analysis over to the  
25                  fact that we're seeing these low response rates



1           there, but, again, the low response rates seem  
2           to not only consistent over time in BC but  
3           consistent over time across the provinces. So I  
4           would say that based on my experience the reason  
5           we're not seeing these response rates is it's  
6           cost written off.

7           Q     Right. And given that mentality that's an issue  
8           with targeting smaller assets, wouldn't the  
9           CFO's purposes be furthermore effectively  
10          placing a higher emphasis or shifting the  
11          investigative target to the larger value and  
12          more complex files?

13          A     So we're resourcing the \$10 million file, we're  
14          resourcing a \$100,000 file and we're resourcing  
15          the \$1,000 file. They're all being resourced  
16          fully to what we can do. What I'm saying is  
17          the -- if you're saying, well, if you stopped  
18          administrative forfeiture at the very bottom  
19          level, you could turn those people into  
20          analysts. That's an apple and orange issue.  
21          The people who are doing the work, the staff who  
22          are doing the work are not necessarily financial  
23          analysts. That's a different animal. And so  
24          you need to bring that skill set in to do  
25          financial tracing. You need that special skill

1 set. So you can still run the bottom level.

2 And the fact that -- it's important to keep  
3 running that bottom level for a very important  
4 reason because as the case management system  
5 grows over time you're going to see people  
6 appearing in the system over time more  
7 frequently. And you're not just going to see  
8 them appearing overtime more frequently, you're going  
9 to see them appearing with other people more  
10 frequently, so you can get a better  
11 understanding of how they relate in the  
12 infrastructure of the pyramid.

13 So I think it's important not to turn off  
14 any dials and to continue to collect that  
15 information. The important thing, though, to  
16 your point is we need to adequately resource the  
17 intensive, highly complex proceeds money  
18 laundering files. We need to resource them  
19 properly with people with the right skill sets.

20 Q And have you ever had to turn down one of those  
21 complex files because you don't have the  
22 resources?

23 A No.

24 Q Never.

25 A Never have.

1           Q     So I take your evidence from the affidavit and  
2                    this morning that the act does not specifically  
3                    grant the CFO authority to initiate an  
4                    investigation of property -- of an asset  
5                    associated with unlawful activity.  But nothing  
6                    in the -- I think your evidence as well was that  
7                    nothing in the act prohibits the CFO to initiate  
8                    the investigation, it's just that, again, the  
9                    investigative tools aren't available?

10          A     You're correct.  It's sort of silent on it, but  
11                    then it doesn't speak to any tools that would be  
12                    provided, so you're correct.

13          Q     And do I have your evidence right that the vast  
14                    majority of referrals are still drug-related  
15                    offences?

16          A     By far, yes.  Vast majority.

17          Q     By far.  Do you -- has your office received any  
18                    referrals, let's say in the last five years,  
19                    from the CRA or the BC Securities Commission?

20          A     We never receive files from the CRA.  We have  
21                    received historically files from the BC  
22                    Securities Commission, but not in the last --  
23                    not recently.

24          Q     And the BC --

25          A     Not in the last five years.

1 Q Pardon me, I didn't mean to interrupt.

2 A No, no problem.

3 Q And the BC securities commission, that's only a  
4 handful of files that have been referred to your  
5 office; correct?

6 A That's correct. And to our knowledge the  
7 initial referrals had much to do with the fact  
8 that there was a piece of the legislative puzzle  
9 missing for them. They were able to -- they  
10 were able to lock down the assets. They weren't  
11 able to -- they didn't have a legal mechanism to  
12 disburse the funds back to the victims. And  
13 they've since changed the legislation, my  
14 understanding, to facilitate that now. But back  
15 a decade ago when they didn't have that and we  
16 had that, then it was simply a matter of going,  
17 securing the assets, locking it down and using  
18 our provisions to get the money all back to the  
19 victims.

20 Q And you mentioned that you haven't received any  
21 referrals from the CRA. Is that an office that  
22 you would consider reaching out to to try and  
23 secure referrals for things like tax evasion?

24 A I think what we were more interested in doing is  
25 trying to obtain an information-sharing

1                   agreement with the CRA that would allow us to  
2                   better understand for the purposes of setting a  
3                   baseline for the analysis of litigation, who are  
4                   we dealing with, and that was a non-starter. So  
5                   around the time we went to the federal  
6                   government to sort of get a sense of who we  
7                   could maybe open up lines of communication with,  
8                   CRA being one of them, FINTRAC being another  
9                   one. And so those -- there's obviously -- it's  
10                  not that they don't want to share, it's they  
11                  simply can't. The structure is what it is. And  
12                  they follow the legal structure as we do. So  
13                  there is no information sharing because it's  
14                  simply prohibited, and it's as simple as that.

15                Q    To facilitate that information sharing you're  
16                    saying that there has to be an overhaul on the  
17                    structure?

18                A    Correct. Whether it's FINTRAC, whether it's the  
19                    CRA. You're right. The federal legislation  
20                    would have to be changed in order to facilitate  
21                    that.

22                Q    And is it your opinion that that would assist  
23                    your office in furthering its objectives if the  
24                    federal level was changed?

25                A    I think it's helpful if we have relevant

1 information to conduct our proceedings, and in  
2 cases like that I think that information would  
3 be helpful.

4 Q Thank you. A couple of final questions here.  
5 At paragraph 56 of your affidavit, you state  
6 that to successfully investigate, the CFO  
7 requires specially trained investigators and  
8 experts in financial analysis. I take it that  
9 since the CFO operates on an exclusive referral  
10 basis, that you would agree that the police and  
11 reporting entities would need the same type of  
12 assets; right?

13 A Yes. And I believe as I was mentioning earlier  
14 to Mr. McGowan, depending on the size of the  
15 department and the bandwidth of the department,  
16 in cases we do see that they have financial  
17 analysts. They do have forensic accountants not  
18 on staff but that they go out and engage similar  
19 to what we do. So we are seeing them use those  
20 resources where they have the budget and the  
21 bandwidth to go and do that work.

22 Q But where they don't, that exposes a significant  
23 issue because your office doesn't facilitate  
24 investigations. They're wholly reliant on the  
25 local police force, and if it's not in their

1 budget, it'll never come across your desk.

2 Isn't that right?

3 A Yes, or we're getting a package that's very  
4 razor thin and there's not much place to start.  
5 So you're right.

6 MR. RAUCH-DAVIS: Thank you. Those are my questions.

7 THE COMMISSIONER: Thank you, Mr. Rauch-Davis. Now  
8 Mr. Lawless on behalf of the Province who has  
9 been allocated 30 minutes.

10 MR. LAWLESS: Thank you, Mr. Commissioner.

11 **EXAMINATION BY MR. LAWLESS:**

12 Q Mr. Tawtel, can you hear me?

13 A I can.

14 Q I don't have many questions, in fact I believe I  
15 just have one. And it's just to clarify a piece  
16 of the evidence you had given earlier when  
17 commission counsel, Mr. McGowan, was asking you  
18 questions with respect to file referrals  
19 potentially coming from the Crown during a  
20 criminal proceeding. And I believe your  
21 evidence was that you wouldn't accept that type  
22 of a referral. Can you tell me what you would  
23 do in the event Crown was attempting to make  
24 that referral?

25 A So in the event that we did receive an inquiry

1 from the Crown saying, for your information we  
2 are discontinuing our proceedings; I've tried to  
3 reach the officer; I didn't reach them; he was  
4 talking about civil forfeiture, but we're  
5 letting you know we're done with the proceedings  
6 and you're welcome. We would refer them again  
7 back to the police officer, back to the agency.  
8 And make sure the agency understood that, that  
9 somebody had received that information, and then  
10 we would ask the agency, are you seeking to make  
11 a referral based on those earlier discussions.

12 So, again, it's not that we would simply  
13 drop it, but we would certainly go back to the  
14 law enforcement agency to say, we understand  
15 Crown is discontinuing; do you wish to make a  
16 referral so it doesn't fall off the table.

17 MR. LAWLESS: Great thank you, Mr. Tawtel.

18 Mr. Commissioner, those are my questions.

19 THE COMMISSIONER: Thank you, Mr. Lawless.

20 Anything arising, Mr. Rauch-Davis?

21 MR. RAUCH-DAVIS: No. Thank you.

22 THE COMMISSIONER: Ms. Magonet?

23 MS. MAGONET: No, thank you, Mr. Commissioner.

24 THE COMMISSIONER: Thank you. Ms. Dickson?

25 MS. DICKSON: If I may, Mr. Commissioner, I would



1           seek your permission to ask a couple of brief  
2           followup questions.

3           THE COMMISSIONER: Yes, that's fine.

4           MS. DICKSON: Thank you.

5           **EXAMINATION BY MS. DICKSON:**

6           Q     Mr. Tawtel, the questions are related to the  
7                 non-response rate. And I note of course that  
8                 there's -- under the act personal service is not  
9                 required to -- for an application pursuant to  
10                the administrative forfeiture scheme.

11          A     That's correct. We are required to do one or  
12                 the other, either advertise or serve. We do  
13                 both. We try and execute -- we for sure execute  
14                 on the public notification and advertisement.  
15                 We do that all the time. And then we do our  
16                 very best to serve at the last-known address of  
17                 the interest holder as well. So although the  
18                 act doesn't require us to do both, we do both.

19          Q     And so another reason, of course, why some  
20                 people may not respond to the application, in  
21                 particular people with no fixed address, is  
22                 because they're not receiving the application?

23          A     That's correct. In some cases the person may  
24                 not receive it. They may be out of the country.  
25                 There may be a number of reasons why that's

1           taken place. And the act has a provision that  
2           allows under section 14(11) that if someone is  
3           out of the country or is unavailable and is  
4           late to the game in responding, the actor -- the  
5           director does not have the authority to reset  
6           the timer. That's -- it's administrative, so it  
7           must roll through.

8           But that said, if the interest holder is  
9           late to the game and wishes to argue their case,  
10          there is a provision, a safety valve for them to  
11          do that. They can commence a proceeding against  
12          the director in personam. They can begin the  
13          proceeding and then really for all intents and  
14          purposes it's a very low threshold for them to  
15          say, here's the reason I'm late. And there have  
16          been two or three handfuls of those that have  
17          come through over the years, and the position  
18          we've taken is it's a super low bar for you to  
19          get over to say that you missed the deadline;  
20          we're satisfied. You missed the deadline, you  
21          missed the deadline. It's reasonable what  
22          you've done, so you're now participating, you  
23          filed a claim, we filed a response and we're  
24          back in the forfeiture proceeding game other  
25          than the fact that it's not an in rem proceeding

1 per se where the director is plaintiff and the  
2 interest holder is defendant. It's the  
3 opposite. But for all intents and purposes it's  
4 much the same.

5 And if the director becomes aware that the  
6 property at stake is of interest and has not  
7 been liquidated, then that property can be set  
8 aside. There's no -- even though the director  
9 has the right to liquidate, there's no urgency  
10 to get that done if we can settle a file  
11 appropriately and responsibly that's fair to the  
12 interest holder.

13 Q Of course in filing a civil claim personal  
14 service is required.

15 A That's correct.

16 Q And that's required because then we have  
17 certainty that the person is being served with  
18 the notice?

19 A That's correct. And we do have problems  
20 associated with service as well for notices of  
21 civil claim for the very reasons you've  
22 outlined. It's the no fixed address; good luck  
23 finding them and then having to get  
24 substitutional service orders, good luck finding  
25 them and then we're into the default order.

1                   And, again, the problem being is all the costs  
2                   associated with, you know, what started out as a  
3                   \$1,000 cost bill is now a \$5,000 cost bill while  
4                   you're trying to get service on the individual.

5           MS. DICKSON: Thank you, Mr. Tawtel. I hope I got  
6           your name correct.

7                   And thank you, Mr. Commissioner.

8           THE WITNESS: Thank you very much.

9           THE COMMISSIONER: Thank you, Ms. Dickson.

10                   Mr. McGowan anything arising.

11           MR. MCGOWAN: Nothing arising, Mr. Commissioner.

12           THE COMMISSIONER: Thank you, Mr. Tawtel. Your  
13           evidence has been very helpful in explaining the  
14           nature and scope of your organization and of the  
15           larger context in which it operates. And I am  
16           grateful to you for that time you've taken and  
17           the value of your evidence. You're excused now.  
18           Thank you.

19           THE WITNESS: Thank you, Mr. Commissioner. Thanks  
20           for this opportunity.

21                   **(WITNESS EXCUSED)**

22           THE COMMISSIONER: And I think now, Mr. McGowan, we  
23           have concluded this tranche of hearings and  
24           we'll be adjourning until January 11th to resume  
25           our hearings. Is that correct?

1 MR. MCGOWAN: Yes, at 9:30 a.m., Mr. Commissioner.

2 THE COMMISSIONER: All right. Thank you. And just  
3 on that note, I would like to thank counsel for  
4 the various participants who have participated  
5 in the fall hearings up to this point. The  
6 hearings have been conducted under challenging  
7 circumstances, and we recognize that counsel who  
8 have involved themselves have had to meet those  
9 challenges and to adapt to the circumstances.

10 So I want to express my gratitude to you and  
11 hope that everyone is able to take some time  
12 over the next few weeks to have a relaxing  
13 holiday and also that you will stay safe. So  
14 we'll adjourn now until January 11th, at 9:30.

15 THE REGISTRAR: The hearing is now adjourned until  
16 January 11th, 2021, at 9:30 a.m. Thank you.

17 **(PROCEEDINGS ADJOURNED AT 12:53 P.M. TO JANUARY 11, 2021)**

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