

**PROCEEDINGS AT HEARING
OF
MAY 5, 2021**

COMMISSIONER AUSTIN F. CULLEN

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May 5, 2021

(Via Videoconference)

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

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

THE COMMISSIONER: Thank you, Madam Registrar.
Yes, Ms. Patel.

MS. PATEL: Thank you, Mr. Commissioner. Our witness today is Melinda Murray, the Executive Director of the Manitoba Criminal Property Forfeiture Unit. And I just note for the record that Ms. Murray is here with counsel, Ms. Lisa Cupples.

THE COMMISSIONER: Thank you.

MS. PATEL: I believe Ms. Murray has chosen to affirm.

**MELINDA MURRAY, 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: My name is Melinda Murray,
M-e-l-i-n-d-a M-u-r-r-a-y.

THE REGISTRAR: Thank you.

1 **EXAMINATION BY MS. PATEL:**

2 Q Ms. Murray, just by way of background, your
3 current role, I understand, is Executive
4 Director of the Manitoba Criminal Property
5 Forfeiture Unit, as I said at the outset. And I
6 understand that that's a statutory role.

7 A That is correct.

8 Q And could you just tell us a little bit about
9 your background, professional background before
10 stepping into that role?

11 A Yes. I was a Crown attorney with Manitoba
12 prosecutions from 1996 till April of 2020, at
13 which time I was acting director of the criminal
14 property -- Acting Executive Director of
15 Criminal Property Forfeiture as of May 4th,
16 2020, and then was officially or formally
17 appointed as the director, the Executive
18 Director in October of 2020. And so prior to
19 that I was the Crown attorney with Manitoba
20 justice. I worked the last six years of my
21 career with Manitoba justice. I was in the high
22 risk offender unit dealing with danger offender
23 and long-term offender applications. And I did,
24 though, do one year secondment in 2012/2013 as
25 legal counsel with the legal services branch and

1 was counsel for the criminal property forfeiture
2 unit solely dealing with them.

3 Q And in your role as Crown counsel and setting
4 aside your stint with the criminal property
5 forfeiture unit for the moment, did you deal
6 with proceeds of crime or money laundering
7 files?

8 A I did not.

9 Q And in your current role as Executive Director,
10 can you give us a broad overview of what your
11 responsibilities are.

12 A Yes. Well, as you mentioned, I am statutorily
13 appointed by Order in Council as the director
14 that administers the *Criminal Property*
15 *Forfeiture Act* and a few other acts. I'm also
16 the Executive Director, which is a government
17 position, of the criminal property forfeiture.
18 So there's two separate roles. My powers and
19 responsibilities under the act, under
20 section 19.2(1) of the act refer to the director
21 being responsible for determining when to
22 commence proceeds under the act as well as
23 commencing and conducting proceedings under the
24 act as well as requisitioning payments for --
25 from the criminal property forfeiture fund. And

1 so those are my statutory responsibilities.

2 As the Executive Director, the government
3 position, my responsibilities include making
4 final decisions as to forfeiture proceedings,
5 day-to-day operations, policy and procedures,
6 implementation and integration of legislative
7 regulatory frameworks and distribution of
8 grants, et cetera.

9 Q And before we proceed, you are here today as the
10 director and as the Executive Director of the
11 criminal property forfeiture unit, and I
12 understand that there may be pursuant to that
13 role that you occupy some limits on what
14 evidence you are free to give before the
15 commission, and I just wanted to give you an
16 opportunity to state what those limits might be.

17 A Yes. Certainly I -- you're correct. I am
18 limited in the information I can provide mostly
19 as a result of legislative privilege. The
20 Bill 58 that you are aware of has not passed as
21 of yet, and so -- and I don't know when it
22 would, so I can't predict that. So there's
23 certainly legislative privilege there. I can't
24 go into certain details about the bill itself.
25 And so I'm limited in that regard.

1 Q You previewed some of the evidence that I hope
2 to address with you today, and one development,
3 which we'll come to, is just to provide some
4 context before we move forward. Can you just in
5 brief and understanding that we'll come back to
6 the contents of the bill later, just describe
7 what Bill 58 is.

8 A Yes. Bill 58 is entitled the *Criminal Property*
9 *Forfeiture Amendment Act*, and it, as I
10 mentioned, has not yet passed. I can advise
11 that the minister is comfortable with the
12 legislation going forward, but of course as I'm
13 sure everyone is aware, there could still be
14 amendments to this bill at any point, and so
15 it's not something that's received royal assent
16 as of yet.

17 The bill really has two prongs. As a
18 result of practical experience within the unit,
19 some amendments were required to improve
20 operational efficiency, so I'm sure we can get
21 into that later, but just high-level
22 information. There were some operational
23 inefficiencies that we were addressing in this
24 bill. As well some of the amendments are
25 introduced to enhance the branch's information

1 gathering tools to be able to identify illegal
2 assets and to deter money laundering and the
3 removal of illegal funds during the initial
4 stages of our cases.

5 So in essence, the practical experience was
6 that we were addressing an increasing
7 sophistication of criminal organizations and
8 their methods of concealing the profits of crime
9 and to ensure they're not profiting from their
10 unlawful activity.

11 Q Thank you. And maybe before we get into the
12 amending bill, we'll have a quick look at the
13 existing legislation and the existing powers and
14 structure of the criminal property forfeiture
15 unit, which going forward I'll just refer to as
16 "the unit" for convenience.

17 I understand that Manitoba enacted its
18 criminal forfeiture -- civil forfeiture
19 legislation in 2009. Is that right?

20 A 2008, actually.

21 Q Okay. And, sorry, did it come into force in
22 2009?

23 A That's correct.

24 Q And can you speak at all to the jurisdictions on
25 which the Manitoba legislation is modelled?

1 A Yes. We modelled our act with respect --
2 actually it was modelled on BC's act, which was,
3 I believe, in 2006 they were operationalized.
4 And so there are some significant differences,
5 of course, but it was modelled on the BC's act.
6 And our model is a director-led model, which I
7 believe is the same for British Columbia. One
8 of the significant differences is we are
9 government funded; we're not self-funding, so
10 we're a government-funded model with some
11 allowances in the act for cost recovery of
12 certain costs such as asset management and legal
13 fees, for example. So a portion of the legal
14 fees actually is provided by the government. We
15 have a budget line for legal fees in our
16 operating budget. However, if we go above and
17 beyond that, and of course legal fees can be
18 unpredictable because we don't control the flow
19 of work and the referrals, so we do have the
20 option of funding any additional legal fees from
21 our fund to cover the costs. And of course the
22 government -- so we were operationalized in
23 2009, and so the office is now in the 12th year
24 of operation. And in essence the
25 government-funded model funds our salaries, our

1 operating costs, our -- you know, our offices
2 and our equipment, et cetera. Our training.
3 All of that is funded by government.

4 Q And can you describe the structure and staffing
5 of the office?

6 A Yes. So the structure is really -- there's an
7 Executive Director and then there are five other
8 full-time permanent employees that work under
9 the Executive Director, and they deal with the
10 day-to-day work and support for the criminal
11 property forfeiture unit or branch. We do have
12 a student as well. And I should mention we do
13 not have legal counsel as part of our branch, so
14 legal counsel, we obtain legal counsel through a
15 different division. They're under a different
16 division in justice, so our division is -- so
17 we're under justice. The branch itself is under
18 the community safety division. We obtain legal
19 services from the legal services branch, which
20 is under the Crown law division under justice.

21 Q And when you spoke a moment ago about paying
22 legal fees from forfeiture recoveries, is that
23 legal fees to the justice branch lawyers that do
24 the work for the unit?

25 A Yes. So we still -- I mean, it's still within

1 justice and within the government, but we move
2 the money around from one department or one
3 government agency to another. So we still have
4 to pay legal fees and transfer that money to the
5 legal services branch.

6 Q And is that -- are legal fees a significant line
7 item in your budget?

8 A Yes, I would say so. And it really depends on
9 the year. If there are many additional higher
10 complex files, they will require more legal
11 services and work, and, again, it's
12 unpredictable because we get our file referrals
13 from the police, so we have no control over our
14 workload in that regard. And higher, more
15 complex -- higher value, more complex files
16 require more legal services.

17 Q Returning to the powers of the director under
18 the act, what are the powers that you have?

19 A Yes. Well, I mentioned 19.2(1), what the powers
20 and responsibilities are. I'd simply note, I'd
21 refer to section 2 of the act, which essentially
22 is the purpose of the act and it provides for
23 civil remedies that will prevent people who
24 engage in unlawful activities and others from
25 keeping property that was acquired as a result

1 of unlawful activities, and secondly, property
2 from being used to engage in certain unlawful
3 activities. So that's generally the power and
4 the powers of the branch itself. And that's our
5 purpose and our mandate.

6 I'm sorry. I was going to also add, I
7 apologize, how an action is commenced. So under
8 section 3, that's really the basis of our
9 actions, and it determines that the director is
10 satisfied that property is proceeds of unlawful
11 activity or an instrument of unlawful activity.
12 She or he may commence proceedings in court
13 seeking an order of forfeiture of the property
14 to the government. So those are really the
15 powers. But of course we have to consider all
16 of -- certain factors when that decision is made
17 by the director.

18 Q And I understand that as in British Columbia and
19 other jurisdictions, that it's ultimately the
20 court which makes a determination as to whether
21 a property is either an instrument or a proceed
22 of crime and subject to forfeiture.

23 A Correct. It's all under judicial oversight.

24 Q And I also understand that similar to British
25 Columbia, Manitoba has two streams of

1 forfeiture, administrative and judicial.

2 A That's correct. So our administrative

3 forfeiture regime came into effect -- it was in

4 2012, 2013, and so it's very similar to the BC

5 model, and I think probably similar to models

6 across Canada. It's \$75,000 or less, not real

7 property, so not homes, et cetera. No

8 registered interest in that property can be

9 present. It includes cash, vehicles, jewellery,

10 et cetera. Yeah, so that's the administrative

11 forfeiture. And, again, ours came into effect

12 after the BC regime came into effect. And,

13 again, similarly I believe all jurisdictions

14 noticed the same issue. The rationale for the

15 administrative forfeiture process was because we

16 were seeing a lot of default, cases going to

17 default in the judicial stream. And so there

18 was such a high number that it was -- the idea

19 was to try to streamline and render this more

20 efficient and more cost efficient. So under the

21 judicial process of course there's legal fees

22 attached and court resources that are expended

23 on proceeding in that fashion, and because of

24 the high number of defaults that were occurring

25 and especially in low-value cases, the

1 administrative forfeiture regime came about to
2 reduce that cost and the resource intensiveness
3 as well as the inefficiency.

4 And so with the advent of the
5 administrative forfeiture process or regime,
6 what we've seen is it is really quite
7 beneficial, not only to the branch itself but
8 also to interest holders. Because there was a
9 cost attached for them to proceed in a judicial
10 stream or process. This way it's less expensive
11 on either -- for either side, and it's simply an
12 administrative notice, an administrative
13 forfeiture notice that's sent out. We send that
14 out to various addresses, last-known addresses
15 of the individual. That could include a
16 correctional facility, any known -- last-known
17 addresses. That notice is sent out. We also
18 advertise in the *Gazette* and the newspapers as
19 well as on our website to reach those
20 individuals. And they have the right to file a
21 notice of dispute.

22 And so once a notice of dispute is filed --
23 and they can include any documentation as well
24 that they'd like to provide us with as proof to
25 show us that the property is in fact not an

1 instrument or proceeds of unlawful activity.
2 And from there we make a decision as to whether
3 we would proceed, so we will discontinue if we
4 feel that the evidence is appropriate, strong
5 enough. We will discontinue and not proceed any
6 further. Or we can choose to then proceed
7 through the judicial stream or process and file
8 a statement of claim.

9 Q Thank you for that explanation. You've
10 referenced one section of the *Criminal Property*
11 *Forfeiture Act*, and I think I'd like to just
12 pull this up for a moment.

13 MS. PATEL: Madam Registrar, if you could pull up the
14 Manitoba *Criminal Property Forfeiture Act*.

15 Q So you mentioned section 3(1), which, Madam
16 Registrar, is page 11 of the PDF.

17 And section 3(1) just sets out, as you've
18 already told us, the basis on which the
19 director, you, yourself, can commence a
20 proceeding seeking forfeiture; correct?

21 A Correct.

22 Q Okay. And just because this informs the
23 discussion we'll be having later about Bill 58
24 I'm just going to note that it says that:

25 "If the director is satisfied that

1 property is proceeds of unlawful activity
2 or an instrument or unlawful activity, he
3 or she may commence proceedings in court
4 seeking an order forfeiting the property
5 to the government."

6 And then further just again to inform our later
7 discussion --

8 MS. PATEL: Madam Registrar, if you could go to
9 page 15 of the act. And to the bottom,
10 section 14(1). Thank you, Madam Registrar.

11 Q And a successful proceeding for the director
12 would conclude with an order under 14(1); is
13 that right?

14 A That's correct.

15 Q All right. And:

16 "And subject to section 15, and unless it
17 would clearly not be in the interest of
18 justice, the court must make an order
19 forfeiting property to the government if
20 it finds that the property is proceeds of
21 unlawful activity or an instrument of
22 unlawful activity."

23 So that's the basis on which the court may
24 make -- must make an order forfeiture; is that
25 right?

1 A That's correct. And in fact we recently
2 received a Manitoba Court of Appeal decision.
3 We've received three recently, the first three
4 we've ever had in relation to criminal property
5 forfeiture. Surprisingly in 12 years we've
6 never really been to the court of appeal in
7 Manitoba, but the *Nguyen* case actually
8 defines -- there's a decision rendered by the
9 Manitoba Court of Appeal in *Nguyen* that defines
10 the test, the clearly not in the interest of
11 justice test. So yes. And if --

12 Q And are you able in shorthand to give us a
13 summary --

14 A Citation?

15 Q Well, the citation would be helpful. Thank you.

16 A Yes, the citation is 2021, Manitoba Court of
17 Appeal 19.

18 Q Thank you. You passed the quiz.

19 MS. PATEL: And, Mr. Commissioner, I think that
20 because this is technically foreign law, perhaps
21 we should have this, the act, marked as the next
22 exhibit.

23 THE COMMISSIONER: All right. I think we're at 955,
24 Madam Registrar.

25 THE REGISTRAR: Yes, exhibit 955.

1 THE COMMISSIONER: Thank you.

2 **EXHIBIT 955: Criminal Property Forfeiture Act**

3 MS. PATEL: And, Madam Registrar, we can take this
4 down now. Thank you.

5 Q Can you estimate what percentage of your asset
6 recovery proceedings go by way of administrative
7 forfeiture?

8 A Difficult to estimate. I would say that we do
9 get many, so the percentage is high, but the
10 value is low. So it's a lower value because
11 obviously we're dealing with \$75,000 or less.
12 But I would say that there is a high percentage
13 than go through the administrative process.

14 Q And I think you just mentioned this when we
15 were -- when discussing that Manitoba Court of
16 Appeal decision, but in terms of the matters
17 that proceed by way of judicial action, how
18 often do they go to trial?

19 A In the history of our branch we've only had one
20 trial. So most get resolved either by default,
21 so no one shows up, there's no statement of
22 defence filed, or we resolve many of our
23 matters.

24 Q The property which is forfeited under --
25 pursuant to the act and pursuant to an order

1 made under section 14(1), what becomes of it?

2 A Before -- if I may, before we get into that
3 question relating to distributions of grants,
4 perhaps I'll just note under our annual
5 report -- and this was for the fiscal year of
6 2019/2020 -- you had asked me about how many
7 files, administrative forfeiture files. So we
8 do have the amount. So I apologize I didn't
9 have that at the tip of my fingers. But the
10 administrative forfeiture proceedings last year
11 fiscal year, 558 files were initiated, 417 were
12 resolved.

13 Q Administratively?

14 A Correct.

15 Q Since it appears you might have the document at
16 hand, do you have the same statistics available
17 for judicial proceedings?

18 A It says -- well, the figure there is a little
19 bit more difficult to flesh out because what we
20 have here is it says the director initiated
21 civil forfeiture actions against 76 properties.
22 The majority of these matters remain under
23 review by the Court of Queen's Bench, 11 files
24 mainly from previous years were resolved by the
25 court in 2019/2020. But when we talk about

1 properties we could have several properties
2 under one file, right, because one individual
3 defendant may have three homes, a vehicle, cash,
4 et cetera. So it's difficult to determine how
5 many properties, how many files, per se, versus
6 the properties. Because each -- the way we keep
7 our statistics, each file will contain several
8 properties.

9 Q Thank you.

10 A And then going on to your next question -- may I
11 ask you to repeat it.

12 Q Yes. My question was what becomes of property
13 that is forfeited under the act?

14 A Right. So under section 19(4) of the act we
15 have -- the funds go to specific -- they're
16 designated to go to specific areas. So for
17 example, victim compensation for a specific
18 victim of unlawful activity is the number one
19 priority. Now, of course there are many times
20 we are unable to identify a specific victim, so
21 in many of our cases, it involves drug
22 trafficking of some sort. We may not have a
23 specific victim, per se. Obviously society at
24 large is a victim, but we don't have a specific
25 victim we can identify. But in cases where we

1 are able to identify the victim, the primary
2 goal is to ensure that we are compensating that
3 victim for that specific unlawful activity from
4 the funds we recover.

5 So, for example, in a fraud case, we had a
6 fraud case with a church where an employee or a
7 bookkeeper of the church was defrauding the
8 church. I think it was in the amount of
9 400,000. I could be off on the amount. We
10 proceeded with the forfeiture proceedings,
11 recouped and recovered, I think, most of that,
12 all of that money through the defendant, the
13 employee and then returned all of that money to
14 the church itself. So that would be a case
15 where victim compensation, where we're recouping
16 and providing compensation to the specific
17 identified victim, in this case the church.

18 We also -- funds will also go to provide to
19 programs operated by law enforcement agencies to
20 promote safer communities or reduce crime and
21 that includes programs, training and equipment.
22 Programs and services that benefit victims of
23 crime. So we generally provide victims
24 services, which is part of justice will provide
25 them with a specific amount of money year after

1 year, and then they decide which programs
2 they're going to fund. They're the ones who
3 have the expertise, so we provide them with a
4 certain amount of money. And we provide -- we
5 promote safer communities through the payments
6 that benefit programs or activities designated
7 in the regulations. So those are generally the
8 high-level -- where the funds are usually sent
9 to.

10 Now, there's some -- you know, for
11 example -- and I think it's important to note
12 that there are many law enforcement applications
13 that we receive where they are actually seeking
14 funds to support community organizations within
15 their area or their community. So we will fund
16 things like Manitoba Citizens on Patrol Program
17 through law enforcement or Bear Clan through law
18 enforcement, so the law enforcement agency will
19 apply for the funding on behalf of these
20 community organizations so that the funding goes
21 to patrolling, Citizens on Patrol. Bear Clan is
22 one of them well-known in Manitoba. And they,
23 you know, will also ask for funding of things
24 like summer camps for kids for disadvantaged
25 youth or sports equipment for disadvantaged

1 youth, programming camps for reconciliation, et
2 cetera, et cetera. Programs for people who are
3 vulnerable or -- I think there's even a camp
4 last year we funded involving -- actually
5 involving people who have been convicted of
6 domestic abuse. They had a camp for a week with
7 traditional teachings, et cetera, to assist in
8 reducing, you know, family violence. So those
9 are often a lot of the funds will go to these
10 different organizations, these different law
11 enforcement agencies, but they are promoting it
12 within the community and supporting community
13 organizations in that fashion.

14 Q Do you have a sense of what percentage of grants
15 in a given year would go to law enforcement
16 versus victims of crime or --

17 A No. I don't -- I don't have that figure
18 available, but what I can say is we -- so last
19 fiscal year, April 1st, 2019, to March 31st,
20 2020, we forfeited 1.6 million. Some cost
21 recovery was deducted from that and a total of
22 1.5 was disbursed. And that's generally on
23 average per year annually what we disburse in
24 funds, 1.5 million. Since its inception, we've
25 had 22.3 million in assets that have been

1 successfully forfeited and 16 million in
2 disbursements as grants.

3 Q And just so I understand on the law enforcement
4 point, can grants from the fund be used to cover
5 regular law enforcement operation expenses?

6 A No. We cannot fund -- and I'm sorry, I'm
7 just -- I just noticed my computer has decided
8 it might want to do a scan right now. So I'm
9 hoping it won't shut down my computer, my
10 laptop. So if it does, I just wanted to
11 forewarn you for some reason it's decided. It
12 has a mind of its own. So I'm hoping that it
13 won't.

14 But to answer your question, no. The -- we
15 do not -- so grants are on a one-time basis
16 only. You are not -- so any agency cannot
17 expect funding every year from year to year. We
18 do not cover operational costs or capital
19 expenses. We simply provide funding for
20 programs or initiatives and some -- and
21 certainly not standard equipment that would be
22 the norm as part of operational costs for an
23 organization or for an agency. So we will fund
24 specialized equipment but not standard
25 equipment.

1 Q And who makes the determinations about who will
2 receive grants?

3 A So we have a distribution committee, and that --
4 and I'm the chair of that committee, and then we
5 make recommendations to the minister, and then
6 the minister makes the approval, makes or
7 decides.

8 Q At the outset you alluded to a different --
9 sorry, you identified a difference between the
10 British Columbia Civil Forfeiture Office and the
11 Manitoba unit being in funding. And I'd like to
12 just turn to that topic for a moment.

13 Is there -- so my understanding from what
14 you've said is that there's not a requirement
15 for the unit to fund its own activities through
16 its forfeiture recoveries.

17 A No, not at all.

18 Q With the exception for -- of disbursements for
19 legal fees?

20 A Yes. And only a portion of it. Because the
21 government does provide us with some funds or
22 money to cover legal fees and it's only if we go
23 above and beyond that will we then dip into the
24 CPF fund in order to compensate for the
25 difference.

1 Q Are there any other operational expenses of the
2 unit that you are required to pay for out of the
3 fund?

4 A Yes. We do -- we are required to pay for asset
5 management costs and expenses and a prescribed
6 percentage of the value of forfeited property
7 for the cost of operating our admin forfeiture
8 program, which is -- I believe in the regs it
9 talks about 20 percent.

10 Q Does the unit have any financial targets?

11 A No.

12 Q In terms of forfeiture?

13 A Not at all.

14 Q Do cost considerations impact the decision of
15 whether or not to pursue an asset for
16 forfeiture?

17 A Well, so the answer is not really. There is
18 some peripheral -- we do consider cost benefit
19 analysis, but our factors -- the factors we
20 consider are first and foremost the strength of
21 the evidence that we have before us. Secondly,
22 we look at the interests of justice, and as I
23 mentioned, the Manitoba Court of Appeal has
24 rendered a decision that defines it and
25 clarifies what the interests of justice are.

1 And that includes fairness and proportionality.
2 And then we look at victim compensation. And of
3 course we consider cost benefit analysis to some
4 degree. So, for example, if we have a low-value
5 file -- and I should mention these factors are
6 considered whether we proceed in the
7 administrative forfeiture regime or whether we
8 proceed in the judicial stream. So it's the
9 same factors that we would consider either way.
10 But for example, if we were in the admin
11 forfeiture stream and we were discussing a low
12 value file, a thousand dollars, and there was a
13 notice of dispute filed, we would then determine
14 is it worth our effort to go after the thousand
15 dollars in cash, for example, to pay whatever
16 the legal fees would be to proceed in the
17 judicial stream. So we'll certainly consider
18 that. But if the public interest -- so one of
19 the other factors is the public interest that I
20 failed to mention. So the public interest will
21 weigh as well as an important factor to
22 consider. So, again, for example, we've had
23 several files where we don't -- we actually lose
24 money because our costs are more than the value
25 recovered, but we do so because there's a high

1 public interest. For example, the Hells Angels'
2 clubhouse, that was before my time, but the
3 Hells Angels clubhouse, we lost money proceeding
4 judicially on that matter, on that file, but
5 there was a high public interest in ridding the
6 neighbourhood, a residential neighbourhood of a
7 Hells Angels criminal organization clubhouse,
8 and so we proceeded, in any event. And another
9 example would be the church. So we had costs
10 involved in obtaining forfeiture of all those
11 assets and then liquidating them and providing
12 that to the church. So -- but we gave them all
13 of the assets. We didn't take -- we didn't
14 deduct our costs out of that amount. So in the
15 end the cost benefit analysis does play into
16 files to some degree, but there are more
17 important factors to consider.

18 Q With reference to those files that you've just
19 mentioned, the Hells Angels clubhouse and the
20 church, that case, if the unit -- and
21 appreciating some of this came before your time,
22 but if the unit had been operating on a cost
23 recovery basis, would that in your view have
24 impacted the decision to pursue those assets?

25 A Well, and I think you're talking about more like

1 the self-funding model.

2 Q That's correct.

3 A Okay. Difficult for me to say. First, it was
4 before my time. Secondly, we don't have a
5 self-funding model. I'd imagine that even in a
6 self-funding model the factors are probably very
7 much the same and in discussion with every
8 jurisdiction that has a civil forfeiture office,
9 our factors are all the same. I can tell you
10 that today if that were the case today, dealing
11 with the clubhouse, whether we were self-funded
12 or not, I think the public interest would be so
13 high that we would proceed in any event.

14 Q How were staffing -- how are staffing levels and
15 human resources of the unit, how are those
16 determined and how do you go about obtaining
17 funding for those positions?

18 A We have to -- as with any other government
19 department, we have to go through the treasury
20 board and make a submission to request funding
21 for additional resources and personnel.

22 Q Are you adequately able to access the resources
23 to handle the referrals that you receive?

24 A I would say so. I think I would also say that
25 we are not lacking in work. That's for sure.

1 And so we're not out there looking for work. We
2 have a lot of work and plenty of work to keep us
3 occupied. But I do believe that we are
4 adequately able to access any resources that we
5 feel we may need.

6 Q I'd like to turn to the topic of file intake and
7 referrals. How is it that matters -- assets, I
8 suppose, how is it that assets are referred to
9 the unit?

10 A So I'd say almost, if not all of our files are
11 referred from law enforcement agencies. So here
12 in Manitoba the bulk will come from the RCMP and
13 Winnipeg Police Service, WPS. So we receive all
14 our file referrals from law enforcement. We
15 also have many other smaller law enforcement
16 agencies that will refer matters to us. We also
17 get referrals from agencies such as Manitoba
18 Finance, so they're part of the government, but
19 they investigate cigarette smuggling, and so we
20 do get referrals from them when dealing with --
21 when they seize the cigarettes and the property,
22 sometimes cash in the vehicles, then we will be
23 referred those files for forfeiture. And also
24 Manitoba Conservation and Climate, under their
25 act they can seize vehicles, and so we are then

1 referred those files for forfeiture. So -- but
2 really that's where we get all of our files. So
3 everything is dependent on the flow of files
4 from police.

5 Q And can you describe how the unit interacts with
6 police in receiving referrals.

7 A Right. I would say first and foremost we're at
8 arm's length. So we do not direct the police.
9 We do not direct them in any type of
10 investigation. They simply refer files to our
11 unit. It's a one-way street. And I think
12 that's also very important. So they provide us
13 with the file referrals, and whatever
14 information we may discover from our own
15 information gathering tools, we do not disclose
16 to them. So it is very much a one-way street.
17 We do not direct them. We do not disclose. And
18 they -- so unlike when I was a Crown attorney, I
19 would call up the police on one of my files and
20 ask them to do further investigation, obtain
21 further statements from witnesses, et cetera.
22 That does not happen in this unit. I do not
23 direct them to gather any further information
24 than what they've provided to us. So that's
25 important to note. We -- they disclose -- so we

1 do have two -- we call them liaison officers or
2 gatekeepers. We have an RCMP officer and a
3 Winnipeg Police Service officer, because that's
4 where the bulk of our files come from. But they
5 are not seconded to us, and we don't have staff
6 in their agencies. So that's a distinction I
7 think from what the BC model has. We have --
8 these officers, calling them liaison or
9 gatekeepers -- they are employed by their law
10 enforcement agencies. So the RCMP officer works
11 for the RCMP, but is -- a portion of her time is
12 dedicated to CPF and CPF referrals. I don't
13 know exactly what portion of time. I don't
14 believe that -- my understanding is that that is
15 not their sole responsibility. They have other
16 responsibilities within their agency. But
17 generally speaking a big portion of it will be
18 file referrals to CPF, to criminal property
19 forfeiture. And the reason that was implemented
20 is because we couldn't have all of these
21 investigators contacting us because we'd have
22 too many. And that would be difficult. So
23 having these gatekeepers or liaison officers
24 allows us or allows them to funnel all of the
25 file referrals to us. So they will ensure --

1 and they liaise with their agency, their
2 officers and they will ensure that they are --
3 that they are educated on what files can be
4 referred, what files are eligible for referral,
5 what information is required to refer a file.
6 And so on and so forth. So they really are the
7 gatekeepers and they funnel all of the files to
8 us and ensure that we are getting proper
9 referrals. And so they do that on their end.
10 But they're not our employees. They are
11 employed by their agencies. And, again, they
12 act as a buffer so that we're not getting
13 thousands of phone calls from each individual
14 investigator. And so we go through them and
15 they're the point of contact between us and the
16 law enforcement agency.

17 Q Where are they physically located?

18 A Winnipeg police, they're in their building, so
19 their headquarters at Winnipeg Police Service.
20 And the RCMP, we do have a spare office for her
21 here, but she also has an office at the RCMP,
22 and she's mostly -- well, I mean, we're talking
23 about the pandemic. She's at home. But mostly
24 she's at the RCMP office. I don't believe -- I
25 started in the middle of the pandemic, so I have

1 not seen her in the office at all, but my
2 understanding is she mostly attends the RCMP
3 office. She's not often in our office.

4 Q Can you speak to the reason why an office was
5 made available to her at the criminal property
6 forfeiture unit?

7 A My understanding is that because of their
8 databases, they needed a special line, land
9 line, to allow for her to access information,
10 and so we wanted to make sure she had an office
11 that had a door that locked and no access to her
12 computer.

13 Q And aside from receiving and funnelling
14 referrals from other law enforcement officers
15 and providing them to you, what's the nature of
16 the interaction of the liaising officers with
17 your unit?

18 A Could you rephrase that question?

19 Q Yes. So I understand that one of -- I
20 understand from what you've said that a
21 function, perhaps the principal function, of the
22 liaison officers is to receive referrals from
23 other law enforcement officers, whether it be in
24 Winnipeg Police Service or the RCMP and to be
25 the relay point of making those referrals to

1 your unit. Is that right?

2 A Correct.

3 Q All right. And besides that function, is there
4 any other interaction or engagement that happens
5 between your unit and those liaison officers?

6 A No. I mean, we'll discuss if there is missing
7 information if we require. And what I mean by
8 that is well, we may made need police officer
9 notes to look into something a little bit deeper
10 to determine if we have the evidence or not.
11 Maybe it wasn't written out in the report and we
12 don't have the notes and we'll ask could you
13 please -- we'll ask the liaison officer could
14 you please contact the investigator to provide
15 us with police notes, et cetera. What already
16 exists in the file, not to get them to go do
17 further investigation.

18 We -- they also have a function to some
19 degree of educating theirs officers in their
20 agencies about our program and what we can and
21 cannot do and what files are eligible. But
22 generally speaking it's my staff that go to
23 actually do presentations within law enforcement
24 agencies to provide them with information about
25 our program.

1 Q And I understand that this system, the liaison
2 officer system, was in place when you stepped
3 into your role, but I'm wondering if you have
4 any institutional knowledge or institutional
5 views on the difference in quality of
6 information received through the liaison
7 officers versus information just received from
8 law enforcement at large.

9 A Yes. And my understanding from my staff and
10 from legal counsel is that the -- this was
11 necessary to have these liaison officers in
12 order to be able to ensure proper consistency
13 with file referrals because otherwise what was
14 occurring was just -- we were getting too many
15 files, I understand, that weren't eligible and
16 it was becoming overwhelming for the staff to be
17 able to deal with that. So by having these
18 liaison officers, what we've done is we've
19 managed to have efficiency in file referral as
20 well as consistency in file referrals, which
21 were really important to be able to function as
22 an office and move forward with our files.

23 Q A few minutes ago you referred to your own
24 information gathering tools within the unit, and
25 I just -- I wanted to ask you to expand on what

1 information gathering tools you have internally.

2 A Right. Well, the act provides for -- I'll just
3 verify the section. So under -- I think it's
4 19.3. I'll just verify that. But we have the
5 ability -- so the director has the ability to
6 collect information from public bodies in order
7 to gather some information to determine whether
8 we would be proceeding with a forfeiture case or
9 not. So we do have that power to gather
10 information. Now, and through of course our
11 judicial proceedings, we obtain affidavits,
12 affidavits of documents from the defendant. We
13 also go through the examination for discovery.
14 And so all of those are also information
15 gathering tools available to us where we will
16 obtain further information with respect to
17 background and details relating to the assets.

18 Q And in terms of resources, does your office
19 employ any investigators?

20 A No. We do not have investigators in our office.
21 We do not have anyone who has peace officer
22 status. So we're limited in that regard. We
23 have the ability to hire experts, if need be, to
24 testify or provide us with a report. I think we
25 have done so -- we've had drug experts at times,

1 but other than that, we haven't yet used, you
2 know, for example, a forensic accountant as an
3 expert. Not at this stage yet.

4 Q Do any of your staff have anti-money laundering
5 training specifically?

6 A No, I don't think anyone has specific anti-money
7 laundering training. That's something that
8 we -- I've been exploring, whether it's general
9 anti-money laundering or specific such as
10 cryptocurrency, et cetera, et cetera. Obviously
11 we're looking into all of those training
12 opportunities for some of our staff and legal
13 counsel as well.

14 Q I just wanted to confirm what you'd said before
15 which was that your files are -- your files are
16 generated by way of referrals from law
17 enforcement. Does the unit ever identify files
18 or assets of its own accord to target with
19 forfeiture proceedings?

20 A To my knowledge we have not done so in the --
21 historically we've never done that. Generally
22 speaking, as I said, we do not lack for work,
23 and so there hasn't been the ability to start
24 looking for targets, so to speak. So what will
25 happen in more high-value complex files is we

1 will look at open-source databases or
2 subscription databases where we may locate
3 further assets that a defendant may have when we
4 do those sort of, you know, information
5 gathering. So the police might know about two
6 homes and a bank account and two vehicles, but
7 we may discover that the defendant actually has
8 three homes or four homes once we look into
9 open-source information. So we'll add that to
10 our forfeiture proceedings if we feel we have
11 the evidence to do so. But that is about it as
12 far as targeting specific assets or files per
13 se.

14 Q And when it comes to more complex files where
15 there might be a requirement to do some forensic
16 accounting or asset tracing, is that something
17 that you have the capacity to do, or is that
18 something you're expecting law enforcement to
19 have done before the file was referred to you?

20 A We don't have that capacity at the moment. We
21 do not have that capacity. We've never required
22 it. I was inquiring about that the other day.
23 We have not required it, but we suspect that
24 that's something we'll be looking into further
25 even with some of the recent cases or files that

1 we've been referred. So we do expect that --
2 and we have the ability, like I said, to contact
3 an expert in forensic accounting and obtain a
4 report from them to provide us with that
5 expertise. Because we don't have it right now
6 in-house.

7 Q At the outset of your evidence you made mention
8 of an increasing complexity of files that are
9 coming to your office. Can you give us a little
10 bit more understanding of what that increasing
11 complexity is?

12 A Well, even when I was legal counsel in about
13 eight, nine years ago, you know, we dealt with
14 drug trafficking files where there was police
15 would do an interdiction and then they'd find,
16 you know, \$500,000 cash and some drugs in a
17 vehicle right next to it. And then there'd be
18 two people in a vehicle with some cellphones,
19 score sheets and you name it. And all of that.
20 So those were fairly straightforward files. Oh,
21 sorry. I notice the Commissioner's hand is up.
22 Oh, no. Sorry.

23 Okay. So just to continue on. So those
24 were fairly straightforward files that we
25 received. And now what we're seeing is, you

1 know, more complex files with a lot more assets
2 with properties and bank accounts and
3 cryptocurrency. We recently received a case
4 with cryptocurrency. And more sophisticated
5 methods of concealing their assets, whether
6 that's through corporations, numbered
7 corporations, et cetera. And so we're finding
8 that we need to -- we need to really address
9 that issue by looking for the expertise that we
10 will need to be able to proceed with forfeiture
11 cases. Because we just don't have that
12 expertise, that level of expertise within our --
13 within our unit.

14 Q And you mentioned the increasing complexity of
15 files in the context of Bill 58, so perhaps it's
16 a good moment to segue to that. Maybe you can
17 just tell me, what are the -- what were the
18 legislative, perhaps, gaps that existed or that
19 still exist -- the bill has still not been
20 passed into law -- that could help address this
21 complexity that you've just described to us.

22 A Well, as I mentioned, there's some practical
23 experience that we've gained over the years as a
24 branch, and we wanted to improve operational
25 efficiency first. So, you know, some of it is

1 simply, you know, for example, under section 14,
2 1.2 of Bill 58, we addressed partial forfeiture,
3 and that was in response to an Ontario superior
4 court case whereby the court did not allow a
5 resolution of a matter by way of partial
6 forfeiture since the Ontario legislation did not
7 specifically allow for it. And most of the
8 jurisdictions didn't have legislation that
9 allows for that. And so we've addressed that by
10 amending the legislation to allow for that
11 partial forfeiture in the event. And it's
12 usually as a result of resolutions that we look
13 at partial forfeiture. And we wanted to ensure
14 that that was not going to be a barrier in the
15 event we're able to resolve a case.

16 So those are some -- and there were other
17 examples I won't get into. But some of the
18 amendments as I mentioned at the outset of my
19 testimony resolve around enhancing the branch's
20 information gathering tools. And so one of them
21 is what we call -- and also to limit the
22 dissipation of assets because we're finding with
23 the level of technology and the level of
24 sophistication of some criminal organizations,
25 it's much easier for them to not only conceal

1 their assets but also to dissipate them fairly
2 quickly. And so what we decided what made sense
3 was to look at what we've got. So, for example,
4 we've got a preliminary preservation order. So
5 PPO for short, 2.1 of the Bill 58. So under the
6 current law under section 7 we have the ability
7 to obtain an interim preservation order, but we
8 can only do so when we filed a statement of
9 claim. And so that was slowing us down in the
10 sense that we weren't able to get all of the
11 evidence and determine and assess the case and
12 the file quickly enough to file a statement of
13 claim and an interim preservation order. And so
14 what we're doing with the preliminary
15 preservation order is to simply proceed to that
16 step with judicial oversight, but we would have
17 to seek the court's permission, obviously, to
18 grant the order to serve property, the idea
19 being that it would be more efficient and
20 quicker to be able to preserve the property
21 before it dissipates without the need to file a
22 statement of claim, but simply for a very
23 limited time period to preserve that property
24 until we can obtain the proper ability to file a
25 statement of claim. So that was one of the

1 amendments. So it would allow the court to
2 preserve the property and prevent the person
3 from disposing it before we've commenced
4 proceedings. And the court would have to be
5 satisfied that there was a serious question to
6 be tried in forfeiture proceedings, namely
7 whether the property is proceeds or an
8 instrument of unlawful activity.

9 Q And I understand that you can apply for such an
10 order *ex parte*.

11 A Yes, that's correct. That's correct.

12 Q And how long does it stay in effect
13 [indiscernible] before commence proceedings?

14 A I'll have to verify that because I don't know
15 that offhand. I can verify that and perhaps get
16 back to you on the exact amount. I thought it
17 might be 30 days, but I may be mistaken.

18 Q Okay.

19 A But yes. So, I mean, really at the end of the
20 day what we were looking to do was just to
21 disrupt or interrupt the process by which a
22 person is able to liquidate or move assets
23 before we've been able to file the statement of
24 claim. And, again, this is all under judicial
25 oversight. And then dealing with the

1 preliminary disclosure, what we're calling a
2 PDO, that's 2.3 of the Bill 58. Okay. And I'm
3 just being advised by legal counsel that it's
4 30 days for the preliminary preservation order.
5 So that's where we landed on that.

6 Q And, sorry, you were beginning to describe what
7 a preliminary disclosure order is.

8 A Yes.

9 Q Perhaps this is actually a good moment to
10 actually bring up Bill 58. And let's have
11 a quick look at the explanatory note.

12 MS. PATEL: Thank you, Madam Registrar.

13 Q The explanatory note, I believe, is on the next
14 page. There we are. And the two powers that
15 you were just describing, Ms. Murray are
16 described in the middle of this page:

17 "The bill allows the court to make two new
18 orders --"

19 A Correct.

20 Q "-- before proceedings begin ..."

21 A preliminary preservation order and a
22 preliminary disclosure order.

23 And I'm going to ask you to describe the
24 preliminary disclosure order, but before you do,
25 would you agree that this is a type of order

1 that in other jurisdictions is called or has
2 been described as an unexplained wealth order?

3 A Yeah, I would suggest that certainly there have
4 been often mention of the fact that it's similar
5 to the unexplained wealth order. There are some
6 distinctions, though, because we see it as
7 really a tool to gather information and not a
8 means to an end. So it doesn't result in
9 forfeiture of assets. And I know that other
10 jurisdictions, the unexplained wealth order
11 actually results in forfeiture of the assets.

12 In this particular case it does not. What
13 it does is it's an information gathering tool
14 to -- once that information is received by the
15 branch, the branch or the director would then
16 make an assessment as to whether we would
17 proceed to forfeiture in the normal course and
18 file a statement of claim under section 3. So
19 there's a distinction there that I think is
20 important to make.

21 Q Thank you.

22 A Between an unexplained wealth order and a --
23 what we're calling the preliminary disclosure
24 order. Because, again, we're not subverting the
25 procedure, the forfeiture procedure that we have

1 in place at the moment. It's not a different
2 stream, so to speak. It's an information
3 gathering tool that will enable us to determine
4 whether we would then proceed with forfeiture in
5 the normal course under section 3 and whether,
6 as mentioned, in section 3 whether the director
7 is satisfied that there is the ability to
8 proceed with forfeiture.

9 Q Are you aware, can you confirm if Manitoba is
10 the first Canadian jurisdiction to introduce
11 this type of legislation?

12 A Yes, I can confirm that we are the first. I'd
13 also note that, you know, obviously we were well
14 aware of other jurisdictions' unexplained wealth
15 orders, but what we've done is we've looked at
16 the Canadian realities, division of powers, et
17 cetera, as well as the Manitoba context, and so
18 we've come up with this Bill 58 and this PPO and
19 PPDO preliminary disclosure order based on our
20 own realities.

21 MS. PEDDLE: Madam Registrar, I just want to mark
22 this as an exhibit before we continue because I
23 tend to forget these things. Madam Registrar,
24 if we could just scroll back up to the covering
25 page. And so this is Bill 58, the *Criminal*

1 (PROCEEDINGS ADJOURNED AT 10:39 A.M.)

2 (PROCEEDINGS RECONVENED AT 10:41 A.M.)

3 MELINDA MURRAY, a
4 witness for the
5 commission, recalled.

6 THE REGISTRAR: Thank you for waiting. The hearing
7 is resumed. Mr. Commissioner.

8 THE COMMISSIONER: Thank you, Madam Registrar.
9 Whatever the problem was, it's now resolved,
10 Ms. Patel, so please proceed.

11 MS. PATEL: Thank you, Mr. Commissioner, and I
12 believe we've now marked Bill 58 as exhibit 956
13 it's not resolved as exhibit 956, and I'm just
14 going to ask Madam Registrar to pull that up
15 again. And I know, Ms. Murray, that the bill
16 speaks for itself and it sets out how this at
17 the moment proposed power is supposed to work.
18 But just because it is novel in Canadian
19 legislation, I do want to spend some time just
20 looking at it a little bit carefully in how this
21 proposed preliminary disclosure order would
22 function. And so perhaps we could go to page 10
23 of the PDF, section 2.3, Madam Registrar.

24 **EXAMINATION BY MS. PATEL (continuing):**

25 Q And so this would be, I think, probably an

1 opportune moment to ask you what does a
2 preliminary disclosure order do. What is the
3 function of it?

4 A The function of the order -- and again, we have
5 to proceed to court and request that the court
6 make such an order and obviously the court can
7 decide not to provide us with this preliminary
8 disclosure order, but the role or the purpose of
9 the preliminary disclosure order is to obtain
10 information that we would normally obtain at an
11 examination for discovery. So when we file a
12 statement of claim and we get to the point of an
13 examination for discovery, we are allowed to ask
14 questions in relation to the property, the
15 assets, how they were acquired, et cetera. And
16 the purpose here is to be able to obtain this
17 information at the front end to determine
18 whether we would actually be proceeding with a
19 forfeiture proceeding later rather than
20 commencing a proceeding, filing a statement of
21 claim, defence -- the defendant filing a
22 statement of defence -- a statement of defence,
23 dealing with affidavits of documents, exams for
24 discovery, and then, you know, if we're
25 discovering that there is legitimately acquired

1 wealth or that their assets seem to be
2 legitimate, then we won't proceed on those. The
3 idea is to obtain that information at the front
4 end in order to be able to determine whether we
5 would proceed with forfeiture or not. So the
6 idea is to simply obtain this information, which
7 we can already do but only once we're partway
8 down into the system into the case. And, you
9 know, really -- perhaps the best way to describe
10 it is to give you an example. We had a case
11 when I first started within the week, first week
12 that I started, we had a case where there was a
13 homicide and there was a homicide of a rival
14 drug gang. And there was -- the police had
15 determined that there was drug trafficking as
16 part of that. So one of the four individuals
17 charged with the homicide. Also we knew from
18 police that this individual did not work, did
19 not have a job at all and that they received
20 information or found information that he had
21 bank accounts, over \$500,000 in several -- 13
22 different bank accounts, some with his family,
23 jointly owned bank accounts, and that they were
24 living in a residence that was worth \$600,000,
25 yet these individuals, the parents and the

1 defendant or the accused in the criminal case
2 had -- they were collecting what we call
3 employment insurance assistance, so EIA in
4 Manitoba. And so this would be the perfect
5 example of what we would want to perhaps obtain
6 information as to where this wealth was acquired
7 in order to determine if it's legitimate wealth
8 and there's obviously the ability for them to
9 advise us as to legitimacy of the income. We
10 would then not seek forfeiture if the evidence
11 or the information provided to us was adequately
12 indicated that it was legitimate. But if it's
13 not legitimate, then we would take a closer look
14 at that information and determine whether we'd
15 proceed with forfeiture under section 3 and file
16 a statement of claim.

17 Q And the next question I have for you, and
18 perhaps we can move to page 11 of the PDF for
19 the background on this and just if you could
20 scroll down, Madam Registrar, so we can see all
21 of 2.3.6. My question is what does the director
22 have to show in order to obtain such an order?

23 A Right. So when you see it right there, 2.3(6)
24 that the director has reasonable grounds to
25 suspect that the respond -- and all of these

1 factors, these are "and," so all of these
2 factors must be present, not just one.

3 "(i) the respondent is the owner of, or
4 has possession of the property. (ii) the
5 fair market value of the property exceeds
6 \$100,000."

7 The known sources, again, of the respondent's
8 lawfully obtained income and assets would be
9 insufficient to enable to respondent to acquire
10 the property. So essentially what I've just
11 described in my example. And:

12 "(iv) the respondent, or a person who does
13 not deal with the respondent at arm's
14 length, is, or has been, involved in
15 unlawful activity."

16 Now, I think that last factor is also
17 important to underline. There has to be some
18 indication that there was unlawful activity
19 involved here. And so those are the grounds for
20 the order, and obviously it would be up to the
21 court to determine whether they would grant such
22 an order and it would be up to the court to
23 determine the information that should be
24 disclosed and the timelines for that
25 information. So, for example, if it's a certain

1 document that might take more time to obtain
2 than other information and so the timelines can
3 be different depending on what information the
4 court has determined should be disclosed.

5 Q And this is more of an operational, foreseeing
6 operational issues rather than a question about
7 the legislation, but under (3)(iii) what access
8 does the criminal property forfeiture unit have
9 to sources of -- to known sources of a person's
10 income? What, like -- and I suppose that one
11 possible source of knowledge about a person's
12 income could be CRA income tax records. Does
13 the unit have access to that type of information
14 to allow them to inform this kind of
15 application?

16 A No, we do not have access to CRA documents. We
17 cannot obtain those. But we do have access, as
18 I mentioned, we -- under -- again, I can't
19 remember the section off the top of my head, but
20 under our act, the director may collect
21 information from public bodies, so in the
22 example I gave, we can ask the EIA office, which
23 is a public body, the employment insurance
24 assistance officer, I think it's called. We can
25 ask them to obtain their files in relation to

1 those individuals as long as we have a basis to
2 do so and disclose that basis to do so within
3 reason. We can't disclose too much confidential
4 information, but certainly we can disclose the
5 basis for the request. And then that
6 information can be provided to us. So that's an
7 example of how we would know about particular
8 sources of a respondent's lawfully obtained income
9 and whether in fact -- and of course in my
10 example clearly the amounts that they were
11 receiving from employment income assistance
12 versus how much wealth they had in bank accounts
13 and assets in the house were very disparate.
14 Obviously so.

15 Q And what does the preliminary disclosure order
16 require the respondent to do if the order is
17 made?

18 A Well, if the order is made, it would be up to
19 the respondent to comply with the order and to
20 provide the information as it's laid out in an
21 order. So the court would order, you know, if
22 the court orders that CRA records or returns for
23 the last three years are provided to the branch,
24 that that -- and within a certain time period
25 that would be required information. Or, you

1 know, pay stubs or whatever other documentation.
2 So it would include whether they want to give a
3 statement and the time and location of where
4 they would give a statement as well as any
5 documentation that could demonstrate that their
6 assets were legally acquired. You know, if
7 someone won in a lotto or, you know, if they
8 inherited money, et cetera, there should be
9 paper trails for some of this, and so they
10 should be able to provide us with that
11 information.

12 MS. PATEL: Sorry, just to provide some context for
13 this, Madam Registrar, if we could scroll to the
14 next page to 2.3(8).

15 Q I'm sorry, Ms. Murray, this is just to
16 provide -- this is that part of the bill which
17 sets out what the contents of an order will be
18 and what the court can require a person to
19 disclose?

20 A That's correct. That's correct. So "the form
21 and manner in which the statement under
22 subsection 1 is to be provided; the person to
23 whom the statement is to be given; and the place
24 the statement is to be given or, if it is to be
25 provided in writing."

1 Et cetera and then the documents. You know,
2 anything specified by the court.

3 Q If we could just go to the next page. What are
4 the permissible -- if a respondent to such an
5 order complies and provides information, what
6 use can be made of the documents that are
7 provided or the information that's supplied?

8 A Only to be used for the purposes under the *CPFA*,
9 so only for the purposes of whether to
10 determine -- to determine whether proceedings
11 under our act would be commenced. The only,
12 absolute only use. And in fact that was
13 important to include that as protection that the
14 information would be -- remain solely with the
15 unit for the purposes of determining whether to
16 commence proceedings under section 3 of the
17 *Criminal Property Forfeiture Act*. It would not
18 be provided, as we have in other sections in our
19 act as it exists today, the information is not
20 to be provided to police agencies or anybody
21 else for that matter. And I think under the
22 section that I was referring to, collecting
23 information from a public body, I believe it
24 does state that we are not to share that
25 information with anybody. And, again, it's

1 similar in regards to this section.

2 Q And do you know whether the response made by a
3 person subject to a preliminary disclosure order
4 would become part of a public record at any
5 point? For example, a filing in court?

6 A Well, speculation on our part since its early
7 days. You know, we don't even have a bill
8 passed yet. But if there's information that's
9 provided, yes, it may become evidence at a
10 trial. If we were to proceed to trial that
11 would be part of the information as part of the
12 evidence, as would be, I would point out, any
13 information that's discovered in an exam for the
14 discovery. So information that we already can
15 obtain through an examination for discovery can
16 form part of the public record if we went to
17 trial.

18 Q And just below the heading "Statements" there's
19 a heading "Orders Made in the Same Proceeding"
20 and I just want to make the connection back to
21 the first new power that you discussed, which
22 was a preliminary preservation order, and this
23 just sets out that a preliminary disclosure
24 order can be sought statement at the same time
25 as a preliminary preservation order. Is that

1 right?

2 A That's correct. I mean, I think that was just
3 to ensure clarity that, you know, conceivably
4 we'd imagine you'd go in with both at the same
5 time. Otherwise the asset would be dissipated.

6 Q And then just to complete -- on receipt of a
7 response -- sorry, pardon me. I'll start again.

8 On receipt of a response pursuant to a
9 preliminary disclosure order, what are the
10 options for the director?

11 A The options would be -- well, we'd obviously
12 take the time to assess the information and
13 whether we'd have the capacity to do a deeper
14 dive, so to speak, depending on what information
15 we're allowed to obtain by court order. Further
16 deep dive into looking at the accuracy, the
17 legitimacy. You know, if someone's providing us
18 with a receipt, we may have to do further, a
19 robust sort of look at or assessment of that
20 information and that evidence. And then the
21 option is whether we would determine that we
22 have -- again, all of the same factors that I've
23 mentioned previously would still apply. Whether
24 the strength of the evidence, the interest of
25 justice proportionality and fairness, the public

1 interest and cost benefit analysis and determine
2 whether we would proceed with a section 3
3 statement of claim proceeding for forfeiture.

4 Q All right. So the response may or may not give
5 the director -- satisfy the director that the
6 property is proceeds or instrument of unlawful
7 activity?

8 A That's correct. I mean, the option -- it was
9 considered that the option may be that we would
10 not proceed to forfeiture if there was an
11 explanation and the strength of the evidence
12 indicated that this was legitimate acquired
13 assets.

14 Q And in the alternative, if the respondent does
15 not respond or does not provide a complete
16 response to the order, what are the consequences
17 of such a failure?

18 A So under 17 -- so section 17.18 there's a
19 rebuttable presumption.

20 MS. PEDDLE: Madam Registrar, just to make sure we're
21 following along. If you could go to page 21 of
22 the PDF. Thank you.

23 Q And what is the rebuttable presumption that
24 arises?

25 A So that the property in question is proceeds or

1 instrument of unlawful activity. If a person
2 does not comply with the court order whereby
3 they are required to disclose specific
4 information. So the key here is that the
5 presumption is we have to deal with the fact
6 that there may be individuals who will either
7 just ignore or evade and so we had to deal with
8 that in some fashion. This is allowing for the
9 fact -- for that possible scenario, and if in
10 fact someone refuses or does not respond or
11 ignores us, however you want to refer to it, the
12 presumption is rebuttable, though. So we can --
13 if the person does not provide us with the
14 information as required by a court order, we can
15 then go and proceed to a forfeiture proceeding
16 and ask the court to use this presumption. And
17 the individual would then be able to rebut the
18 presumption. So they certainly have the
19 opportunity to rebut the presumption.

20 And, again, at that stage if the
21 information is -- they rebut the presumption and
22 they provide the information and the information
23 is -- there's clear evidence or there's evidence
24 that the assets were acquired legitimately,
25 the -- obviously the director would walk away.

1 So at any point in time the director may always
2 decide to not proceed if there's legitimate --
3 legitimately acquired assets.

4 Of course there's also -- so that -- really
5 that scenario, this rebuttable presumption under
6 17.18 deals specifically with the scenario where
7 an individual did not disclose any information
8 as required by the court order or the
9 information was partially disclosed. So that --
10 those scenarios, this section deals with those
11 scenarios.

12 There's also the offences section under
13 23.1(1). I don't know if you want to scroll
14 there

15 Q Yes. PDF page 23, please, Madam Registrar.

16 A And in this particular situation, this relates
17 to offences, and this really targets the
18 situation where a person provides false or
19 misleading information to -- in response to the
20 court order to disclose information and if
21 that's the case then there's certainly offences
22 under this section.

23 Q And this might be a matter for judicial
24 interpretation down the line, but is it
25 contemplated at the moment that the provision of

1 false information gives rise to the presumption?

2 A Right. I think that's really going to -- time
3 will tell. And that's an issue that probably
4 may come up in a court -- in a court setting. I
5 really can't comment on that specifically.

6 MS. PATEL: Madam Registrar, I think that we can take
7 down this document now. Thank you.

8 Q So just to review the presumption for a moment,
9 Ms. Murray. My understanding is the presumption
10 could assist the director in two distinct ways:
11 one, it provides -- it could provide the grounds
12 under section 3.1 of the act to commence a
13 proceeding; is that right?

14 A Correct.

15 Q And then it could also assist the director in
16 the proceeding itself by shifting the onus to
17 the respondent to show that an asset is not the
18 proceeds or the instrument of unlawful activity?

19 A That's correct. It's rebuttable, obviously.

20 Q Thank you. Now, in terms of the new powers in
21 the act -- and, sorry, I do -- I wanted to focus
22 on the preliminary disclosure order, but there
23 are other amendments to the act. For example, I
24 understand that it gives the director the power
25 to require financial institutions to disclose

1 records.

2 A That's correct. Our practical experience has
3 been that banks will often indicate they require
4 a court order to provide us with that
5 information. Our act is permissive. So in
6 Manitoba the financial institution may provide
7 us with that information, but they will often
8 suggest to us that we need a court order, which
9 is inaccurate. And so what we've -- what this
10 section or provision does in our minds is it
11 gives the financial institution some certainty
12 when they receive notice that they must comply
13 with this section or this provision to provide
14 the director with the information requested.
15 And it provides for what information exactly the
16 director is seeking and also the timeline.
17 Because, again, this goes back to the issue of
18 bank accounts get dissipated very quickly in
19 this day and age with smart technology,
20 smartphone technology, and what we've -- the
21 difficulty we've encountered is we may get
22 information from police that there are X number
23 of dollars in these bank accounts, but by the
24 time we get the ability to file our statement of
25 claim and our interim preservation order under

1 our present act that money has been transferred,
2 moved, transferred, dissipated, and at the very
3 least being able to ask the banks is that money
4 still there and is it still in those bank
5 accounts will certainly be of assistance to us.
6 That's one example of how we would conceivably
7 use this section.

8 Q If the -- and I wanted to make sure that we
9 covered that important proposed amendment as
10 well. But just going back to the proposed
11 preliminary disclosure order. If it is -- if
12 the legislation is amended in the form that
13 we've just reviewed, is it your view that the
14 preliminary disclosure order power will have an
15 impact on your office's ability and the extent
16 to which it can pursue complex -- assets which
17 may be the proceeds or the instrument of
18 complex, more complex, unlawful activity? That
19 was a very convoluted question. Feel free to
20 ask me to rephrase it.

21 A Yeah, perhaps if you can rephrase. I also
22 think, yeah, it's complex and the answer is
23 either simple or it's long. It depends, but go
24 ahead. Maybe if you can rephrase it.

25 Q Yes. Will this proposed power have an impact on

1 your ability to pursue assets which are the
2 product of the proceeds of more complex unlawful
3 activity? And I'll throw out there, for
4 example, money laundering.

5 A Yeah. And I think that's conceivably -- that's
6 very conceivably possible. I mean, I think at
7 the end of the day, again, we're looking at more
8 and more sophisticated criminal organizations
9 with, you know, professional money launderers
10 who don't get involved in the drug trafficking
11 and you've got your pyramid of drug traffickers
12 and criminal organizations and often I think --
13 from what I understand, what we're doing is
14 we're scratching the surface. We're dealing
15 with the bottom of the pyramid, and every once
16 in a while we get these more complex cases and I
17 know other jurisdictions might get more of them
18 than Manitoba, but we don't feel we have the
19 necessary tools to do deeper dives into the more
20 complex cases with higher value assets because
21 of the sophistication of the criminal
22 organization. So yeah, to answer your question,
23 yes, I think it's part of the reason why this
24 has been introduced.

25 Q Have you considered whether any of these new

1 powers, if the statute -- if the bill is passed
2 as we've seen it written, have you turned your
3 mind to whether any of these new powers will
4 require additional resources within your office
5 in order to use them effectively?

6 A Well, I would say to you that the budget for the
7 province has not yet passed, so I am limited,
8 again, in what I can say in that regard, but I
9 can tell you that the government has approved
10 the creation of three new positions within the
11 branch and an increase of 336,000 to allow for
12 the additional capacity to seize money and
13 assets. And so that has already been
14 contemplated and is being addressed.

15 Q And what are those three new positions
16 anticipated to be?

17 A Well, I can't really divulge that because it's
18 not public, but suffice it to say that they
19 would support the new amendments.

20 Q Can you say whether this would be positions more
21 in the role of analyst or investigative
22 capacities than in any other function?

23 A That's the contemplation is that there would
24 be -- not necessarily peace officers, of course,
25 but more analyst type of role to allow for -- so

1 in conjunction with information gathering tools
2 like the section related to financial
3 institutions as well as the preliminary
4 disclosure order, we would need the capacity
5 then to have people, to have staff to review
6 that information. So once we receive
7 preliminary disclosure order and we obtain the
8 information from that individual, someone needs
9 to look into all of that information to
10 determine whether it makes sense, whether it's
11 legitimate, the evidence, et cetera, and so
12 that's conceivably what we would expect with
13 those new positions. It would obviously
14 generate more work; right? So with the
15 legislative amendments in place, that will
16 generate more work and a more robust look at a
17 peek behind the veil of money laundering,
18 et cetera, in essence.

19 Q Turning to a different topic entirely. I have
20 just a few short kind of cleanup questions for
21 you here. Are you aware if legal aid is
22 available to respondents to a civil forfeiture
23 proceeding in Manitoba?

24 A My understanding is it is not available for
25 criminal property forfeiture proceedings.

1 Q Given -- based on your own experience, how often
2 do you find respondents in these proceedings to
3 be unrepresented?

4 A I don't believe we've had many unrepresented
5 cases. I'm looking to my legal counsel here
6 because she would know better than I, but I
7 don't believe we've had very many cases of
8 unrepresented. At least not with respect to the
9 higher value cases. If you're talking about the
10 lower value cases, there may be unrepresented
11 individuals, self-represented individuals for
12 the lower value files. But keep in mind we've
13 only had one trial in the history of our unit,
14 so generally things end up either in default or
15 resolution. But I can tell you as former legal
16 counsel for the criminal property forfeiture
17 unit and as a former Crown attorney for
18 24 years, we would also prefer to have someone
19 else on the other side representing a defendant.

20 Q And this might seem -- it might seem obvious why
21 that is, but if you could just elaborate a bit
22 on why you would prefer to see somebody on the
23 other side.

24 A It's just it's much simpler to run a case or
25 deal with an individual, legal counsel that

1 understands the law and the procedures, et
2 cetera, and the ability to have discussions with
3 legal counsel is obviously simpler. I mean,
4 there's -- I'm sure everyone would feel the same
5 way. It's very difficult to deal with
6 self-represented individuals. And, again, our
7 role is not -- so if you're legal counsel for
8 the CPF, your role is not to give legal advice
9 to the defendant. On the flip side you want to
10 make sure that that defendant is treated fairly
11 and has all of the knowledge or ability to make
12 informed decisions. So it's a difficult role
13 for legal counsel and of course for the courts.
14 And it's much simpler to have someone on the
15 other side representing any defendant and their
16 interests.

17 Q Would you agree that it would increase the
18 fairness of the process from the perspective or
19 a respondent to have access to legal assistance?

20 A I'm not sure I feel comfortable in answering
21 that question. I think -- I've spent, as I
22 mentioned, many years in criminal courts dealing
23 with many self-represented individuals, and I'm
24 not sure I would suggest that they didn't have
25 fair opportunities not only from the Crown

1 attorneys but also from the courts. So I
2 wouldn't necessarily agree with that contention.

3 Q And I think moving on to my last topic -- and I
4 believe this is my last question for you, but
5 I'll reserve on that for the moment -- do you
6 have -- I know you've been in your role with the
7 Manitoba unit for only -- for just a year now.
8 Do you have any thoughts on how a non-criminal
9 asset forfeiture program can go about measuring
10 its success?

11 A Well, that's a very difficult question. I would
12 imagine if one looks at what the mandate is of
13 our branch, to forfeit proceeds or instruments
14 of unlawful activity, to deter and disrupt
15 organized crime, to return forfeited money to
16 the community and to compensate victims. That's
17 really our mandate. How do we measure success?
18 First off, we don't control the flow of
19 referrals. So some year there are more
20 referrals than other years and it's wholly
21 dependent on law enforcement agencies and their
22 work around crime and what they may investigate.
23 How do you measure success? One important
24 factor is you can't simply look at numbers and
25 finances and profitability because, as I

1 mentioned, there are several times -- and I'm
2 sure this occurs and I know this occurs in every
3 jurisdiction -- we will proceed on cases on
4 files where there is no monetary value because
5 the public interest is present. And so how do
6 you measure that when there's no bottom line
7 number? And in fact we lose money on some files
8 because it costs us money to proceed. And so we
9 can't use that as a measurement of success. You
10 know, and, again, as I mentioned, Hells Angels
11 clubhouse or the fraud theft case in the church
12 are examples of that.

13 I think we are one or many initiatives
14 federally and provincially that attempt to
15 address crime prevention and safer communities
16 and so we are one spoke in the wheel, so to
17 speak, of various initiatives that attempt to or
18 have similar mandates and have different ways of
19 achieving those mandates.

20 I think at the end of the day if you look at
21 the numbers in one sense, that's money that's
22 taken off the street and that's money that's
23 taken off the street whether there's proceeds or
24 instruments are taken off the street and out of
25 communities and it's invested back into those

1 communities. So that's also a measurement that
2 needs to be considered.

3 And really at the end of the day our branch
4 as is every civil forfeiture office, we're
5 really reactive, not proactive. We're not
6 stopping crime from happening, not necessarily.
7 We're getting file referrals usually after
8 charges have been laid and then we're looking to
9 forfeit those -- that money or those assets. So
10 we're more reactive in that sense. Does it
11 deter crime? I don't know how you measure that
12 necessarily. And I think it's probably the same
13 issue in criminal law and the criminal process,
14 how do you measure success. So I think at the
15 end of the day we're one of many initiatives
16 federally and provincially that attempt to do --
17 to deter criminal organizations.

18 I think one important aspect is at the very
19 least our act, and hopefully our amendments if
20 they are passed, looks to make our province a
21 hostile territory to criminal organizations and
22 those who endanger public safety. And so if
23 there's more robust laws in place that might
24 deter money launderers or criminal organizations
25 from doing business in our province, then that's

1 a good thing. How do we measure that? I'm not
2 sure.

3 MS. PATEL: Thank you. Mr. Commissioner, I believe
4 those are my questions. But I note the time and
5 I would suggest that maybe we take a 15-minute
6 break and if I could just review my notes during
7 the break and then I'll let you know when we
8 come back whether I have anything further for
9 Ms. Murray.

10 THE COMMISSIONER: All right. Thank you, Ms. Patel.
11 We'll take 15 minutes, then.

12 THE REGISTRAR: This hearing is adjourned for a
13 15-minute recess until 11:34 a.m.

14 **(WITNESS STOOD DOWN)**

15 **(PROCEEDINGS ADJOURNED AT 11:19 A.M.)**

16 **(PROCEEDINGS RECONVENED AT 11:34 A.M.)**

17 **MELINDA MURRAY, a**
18 **witness for the**
19 **commission, recalled.**

20 THE REGISTRAR: Thank you for waiting. The hearing
21 is resumed. Mr. Commissioner.

22 THE COMMISSIONER: Thank you, Madam Registrar.
23 Yes, Ms. Patel.

24 MS. PATEL: Mr. Commissioner. I don't have any
25 further questions for the witness. However,

1 over the break the witness was able to send me a
2 copy of the annual report that she referred to
3 at one point in her evidence -- sorry, counsel
4 for the witness sent to me -- and it's the
5 Manitoba justice annual report 2019 to 2020 and
6 I wonder, Madam Registrar, if you have that
7 handy if you could just pull that up. And I
8 don't -- it may -- since it was referred to in
9 the evidence, there may be some utility in
10 having this marked as an exhibit. This is of
11 course without notice to my friends, and if any
12 of my -- any participant should have any concern
13 with this being marked as an exhibit at this
14 time, it isn't necessary.

15 THE COMMISSIONER: All right. Maybe what we should
16 do, Ms. Patel, is simply mark it as an exhibit
17 for identification. And if any counsel having
18 perused it have any objection to it being marked
19 as an exhibit proper, that could be dealt with
20 at a later time. But I take it it's not a one
21 or two-page document.

22 MS. PATEL: It is an 86-page document. Only part of
23 it deals with the criminal property forfeiture
24 branch and I'll just ask if Ms. Murray can
25 confirm. Madam Registrar, if you can go to

1 page 19 of the PDF.

2 **EXAMINATION BY MS. PATEL (continuing):**

3 Q This is the section dealing with the civil
4 property forfeiture unit, Ms. Murray?

5 A Yes, that's correct.

6 MS. PATEL: All right. That's all I wanted to say.

7 I think it goes for a page or so. But I'm happy
8 to proceed on that basis, Mr. Commissioner.

9 THE COMMISSIONER: All right. Let's do it that way,
10 and if anyone has any objection, it can then be
11 raised in due course. Thank you.

12 THE REGISTRAR: That will be exhibit J,
13 Mr. Commissioner.

14 THE COMMISSIONER: Thank you, Madam Registrar.

15 **EXHIBIT FOR IDENTIFICATION J: Manitoba**
16 **Justice - Annual Report 2019-2020**

17 THE COMMISSIONER: Thank you, Ms. Patel.

18 I'll then call on Ms. Addario-Berry on
19 behalf of the province, who has been allocated
20 15 minutes.

21 **EXAMINATION BY MS. ADDARIO-BERRY:**

22 Q Good morning, Ms. Murray. Can you hear me okay?

23 A I can. Good morning.

24 Q So I'd just like to start by clarifying
25 something which came up earlier this morning in

1 your evidence. You stated that your office has
2 a budget line for legal fees, but if you go
3 beyond that budget you have the option of
4 funding additional legal fees to cover the cost.
5 Do you recall giving that evidence?

6 A That's correct.

7 Q Is that budget for legal fees set on a
8 file-by-file basis, or is this an aggregate
9 amount for the unit?

10 A It's just an aggregate amount.

11 Q Okay. Is the funding of legal fees over and
12 above that budget something that would come from
13 assets which have been recovered by the unit?

14 A Yes.

15 Q Okay. So not just excess legal fees that could
16 be recovered but all costs and expenses incurred
17 within the proceedings; correct?

18 A Yes.

19 Q And does that also include reimbursement of the
20 asset manager for costs and expenses incurred in
21 managing, selling or otherwise disposing of the
22 property?

23 A That's correct.

24 Q And how is your unit's budget determined?

25 A By treasury board and by the justice department.

1 I can't say that I know much about that. I've
2 only been in the position for a year, so I
3 simply know that I get a budget and I have to
4 work within that operating budget.

5 Q Fair enough. And I take it, then, you are
6 perhaps not in a position to opine on whether
7 your annual budget stays fairly static and
8 constant from year to year or if you see much
9 fluctuation in that regard?

10 A I can't really comment because I have not looked
11 at previous budgets.

12 Q Okay. My next question relates to the *Criminal*
13 *Property Forfeiture Act* itself.

14 MS. ADDARIO-BERRY: Madam Registrar, could I ask you
15 to pull up that PDF, please. Thank you. And
16 I'd like to turn to page 37 of the PDF.

17 Q My question relates to section 19.1(1) and (2)
18 regarding compensation for victims. Is it
19 correct that pursuant to 19.1(2) it states:

20 "An application for compensation must be
21 made in writing to the director in
22 accordance with the regulations."

23 Does this mean that where victims of criminal
24 activity have been identified by the unit, the
25 burden is still on those victims themselves to

1 apply for compensation as opposed to the unit
2 initiating the compensation process proactively?

3 A So I have not yet delved into the issue of
4 victim compensation, but what I can tell you is
5 that even though the application for
6 compensation must be made in writing to the
7 director by the individual, I know for a fact
8 that if we've identified someone, we will go
9 ahead and commence the proceedings and reach out
10 to that victim. So if we've identified a
11 victim, we will certainly ensure that they are
12 aware of the fact that they are allowed to
13 receive compensation.

14 Q Okay. So when you say initiate the proceedings,
15 I take it that would mean that you have conveyed
16 to them the fact that there is eligibility for
17 compensation under this statutory regime.

18 A Right, that's correct. And when I say initiate
19 the proceedings is there's a victims
20 adjudication committee that will then determine.
21 So we would compile the required documentation
22 and then the committee takes a look at it to
23 determine eligibility and amount, et cetera,
24 based on factors in the regulations. So if we
25 reach out, we identify a victim and we're always

1 asking -- so I always ask my staff to ensure
2 that they're going through every file to
3 determine if there's a specific victim that is
4 identifiable for a specific unlawful activity
5 where we've actually received forfeiture. And
6 in those cases we will reach out to those
7 individuals to ensure they are aware of the
8 process and in the meantime we get organized.
9 We would be organized to proceed to a victim
10 adjudication compensation meeting.

11 Q I see. And would victims be appearing with
12 legal counsel at these sorts of hearings, or is
13 it more of an informal process?

14 A It's informal and the victim just provides --
15 from what I understand because I haven't yet
16 dealt with this particular, I guess, power or
17 responsibility -- my understanding is they apply
18 for it and they would describe how -- why they
19 feel they would need compensation and then from
20 there it's just an adjudication committee that
21 makes the determination and then there's no --
22 the victim does not appear and neither does
23 legal counsel.

24 MS. ADDARIO-BERRY: Madam Registrar, I'm finished
25 with that document. Thank you.

1 Q Turning to the composition of the unit itself, I
2 believe you mentioned this morning that you have
3 five permanent positions and one student within
4 your complement. Is that correct?

5 A That's correct. In addition to myself.

6 Q Of course. I'm sorry. Could you speak a little
7 more about the nature of the five permanent
8 positions within the unit?

9 A Sure. There's the assistant director, who
10 I certainly can delegate some of my powers or
11 responsibilities to. There is the manager of
12 administrative forfeiture proceedings or
13 administrative forfeiture, so he will deal with
14 all of the admin forfeiture files. We have an
15 administrative forfeiture coordinator. She will
16 do all the support for the admin forfeiture
17 files. And there's an asset manager, we have an
18 administrative assistant and then the student.

19 Q And are any of your employees either seconded to
20 police departments whether provincial or RCMP?

21 A Not in the history of the unit.

22 Q And as the Executive Director, who do you report
23 to?

24 A I report to the Associate Deputy Minister of
25 community and safety division. He reports to

1 the Deputy Minister, who reports to the Minister
2 of Justice.

3 Q Thank you. Does your organization frequently or
4 ever identify proceeds of international
5 organized crime through the proceedings that
6 you've been involved with?

7 A Not since I've been Executive Director and not
8 when I was legal counsel approximately eight
9 years ago. I do know through institutional
10 knowledge, so to speak, that the previous
11 Executive Director was part -- I think he was a
12 Canadian representative on the -- it's called
13 CARIN, and it's the -- I can't remember what it
14 stand for. Caribbean -- there's an
15 international organization that enables
16 different jurisdictions and countries to connect
17 to be able to advise if there are particular
18 assets in a certain jurisdiction or unlawful
19 activity that could lead to particular assets.
20 So there's some information sharing in that
21 regard.

22 This -- once the previous -- my
23 predecessor, once he retired I believe it was
24 the Executive Director of the British Columbia
25 Civil Forfeiture Office who was then appointed

1 or named as one of the Canadian delegates for
2 this organization. So I'm not very familiar
3 with it other than what I've just talked to you
4 about. I have not had anybody reach out to me
5 from international jurisdictions. We have
6 worked within Canada. We do have a national
7 civil forfeiture executive committee, and we
8 meet. We have annual meetings and discuss
9 issues and similarities and consistencies, et
10 cetera, and any particular interesting case law
11 that we get out of our courts in our
12 jurisdictions but we also have memorandums of
13 understanding between the different provincial
14 and territorial jurisdictions that have CFOs to
15 assist in asset recovery and/or unlawful
16 activity within one jurisdiction.

17 So, for example, in a recent case there was
18 unlawful activity occurring in Manitoba, and it
19 was a Manitoba investigation with law
20 enforcement in Manitoba, but they had also
21 discovered assets in Vancouver, and so BC was
22 also included in that asset recovery on their
23 end for whatever was found in BC. And so we
24 work in conjunction in that fashion.

25 Q And can you just explain to me how do the

1 memorandum of understanding play a role in that
2 sort of interjurisdictional cooperation.

3 A Well, it's -- it's simply a memorandum of
4 understanding that we can share information with
5 each other regarding specific files, which
6 normally we wouldn't, right, so normally we
7 would not share any of our information. But in
8 that particular instance, if we're looking to
9 assist another jurisdiction where there's cross
10 jurisdictional unlawful activity, which is
11 common enough with drug trafficking, for
12 example, we ensure that we are allowed to share
13 that information to assist the other offices.
14 And I think 19.5 of the *CPFA* actually allows for
15 it.

16 Q You mentioned this morning that the unit is more
17 reactive than proactive and also has no control
18 over what sort of referrals you receive. In
19 your capacity as Executive Director is that
20 something that you're hoping will change in the
21 coming years?

22 A I'm not sure I know how to answer that. I mean,
23 from a practical standpoint, we certainly have
24 our hands full with what we have presently. I
25 guess I could say hypothetically what I'd like

1 to see is that there be an ability to go further
2 than simply scratch the surface. I think anyone
3 who works in these fields would like to see
4 deeper dives into the money laundering that's
5 occurring and the concealing of assets to ensure
6 that we're not simply scratching the surface.
7 So on a personal level, yes, I would like to see
8 the ability to go further. And I think there is
9 potential because there certainly is a lot of
10 criminal activity and criminal organizations and
11 money laundering that's occurring from what I've
12 read. Again, I'm not an expert, but certainly
13 from what I've been reading, it's clear that
14 there are some issues that we need to address.
15 Hence, I think the reason why you have your
16 commission.

17 Q Thank you. And are you optimistic that the
18 amendments set out in Bill 58 will help to move
19 the unit towards that direction?

20 A I'm certainly optimistic. The minister is
21 comfortable with the legislation moving forward,
22 and it's early days. We haven't even passed the
23 legislation and in practical terms we'll have to
24 see how this all plays out.

25 MS. ADDARIO-BERRY: Thank you. Those are my

1 questions.

2 THE COMMISSIONER: Thank you, Ms. Addario-Berry.

3 I'll now call on Ms. Roos on behalf of the
4 BC Lottery Corporation, who has been allocated
5 five minutes.

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

8 THE COMMISSIONER: Thank you, Ms. Roos.

9 Now Ms. Magonet on behalf of the British
10 Columbia Civil Liberties Association, who has
11 been allocated 15 minutes.

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

13 **EXAMINATION BY MS. MAGONET:**

14 Q Ms. Murray, can you hear me?

15 A Yes, I can.

16 Q Excellent. So the first series of questions are
17 going to concern preliminary disclosure orders,
18 which are in Bill 58. Earlier today you
19 provided evidence that these are primarily an
20 information gathering tool. Is that accurate?

21 A That is.

22 Q I appreciate if you may not be able to answer
23 this question, that's fine, but would you agree
24 they're actually quite similar to the
25 unexplained wealth order regime in the UK where

1 information?

2 A Right. But if you look at Bill 58, there's also
3 the ability for an individual to ask for
4 extensions of time if they feel the need to --
5 if they require more time to be able to gather
6 the information. So, you know, if you're in the
7 middle of a pandemic and you're not able to
8 access certain information or if someone is sick
9 or there's other reasons why a person would ask
10 for an extension, and that's up to the court to
11 determine whether that extension is granted or
12 not. That's not up to the director. So the
13 court would make a determination. So the
14 availability of the extension was important to
15 ensure that there are many situations that could
16 arise that, you know, even from -- if they were
17 required to provide banking information or -- I
18 don't know -- documents from a federal agency
19 and the federal agency wasn't giving the
20 documents to them within the timeline, they
21 would be able to simply notify and ask the court
22 for that extension. And so, you know, yes, I
23 mean, the scenarios that the rebuttable
24 presumption addresses is one, no information is
25 provided, or two, some information is provided,

1 or some information and some information is not
2 provided within the time period required. But,
3 again, they have the opportunity to ask for
4 extensions.

5 Q Thank you. And an application for preliminary
6 disclosure order, it could be made without
7 notice under Bill 58; correct?

8 A That's correct. *Ex parte*.

9 Q And you would agree that a preliminary
10 disclosure order can require somebody to provide
11 quite sensitive information, wouldn't you?

12 A Correct. Same as you would in an exam for
13 discovery.

14 Q And, for example, it can require somebody to
15 provide the sources and amounts of their
16 lawfully obtained income and assets?

17 A Yes, it would certainly do that. Same as it
18 would in an exam for discovery.

19 Q Bill 58 says that the proceedings for a
20 preliminary disclosure order is *in rem*. But
21 wouldn't you agree that an order requiring a
22 person to disclose the sources and amounts of
23 their lawfully obtained income and assets is
24 really directed at a person and not a piece of
25 property?

1 A I would not agree with that. Our act proceeds
2 on *in rem* basis, not *in personam*. We do need to
3 speak to an individual to obtain that
4 information, but it's the assets and the
5 property that's being targeted, not the
6 individual. So we're -- the proceedings, the
7 target of the proceedings for forfeiture are the
8 assets, not the individual.

9 Q But what about the target of the preliminary
10 disclosure order? Isn't that really about the
11 individual and the source of their wealth in
12 addition to the piece of property in question?

13 A No, I would, again, disagree. It's, again, all
14 about property. The relevant questions on a
15 preliminary disclosure order would have to be
16 relevant to property and how it was acquired.
17 It's not relevant to any other personal
18 information other than the property. It's tied
19 to the property and the assets, nothing else.
20 But the only way that information can be
21 obtained is through the individual who owns the
22 property or possesses it.

23 Q Okay. Thank you. You would agree that the
24 Bill 58 requires a judge to grant a preliminary
25 disclosure order if the conditions set out in

1 section 2.36 are met unless it's clearly not in
2 the interest of justice?

3 A Correct. Correct.

4 Q So a judge has limited discretion to refuse to
5 grant such an order?

6 A Again, that will be up to the court, and we have
7 a recent case from the Manitoba Court of Appeal
8 that defines the not clearly in the interest of
9 justice test. And certainly that will be up to
10 individual courts to determine whether it's in
11 the interest -- not clearly in the interest of
12 justice. I mean, there's a million different
13 computations or mutations of what that may look
14 like, but that's, again, judicial oversight was
15 important to us to ensure that the courts had
16 the final decision, but certainly if all of the
17 conditions are met, the judge still has the
18 option of determining that it was clearly not in
19 the interest of justice to order that
20 preliminary disclosure order.

21 MS. MAGONET: Thank you. Madam Registrar, if I could
22 ask you to please call up Bill 58. I think this
23 might be helpful at this point. And if you
24 could please go to -- sorry, just give me a
25 moment -- page 11 of the PDF, and it will be

1 section 2.3(6) of the law. Excellent. Thank
2 you.

3 Q Ms. Murray, just looking at the conditions for
4 granting a preliminary disclosure order, it is
5 not the case that the director must have
6 reasonable grounds to suspect that the property
7 in question is the instrument or proceeds of
8 unlawful activity?

9 A Sorry. Can you repeat the question.

10 Q Yes. Sorry. I phrased that a bit strangely.
11 In order for a preliminary disclosure order to
12 be granted, the director doesn't need to suspect
13 that the particular piece of property at issue
14 is the proceeds or instrument of unlawful
15 activity. They simply need to have a reasonable
16 suspicion that the respondent or someone who the
17 respondent has been associated with was involved
18 in unlawful activity?

19 A Yes, I think that's correct. I would also note,
20 though, under section -- in our current act
21 under section 17.15(2) (a). I'm just going to --
22 if you give me a minute I'll just refer to the
23 actual wording. So I think this is what you're
24 getting at. So 17.15(2):

25 "No direct link to specific unlawful act

1 needed."

2 So this the exists already in our act:

3 "In a proceeding under this Act in which
4 property is alleged to be proceeds of
5 unlawful activity, the court, (a), is not
6 required to be satisfied that the property
7 was acquired in connection with a specific
8 unlawful act; or (b) is not required to be
9 satisfied that an increase in the value of
10 the property or a decrease in a debt
11 obligation secured against the property
12 arose as a result of the specific unlawful
13 act."

14 So it already exists in our act and has for the
15 entirety of or our -- of its existence.

16 Q Thank you. And unlawful activity is defined
17 extremely broadly in the *Criminal Property*
18 *Forfeiture Act*. Like we're not just talking
19 about serious organized crime. We're talking
20 about something that could be a petty provincial
21 offence in any province in Canada. Is that
22 accurate?

23 A It can refer to any unlawful activity that's
24 against the -- any statute, provincial statute,
25 you're correct. Whether -- I would suggest

1 whether it's petty or not depends on I guess
2 different people's perceptions; right? So if --
3 under our -- I think there's an act that deals
4 with cigarette smuggling in our province. It's
5 a provincial statute. It has an offence section
6 for smuggling cigarettes. It is big money in
7 this province and they smuggle the cigarettes
8 across. They make a lot of money. They profit
9 from it quite a bit and so to suggest that
10 that's not as important an act as the *Criminal*
11 *Code*, I guess I would beg to differ with you in
12 that regard. But certainly we certainly look at
13 those -- all of the provincial statutes. And
14 federal statutes.

15 Q Thank you. Ms. Murray, are you aware that
16 unexplained wealth orders have been criticized
17 by lawyers and academics around the world in
18 terms of their implications for privacy rights,
19 self-incrimination and the presumption of
20 innocence?

21 A Sorry, I missed part of that question. I think
22 my -- I've been advised my internet connection
23 is unstable. So I missed the first part of your
24 question.

25 Q Oh, I'm happy to repeat it. I was wondering if

1 you're aware --

2 A Thank you.

3 Q No problem. I was wondering if you were aware
4 that unexplained wealth orders have been
5 criticized by lawyers and academics across the
6 globe in terms of their implication for privacy
7 rights, the presumption of innocence and the
8 right to be protected from self-incrimination?

9 A Yes, I would say that I am aware of that, as I'm
10 aware of criticism about *CPFA* generally and some
11 of the decisions from courts regarding *Criminal*
12 *Code* and charter issues as well.

13 Q Thank you. To that concludes my questions about
14 preliminary disclosure orders. I now just have
15 some questions about the current laws that
16 operate. It's my understanding that the current
17 law requires an annual report be prepared every
18 year providing information notably on how much
19 revenue was raised from the civil forfeiture
20 office and how those funds were distributed. Is
21 that accurate?

22 A That is accurate.

23 Q And I was wondering if you could speak to the
24 value or if you have any views on the value of
25 this kind of transparency.

1 A Well, I think it's necessary for -- to ensure
2 that there's some information about the asset
3 recovery and the forfeiture recoveries and where
4 the money goes. Certainly it's required under
5 the legislation and we comply with that.

6 MS. MAGONET: Thank you. Madam Registrar, if I could
7 ask you to please pull up a document that I
8 circulated. It's a news article from 2019
9 entitled "How Crime Pays for Police." Yes. I
10 have it here.

11 Q Ms. Murray, are you familiar with this document?

12 A Yes, I was advised that you would be referring
13 to it. Other than that, it was the first time
14 I've seen it.

15 MS. MAGONET: Mr. Commissioner, I wonder if it might
16 be possible to get this marked as the next
17 exhibit.

18 THE COMMISSIONER: Yes, very well.

19 THE REGISTRAR: Exhibit 957, Mr. Commissioner.

20 **EXHIBIT 957: CBC news - How Crime Pays for**
21 **Police, by Ian Froese - November 30, 2019**

22 MS. MAGONET: Madam Registrar, if you could please
23 scroll down to the second page of this document.

24 Q I'm hoping just to take you to a quote from this
25 document, Ms. Murray. Here it says:

1 "There has been a nearly eightfold
2 increase in the proceeds of criminal
3 property forfeiture since 2012 – and the
4 police are the primary beneficiaries of
5 the growing fund in Manitoba. Law
6 enforcement agencies are receiving more
7 than \$1.1 million annually from the pool
8 of money – more than triple what they
9 earned in 2012-13 when the province made
10 it easier for the police to seize
11 property. Meanwhile, the money going to
12 victims from the fund hasn't increased
13 nearly as much – this year, it's \$415,000,
14 which is only a 20 [sic] percent increase
15 from 2012-13."

16 Would you --

17 A I think you -- sorry, I was just going to say, I
18 think it was a 27 percent increase.

19 Q Oh, my apologies. Thank you for the correction.
20 Do you agree that this is what the article says?

21 A I agree this is what the article says, yes.

22 Q And do you have any reason to dispute this
23 finding or believe this is inaccurate?

24 A Well, I would say that what doesn't come out in
25 the statistics, and I think I mentioned this in

1 my direct testimony -- what doesn't come out in
2 the statistics is law enforcement, although the
3 statistics show that law enforcement receive X
4 number of dollars, when you look at what the
5 applications are for and, you know, I gave
6 examples. So, for example, Brandon Police
7 Service last year applied for funding for the
8 Bear Clan in a certain amount to allow for --
9 this is a grassroots organization that patrols
10 the streets of the city of Brandon and they
11 assist in high crime areas. They will, for
12 example, search for missing persons, assist
13 people, assist the community, not just police
14 but the community, in that regard.
15 Neighbourhood watch, all of that kind of thing
16 rolled into one. So there are many, many
17 applications where -- and many disbursements
18 where the funds are -- what looks like in a
19 statistics going to law enforcement agencies but
20 they are essentially the sponsor of community
21 organizations. So I think that is problematic
22 with respect to how the statistics bear out.
23 Because when you look behind those numbers, you
24 see that, for example, most of the RCMP requests
25 involve specific community organizations or

1 funding to assist the community. So it's not to
2 buy specific special equipment for themselves.
3 They will often ask for money to help up in the
4 northern Manitoba where there's disadvantaged
5 youth, for example, to assist with summer camps
6 to keep them busy or, you know, intermural
7 sports so sporting equipment, canoes, et cetera.
8 So from that perspective, it's a bit deceiving
9 when you look at those numbers.

10 Q Thank you. And this article reports that in
11 2019 the Winnipeg police used their disbursement
12 to purchase a drone and a robotic arm. Do you
13 have any reason to dispute that?

14 A What year was that?

15 Q This was 2019.

16 A In 2019. So I don't know that I was involved in
17 that specifically. So if you say so, I'll take
18 your word for it because I don't have specific
19 knowledge of that. What I can tell you is,
20 again, funds to law enforcement for specialized
21 equipment is specific -- the specific objective
22 has to be to reduce crime or to support safer
23 communities. So I don't -- I can't specifically
24 speak to those specific funds and disbursements
25 and what they were -- what the suggestion was

1 they were used for, but certainly we don't fund
2 operational cost, standard equipment capital
3 costs, anything like that. We fund initiatives
4 or equipment that are going to go back to our
5 mandate, which is, again, reducing crime,
6 deterring criminals and rendering communities
7 safer.

8 MS. MAGONET: Thank you, Ms. Murray.

9 Mr. Commissioner, those are my questions.

10 THE COMMISSIONER: Thank you, Ms. Magonet.

11 Anything arising, Ms. Addario-Berry?

12 MS. ADDARIO-BERRY: No, thank you, Mr. Commissioner.

13 THE COMMISSIONER: Thank you. Ms. Patel?

14 MS. PATEL: No, thank you, Mr. Commissioner. I would
15 just mention, however, that Ms. Murray is here
16 with counsel. I'm not sure if she wanted the
17 opportunity to redirect.

18 THE COMMISSIONER: Ms. Cupples? Sorry, Ms. Cupples,
19 did you have any questions you wish to ask
20 Ms. Murray?

21 MS. CUPPLES: There we go. I was having problems
22 unmuting here. No, Mr. Commissioner. I don't
23 have any followup questions. Thank you.

24 THE COMMISSIONER: All right. Thank you.

25 Thank you very much, Ms. Murray, for your

1 assistance to the commission. It's very
2 interesting to hear about what other
3 jurisdictions are doing, your experiences with
4 the current legislation and your expectations
5 of, and insights into, the proposed legislation.
6 It really has been helpful. I'm grateful to you
7 for taking the time to testify before us.
8 You're now excused.

9 **(WITNESS EXCUSED)**

10 THE COMMISSIONER: And, Ms. Patel, I think we have an
11 earlier start tomorrow. Is it 8:00 a.m.?

12 MS. PATEL: Yes, Mr. Commissioner. I believe an
13 8:00 a.m. start tomorrow morning to accommodate
14 a witness in the UK.

15 THE COMMISSIONER: Thank you. We will adjourn until
16 tomorrow morning at 8:00 a.m.

17 THE REGISTRAR: The hearing is --

18 THE WITNESS: Thank you very much.

19 THE REGISTRAR: The hearing is adjourned until
20 May 6th, 2021, at 8:00 a.m.

21 **(PROCEEDINGS ADJOURNED AT 12:12 P.M. TO MAY 6, 2021)**

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