Part XI
Enforcement

One of the cornerstones of an effective anti–money laundering regime is the investigation and prosecution of money laundering offences. While money laundering has long been a criminal offence in Canada, a recent assessment by the Financial Action Task Force indicates that law enforcement results in this country are not commensurate with money laundering risks, and evidence tendered during the Commission process demonstrates that there have been very few successful money laundering investigations or prosecutions in recent years. The most high-profile money laundering investigation in this province (E-Pirate) was terminated before the case went to trial and statistics produced by the RCMP establish that, from 2015 to 2020, there were no other major federal investigations that resulted in money laundering charges.

In the following three chapters, I review the law enforcement response to money laundering in this province.

Chapter 39 outlines the history and structure of policing in British Columbia, with particular emphasis on the resources dedicated to the investigation of money laundering / proceeds of crime offences over the past 15 years. It also recommends that all provincial law enforcement bodies engaged in the investigation of profit-oriented criminal activity implement a standard policy requiring that all investigators (a) consider money laundering / proceeds of crime issues at the outset of the investigation and (b) conduct an investigation with a view to pursuing those charges and identifying assets for seizure and/or forfeiture.

Chapter 40 reviews some of the challenges associated with the investigation and prosecution of money laundering offences, including the complexity of money laundering / proceeds of crime investigations, the ever-increasing sophistication of money laundering schemes, and the inability of FINTRAC to reliably produce timely, actionable intelligence with respect to money laundering threats.

Chapter 41 recommends the creation of a specialized provincial anti–money laundering intelligence and investigation unit with a mandate to identify, target, and disrupt sophisticated money laundering activity occurring within the province.

Chapter 39
History and Structure of Policing in British Columbia

Broadly speaking, there are three tiers of policing in British Columbia: federal, provincial, and municipal. Federal policing is primarily concerned with national and international priorities such as transnational and serious organized crime, national security, and cybercrime.[1] Provincial policing is primarily concerned with serious crime within the province, as well as the provision of local police services to rural communities and municipalities with a population under 5,000.[2] For many years, the province has engaged the RCMP to provide most of these services (though there are a few provincial units that provide specialized policing functions).[3] Municipal policing is primarily concerned with the provision of police services in municipalities with a population over 5,000 and focuses mostly on local issues such as violent crime.[4] Each level of policing is discussed in turn.

1 Exhibit 789, Ministry of Public Safety and Solicitor General, Police Services Division, *Police Resources in British Columbia, 2019* (November 2020) [*Police Resources in British Columbia*], p 2; Exhibit 863, Briefing for the Cullen Inquiry, April 16, 2021: Presentation by Superintendent Brent Taylor, RCMP "E" Division Federal Serious and Organized Crime – Financial Integrity [FSOC Briefing], slides 3–4; Evidence of B. Taylor, Transcript, April 16, 2021, pp 9–10.

2 Exhibit 789, *Police Resources in British Columbia*, p 2.

3 Ibid, pp 2–3. Section 4.1 of the Police Act, RSBC 1996, c 367, allows the provincial government to create designated policing units to provide policing and law enforcement services "in place of or supplemental to the policing and law enforcement otherwise provided by the provincial police force or a municipal police department."

4 While it is open to these municipalities to create their own municipal police department, most have opted to engage the RCMP to provide these services. Of the 77 municipalities with a population over 5,000, 11 have opted to create their own municipal police department. These municipalities are Vancouver, Victoria, Saanich, Central Saanich, Oak Bay, Delta, Abbotsford, New Westminster, West Vancouver, Nelson, and Port Moody. One municipality (Esquimalt) has entered into a contract with the City of Victoria for the provision of policing services by one police service in both municipalities: Exhibit 789, *Police Resources in British Columbia*, p 3.

Federal Policing

The RCMP serves as the federal police service across the country and is primarily concerned with the priorities set by national headquarters in Ottawa.[5] The province has no formal input into the prioritization process and has limited visibility into the files and investigative strategies pursued by federal investigators.[6] It does, however, receive information from those involved in federal policing on an informal basis and has been taking steps to increase visibility into federal operations by requesting metrics relating to resources and performance (among other things).[7]

At the present time, there are three key priorities in federal policing: transnational and serious organized crime, national security, and cybercrime.[8] Within each of these priorities are a number of key activities to target, one of which is money laundering.[9]

Superintendent Brent Taylor, officer-in-charge of the Federal Serious and Organized Crime (FSOC) Financial Integrity Unit in British Columbia, testified that the goal is to "go after the highest levels of organized crime" and that all major investigations are "tiered" to ensure that federal resources are deployed in the most effective way.[10] Tier 1 files are defined as the most serious, which signals to the commanding officer of that division that the file should be given priority in terms of time and resources. Tier 2 files are seen as high-level investigations but do not have the same importance as Tier 1 files. Tier 3 files rank much lower in terms of importance.[11]

On an annual basis, the RCMP allocates approximately $100 million to federal policing in British Columbia.[12] Most of these funds can be moved around by the commanding officer to support different investigations. However, there are some units that operate on a "fenced-funding" model, meaning that the funds allocated to that unit cannot be transferred to other initiatives (though individual officers can sometimes be pulled from those units in order to address other federal priorities, such as wildfires and VIP visits).[13]

5 Ibid, p 2; Evidence of B. Taylor, Transcript, April 16, 2021, pp 7–10.

6 Evidence of W. Rideout, Transcript, April 6, 2021, pp 39–41, 61–62.

7 Ibid, pp 39–41, 77–80; Evidence of B. Taylor, Transcript, April 16, 2021, p 8; Exhibit 792, Letter from B. Butterworth-Carr, assistant deputy minister and director of police services, Policing and Security Branch, to Eric Stubbs, assistant commissioner RCMP, re Federal RCMP Reporting Requirements (May 23, 2019).

8 Exhibit 868, Money Laundering / Proceeds of Crime – RCMP Federal Policing Perspective: Presentation by Superintendent Peter Payne (April 2021) [Money Laundering / Proceeds of Crime Presentation], slide 2; Evidence of P. Payne, Transcript, April 16, 2021, p 133.

9 Exhibit 868, Money Laundering / Proceeds of Crime Presentation, slide 2; Exhibit 869, RCMP Federal Policing, Prioritization and Governance of Major Projects Tool User Guide (January 2020) [RCMP Major Projects User Guide], p 6.

10 Evidence of B. Taylor, Transcript, April 16, 2021, pp 12–13; Exhibit 863, FSOC Briefing, slide 5.

11 Evidence of P. Payne, Transcript, April 16, 2021, pp 125–26. For the criteria used to prioritize these investigations, see Exhibit 869, RCMP Major Projects User Guide.

12 Evidence of B. Taylor, Transcript, April 16, 2021, pp 20, 30. Approximately $5–6 million is allocated to financial crime: ibid, p 31.

13 Ibid, pp 13–14, 30–31; Evidence of K. Bedford, Transcript, April 15, 2021, pp 58–59.

Integrated Proceeds of Crime Units

From 1990 to 2012, the RCMP maintained Integrated Proceeds of Crime (or IPOC) units in most provinces, which were responsible for conducting money laundering investigations. The mandate of these units was to "identify, seize, restrain and forfeit illicit and unreported wealth accumulated by the highest level of organized criminals and crime groups … thereby removing the financial incentive for engaging in criminal activities."[14] Funding was provided on a fenced funding model and was in the range of $23 million per year across all provinces and participating agencies, which included the Canada Border Services Agency (CBSA), the Public Prosecution Service of Canada, Public Works and Government Services Canada Forensic Accounting Management Group, Public Safety Canada, and the RCMP.[15]

IPOC units were mainly regarded as a support unit for other investigations (primarily drug investigations). When such investigations revealed that proceeds of crime were being accumulated, the officers conducting that investigation would ask for support from the IPOC units to conduct a parallel investigation.[16] IPOC units also worked closely with international partners – including, in particular, the US Drug Enforcement Administration – and were often the first point of contact for referrals and inquiries.[17]

While these units were initially supported by members of other federal agencies, the engagement of those agencies diminished over time. In 1992, the IPOC unit in British Columbia ("E" Division) comprised 55 people, including 45 RCMP members, three civilian members, and seven public service employees.[18] By 2010, the unit comprised 41 people, including 38 RCMP members and three representatives of the Public Works and Government Services Canada Forensic Accounting Management Group (which provided forensic accounting services to investigators within that unit).[19]

On March 30, 2011, Public Safety Canada released an evaluation report with respect to the relevance and performance of the IPOC initiative.[20] The report concluded that the underlying objectives of the IPOC units remained relevant as they responded to Canada's national and international commitments to address organized crime, and that the literature reviewed "overwhelmingly support[ed] the need for continuing efforts to combat organized crime by targeting proceeds of crime.[21]

14 Exhibit 822, Canada, Public Safety Canada, *2010–2011 Evaluation of the Integrated Proceeds of Crime Initiative: Final Report* (March 30, 2011) [*Evaluation of the IPOC Initiative*], p 2.

15 Ibid, p 9. In 2005, the initiative was allocated $116.5 million over five years, averaging $23.3 million per year. According to the report, this amount was the same, *unadjusted for inflation*, as had been allocated in 1996–97: Ibid. However, there were stringent reporting guidelines concerning how those funds were spent: Evidence of B. Baxter, Transcript, April 8, 2021, pp 6–7.

16 Evidence of B. Baxter, Transcript, April 8, 2021, pp 7–8, 14–15. See also Evidence of T. Farahbakhchian, Transcript, April 15, 2021, p 91.

17 Evidence of B. Baxter, Transcript, April 8, 2021, pp 15, 93.

18 Exhibit 864, Assessment of Proceeds of Crime Responsibilities Within FSOC (July 29, 2015), p 4.

19 Exhibit 822, *Evaluation of the IPOC Initiative*, p 7. See also Evidence of B. Baxter, Transcript, April 8, 2021, pp 19–20.

20 Exhibit 822, *Evaluation of the IPOC Initiative*.

21 Ibid, p ii.

The report also found that the initiative had an impact on organized crime and organized crime groups through operations such as *Opération Colisée,* a joint operation of IPOC partners and provincial and municipal police forces, which succeeded in dismantling the Montréal-based Italian mafia.[22] However, it noted that the integration achieved in the early days of the initiative may have faded over time and highlighted several human resource challenges that were having an adverse impact on efficiency and effectiveness. These challenges included: staff turnover, vacant positions, recruitment difficulties, lack of experience, and insufficient training.[23]

Ultimately, the report recommended that the RCMP take steps to address these issues in order to ensure optimal performance of the IPOC units.[24]

One factor leading to the success of the IPOC units was the high level of expertise they developed in proceeds of crime investigations. Barry Baxter, a retired RCMP officer who was officer-in-charge of the IPOC unit in "E" Division from 2010 to 2012, spoke to the expertise and experience of his investigators when he arrived at that unit:

> Generally all of the investigators in IPOC when I arrived were very well experienced, having come from drug section or from commercial crime where you need a level of expertise on the movement of money nationally and internationally. You need to be aware of areas where you could seek assistance, whether it be through mutual legal assistance treaty. You needed to know financial systems and how to restrain assets or have assets seized. So generally well experienced people it's something that takes many, many years to gather that experience, and in fact several of the members under my command were credited in what was called expert witness program which allowed them to give expert testimony during proceeds of crime prosecutions.[25]

Mr. Baxter's comments were echoed by Melanie Paddon, a retired RCMP member who was part of the IPOC units from 1992 to 2012:

> IPOC, I found, was very beneficial to the actual act of investigating money laundering and proceeds of crime. It was a self-contained unit, there was a lot of expertise in that unit … [I]t was integrated. We had Department of Justice working with us in house, in IPOC. We had CRA working with us. We had CBSA working with us. And so you had your little group of people all work[ing] on particular projects who all had a role in what their job was. And so to me it was very fruitful because it allowed you to actually go from your predicate offence to money laundering offence, and you had all

22 Ibid.

23 Ibid.

24 Ibid, pp ii–iii.

25 Evidence of B. Baxter, Transcript, April 8, 2021, pp 8–9. For a list of some of the successful investigations conducted by these units, see Exhibit 864, Assessment of Proceeds of Crime Responsibilities Within FSOC, pp 9–11.

> that in house expertise helping you out so that at the end of the day you were able to get to the point of prosecution.[26]

One of the investigations undertaken by these investigators during their time at IPOC was an intelligence probe into the large amount of suspicious cash entering Lower Mainland casinos. Mr. Baxter testified that, when he arrived at IPOC in 2010, he conducted a file review and became concerned about the large volume of $20 bank notes going through BC casinos (as reported by the suspicious transaction reports, large cash transaction reports and section 86 reports received by the RCMP).[27]

After meeting with senior members of the RCMP, he directed the money laundering team (a team known as C-22) to initiate an investigation.[28] The investigation soon became the team's most high profile because of the substantial amount of cash entering Lower Mainland casinos and "the potential that it was backed by organized crime using … casinos to launder the proceeds of those crimes."[29]

Although the intelligence probe was not able to make a *definitive* link to criminal activity, there was a strong belief among investigators that the funds were criminal in nature. For example, Sergeant Paddon testified that the manner in which the cash was bundled and brought into casinos led her to conclude that it had criminal origins:

> [D]efinitely I believed it was criminal … cash coming in bags, suitcases, boutique bags is not normal practice … [I]n my opinion illegal cash is basically held together in bricks, and they're sub-bundled with elastic bands on them usually in amounts of, like, 1,000, 2,000 or 5,000 which makes up the actual brick. Often the bills would be facing in different directions.
>
> Criminals basically take their cash whereas a bank would put together a bundle of cash – it would be 100 notes of one specific denomination. Criminals don't. They basically take their brick of cash, and it's made up in dollar amount, so it would be in even dollars of 5,000, 10,000, that kind of idea. It's not in hundred-note amounts. There are no paper bands around it. It's held together with elastics on both ends, sometimes in the middle.
>
> The bricks are put together and they're often thrown into a boutique bag. They often tend to use, you know, grocery bags, plastic grocery bags, they're concealed in compartments in vehicles, they're hidden in briefcases and they're basically brought into the casino.

26 Evidence of M. Paddon, Transcript, April 14, 2021, pp 27–28.

27 Evidence of B. Baxter, Transcript, April 8, 2021, pp 15–16. Section 86 reports are reports provided under s 86 of the *Gaming Control Act*, SBC 2002, c 14.

28 Ibid, p 27.

29 Evidence of B. Baxter, Transcript, April 8, 2021, pp 27 –30. See also ibid, pp 77–78, where he discusses the possibility of Asian organized crime groups acting as a "depository" for other organized crime groups and assisting them to launder illicit funds. See also Evidence of M. Paddon, April 14, 2021, pp 13–16.

> That is dirty cash. I mean, that is … not from a legal source. A bank would never distribute cash like that.[30]

She also testified that the manner in which the cash was received by gamblers strengthened her belief that it was derived from criminal activity:

> Well, it was strengthened because it's never just the cash. It's the circumstances that surround the seizure of cash or anything like that … [I]t's the fact that maybe the person has no criminal – sorry, has no legitimate income … maybe they don't have access to a bank account, so for whatever reason – especially in a case when you've got Chinese nationals come in, they don't have access to banking where they can go and take out $50,000 or $100,000 because of the restrictions over in China with moving cash across the country – you know, obviously sending cash over to Canada.
>
> [A]s time went on, these loan sharks were seen meeting with these gamblers. Some of the gamblers would go in, they'd gamble, they'd go back out to the parking lot, they'd meet the loan shark and then they would go back into the casino and continue gambling. There was chip passing going on. In some of the VIP rooms you could … clearly see that these loan sharks were approaching … the gamblers in the VIP rooms and replenishing their funds.
>
> You know, it was going on in the bathroom because there's no cameras in there. So there would be … things being slipped in the bathroom. And … unfortunately because we were unable to see anything through the cameras, you know, someone would come back out with … a bag of cash, and it's kind of unknown where they'd got it from, but obviously the loan shark had given it to them in the bathroom and then they'd gone back out to the tables to play.[31]

On January 30, 2012, the C-22 team put together an operational plan to address the issue of money laundering in Lower Mainland casinos.[32] The plan notes that investigators had identified "significant money-laundering activity in and around several B.C. casinos" including almost $40 million in suspicious cash buy-ins in the one-year period ending in August 2011.[33] It also indicates that the methodology used to launder illicit cash through Lower Mainland casinos involves groups of loan shark "facilitators" who are constantly present in and around casinos "ready to supply large quantities of cash to … high-roller players who pay back the cash facilitators using a "hawala" style of debt-settlement."[34]

30 Evidence of M. Paddon, Transcript, April 14, 2021, pp 16–17. Sgt. Paddon, who is certified as an expert in cash bundling, has provided expert opinion evidence for both the RCMP and the Civil Forfeiture Office: ibid, p 18.

31 Ibid, pp 20–21.

32 Exhibit 760, RCMP "E" Division IPOC, Investigational and Planning Report, Money Laundering – B.C. Casinos (January 30, 2012) [Casino Operational Plan]. See also Evidence of B. Baxter, Transcript, April 8, 2021, p 86; Evidence of M. Paddon, Transcript, April 14, 2021, pp 12–13.

33 Exhibit 760, Casino Operational Plan, pp 3, 4.

34 Exhibit 760, Casino Operational Plan, p 4. A full description of the *hawala* model of debt settlement is contained in Chapters 3 and 37 of this Report.

The operational plan had two key objectives: (a) to disrupt money laundering activity in and around Lower Mainland casinos (thereby disrupting the activities of organized crime groups within the province); and (b) to work with stakeholders in the gaming industry to effect legislative and regulatory change to minimize and/or eliminate the need for wealthy foreign gamblers to access large amounts of local, criminally derived cash.[35]

If the investigation had been allowed to continue, I expect that the RCMP would have been able to achieve those objectives and stem the flow of suspicious cash into Lower Mainland casinos. IPOC had already made significant progress toward identifying the methodology being used to carry out the money laundering scheme and had a great deal of information about the high-stakes gamblers who were making large cash buy-ins.[36] Moreover, in relatively short order, the RCMP made a direct link between the suspicious cash being provided to high-stakes gamblers and a large underground bank in Richmond when it turned its attention to this issue in 2015.[37]

Unfortunately, however, the federal government decided to make significant cuts to government services, leading to the "re-engineering" of federal policing, the disbandment of the IPOC units, and the termination of the intelligence probe (see below). The result was a lost opportunity to disrupt the flow of illicit funds into Lower Mainland casinos and a significant enforcement gap that allowed those involved in money laundering to operate in plain sight and with relative impunity for the better part of a decade. While I appreciate that the decision to disband the IPOC units was a policy decision made by a federal entity, it is critical to review the timing and effect of that decision in order to make findings of fact and recommendations concerning the law enforcement response to money laundering in this province.

The Re-Engineering of Federal Policing

On June 6, 2011, Jim Flaherty, the federal minister of finance, introduced the 2011–2012 federal budget (Budget 2011) in the House of Commons.[38]

One of the key announcements made in the budget was a strategic review of government spending aimed at improving the "efficiency and effectiveness" of government operations and programs. The strategic review was part of a broader deficit action reduction plan, which called on all federal departments to cut existing spending in order to achieve a specified level of savings.

35 Ibid.

36 The RCMP officers involved in the intelligence probe also believed it was a promising investigation with considerable potential: see, for example, Evidence of M. Paddon, Transcript, April 14, 2021, pp 14–18; Evidence of B. Baxter, Transcript, April 8, 2021, pp 86–90.

37 The RCMP started surveillance in April 2015 and advised Brad Desmarais that they had made a direct link to a large underground bank in July 2015: see Exhibit 522, Affidavit #1 of Brad Desmarais, exhibit 55, p 313; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 121–22.

38 Budget 2011 received Royal Assent on June 26, 2011.

Superintendent Taylor testified that the strategic review created a situation where the RCMP had to become "cleaner and more focused" and "do less with less" (meaning that the RCMP would have to focus on higher-level priorities and refuse investigations that did not rise to that level).[39]

In an attempt to find greater efficiencies within its operations, the RCMP made the decision to "re-engineer" its federal policing operations and disband the IPOC units.[40] Mr. Baxter attended a number of meetings in which the re-engineering of the IPOC units was discussed. He testified that the officers-in-charge (or OICs) of these units raised concerns about Canada's international commitments and the RCMP's ability to "look after" money laundering / proceeds of crime issues if the IPOC units were disbanded. In my view, the concerns raised by these officers were prescient:

> Yes, we had had some meetings in Ottawa about the federal re-engineering and some IPOC meetings during which again with senior managers, senior leaders, there was robust discussion and ... some of the concerns being raised by all of us as OICs of IPOC units were, one, that the funding aspect, the specialization, the expert witness program, the international commitments under the United Nations where Canada had signed on to do certain things under the Financial Action Task Force, the FATF, and our concerns myself included was we have these obligations. Who's going to look after this? Where are we going to go with this? And again it was all discussions and they were difficult decisions, I know, by the senior leaders of the day, and the decision was made that IPOC would be disbanded, and that was the end of it. *We voiced concerns and I said boy, this I think is going to come back and bite us. Canada had played a leading role in that UN resolution where we were monitoring and evaluating other countries' money laundering regimes and banking industries and here we were shutting down the very people who were a part of that process, myself included.* [Emphasis added.][41]

In British Columbia, officers previously assigned to IPOC were transferred to other areas of federal policing including the FSOC section.[42] The concept was that officers

39 Evidence of B. Taylor, Transcript, April 16, 2021, pp 18, 24–25. Many estimates suggest that British Columbia saw at least a 25 percent reduction in federal policing as a result of these cuts: see Exhibit 790, Email from Lori Wanamaker to Clayton Pecknold, re fwd German Money Laundering (December 15, 2018), p 3; Evidence of C. Pecknold, Transcript, April 6, 2021, pp 51– 55. See also Evidence of W. Rideout, April 6, 2021, pp 16–17 (over recent years, vacancy numbers in federal policing (the difference between the authorized strength of the RCMP and the number of officers filling those positions) have ranged from 140 to 200). In 2019, the authorized strength of the RCMP was 1,038, including 135 positions in protective policing: Exhibit 789, *Police Resources in British Columbia*, p 17. For another area in which these reductions created a policing gap, see Evidence of B. Taylor, Transcript, April 16, 2021, pp 26–27; Evidence of D. LePard, Transcript, April 7, 2021 (Session 1), pp 56–57.

40 Evidence of B. Taylor, Transcript, April 16, 2021, pp 18–22, 37–38. Note, however, that there were other reasons for the restructuring of federal policing, including increased costs and the emergence of serious national security threats: Evidence of P. Payne, Transcript, April 16, 2021, p 153. While not entirely clear, it appears that the decision to re-engineer federal policing operations was made in mid-2012.

41 Evidence of B. Baxter, Transcript, April 8, 2012, pp 80–81.

42 Evidence of B. Taylor, Transcript, April 16, 2021, p 38. See also Evidence of B. Baxter, Transcript, April 8, 2021, p 81.

who came from an IPOC background would bring their expertise to other units and investigate the money laundering aspects of ongoing investigations (such as drug investigations). However, there is widespread agreement that the re-engineering led to a significant dilution of expertise, along with an inability to pursue complex money laundering investigations requiring multiple investigators.[43]

Importantly, it also meant that money laundering investigations were subject to the federal prioritization process and were weighed against other pressures and priorities including national security investigations and requests made by international partners.[44] One of the practical consequences of the new prioritization process was the termination of existing investigations, including the intelligence probe into money laundering in BC casinos (which would have been a priority investigation had the IPOC units remained intact).[45] While I appreciate that the RCMP was forced to make a number of difficult decisions concerning the allocation of law enforcement resources, I find it unfathomable that it would terminate that investigation without taking any meaningful steps to address the growing volume of suspicious cash entering Lower Mainland casinos.

The RCMP had identified serious criminal activity occurring in British Columbia casinos and had developed an action plan that would likely have succeeded in disrupting this criminality. Its decision to terminate the intelligence probe, without taking any meaningful steps to investigate this conduct, allowed for the continued proliferation of money laundering through Lower Mainland casinos in the years that followed.

A report prepared by the provincial Gaming Policy and Enforcement Branch (GPEB) on November 19, 2012 provides the following snapshot of the suspicious activity occurring in and around Lower Mainland casinos from January 1, 2012, to September 30, 2012:

> Total Money Laundering/SCT [Suspicious Currency Transaction] files: **794**
>
> Total dollar amount: **$63,971,727.00**
>
> Total dollar amount in $20 dollar denominations: **$44,168,660.00**. This represents 70% of all suspicious cash entering casinos.
>
> 79 patrons had SCT buy-ins at least once with $100,000
>
> 17 patrons had total SCT buy-ins over $1,000,000
>
> The top 22 patrons had SCT buy-ins totaling: $45,12,130.00 [*sic*]. This represents 71% of the total dollar amount of all Suspicious Cash Transactions.

43 See, for example, Evidence of B. Baxter, Transcript, April 8, 2021, pp 82–83; Evidence of M. Paddon, Transcript, April 14, 2021, pp 23–24. In some cases, there was also a *loss* of expertise as many of the people previously working within IPOC (some of whom had law or accounting backgrounds) started rethinking their career paths and trying other things: Evidence of B. Taylor, Transcript, April 16, 2021, p 20; Exhibit 864, Assessment of Proceeds of Crime Responsibilities Within FSOC, p 12.

44 Evidence of B. Baxter, Transcript, April 8, 2021, pp 90–91, 94–95.

45 Ibid, pp 87–89. See also Evidence of M. Paddon, Transcript, April 14, 2021, p 23.

> The top ten patrons SCT buy-ins generated 285 separate s. 86 reports from the service providers and BCLC.
>
> The top five patrons SCT buy-ins generated 172 separate s. 86 reports from the service providers and BCLC.
>
> By comparison; the top 22 patrons who generated 285 SCT reports between them, in a nine-month period in 2012, is more that [sic] the total number of SCT reports generated in 2007, 2008 and 2009, and is only ten less than 2010.
>
> Using the figures from the first nine months of 2012, it is estimated that the yearly totals will be;
>
> Total Money Laundering/SCT files: **1060**
>
> Total dollar amount: **$85,295,636.00**
>
> Total dollar amounts in $20 denominations: **$58,891,546.00**
>
> It has become routine for patrons to buy-in with suspicious cash totalling $200,000, $300,000, $400,000, and on two occasions where $500,000 and $580,000 respectively, were presented at the cash cage of a casino.[46]

Moreover, there can be no doubt whatsoever that the RCMP was aware of the nature and seriousness of the problem at the time it terminated the intelligence probe. GPEB and the BC Lottery Corporation (BCLC) had long been sharing information with the RCMP concerning suspicious transactions at Lower Mainland casinos[47] and the operational plan prepared by the C-22 team in January 2012 described the problem as follows:

> *In a one-year period (ending August, 2011), almost $40 million dollars in suspicious buy-ins were identified, with the vast majority of these being in $20 bills.*
>
> As noted, the individuals actually conducting the buy-ins at the casino, and doing the gambling, were wealthy Chinese businessmen, many with little to no ties to Canada. They choose to gamble at the casinos here, and to do so, they need ready access to significant amounts of Canadian cash. Typically, they are wealthy, but their funds are overseas … and are subject to PRC [People's Republic of China] government currency export and transaction-restrictions.

46 Exhibit 181, Affidavit #1 of Larry Vander Graaf, dated November 8, 2020, exhibit G, Gaming Policy and Enforcement Branch Investigation Division, Money Laundering in BC Casinos 2007–Present (November 19, 2012), pp 88–89.

47 For example, Gordon Friesen, who was manager of investigations at BCLC during the relevant time period, testified, "[W]e were sending reports to the RCMP proceeds of crime unit right from the day I got there [in 2005] … we actually had a specific dedicated email site where we sent our reports to automatically": Transcript, October 29, 2020, p 13. See also Exhibit 145, Affidavit #1 of Rob Barber, made on October 29, 2020, paras 48–49; Evidence of B. Baxter, Transcript, April 8, 2021, pp 22–24, 86, 92.

...

> To fulfill the need of these gamblers for Canadian cash, there are several groups of people known to regularly frequent the River Rock and Starlight casinos. Investigation by IPOC ... to date indicates that these groups of loan-shark "facilitators" are constantly present in and around the casinos, ready to supply large quantities of cash to these high-roller players. These high-roller players typically pay-back their losses via bank-deposits in the PRC or Hong Kong, which are ultimately brought back to Canada by the loan-sharks (in non-cash form) as "legitimate" money. This is often done by international money-laundering groups, using a "hawalla" style of debt-settlement, where a debt in Canada can be paid-back with a corresponding credit overseas (or vice-versa), with actual money rarely even changing hands between the parties.
>
> These high-roller gamblers are coming into the casino literally with "shopping bags full of cash", often in the hundreds of thousands of dollars at one time. *It is the root source of this cash that is of greatest concern to law-enforcement. Both by its appearance and the surrounding circumstances, it is apparent that virtually none of this cash was withdrawn from a bank, or any other legitimate source. Especially given the presence of huge amounts of $20 bills (the most common "street money"), the origins of these actual dollar-bills being used can likely be traced-back to drugs, prostitution, or other street-level criminal activities being run and/or controlled, by organized criminal groups.*
>
> The goal of this "cash-service" provided by the loan-sharks, is both for the purpose of earning interest on the loans, and also to launder illicit funds. The individuals running the drug-operations or bawdy houses where these funds originate pay the loan-sharks a commission in order to turn their $20 bills into a form (bank drafts or wire-transfers) that they can use to buy their expensive homes, cars, etc. Turning "street money" into a seemingly legitimate form, is a necessary part of any successful criminal enterprise.
>
> The listed targets have been identified by IPOC as being "middle men", who directly supply high-roller gamblers with large quantities of cash on very short notice, in surreptitious locations. IPOC surveillance and investigation to-date has shown discrete night-time parking-lot meetings, not far from the casino, where high-roller gamblers have met with these "middle men", then bought-in at the casino only minutes later with a bag full of cash. [Emphasis added.][48]

Overall, I view the prolonged lack of attention to this issue as a significant failure that allowed for the unchecked growth of money laundering activity in British

48 Exhibit 760, Casino Operational Plan, p 4. See also Evidence of B. Baxter, Transcript, April 8, 2021, p 86.

Columbia.[49] It is also indicative of a serious disconnect between the priorities of the RCMP and the law enforcement needs in this province. In what follows, I review the RCMP's response to the money laundering problem in two key periods (2013–2015 and 2015–2020).

The 2013–2015 Period

From 2013 to 2015, the gaming industry continued to struggle with the ever-increasing volume of suspicious cash entering Lower Mainland casinos. A GPEB report dated October 25, 2013, indicates that an "overwhelming amount of suspicious currency, most being in small denominations, continues to flood into casinos in British Columbia" and that "[n]one of the measures introduced by BCLC, the service provider, the AML X-DWG [a cross-divisional working group in the gaming sector] or a combination of these entities over the past 3 years have stopped or slowed that increase."[50] It also indicates that the number of section 86 reports had increased from a low of 103 in 2008–9 to a projected total of 1,120 in 2013–14, and that the amount of suspicious funds entering BC casinos had increased from approximately $87 million in 2012 to a projected total of $95 million in 2013–14.[51] In reality, the actual numbers for 2013–14 far exceeded the projections, resulting in 1,382 section 86 reports, totalling $118 million in suspicious funds.[52]

In 2014, BCLC was submitting as many as 150 suspicious transaction reports per month (three times as many as in 2011) with most of those reports relating to suspicious cash buy-ins at Lower Mainland casinos.[53] There was also a "rapid acceleration" of suspicious cash entering casinos with the number of section 86 reports filed by service providers increasing to a projected total of 1,750 in 2014–15 and the total dollar value of suspicious funds entering Lower Mainland casinos increasing to a projected total of $185 million. [54]

Individual occurrences also demonstrate the "alarming" volume of suspicious cash entering BC casinos.[55] On September 24–25, 2014, for example, a patron made two $500,000 cash buy-ins at the River Rock Casino. The player had initially bought-in for $50,000 in $100 bills but exhausted those chips. At approximately 11 p.m., he made a

49 The lack of attention to this issue is particularly troubling when we consider the conclusions reached in the March 2011 IPOC evaluation report concerning the central role played by proceeds of crime investigations in combatting organized crime: see Exhibit 822, *Evaluation of the IPOC Initiative,* p ii.

50 Exhibit 181, Affidavit #1 of Larry Vander Graaf, exhibit O, Gaming Policy and Enforcement Branch Investigation Division, Suspicious Currency Transactions / Money Laundering in British Columbia Casinos (October 25, 2013), p 161.

51 Ibid, p 159. The projections also estimated that approximately 75 percent of those funds would be accepted at the River Rock Casino, and 67 percent would be in $20 bills.

52 Exhibit 181, Affidavit #1 of Larry Vander Graaf, exhibit Q, Gaming Policy and Enforcement Branch Investigation Division, Suspicious Currency Transactions/Money Laundering in British Columbia Casinos (October 27, 2014), p 171.

53 Exhibit 148, Affidavit #1 of Daryl Tottenham, sworn October 30, 2020, para 64.

54 Exhibit 181, Affidavit #1 of Larry Vander Graaf, exhibit Q, p 171.

55 Ibid, p 172.

telephone call, left the casino, and entered a waiting vehicle. The patron returned a short time later with a black suitcase and a brown bag and used the cash contents of those bags to make a cash buy-in of $500,040. The cash consisted entirely of $20 bills that were bundled and secured with elastic bands inside silver plastic bags.[56] By approximately 1 a.m., the patron had lost all or most of the $500,000. He made another call, left the casino, and interacted with two males outside a waiting vehicle. The patron subsequently returned with another suitcase filled with approximately $500,000, which he used to make a further cash buy-in of $500,030. Almost all the cash was in $20 bills, bundled and secured with elastic bands in silver plastic bags.[57]

Robert Barber, a retired member of the Vancouver Police Department (VPD) and an investigator with GPEB from 2010 to 2017 testified that this was a "fairly typical transaction in that time period."[58] He also indicated that there may have been another five or six similar events on that same night:

> [T]his was an interesting case. It had many obvious factors indicating money laundering and perhaps other offences, but there might have been on that same night another five or six very similar events … [O]bviously we didn't have surveillance capabilities or any of the other niceties of policing that would have allowed us to move forward with an investigation.[59]

At the time these transactions were occurring, BCLC had adopted a practice whereby all suspicious transaction reports submitted to FINTRAC were copied to the RCMP.[60] However, no meaningful steps were taken to investigate. Daryl Tottenham, a former member of the New Westminster Police Department and the manager of anti–money laundering programs at BCLC, gave evidence that the suspicious transaction reports prepared by BCLC "should have been very useful to law enforcement" and that he was "shocked" by the lack of response:

> From 2011 to 2014, I observed that BCLC investigators (and as of 2013 the AML Unit) did not receive any reaction to or feedback about these reports from FINTRAC or GPEB, and was not receiving any assistance from law enforcement on the issues identified in the reports[.]
>
> …
>
> In my view, these reports should have been very useful to law enforcement. If someone had provided that kind of information to me when I was working as a police officer, I would have immediately attempted to initiate a project …

56 Exhibit 145, Affidavit #1 of Rob Barber, exhibit E, pp 8–11.

57 Ibid.

58 Evidence of R. Barber, Transcript, November 3, 2020, p 29.

59 Ibid, p 31.

60 Evidence of G. Friesen, Transcript, October 29, 2020, p 13.

> I was also shocked at the lack of response I observed from proceeds of crime units and GPEB during the period of 2011 to 2014. There was no indication to me that either were working on the information identified in BCLC's [suspicious transaction reports].[61]

In April 2014, BCLC adopted a new strategy and began actively reaching out to the RCMP (and other law enforcement bodies) to urge them to investigate the suspicious activity occurring in and around Lower Mainland casinos.

Later that month, Mr. Tottenham met with representatives of the Combined Forces Special Enforcement Unit (CFSEU) and presented a package of information about potential targets believed to be involved in cash facilitation at Lower Mainland casinos. He testified that the purpose of the meeting was to "engage them to come help us, to come investigate and deal with [the issue] because we were at a loss [as to how] to deal with it – effectively deal with it."[62]

In June 2014, Robert Kroeker, who was then vice-president of compliance at Great Canadian Gaming Corporation (Great Canadian), and Patrick Ennis (director of surveillance at Great Canadian) organized a "site orientation" for CFSEU at the River Rock Casino (where the majority of the suspicious activity was believed to be occurring).

Mr. Tottenham testified that the site orientation was "part of … the pitch for the project. We wanted to come in and show them what they had access to, what we would provide, how we can provide it, what the abilities are of the surveillance operators and how we would be able to assist them if they took a project on."[63]

At approximately the same time, BCLC compiled a package of its "Top 10 casino cash facilitator targets" which was provided to CFSEU in order to assist in conducting surveillance. The information included in that package included "tombstone" information such as names, driver's licence numbers, occupations, addresses, and vehicle information. It also included photographs of each target.[64]

Over the next few months, Mr. Tottenham repeatedly followed up with CFSEU to urge an investigation into the individuals he identified. He described this as a "rattle-the-chain moment" where he was trying to determine whether they were "actually going to engage and do a project."[65] Eventually, he was told that CFSEU's focus was on guns and gangs, not proceeds of crime, and while they might re-engage if they had time, they were tied up with other projects and were therefore unable to assist.[66]

61 Exhibit 148, Affidavit #1 of Daryl Tottenham, paras 67–69.

62 Evidence of D. Tottenham, Transcript, November 4, 2020, p 65–66.

63 Ibid, p 79. See also Evidence of J. Karlovcec, Transcript, October 30, 2020, pp 19–20; Exhibit 121, Email from John Karlovcec, re CFSEU River Rock Casino Orientation (June 20, 2014).

64 Exhibit 148, Affidavit #1 of Daryl Tottenham, exhibits 27–37. See also Evidence of J. Karlovcec, Transcript, October 30, 2020, pp 21–23.

65 Evidence of D. Tottenham, Transcript, November 4, 2020, p 67.

66 Ibid. See also Exhibit 148, Affidavit #1 of Daryl Tottenham, para 118; Evidence of J. Karlovcec, Transcript, October 30, 2020, p 25.

Mr. Tottenham continued to follow up with CFSEU throughout the fall of 2014, but no investigative steps were taken and they seemed to lose interest in the issue. For example, CFSEU initially offered to have one of its members attend a monthly law enforcement briefing by BCLC. However, it does not appear that anyone ever attended.[67]

While CFSEU was the primary focus of BCLC's efforts to prompt a criminal investigation into the network of cash facilitators operating in and around Lower Mainland casinos, it was not the only law enforcement agency alerted to the issue. Moreover, it appears that BCLC continued to advocate for an investigation by contacting the Real Time Intelligence Centre,[68] the Richmond RCMP detachment, and even their former contacts at IPOC (many of whom were still being copied on the suspicious transaction reports submitted by BCLC).[69] On each occasion, they were told that the law enforcement agencies they approached did not have the mandate or the resources to pursue a large-scale investigation into money laundering in Lower Mainland casinos.[70]

In making these comments, it is not my intention to criticize CFSEU or any of the other provincial and municipal law enforcement agencies approached by BCLC (and others) to report suspicious activity. CFSEU clearly had its hands full with the significant gang violence problem in the Lower Mainland and local detachments will rarely have the capacity, expertise, or resources to undertake complex money laundering investigations. However, the fact that the gaming industry had nowhere to go with evidence of a cash facilitation network responsible for laundering hundreds of millions of dollars highlights the significant enforcement gap created by the disbandment of the IPOC units, and the need for a specialized intelligence and investigative unit with an exclusive focus on proceeds of crime and money laundering.

Unfortunately, these issues were not limited to the gaming industry. It appears that actors in other sectors of the economy experienced a similar level of frustration in getting the attention of law enforcement. For example, an investigation conducted by the Registrar of Mortgage Brokers in 2012 determined that one of its registrants was likely involved in laundering illicit funds for individuals with criminal associations through a series of suspicious mortgage transactions.[71] In August 2013, the matter was referred to the RCMP's FSOC section and assigned to Corporal Karen Best, who

67 Evidence of D. Tottenham, Transcript, November 4, 2020, p 72; Exhibit 148, Affidavit #1 of Daryl Tottenham, exhibit 25.

68 I understand the Real Time Intelligence Centre to be an intelligence and analysis unit created to give investigators real-time access to information concerning individuals who pose a substantial risk to public safety.

69 Exhibit 148, Affidavit #1 of Daryl Tottenham, paras 118–22; Exhibit 145, Affidavit #1 of Rob Barber, para 60. On the latter point, see Evidence of B. Baxter, Transcript, April 8, 2021, p 92 ("Well, I know they continued to call, if you will. Because I personally received calls because of our personal relationships. And most times I would refer them to Inspector Cal Chrustie, who was overseeing one of the investigative teams … just so they could pass on relevant information or ongoing intelligence that they were receiving. They wanted some point of contact to continue that ability").

70 Exhibit 148, Affidavit #1 of Daryl Tottenham, paras 118–22.

71 Evidence of M. McTavish, Transcript, February 22, 2021, pp 126–28.

supplemented the information provided by the Registrar of Mortgage Brokers with information from police sources and developed the theory that what was being observed was mortgage fraud in furtherance of a money laundering scheme.[72]

A report prepared by Corporal Best in March 2016 concluded that "organized crime groups in the Lower Mainland may have been using secondary mortgage financing in order to launder [illicit] funds and that this practice may still be occurring."[73] Her report is more than 100 pages and contains a detailed review of money laundering risks in the real estate sector. In the fall of 2016, it was sent to the head of FSOC's Financial Integrity Unit. Corporal Best received compliments on her "exceptional" work. However, the investigation was terminated and the RCMP conducted no further investigation into the alleged money laundering scheme.[74] Notably, the registrant was permitted to carry on his activities until May 2019, when he was the subject of regulatory action.

The 2015–2020 Time Period

In February 2015, Brad Desmarais, BCLC's vice-president of corporate security and compliance, had an informal meeting with Mr. Chrustie at a coffee shop in North Burnaby. At the time, Mr. Chrustie was a senior member of the RCMP's Federal Serious and Organized Crime section.

Mr. Desmarais expressed his frustration that the issue of cash facilitation at Lower Mainland casinos was not being treated seriously and Mr. Chrustie agreed to assign a few of his investigators to look into the issue.[75]

After three months of investigation, the FSOC investigation (which ultimately became Project E-Pirate) was able to make a "direct link" between the suspicious cash being provided to patrons at the River Rock Casino and an illegal cash facility in Richmond.[76]

BCLC was also advised that "potentially some of the funds at the cash house were linked to transnational drug trafficking and terrorist financing."[77]

While the E-Pirate investigation (reviewed in detail in Chapter 3) was undoubtedly a step in the right direction, Mr. Tottenham gave evidence that it seemed to be a constant battle to keep the RCMP engaged on the project.[78] For example, a few months into the

72 Evidence of K. Best, Transcript, February 23, 2021, pp 64–65; Exhibit 652, Affidavit #1 of Karen Best, February 12, 2021, exhibit B, pp 114–16.

73 Ibid, p 116.

74 Evidence of K. Best, Transcript, February 23, 2021, pp 72–79, Exhibit 652, Affidavit #1 of Karen Best, exhibits C, D.

75 Evidence of B. Desmarais, Transcript, February 1, 2021, pp 118–19; Evidence of C. Chrustie, Transcript, March 29, 2021, pp 62–63.

76 Exhibit 522, Affidavit #1 of Brad Desmarais, exhibit 55, p 313; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 121–22. For a full review of the E–Pirate investigation, see Chapter 3 of this Report and Exhibit 663, Affidavit of Melvin Chizawsky, made on February 4, 2021.

77 Exhibit 522, Affidavit of Brad Desmarais, exhibit 55, p 313; Evidence of B. Desmarais, Transcript, February 1, 2021, pp 121–22.

78 Exhibit 148, Affidavit # 1 of Daryl Tottenham, para 126.

investigation, Mr. Tottenham was asked to urgently prepare a presentation for the E-Pirate team in order to justify continued funding for the investigation.[79]

Moreover, there was no sustained effort to investigate and pursue money laundering charges against other individuals and networks engaged in money laundering activity in this province. Between 2015 and 2020, there were only three major money laundering investigations across all of the RCMP's federal, provincial, and municipal business lines that progressed to the charge approval stage. One of those investigations (E-Pirate) resulted in charges that were approved but subsequently concluded before trial, one did not meet the charge approval standard, and the third is currently being considered by prosecutors.[80]

When one considers the nature and extent of the money laundering activity occurring during this time period, it is clear that law enforcement results were not commensurate with the magnitude of the problem. For example, the financial records seized by the RCMP in connection with the E-Pirate investigation revealed that Silver International conducted credit transactions totaling $81,462,730 and debit transactions totalling $83,075,330 between June 1 and October 15, 2015. On an annual basis, that corresponds to approximately $221 million in debit transactions and $217 million in credit transactions.[81] While I am unable to conclude that all of those transactions were carried out in furtherance of a money laundering scheme, I have previously found that a substantial portion of the cash being left at Silver International was derived from profit-oriented criminal activity and that Silver International was assisting organized crime groups in laundering the funds generated by that activity (see Chapter 3). I also heard evidence from Mr. Chrustie about other money laundering operations in this province that were comparable in size and scope, including one that was allegedly laundering billions of dollars through the BC economy.[82]

While the volume of suspicious cash entering Lower Mainland casinos decreased significantly over the next few years, there was still a large volume of suspicious cash entering those facilities. In 2016, for example, the volume of suspicious cash entering Lower Mainland casinos had decreased significantly, but was still in the range of $72 million (see Chapter 11). Moreover, the nature of the Vancouver model is such that the illicit cash generated by criminal activity and provided to those seeking to avoid the currency restrictions imposed by the Chinese government can be used for any purpose including, for example, the purchase of real estate and luxury goods.

79 Ibid, paras 126–27 and exhibit 39. The presentation, entitled "Economic and Social Consequences of Money Laundering," was delivered to the E–Pirate investigative team in May 2015. Following the presentation, Mr. Tottenham was advised E–Pirate would continue to be resourced.

80 Exhibit 794, Money Laundering and Proceeds Investigations by "E" Division – Response to Item 11 of the Cullen Commission's May 4, 2020 Request, pp 9, 12–14. See also Evidence of P. Payne, Transcript, April 16, 2021, pp 140–43. Note, however, that there were an additional 24 "open" major money laundering investigations at the time Exhibit 794 was prepared: Exhibit 794, Appendix B, pp 9, 12–14; Evidence of P. Payne, Transcript, April 16, 2021, pp 178–79. Open investigations are defined as "ongoing" investigations with charges yet to be determined by police.

81 Exhibit 663, Affidavit of Melvin Chizawsky, para 99.

82 Evidence of C. Chrustie, Transcript, March 29, 2021, pp 69–70.

Accordingly, the decrease in suspicious cash entering casinos does not necessarily mean there was a decrease in money laundering activity.

I also note that there were other serious forms of money laundering activity occurring within the province during this period. For example, John Zdanowicz, a professor emeritus at Florida International University and a pioneer in the research of illicit financial flows through international trade, prepared a report for the Commission indicating that there were more than $4.3 billion in undervalued exports and $4.1 billion in overvalued imports from British Columbia in 2019 (see Chapter 38). While I appreciate that there may be legitimate explanations for some of these transactions, it seems very likely that a substantial number of these transactions were connected to money laundering activity. There is also a large body of evidence suggesting that the real estate industry provided fertile ground for money laundering and that money laundering was a significant problem in other sectors of the economy.

Causes of the Poor Enforcement Outcomes in this Province

While I accept that there are significant challenges for law enforcement in the investigation and prosecution of money laundering offences, the primary cause of the poor enforcement outcomes in this province appears to be a lack of resources.

Some estimates suggest that there was at least a 25 percent reduction in federal policing following the 2012 re-engineering. Moreover, I heard evidence that it was extraordinarily difficult for the RCMP to staff the units responsible for money laundering investigations.[83] Superintendent Taylor testified that the Financial Integrity Unit "experienced a shortage of personnel" and there "really were challenges … trying to piece together teams to look after the files that we had."[84] In March 2019, for example, there were 27 authorized positions within Money Laundering Team 2 (one of two federal units responsible for the conduct of money laundering investigations) but only 10 of those positions were filled. Moreover, there was a significant draw on those resources for other federal priorities – such as wildfires and VIP visits – with the result that there were often few (if any) officers available to investigate money laundering.[85]

In a narrative document prepared for the Commission, Superintendent Taylor estimated that "[a]t any given time, due to leave, training and other duties (fires/ VIP) there [were] likely only 3 or 4 people in the office to work on [money laundering / proceeds of crime files] between 2015 and 2018."[86] In his testimony before the

83 Exhibit 790, Email from Lori Wanamaker to Clayton Pecknold, re fwd German Money Laundering (December 15, 2018), p 3; Evidence of C. Pecknold, April 6, 2021, pp 51– 55. See also Exhibit 795, RCMP Narrative Document – Business Cases and Proposals for Provincially Funded ML Unit [Business Case for Provincially Funded ML Unit], p 2.

84 Evidence of B. Taylor, Transcript, April 16, 2021, p 73. Similarly, Insp. Tony Farahbakhchian, officer-in-charge of that unit from May 2018 to March 2021, testified that resources were scarce and it was challenging to get capable officers released from other areas to come to the Financial Integrity Unit: Transcript, April 15, 2021, pp 51–52.

85 Exhibit 795, Business Case for Provincially Funded ML Unit, p 2.

86 Ibid.

Commission, Superintendent Taylor stated that these numbers were not accurate and that there were more people working on money laundering issues in that unit.[87] Moreover, it is important to note that Money Laundering Team 2 was not the entirety of the federal response to money laundering and that the RCMP was pursuing other disruption opportunities including covert operations with international partners.[88] However, there can be little doubt that the resources dedicated to money laundering were insufficient to respond to the problem in any meaningful way.

Another cause of the poor enforcement outcomes in this province was an institutional failure, at all levels of policing, to consider money laundering / proceeds of crime charges at the outset of investigations into profit-oriented criminal offences. An RCMP analysis of 127 serious organized crime, financial crime, and cybercrime files between January 1, 2017, and December 31, 2018, illustrates this point. Despite the fact that most, if not all, serious organized crime activity gives rise to the need to launder illicit funds, the analysis found that only 30 of 127 investigations (24%) pursued a money laundering offence as part of their operational goal and that investigators did not even *consider* a money laundering charge in 63 of those investigations (50%) even though money laundering was considered a national priority.[89] Similar results were observed in an analysis of serious organized crime investigations from 2013 to 2017 which found there was no consideration of money laundering / proceeds of crime charges in more than 50 percent of FSOC and financial crime investigations.[90]

Even a basic financial investigation into the accumulation of wealth by those believed to be involved in criminal activity has real benefits for the disruption of organized crime networks insofar as it identifies assets, points to criminal hierarchies and shows how the subjects are laundering their money.[91] Stefan Cassella, a former

87 Transcript, April 16, 2021, p 74.

88 Dr. German's conclusion that "there are currently no federally funded [RCMP] resources in B.C. dedicated to criminal money laundering investigations" must be approached with particular caution: Peter M. German, *Dirty Money, Part 2: Turning the Tide – An Independent Review of Money Laundering in B.C. Real Estate, Luxury Vehicle Sales & Horse Racing*, March 31, 2019, p 18. While there may have been a limited number of *dedicated* money laundering investigators (i.e., investigators with an exclusive focus on money laundering), federal RCMP officers were working on money laundering issues: Evidence of B. Taylor, Transcript, April 16, 2021, pp 74–75. For information on these covert operations, which can sometimes engage 30–40 officers and result in significant "disruption" opportunities, including criminal charges in other jurisdictions and the seizure of significant amounts of money, see Evidence of B. Taylor, Transcript, April 16, 2021, pp 32–34; Evidence of C. Chrustie, March 29, 2021, pp 35–36.

89 Exhibit 866, RCMP Federal Policing Projects Review: January 2017–December 2018, p 1, suggests that money laundering charges were not considered in 97 of 127 investigations, with the result that 76 percent of applicable files are not considering such charges. However, page 4 suggests that 63 of 127 investigations did not consider a proceeds of crime component, in the sense there was no mention of conducting a proceeds of crime investigation or seizing any assets in the operational plan.

90 Exhibit 865, FPCO Proceeds of Crime Review, pp 1–2.

91 Exhibit 866, RCMP Federal Policing Projects Review: January 2017–December 2018, p 6. See also Evidence of S. Cassella, Transcript, May 10, 2021, pp 79–82. In some cases, the investigation of money laundering / proceeds of crime charges may also make it easier for the Crown to meet its burden of proof about the predicate offence. For example, the fact the accused was involved in significant money laundering activity may strengthen the inference of knowledge and control necessary to prove many drug offences. Involvement in money laundering activity may also be an aggravating factor that leads to a more significant sentence for the offender.

US prosecutor with significant experience in the prosecution of money laundering offences, explained the impact these measures can have on organized crime groups:

> [T]here's no doubt … and economists have studied this, that you have much more of an effect on, let's say, a drug organization or similar organized crime organization if you take their assets than if you simply arrest low-level people.
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> [J]ust use the drug case as the prototypical example, you could arrest any number of street sellers and take the cash that was found on their persons or in … the safe under the bed in their house and they get replaced fairly quickly. It's the large sums of money that are flowing back to Mexico and other places in South America that … sustain the cycle of a drug trafficking organization.
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> [W]hen we'd get a … low-level operative in a drug organization to cooperate with the government and plead guilty and testify, and we would ask him what of our investigation was the most effective in terms of slowing down the drug operation that you used to be a part of? He would say, those seizures; when you took $500,000 off the courier on the airplane, that was the money that was going to buy the next load and we had to start all over and raise that money again before we can get another load, and the supplier then went to somebody else and so forth in Mexico and caused all kind of problems for us.[92]

On February 4, 2020, RCMP Deputy Commissioner Michael Duheme issued a policy directive requiring that all future operational plans submitted for approval and tiering within the FSOC section "clearly denote all dimensions being considered, examined and investigated in relation to the accumulation of illicit funds and wealth including the laundering of money derived from criminal activity."[93] If a money laundering / proceeds of crime investigation is not being pursued, the supporting rationale must be documented and submitted with the operational plan. Moreover, the directive states that "charges for the [money laundering / proceeds of crime] offence should be laid at the same time as those related to the underlying offence or shortly thereafter" and that engaging the Public Prosecution Service of Canada at the outset of the investigation "will greatly assist in the determination of timelines and charges."[94]

I believe that the consistent and rigorous implementation of this directive has the potential to substantially improve law enforcement results in this province. Not only would it allow for additional charges and forfeiture proceedings to be brought against

92 Transcript, May 10, 2021, pp 79–82. For additional evidence concerning the benefits of targeting illicit wealth, see Evidence of C. Hamilton, Transcript, May 12, 2021, pp 9–10, 31–32, 56–58.

93 Exhibit 861, Memorandum from Michael Duheme, re Directive on Proceeds of Crime and Money Laundering in All Future Federal Policing Serious and Organized Crime Investigations (February 4, 2020) [Directive on Proceeds of Crime and Money Laundering].

94 Ibid.

the existing defendant, it would also "expand the universe of potential defendants" and allow for charges to be brought against those who are involved in different aspects of the criminal enterprise. Mr. Cassella described the benefits of this approach as follows:

> Money laundering tends to expand the scope of the criminal investigation in several ways. It expands the category or the universe of potential defendants. Some defendants committed the underlying crime. Some defendants committed the underlying crime and laundered the money. Some defendants only laundered the money. If you didn't charge money laundering, you would not reach that last group of defendants.
>
> The person whose job it is simply to store the money in a drug offence and … launder it through a series of bank accounts and then go to Mexico, or the professional money launderer, a lawyer or an accountant, who was charged with creating … trusts or putting money in the names of shell companies or doing whatever it was that was done to conceal or disguise the money. So it expands the universe of possible defendants.[95]

I would therefore encourage the RCMP to ensure that this directive is followed, and that investigators consider money laundering / proceeds of crime issues in every investigation involving serious organized crime groups and profit-oriented criminal offences.[96] I also recommend that all provincial and municipal law enforcement agencies implement a policy requiring all officers involved in the investigation of profit-oriented crime to (a) consider money laundering and proceeds of crime issues at the outset of the investigation, and (b) where feasible, conduct an investigation with a view to pursuing those charges, and identifying assets for seizure and/or forfeiture.

Such investigations are not beyond the competence of these investigators and ought to be pursued as a matter of course whenever provincial law enforcement bodies are involved in the investigation of profit-oriented crime.[97]

Recommendation 89: I recommend that all provincial and municipal law enforcement agencies in British Columbia implement a policy requiring all officers involved in the investigation of profit-oriented crime to consider money laundering and proceeds of crime issues at the outset of the investigation and, where feasible, conduct an investigation with a view to pursuing those charges, and identifying assets for seizure and/or forfeiture.

95 Evidence of S. Cassella, Transcript, May 10, 2021, pp 38–39.

96 I note that a similar directive was discussed as early as 2008, but it does not appear to have gained any significant traction within the FSOC unit: Evidence of B. Taylor, Transcript, April 16, 2021, pp 44–46. Moreover, I heard evidence that current resourcing levels within certain units may preclude any serious attempt to conduct a financial investigation.

97 On this point, see Evidence of S. Cassella, Transcript, May 10, 2021, pp 72–73.

In order to carry out these investigations, it is important that these investigators have proper training in the conduct of basic financial investigations. I therefore recommend that all provincial and municipal law enforcement agencies involved in the investigation of profit-oriented crime (such as drug trafficking, fraud, and human smuggling) develop training modules to ensure that their members have the ability to conduct these types of investigations.

Recommendation 90: I recommend that all provincial and municipal law enforcement agencies involved in the investigation of profit-oriented crime develop training modules to ensure that their members have the knowledge and skills to pursue money laundering and proceeds of crime investigations, and identify assets for seizure and/or forfeiture.

The dedicated provincial money laundering intelligence and investigative unit recommended in Chapter 41 may be well positioned to provide training to other investigations with respect to proceeds of crime and money laundering issues.

While I appreciate that the allocation of law enforcement resources to these matters will put additional strain on law enforcement agencies in the short term, I strongly believe they will have a significant impact on organized crime groups and result in substantial financial benefits for the Province (which could be used to fund additional law enforcement resources and other government priorities).

Evidence from other jurisdictions illustrates the massive financial benefits that flow from a focused and effective asset forfeiture regime. For example, an expert report prepared for this Commission on anti–money laundering efforts in New Zealand indicates that the cumulative value of assets restrained by the police-run asset recovery unit between July 2017 and October 2020 was in the range of NZ$428 million (approximately Can$358 million). The report states:

> On most accounts, the CPR [Criminal Proceeds (Recovery)] Act system in the hands of enthusiastic and well-drilled Police and Prosecutor operations has been wildly successful. It is a high-profile deterrent force, countering to some extent the attractions that organised crime gangs can use, such as cars, motorbikes, boats, jet skis, flashy bling and assets, to lure new recruits. Nothing speaks as symbolically in this field of crime prevention as a fleet of criminal toys being loaded up onto a confiscation truck pursuant to a surprise freezing order operation.
>
> As at the end of October 2020, assets under restraint between the 5 regional Asset Recovery Units for the Commissioner of Police had grown to NZ$428m cumulative since July 2017. The top 3 offences used as a basis for seeking the asset restraining orders were reported by Police as being: money laundering (56%), drug crime (26%) and fraud (12%).

> The largest single forfeiture to date has been a NZ$43m settlement reached in 2016–17 with a Chinese person resident in New Zealand, Mr William Yan, who was wanted for offences back in China and agreed to forfeit major property and shareholding interests in New Zealand as part of an agreed settlement.
>
> *Property that has eventually been forfeited to the Crown under the CPR Act regime (a process that can take years for all challenges and appeals and third party interests in the property to have been heard) is sold at auction or by other methods. The proceeds from that are lodged in a government Proceeds of Crime Fund administered by the Ministry of Justice. A variety of government agencies and some selected non-governmental organisations can then bid for funding for specific community or criminal justice projects they wish to carry out, such as drug treatment, healthcare services or offender rehabilitation programmes. There is a strong preference for funding initiatives at a grassroots level to fight organised criminal gang influences, especially where they are dealing in methamphetamine and other drugs.* [Emphasis added.][98]

While it is important to use caution in looking at the experiences of other jurisdictions, New Zealand's population, GDP, legal system, and government structure are similar to British Columbia's, which make it a useful point of reference in examining the benefits arising from an effective asset forfeiture regime.[99] If the measures recommended in this Report result in seizures and/or forfeitures that are remotely similar to those in New Zealand, they would dwarf the costs of any new initiatives and result in a significant surplus of funds that could be used to fund other government services.

Other Enforcement Gaps

Finally, it is important to note that other areas of federal policing have suffered as a result of the 2012 federal re-engineering. For example, I heard evidence that the RCMP's commercial crime section was disbanded, leaving nobody to investigate the "mid-level" frauds that have a significant impact on citizens throughout the province.

98 Exhibit 953, Gary Hughes, *Report to the Commission of Inquiry into Money Laundering in British Columbia Regarding the Anti–Money Laundering Regime of New Zealand* (April 2021) [*Anti–Money Laundering Regime of New Zealand*], pp 37–38. Other information suggests that close to $1 billion in assets have been brought under restraint over the past 10 years: see Evidence of G. Hughes, Transcript, May 3, 2021, p 74. In considering these figures, it is important to understand that they refer to the value of assets seized (or "restrained") by law enforcement, and not to the value of assets actually forfeited to the state. However, I understand that approximately 57 percent of the assets restrained over the past five years have been forfeited, which works out to approximately NZ$331 million (Can$278 million): see Exhibit 976, Dashboard – CPRA (Criminal Proceeds (Recovery) Act 2009), April 30, 2021 (redacted). I also understand that forfeiture proceedings are still underway with respect to most of the other assets restrained by police (these actions take an average of two years to complete). For further evidence with respect to the percentage of restrained assets forfeited to the state, see Evidence of C. Hamilton, May 12, 2021, pp 110–14.

99 For the similarities between these jurisdictions, see Exhibit 953, *Anti–Money Laundering Regime of New Zealand*.

Before the re-engineering, there were approximately 100 officers and support staff investigating these types of fraud.[100]

An RCMP business case for the creation of a provincial financial crime unit provides a list of some of the financial crime cases that were not investigated because of the federal re-engineering.[101] These files include a number of serious credit card, mortgage, investment, and tax frauds that resulted in significant losses to individuals, businesses, and public sector entities throughout the province.

One of these frauds (described as an "International Lottery Fraud") has connections to international money laundering and a number of the other files are described as being sophisticated, multi-jurisdictional frauds with links to organized crime.

I strongly encourage the Province's Policing and Security Branch to work with its federal partners to identity and explore these types of enforcement gaps in order to ensure that the citizens of this province are protected from all forms of criminal activity.

Current Structure and Resourcing

Since the establishment of this Commission, the RCMP has renewed its efforts to address money laundering / proceeds of crime issues through measures such as the February 4, 2020 directive (discussed above). It has also taken steps to address some of the resourcing issues that led to the poor enforcement results from 2012 to 2020. While it remains to be seen whether these changes will lead to any concrete results, I have some optimism that the RCMP may find a measure of success if its newfound commitment to money laundering / proceeds of crime investigations is genuine, and if the federal government prioritizes and devotes sufficient resources to this issue once the work of the Commission is over and the public scrutiny on this issue has diminished.

In what follows, I review the mandate and structure of each federal law enforcement agency with responsibility for the investigation of money laundering offences.

FSOC Financial Integrity Unit

The FSOC unit continues to have primary responsibility for the investigation of money laundering offences at the federal level.[102] It does so through two operational

100 Exhibit 796, RCMP "E" Division, Business Case Proposal for a Provincial Financial Crime Unit (November 9, 2016), pp 2–3. See also Evidence of B. Taylor, Transcript, April 16, 2021, pp 26–27; Evidence of T. Farahbakhchian, Transcript, April 15, 2021, pp 119–22; Evidence of K. Bedford, Transcript, April 15, 2021, pp 122–32; Evidence of D. LePard, Transcript, April 7, 2021, pp 55–57.

101 Exhibit 797, Business Case for Financial Crime Unit, Appendix D, Examples of files affected by federal re–engineering.

102 Closing submissions, Government of Canada, July 9, 2021, p 64; Exhibit 868, Money Laundering / Proceeds of Crime Presentation, p 2.

groups (Group 1 and Group 2), which together make up the RCMP's Financial Integrity Program.[103]

Group 1 is made up of two separate teams: the Integrated Market Enforcement Team (IMET) and the Sensitive Investigations Unit (SIU). Neither of these teams has a specific money laundering mandate (though money laundering issues may arise in the course of their investigations, and they have been directed to consider money laundering charges at the outset of each investigation).[104]

IMET has a mandate to detect, deter, and investigate capital market fraud that is of regional or national significance and that poses a threat to investor confidence, economic stability, and the integrity of capital markets.[105] It has an authorized strength of 27 positions (though there have been staffing problems within the unit and only 15 of these positions were occupied in March 2021).[106] IMET receives "fenced" funding from the federal government and its files are prioritized within "E" Division (as opposed to the federal prioritization process).[107] At the time of writing, it has 14 active investigations, many of which have been referred by federal and provincial partners such as the BC Securities Commission.[108]

While money laundering is not part of its core mandate, there appears to be a genuine desire to build in a money laundering component to its investigations, in accordance with the directive made by Deputy Commissioner Michael Duheme on February 4, 2020.[109]

SIU has a mandate to investigate "sensitive" files such as breach of trust, corruption, fraud, and similar offences involving government officials and employees in British Columbia. It also has a mandate to investigate threats directed towards government institutions that imperil political, economic, or social integrity.[110] Like IMET, its files are prioritized within "E" Division and are not subject to the federal prioritization process.

103 The Financial Integrity Program also contains a dedicated intelligence unit, which reviews strategic intelligence, open–source information, and information available to law enforcement to ascertain transnational organized crime involvement in financial crime (see Closing submissions, Government of Canada, p 65.) S/Sgt. Bedford testified that the intelligence unit is critical in developing a strategic focus for these units so they can move in the right direction. However, he said it has been a challenge to get proper intelligence analysts into their unit and a number of vacancies remain: Transcript, April 15, 2021, pp 23–25. See also Exhibit 856, Presentation – FSOC Financial Integrity Program Group 1 (March 15, 2021) [FSOC Presentation], slide 7, which indicates that six of the 11 positions in the intelligence unit are vacant.

104 Exhibit 856, FSOC Presentation, slides 3–4; Exhibit 861, Directive on Proceeds of Crime and Money Laundering.

105 Exhibit 856, FSOC Presentation, slide 4.

106 Ibid, slide 6. See also Evidence of K. Bedford, Transcript, April 15, 2021, pp 16–17.

107 Exhibit 856, FSOC Presentation, slides 4, 6; Evidence of K. Bedford, Transcript, April 15, 2021, pp 14–16, 86–87.

108 Exhibit 856, FSOC Presentation, slide 6.

109 Evidence of K. Bedford, Transcript, April 16, 2021, pp 86–91, 115–18. See also Exhibit 861, Directive on Proceeds of Crime and Money Laundering.

110 Exhibit 793, RCMP, Financial Crime Resources in "E" Division (August 31, 2020), p. 2; Exhibit 856, FSOC Presentation, slide 3.

SIU has an authorized strength of 28 positions (19 of which were occupied at the time of writing) and has 11 active investigations.[111]

Group 2 is made up of two teams with a specific focus on money laundering (Money Laundering Teams 1 and 2).[112] It also includes an Asset Forfeiture Unit, made up of three members, which is responsible for referring files to the Civil Forfeiture Office.

Money Laundering Team 1 has an authorized strength of 19 positions, focuses on regional files and works with various partner agencies within Canada.[113] It is also responsible for tracking and undertaking cryptocurrency and cyber-related financial transaction investigations.[114]

Money Laundering Team 2 has an authorized strength of 25 positions, has more of an international focus, and works with international partners to target individuals tied to transnational criminal networks.[115]

At the time of writing, 17 of 19 positions were occupied within Money Laundering Team 1, and 21 of 25 positions were occupied within Money Laundering Team 2.[116] This is a significant improvement from the situation from 2015 to 2020, when less than half of those positions were filled and there was a significant draw on those resources for other federal priorities.[117]

I heard also evidence that there has been a "positive increase, not only in the capacity and the training, but … overall in the mindset and the satisfaction of the work that's being done within the unit" and that there are "a lot of very confident investigators out there right now that are ready to take on some significant files."[118]

While I am encouraged by these developments, it is important to note that the renewed focus on money laundering is very recent, much of it being announced in the context of the public scrutiny of this Commission, and has yet to yield any tangible results. It remains to be seen whether these resourcing levels will be maintained once the work of the Commission is over and the attention of law enforcement turns to other matters.

111 Exhibit 856, FSOC Presentation, slides 3, 6.

112 I understand that the recently created Integrated Money Laundering Investigation Team will also be housed within Group 2 of the Financial Integrity Unit. I discuss those teams in the section below.

113 Exhibit 856, FSOC Presentation, slide 16; Evidence of T. Farahbakhchian, Transcript, April 15, 2021, pp 42–43.

114 While Team 1 was previously known as the Project Development Unit and was tasked with evaluating and proposing potential projects for investigation, it has always been responsible for the review and evaluation of money laundering files (though the recent "rebranding" seems to have sharpened its focus on money laundering): Evidence of T. Farahbakhchian, Transcript, April 15, 2021, pp 42–48.

115 Exhibit 856, FSOC Presentation, slide 17; Evidence of T. Farahbakhchian, Transcript, April 15, 2021, pp 42–43.

116 Exhibit 856, FSOC Presentation, slides 16–17.

117 Note, however, that VPD secondments account for four of the positions in Money Laundering Team 1 and Money Laundering Team 2 (with two officers assigned to each of those teams): Evidence of T. Farahbakhchian, Transcript, April 15, 2021, p 46.

118 Evidence of B. Taylor, Transcript, April 16, 2021, pp 75–77. See also Evidence of P. Payne, Transcript, April 16, 2021, p 102 ("So the RCMP is taking this rather seriously. It is a priority").

The IMLIT Initiative

On December 17, 2020, the RCMP announced that it would be using a portion of the money allocated to the RCMP in Budget 2019 to create Integrated Money Laundering Investigative teams (IMLITs) in Ontario, Quebec, Alberta, and British Columbia.

Five investigator positions were created in each of these provinces and one position was created at national headquarters. In British Columbia, four of these investigators will be working alongside investigators from Money Laundering Team 1 and 2 in the Financial Integrity Unit and one of the investigators has been assigned to the Counter Illicit Finance Alliance (CIFA; discussed below).[119] The RCMP has also invested in data scientists and other support teams.[120]

I understand that the mandate of these units is to build integrated partnerships with municipal and provincial partners – as well as federal agencies such as the Canada Revenue Agency (CRA), Canada Border Services Agency, and the Public Prosecution Service of Canada – and increase enforcement actions against targeted organized crime groups through the removal of their assets.[121]

While the IMLIT initiative is a step in the right direction, a 2021 IMLIT work plan acknowledges that federal policing will "still require far more of a shift in focus to get the results it needs" and that additional resources will be needed to achieve any tangible results.[122] Others are more cynical and suggest that adding five new resources will not have any real impact when there are already 160 vacancies in federal policing:

> My understanding of the IMLIT proposal is approximately $20 million spread over five years in four provinces. I think the numbers that I've recently seen indicate a 22R CIFA initiative that was born here but is now being managed by the RCMP and then three additional resources into federal policing. That's five resources. There's already 160 vacancies in federal policing. It's not going to do anything.
>
> If you add a little expertise, I suppose, but at the end of the day … it gets absorbed into this big giant pond, then I think that that is inherently the problem … you know, there's very little that two or three people can actually accomplish.[123]

I appreciate that there remain a large number of vacancies in federal policing and it is obvious that the addition of four new investigators in British Columbia is unlikely to have any drastic impact on the investigation and prosecution of money

119 Exhibit 859, "E" Division Criminal Operations Chart (March 15, 2021); Evidence of B. Taylor, Transcript, April 16, 2021, p 70; Evidence of P. Payne, Transcript, April 16, 2021, p 161. I also understand that CRA has committed one resource for the IMLIT team in British Columbia.

120 Evidence of P. Payne, Transcript, April 16, 2021, p 111.

121 Exhibit 872, 2021 IMLIT Way Forward, p 1. See also Exhibit 849, Letter from Bill Blair to David Eby (December 10, 2020).

122 Exhibit 872, 2021 IMLIT Way Forward, p 2.

123 Evidence of W. Rideout, Transcript, April 6, 2021, pp 124–25.

laundering offences. At the same time, the *total* number of investigators assigned to money laundering and proceeds of crime issues, including those assigned to Money Laundering Teams 1 and 2, is now approaching the levels seen in the IPOC days.[124]

While I am encouraged by the renewed focus on money laundering at the federal level, I believe that more is required to respond to the significant – and perhaps unique – money laundering vulnerabilities in this province. I am deeply concerned by the apparent disconnect between the priorities of the RCMP federal police service and law enforcement needs in this province over the past 10 years. If not obvious from my earlier comments, I also have concerns that the RCMP's newfound commitment to money laundering / proceeds of crime issues may be short-lived, and that current resourcing levels will not be maintained once the work of the Commission is over.

In light of the significant benefits that flow from prioritizing money laundering and proceeds of crime issues, it is my sincere hope that the federal government will continue to focus on this issue and add the additional resources needed to achieve tangible law enforcement results. However, it is essential for the province to take matters into its own hands and ensure that the unique money laundering / proceeds of crime issues that arise in this province are properly addressed.

I therefore recommend that the Province create a dedicated provincial anti–money laundering intelligence and investigation unit to lead the law enforcement response to money laundering in this province by (a) identifying, investigating, and disrupting sophisticated money laundering activity, and (b) training and otherwise supporting other investigators in the investigation of the money laundering / proceeds of crime offences.[125]

Recommendation 91: I recommend that the Province create a dedicated provincial money laundering intelligence and investigation unit to lead the law enforcement response to money laundering in this province by (a) identifying, investigating, and disrupting sophisticated money laundering activity, and (b) training and otherwise supporting other investigators in the investigation of the money laundering and proceeds of crime offences.

I also recommend that the AML Commissioner (discussed in Chapter 8) as well as the Policing and Security Branch make best efforts to monitor the response to money laundering within the RCMP federal police service by seeking detailed metrics concerning the resources dedicated to money laundering investigations, the number of money laundering investigations undertaken by the RCMP, and the results of those investigations.

124 At their height, these units comprised at least 50 investigators. However, it is important to note that the C-22 team responsible for conducting money laundering investigations comprised five investigators who undertook money laundering investigations with support from other members of the IPOC units.

125 I return to what I consider to be the essential elements of that unit in Chapter 41.

Recommendation 92: I recommend that the AML Commissioner and the Policing and Security Branch make best efforts to monitor the response to money laundering within the RCMP federal police service by seeking detailed metrics concerning the resources dedicated to money laundering investigations, the number of money laundering investigations undertaken by the RCMP, and the results of those investigations.

One way those metrics could be provided without compromising the integrity of ongoing investigations is for the RCMP to publish annual reports concerning the resources dedicated to money laundering and the performance of those units.

While I appreciate the cost associated with the creation of a specialized money laundering intelligence and investigation unit, I strongly believe that the new asset forfeiture opportunities created by the implementation of these measures will offset, if not exceed, the cost of the new unit and result in a net financial gain for the province.

Other Federal Initiatives

Three other RCMP initiatives play a role in the federal response to money laundering: the Anti–Money Laundering Action, Coordination and Enforcement team; the Counter Illicit Finance Alliance; and the Trade Fraud and Trade-Based Money Laundering Centre of Expertise.

The Anti–Money Laundering Action, Coordination, and Enforcement Team

The Anti–Money Laundering Action, Coordination, and Enforcement (ACE) team was created as a pilot project to bring together experts from intelligence and law enforcement agencies to identify significant money laundering and financial crime threats and to strengthen inter-agency cooperation and coordination.[126]

In the first phase of the pilot project, the ACE team consulted with Canadian and international partners and used the information collected during that process to guide it during the second phase of the project (the operational phase).[127]

In the second phase of the project, the ACE team was renamed the Financial Crime Coordination Centre (FC3) to better reflect its role – namely, to coordinate support to anti–money laundering operational partners, including law enforcement bodies.[128]

While the second phase of the project is still in the planning stage, FC3 plans to offer support to anti–money laundering partners in three main areas: policy, training, and operations. FC3's policy support role will be focused on working with operational partners to modify and develop anti–money laundering strategies, legislation, and

126 Exhibit 1019, Affidavit #1 of Lesley Soper, May 11, 2021, para 5.

127 Ibid, para 10.

128 Ibid, para 13.

policies. FC3's training role aims to support the development of financial crime knowledge, skills, and expertise by providing anti–money laundering partners with greater access to training programs.[129] I understand that one of the initiatives being undertaken by FC3 is to host a national-level anti–money laundering conference for those who work in financial crime enforcement or prosecution services at the federal, provincial, and municipal level.[130]

FC3's operational support role will focus on providing its partners with the support they require to undertake financial crime investigations effectively. These activities may include assistance in accessing federal support services such as forensic accounting services and the development of subject matter experts who can assist and provide guidance to partners on specific issues.[131]

While it remains to be seen whether this initiative will be able to provide any meaningful assistance, the development of subject matter experts who can provide assistance to law enforcement bodies and regulators has been an invaluable tool in guiding money laundering investigations in other countries.

Training programs aimed at improving financial crime knowledge may also strengthen the effectiveness of anti–money laundering initiatives, and I would encourage FC3 to develop basic training programs aimed at front-line investigators, in addition to advanced courses for experienced financial crime investigators. Such programs will enhance the ability of those involved in the investigation of predicate offences to conduct effective financial crime investigations at the same time they are investigating the predicate offence (an approach that has a number of significant benefits, including the disruption of organized criminal activity).

Counter Illicit Finance Alliance of British Columbia

CIFA is a financial information sharing partnership that evolved out of two previous initiatives spearheaded by Sergeant Ben Robinson: the Bank Draft Intelligence Probe and Project Athena.

The Bank Draft Intelligence Probe was an intelligence probe conducted by CFSEU in the aftermath of Dr. German's interim recommendation that gaming service providers complete a source of funds declaration whenever they receive cash deposits or bearer bonds in excess of $10,000.

While that recommendation was intended to stem the flow of illicit funds into BC casinos, CFSEU continued to have concerns about the anonymity and transferability of bank drafts, including the fact that most financial institutions did not include the name of the purchaser or the account number from which the funds were sourced on the

129 Ibid, paras 16–17, 20.

130 Ibid, para 22.

131 Ibid, paras 23–24.

bank draft.[132] Sergeant Robinson testified that the absence of that information made it much easier for bank drafts to be passed from underground service providers to casino patrons who were not the account holder in furtherance of a money laundering scheme.

In March and April 2018, CFSEU analyzed bank drafts received at BC casinos in January and February of that year. It also contacted the financial institutions that issued those bank drafts to determine whether the person presenting the bank draft at the casino held an account with that financial institution. While the analysis revealed that most casino patrons had an account at the financial institution that issued the bank draft, it uncovered a number of discrepancies in the source-of-funds declarations completed by casino patrons when they made large cash buy-ins at BC casinos.[133] For example, the analysis revealed that parts of the source-of-funds declarations were not fully complete and that casino patrons were often including the bank draft number rather than the account number from which the funds were sourced on the declaration.[134]

A briefing note prepared by GPEB in December 2018 summarizes the concerns associated with bank drafts as follows:

> Both JIGIT [the Joint Illegal Gaming Investigation Team] and CFSEU-BC have expressed concerns with the risk presented by bank drafts and the process in place to establish the source of funds. There is concern that due to the limited information on bank drafts and a policy that permits patrons to write-in missing information (e.g., account name and number) onto receipts, bank drafts can be passed from underground service providers to casino patrons who are not the account holder.[135]

In May 2018, CFSEU hosted a meeting with financial institutions, BCLC, and GPEB, where it shared its concerns about the exploitation of bank drafts and facilitated a round-table discussion about the use of bank drafts in BC casinos. One of the solutions proposed during the discussion was to put the purchaser's name on the front of the bank draft to reduce anonymity.[136] The meeting also had the effect of raising awareness of the issue, which allowed stakeholders to be on alert for it and report any concerns to FINTRAC.[137]

In order to streamline the reporting process, the RCMP renamed the intelligence probe Project Athena and reporting entities were asked to identify the typology as "Project Athena" in submitting reports to FINTRAC.[138] Sergeant Robinson testified:

132 At the time, CIBC was the only major bank that included this information on its bank drafts.

133 Evidence of B. Robinson, Transcript, April 14, 2021, pp 44–46, 50.

134 Ibid, p 50.

135 Exhibit 841, GPEB Briefing Note – Bank Drafts and Source of Funds Update (December 28, 2018), p 2. Importantly, Sgt. Robinson testified that other aspects of these source-of-funds declarations piqued his interest as an investigator, including full sections missing, entries in multiple different colours of ink, and items crossed out: Transcript, April 14, 2021, p 50.

136 Evidence of B. Robinson, Transcript, April 14, 2021, pp 51–52.

137 Ibid.

138 Ibid, pp 161–62.

> The rationale for the name was to assist FINTRAC in identifying the reports that were being filed by reporting entities. So one important part to emphasize here is that between the naming of Project Athena, there was a meeting that took place between the stakeholders that each had a varied view on the problem. So we brought together GPEB, BCLC and financial institutions and CFSEU presented what the problem was. And as a result of that discussion … that meeting, we talked about anonymity of bank drafts, and one of the solutions that was presented … to reduce the anonymity of bank drafts was to put the purchaser's name on the front of the draft.
>
> With respect to the part about Project Athena and the naming of Project Athena was that now that reporting entities were aware of the typology and the activity, they could now … be on alert for it and they could file reports. And when those reports were filed … it's helpful for FINTRAC to be able to sort them and to identify them as a Project Athena typology.[139]

On October 24, 2018, CFSEU hosted the inaugural Project Athena meeting at "E" Division headquarters. Present at the meeting were representatives from CFSEU, BCLC, GPEB, FINTRAC, CRA, and a number of major financial institutions.[140]

One of the items discussed at that meeting was the exchange of *tactical* information relating to the exploitation of bank drafts (i.e., the exchange of information with respect to specific individuals and bank drafts). As I understand it, the anticipated flow of information was as follows:

- BCLC would provide CFSEU with information concerning the suspicious use of bank drafts at BC casinos;
- CFSEU would analyze that information and seek information from financial institutions as to whether the individual in possession of a suspicious bank draft held an account with the issuing financial institution;[141]
- CFSEU would share that information with BCLC, which could conduct an investigation into the use of that bank draft and, where appropriate, file a suspicious transaction report with FINTRAC;
- the financial institution that issued the bank draft could conduct its own investigation and, where appropriate, file a suspicious transaction report with FINTRAC;
- where the statutory pre-conditions were met, FINTRAC would share relevant information concerning the bank draft (or the person in possession of the bank draft) with CFSEU and other law enforcement bodies; or

139 Ibid, pp 51–52.

140 Exhibit 840, CFSEU, Project Athena Stakeholders Meeting Presentation (October 24, 2018) [Project Athena Presentation], slide 9.

141 Typically, a bank draft would be flagged as suspicious when the casino patron was presenting bank drafts from multiple financial institutions or a high total volume from a single financial institution.

- CFSEU could submit a voluntary information record to FINTRAC with respect to a suspicious transaction and share any information received from FINTRAC with BCLC and/or the financial institution that issued the bank draft.[142]

While participation was strictly voluntary, it is easy to see how the exchange of tactical information in this manner would assist all parties in identifying suspicious transactions. From a law enforcement perspective, knowing whether a particular customer has an account with the financial institution that issued the bank draft allows investigators to focus their efforts on bank drafts that are truly suspicious (rather than sorting through every bank draft tendered at BC casinos in an attempt to identify suspicious conduct).

It also creates a more efficient and effective reporting regime in which BCLC and individual financial institutions are able to file reports in relation to conduct that is truly suspicious and flag those reports in a way that ensures they are brought to the attention of the proper law enforcement agency.

As a result of these efforts, CFSEU received numerous FINTRAC disclosures related to the use of bank drafts at BC casinos and reviewed these disclosures to determine next steps. Sergeant Paddon described the process of analyzing these disclosures as follows:

> So as a result of STRs that were filed from the banks to FINTRAC under Project Athena, FINTRAC … would then forward FINTRAC disclosures to me … I would go through each FINTRAC disclosure … looking at the gambler [and] … the banking activity of what that gambler was doing.
>
> …
>
> [A]fter looking at each FINTRAC disclosure, we would establish what we were going to do with it, what was going to be the next process we were going to go through. Some of them looked somewhat legit. It was just their banking activity, so they were put aside. Other ones were identified that may be suspect or were clearly layering in the money laundering process, and then they would be spin-off files. We would open separate files for each of those gamblers and we would look at investigating them further.
>
> Of the [ones] identified for interviews, we would work with GPEB. GPEB would deal with BCLC as well. Sometimes BCLC would interview the patron themselves. Other times, if it was an investigative process, we were looking at them possibly for money laundering, we would actually organize an interview to have them come in and then we would interview them and ask them … what was going on in their banking activity.
>
> …

142 Transcript, April 14, 2021, pp 55–56; Exhibit 840, Project Athena Presentation, slide 10.

> Sometimes other detachments would have a money laundering investigation or a cash seizure at the casinos or whatever it was, and then they would ask me to share the FINTRAC disclosure or talk about what it was … they had FINTRAC disclosures they actually obtained, and then I would help them to analyze what was in them.
>
> There were four lawyers identified in some of the FINTRAC disclosures, two notary publics, and there was a number of … car dealerships and other things.[143]

In my view, the success of this initiative in raising awareness of the issue among stakeholders, putting in place preventive measures such as the inclusion of the purchaser's name and account number on bank drafts, and generating actionable intelligence with respect to the misuse of bank drafts illustrates the value of strategic and tactical information sharing in responding to the money laundering threat. At the same time, it is important to note that the ultimate success of information-sharing initiatives such as Project Athena will depend on whether law enforcement has sufficient resources to act on the intelligence generated through these initiatives.

In mid- to late 2019, the decision was made to expand the scope of Project Athena to include other money laundering typologies in other sectors of the economy, including real estate and luxury vehicles. While the expansion of Project Athena to these sectors was soon suspended in favour of a more permanent information-sharing partnership (see below), Sergeant Paddon's laudable efforts to develop strategic intelligence with respect to the luxury vehicle sector are deserving of mention.

After being chosen to lead the luxury vehicle subgroup, Sergeant Paddon conducted wide-ranging interviews with representatives of legitimate, well-respected luxury vehicle dealerships, as well as dealerships that were frequently mentioned on suspicious transaction reports, to determine whether there was any difference in the way they were conducting business.[144] Her analysis revealed that the more reputable dealerships took a 5 percent deposit, with the remainder of the purchase price being paid with certified cheques, credit cards, and bank drafts (all of which can be traced). Moreover, they always confirmed the source of funds used to pay the purchase price by calling the bank to confirm that the purchaser of the bank draft was, in fact, the person purchasing the vehicle.[145]

By contrast, the less reputable dealerships would routinely take 20 percent in deposits and rarely conducted any due diligence in relation to the source of funds used to pay the purchase price (taking the position that it was for the bank to do that work). They often had multiple bank accounts, held their inventory off-site in order to create distance between themselves and the vehicle, and used leasing companies operating under different names in different locations. One dealer even complained

143 Transcript, April 14, 2021, pp 78–81.

144 Evidence of M. Paddon, Transcript, April 14, 2021, pp 88–89.

145 Ibid, pp 91–92.

that the Cullen Commission was causing him to lose a great deal of revenue from his customers.[146]

Sergeant Paddon presented the results of her analysis at the first (and only) meeting of the luxury vehicle subgroup, which included stakeholders such as RBC, HSBC, ICBC, the Vehicle Sales Authority, the New Car Dealership Association of British Columbia, CBSA, CRA, the Criminal Intelligence Service and the Automobile Retailers Association. Based on the minutes of that meeting, it appears there was a wide-ranging and productive discussion about regulatory gaps and the steps that could be taken to strengthen the anti–money laundering regime as it relates to luxury vehicles.[147]

In my view, the extraordinary work undertaken by Sergeant Paddon illustrates the potential value of enforcement-led information sharing partnerships in identifying regulatory gaps and addressing money laundering vulnerabilities in various sectors of the economy.

In late 2019, the RCMP and CFSEU came to the realization that Project Athena was not sustainable in light of the demands presented, the number of resources dedicated to the project, and the level of oversight needed for a project of this nature. A February 13, 2020, RCMP report describes Project Athena as a "corner of the desk initiative" and states that the rapid expansion of Project Athena "exposed the Project's need for defined structure, clear governance, and co-ordination among participants – both internally and externally."[148] In more concrete terms, Sergeant Robinson testified that nobody was "seconded" to Project Athena specifically and that it was being run by a few dedicated officers within CFSEU in addition to their other responsibilities:

> This all started with the bank draft intelligence probe, which was understanding source of fund declarations and … identifying criminality. Soon we found that there was incredible interest from other stakeholders in this type of forum and it grew and it grew. All the while in my case as a team leader at JIGIT managing a team of investigators and investigations. So it was a corner of the desk, and we did our best with Sgt. Paddon and Ben Granger and GPEB resources assigned to CFSEU JIGIT to maintain Project Athena operations. But it was a very heavy lift.[149]

In light of these concerns, the RCMP decided to suspend the expansion of Project Athena and transition it into a permanent information-sharing partnership within

146 Ibid, pp 92–94.

147 Exhibit 844, Project Athena – High End Luxury Vehicle Working Group Minutes (January 22, 2020). Sgt. Paddon also presented a "case scenario" to the group to solicit feedback on what each of the stakeholders could do to assist the investigation: Transcript, April 14, 2021, p 90; Exhibit 843, Luxury Vehicle Case Scenario. A full description of money laundering risks that arise in the luxury vehicle sector, along with measures that could be taken to address those risks, is set out in Chapter 35.

148 Exhibit 846, RCMP Investigational Planning and Report, Project Athena (February 13, 2020), p 1.

149 Transcript, April 14, 2021, p 86. Similarly, Sgt. Paddon testified that "we were all running other files and investigations off the side of our desk" and it was "a lot of work for us to continue maintaining and keeping up with [Project] Athena on top of other tasks and priorities": ibid, p 87.

federal policing known as the Counter Illicit Finance Alliance.[150] A report dated April 9, 2021, on the new initiative states that "[t]he experiences from Project Athena highlighted the need for a formalized [information-sharing partnership] with a clearly defined structure, strategic objectives, governance model, and operational process"[151] but indicates that the three "pillars" of the initiative remain the same:

- prevention of money laundering activity by raising awareness and improving understanding among stakeholders;
- identification of money laundering risks and threats; and
- disruption of money laundering activity.[152]

While I appreciate the need to lay the necessary groundwork for a national information-sharing partnership, I have serious concerns about the extent to which the original concept has been watered down. First, it appears the analytical work associated with the information-sharing partnership will no longer be done by law enforcement and that the RCMP will be relying on its partners to carry out that work.[153] Second, and most significantly, it appears that CIFA is only intended to be a *strategic* information-sharing partnership and will not be engaging in any tactical information sharing (at least in the short term). Sergeant Robinson testified that the only information that will be shared within CIFA is "strategic general information."[154] Moreover, the April 9, 2021, report discussed above warns that expectations need to "tempered" in light of that reality:

> [T]he type of information being shared at CIFA-BC, namely strategic information, holds certain implications for outcomes. Traditionally, public-private tactical information sharing is the most direct means of supporting law enforcement and disruption efforts across international FISP [financial information sharing partnership] models. Without a tactical component, the path to progress intelligence generated at FISPs to law enforcement investigations becomes less linear. *As a law enforcement led initiative, expectations for CIFA-BC results may steer towards traditional enforcement-centric outcomes that include quantitative measures of investigations, prosecutions, and charges. Potential misunderstandings around traditional outcomes stem from a mismatch between the type of input needed for enforcement-centric outcomes (i.e. tactical public-private information sharing) and the type of input currently possible given understandings of provincial and national legislative frameworks in place (i.e. strategic public-private information sharing). As a strategic information sharing public-private partnership, the correlation between the type of information shared at CIFA-BC and the outcomes that are produced as a result,*

150 Exhibit 847, RCMP "E" Division, CIFA–BC Framework (revised April 9, 2021), p 5.

151 Ibid.

152 Ibid, p 9.

153 Evidence of B. Robinson, Transcript, April 14, 2021, pp 109–10.

154 Ibid, p 123.

> *will conceivably be less traditional and expectations will need to be tempered accordingly.* [Emphasis added.][155]

I see both elements (analytical work by law enforcement and tactical information sharing between public- and private-sector entities) as being critical to the initial success of Project Athena, and I am not persuaded that the new model will be as effective as the Project Athena model in the identification and disruption of money laundering activity.

I am strengthened in that view by the evidence of Nicholas Maxwell, one of the world's leading experts on public-private financial information-sharing partnerships.[156] Mr. Maxwell repeatedly emphasized the need for law enforcement to provide strategic *and* tactical insight to reporting entities in order to guide the collection of intelligence with respect to money laundering. He also stressed the need for ongoing assessment and analysis of tactical information by law enforcement in order to inform the direction and collection of further intelligence by reporting entities:

> [A]nyone that's familiar with an intelligence cycle knows that the direction needs to inform the collection of intelligence, and viewed as an intelligence asset, reporting entities are the collection arm. So they are meant to report what's happening in the real world and then it needs to be assessed, generated into intelligence and understood by the users, whether they are decision-makers or operational stakeholders, and then that informs further direction and further collection.
>
> So there's no direction of collection in this cycle. It's not a cycle. The reporting entities stand there in isolation, not able to speak to each other, not able to get insights, tactical level insights from public agencies and try to their best to look at their data and find all crime as it might come through as money laundering. And then they never hear anything back. So it's a black box situation where the reports are filed and they don't get any feedback. So any system that doesn't have feedback is unable to improve and that is why we describe the system as fundamentally broken from the perspective of an intelligence cycle and it's certainly built backwards in terms of direction happening within the individual reporting entities in isolation and a lack of any form of tactical direction.[157]

Mr. Maxwell went on to explain that the absence of a legal gateway for tactical information sharing between public- and private-sector entities has led to a disjointed and ultimately ineffective anti–money laundering regime:

> [F]undamentally these reporting entities are part of the AML/ATF [anti–money laundering / anti–terrorist financing] system, they are required to

155 Exhibit 847, RCMP "E" Division, CIFA–BC Framework (revised April 9, 2021), p 15.

156 Mr. Maxwell's evidence is reviewed in detail in Chapter 7.

157 Evidence of N. Maxwell, Transcript, January 14, 2021, pp 90–91.

> identify crime, so if you don't assist them in that process then they are going to be less effective. And when crimes are priorities and you have particular crimes of concern, money laundering issues of concern in British Columbia and there isn't a process for those priorities to inform the collection process, at the strategic level we talked about prioritization but at a tactical level, your law enforcement officers who are working on serious organized crime in British Columbia should be able to understand for intelligence purposes what the financial intelligence AML/ATF system has in terms of relevant information to their investigation. That's the whole point of the AML/ATF regime, that it provides useful information to law enforcement. *But your law enforcement officers are not able to request any specific information. They are not able to outside of a production order for evidence where they must already know that the financial institution holds the account. They are not able to share tactical information with specific financial institutions or other reporting entities to allow those reporting entities to be responsive to the law enforcement collection requirements, so that is why the flow of information is so disjointed and ultimately the effectiveness and challenges that we see in terms of the lack of ability for the Canadian regime to demonstrate effective results in a large part are due to this lack of information sharing and lack of a cycle that really is fit for purpose*. [Emphasis added.][158]

While I appreciate the constitutional concerns that arise in this context, I have concluded that more must be done to explore constitutionally permissible ways of developing actionable intelligence that is responsive to the needs of law enforcement agencies.[159] I return to this topic below in discussing the creation of the specialized provincial money laundering intelligence and investigation unit.

Trade Fraud and Trade-Based Money Laundering Centre of Expertise

The Trade Fraud and Trade-Based Money Laundering Centre of Expertise is a federal initiative aimed at strengthening Canada's response to trade-based money laundering. A full discussion of this initiative, along with its potential value in addressing the risks associated with trade-based money laundering, is set out in Chapter 38.

Provincial Policing

In British Columbia, two government officials have primary responsibility for policing and law enforcement: the minister of public safety and solicitor general (minister of public safety) and the director of police services. The minister of public safety is the highest law enforcement official in the province and has a statutory duty to maintain an "adequate and effective" level of policing.[160] The director of police services has

158 Ibid, pp 92–93.

159 For a discussion of the constitutional concerns that arise in this context, see Chapter 7.

160 *Police Act*, s 2. See also Evidence of W. Rideout, April 6, 2021, pp 8–9.

statutory responsibility for superintending police and law enforcement functions, including the responsibilities set out in section 40(1) of the *Police Act,* RSBC 1996, c 367. The director also holds the position of assistant deputy minister and is responsible for the Policing and Security Branch.[161]

The *Police Act* allows the minister of public safety (with assistance from the director of police services and the Policing and Security Branch) to establish priorities, goals, and objectives for policing and law enforcement agencies in British Columbia.[162] However, these individuals are not involved in the operational management of the provincial police force or the establishment of tactical priorities. These are established independently by senior police officers in line with their constitutionally protected independence.[163]

In what follows, I review the mandate and structure of the provincial police service in British Columbia, along with a number of specialized agencies created by the province.

RCMP Provincial Police Service

Since at least the 1950s, the Province has chosen to provide provincial police services through a series of agreements with the federal government (Police Service Agreements).[164] The agreements contemplate that the federal and provincial government will share the costs of provincial policing, with the RCMP providing provincial police services in addition to its federal policing responsibilities.[165] In the current iteration of the Police Service Agreement, these costs are shared on a 70/30 basis, with the Province reimbursing the federal government for 70 percent of the costs of providing a provincial police service.[166]

While a full review of that agreement is beyond the scope of this Report, a few aspects of it have particular relevance to the work of the Commission.

Purpose, Term, and Scope

The overall purpose of the Police Service Agreement is to have the federal government "provide and maintain" a provincial police service within the province.[167]

The preamble states that "[c]ontract policing is recognized as an increasingly effective national policing model to address the cross-jurisdictional (i.e., municipal, provincial, territorial, national and international) and evolving nature of crime."[168]

161 Ibid, p 9.

162 *Police Act,* s 2.1.

163 Exhibit 790, Email from Lori Wanamaker to Clayton Pecknold, re fwd German Money Laundering (December 15, 2018), p 3.

164 Evidence of W. Rideout, April 6, 2021, p 10.

165 Importantly, however, the *Police Act* also gives the Province the ability to establish a designated policing unit to provide policing and law enforcement services "in place of or supplemental to the policing and law enforcement otherwise provided by the provincial police force" (s 4.1).

166 Exhibit 788, Province of British Columbia, Provincial Police Service Agreement (April 1, 2012) [Police Service Agreement], art 11.1.

167 Exhibit 788, Police Service Agreement, art 2.1.

168 Ibid, p 5.

It also states that both the federal and provincial government receive benefits from the RCMP acting as the provincial police service by:

i. facilitating the flow of intelligence between all levels of policing;

ii. having a direct connection, though the RCMP, between municipal, provincial, territorial, national and international policing that is important to modern policing and the security of provincial infrastructure and communities;

iii. promoting Canadian sovereignty through the RCMP's presence across Canada including in isolated communities and at Canada's borders;

iv. having RCMP members available for redeployment;

v. sharing the costs and use of common police and administrative services; and

vi. having a professional, efficient and effective police service that reflects reasonable expenses for operating and maintaining a police service.[169]

The agreement was signed on April 1, 2012, and has a 20-year term that expires on March 31, 2032, though it can be extended or renewed for an additional period on terms agreed to by the parties.[170] There is also provision for the agreement to be terminated by either party by giving notice to the other party not less than two years before the termination date.[171]

At present, the services provided by the RCMP include (a) general police services, such as the investigation and prevention of gang and gun violence, and (b) detachment policing (defined as the provision of local police services to municipalities with a population under 5,000 as well as unincorporated areas throughout the province).[172]

Federal police services such as policing services of a national or international nature, national security investigation services, protective security, and services provided to federal government departments are excluded from the scope of the agreement.

So, too, are municipal police services (defined as local police services provided to municipalities with a population over 5,000), though such municipalities can enter into separate contracts with the provincial government for RCMP services (see below).[173]

169 Ibid.

170 Ibid, art 3.0.

171 Ibid, art 3.3. Note also that the federal government will be conducting an assessment of contract policing before the expiry of that agreement, with the result that there could be significant changes to the RCMP's policing agreements before the expiry of the 20-year term.

172 Exhibit 789, *Police Resources in British Columbia,* pp 2–3.

173 Ibid, p 3. See also Exhibit 788, Police Service Agreement, art 10.2.

Objectives, Goals, and Priorities

Articles 6 and 7 of the Police Service Agreement provide that the minister of public safety will set the "objectives, priorities and goals" of the provincial police service and that the commanding officer of the RCMP provincial police service will "act under the direction of the [minister of public safety]" and "implement the objectives, priorities and goals as determined by the [minister of public safety] to the extent practicable."[174]

In practice, these objectives, priorities, and goals are communicated to the RCMP through a formal letter to the commanding officer of the provincial police service.[175] However, there are a number of formal and informal mechanisms in place by which the Policing and Security Branch communicates with the RCMP to "assess the evolving nature of crime and pressures that are facing the RCMP."[176] In some cases, these mechanisms also allow the Policing and Security Branch to track progress on the objectives, priorities, and goals set by the minister of public safety.[177]

Overall, I am satisfied that there is a high level of engagement between the RCMP provincial police force and the Policing and Security Branch with respect to the objectives, priorities, and goals of the RCMP *provincial* police service (though there remains a fundamental disconnect between the objectives, priorities, and goals of the RCMP *federal* police service and criminal activity in the province). The bigger problem in relation to the provincial police force seems to be one of resourcing.

Over the past 10 years, provincial priorities have largely been focused on organized crime, guns and gang violence, and the opioid crisis.[178] It does not appear that money laundering has ever been identified as a priority for the provincial police service (though there is evidence that the Policing and Security Branch has sought to deal with that issue as part of its overall organized crime strategy).[179] It is also important to recognize the significant pressures on the provincial police force during that period.

Not only was the province in the midst of a very serious gang violence problem, in which sophisticated organized crime groups were engaging in open air violence, but the provincial police force was required to "lean in heavily" to assist the federal force in the aftermath of the deficit reduction action plan and the national security surge that occurred in or around 2014.[180] There were also a large number of prosecutions for

174 Ibid, arts 6, 7.

175 For example, see Exhibit 791, Briefing Note to Mike Farnworth, Minister of Public Safety and Solicitor General, re Organized Crime Priorities (April 30, 2018).

176 Evidence of W. Rideout, April 6, 2021, p 29. See also Evidence of C. Pecknold, Transcript, April 6, 2021, pp 31–32, where he discusses information sharing through formal committee structures and reporting through the contract policing group, as well as informal processes with senior leadership of the RCMP.

177 Evidence of W. Rideout, Transcript, April 6, 2021, pp 28–31. The Police Service Agreement also requires the commanding officer of the RCMP provincial police service to produce an annual report to the minister of public safety regarding the implementation of the Province's objectives, priorities, and goals for the provincial police service: Exhibit 788, Police Service Agreement, art 7.2.

178 Evidence of C. Pecknold, Transcript, April 6, 2021, pp 35, 57.

179 Ibid, p 36.

180 Evidence of W. Rideout, Transcript, April 6, 2021, pp 58–60.

major offences such as murder, conspiracy, and kidnapping, which were a significant draw on police resources.[181] All of these pressures must be considered in evaluating the law enforcement response to money laundering at the provincial level and in making recommendations. That said, the failure to attach any meaningful priority to money laundering resulted in a lost opportunity to disrupt the organized crime groups fuelling many of the issues that the RCMP provincial police force had to address.

Resourcing

One of the principal challenges in provincial policing is ensuring that sufficient resources are in place to meet the objectives set by the minister of public safety.

Annex A of the Police Service Agreement sets out the "authorized strength" of the RCMP provincial police force as agreed upon by the parties.

"Authorized strength" refers to the maximum number of positions that the federal and provincial government have committed to funding. However, it does *not* refer to the number of positions within the RCMP provincial police force that have been filled, and there are often a large number of vacancies within the RCMP provincial police force.[182] Under Article 11.1 of the Police Service Agreement, the Province is required to pay 70 percent of the *cost* of providing and maintaining the RCMP provincial police service,[183] with the result that it does not pay for positions that are not filled.

Since April 2012, the authorized strength of the RCMP provincial police force has been 2,602.[184] However, there are approximately 110 vacancies in the provincial force, and there is evidence that the impact on core policing has reached "critical" levels.[185]

Because of these shortages, the Province has to be cautious when looking to staff large units because of the "cascading effect on the provincial force" and has started to look at building some permanent legacy infrastructure within designated policing units such as the Organized Crime Agency of British Columbia (OCABC; discussed below) to ensure that these units do not have a direct impact on the provision of core provincial

181 Ibid, p 59.

182 Exhibit 789, *Police Resources in British Columbia,* p 25; Evidence of W. Rideout, Transcript, April 6, 2021, pp 13–14.

183 Exhibit 788, Police Service Agreement.

184 Exhibit 789, *Police Resources in British Columbia,* p 17. RCMP contributions to specialized units such as CFSEU come out of that total, with the result that core policing services provided by the RCMP provincial police force – such as policing in rural communities – could potentially be "hollowed out" by the creation of too many specialized agencies. Note, however, that the Province has, in recent years, been able to find ways of creating specialized units that do not detract from the provincial force: Evidence of W. Rideout, Transcript, April 6, 2021, pp 17–19.

185 Evidence of W. Rideout, Transcript, April 6, 2021, pp 14, 16–17, 115–16. See also Exhibit 800, Ministry of Public Safety and Solicitor General Policing and Security Branch – Decision Note (June 7, 2019), p 4 ("The pressures and resource shortages in front–line policing and resulting risk has reached a critical point"). Note, however, that these numbers fluctuate over time and that "federal police numbers generally suffer from greater vacancy patterns than the provincial police force": Evidence of W. Rideout, Transcript, April 6, 2021, p 16.

resources.[186] Such units also allow the Province to hire police officers and civilian specialists with the proper credentials to do the work.[187]

Article 5 of the Police Service Agreement allows the province to request an increase or decrease in the total authorized strength of the RCMP provincial police force. Such a request must be made in accordance with Annex B and include written confirmation that the Province will fund its share of the increase.[188]

Wayne Rideout, the current director of police services, testified that increasing the authorized strength of the force is a complex process that requires the Policing and Security Branch to secure funding from both the federal and provincial government.[189]

At the same time, the Province has found some success using existing vacancies within the total authorized strength to support provincial initiatives.[190] In such cases, it is not necessary to seek the approval of the federal government to fill these positions. All that is required is the willingness of the Province to fund them.[191]

Emergencies and Events

Another issue that arises in this context is the impact of provincial and federal emergencies on the ability of the RCMP provincial police force to deliver on its mandate.

Article 9.0 of the Police Service Agreement contains detailed provisions governing the redeployment of police officers in the event of a provincial or federal emergency.

If an emergency occurs in an area of provincial responsibility, the RCMP provincial police service must, at the written request of the minister of public safety, be redeployed to such as extent as is "reasonably necessary to maintain law and order, keep the peace and protect the safety of persons, property or communities."[192] If an emergency occurs in an area of federal responsibility, or in a province other than British Columbia, the federal government is entitled to temporarily withdraw up to 10 percent of the RCMP provincial police service to deal with that emergency.[193]

186 Evidence of W. Rideout, Transcript, April 6, 2021, p 116–17.

187 Ibid.

188 Exhibit 788, Police Service Agreement, art 5.0.

189 Transcript, April 6, 2021, pp 21–22. See also Evidence of C. Pecknold, Transcript, April 6, 2021, p 34. On its face, article 5 of the Police Service Agreement (Exhibit 788) does not require the approval of the federal government to increase the total authorized strength of the force. However, there may be other provisions of the agreement which require federal approval before the authorized strength of the provincial force can be increased. At the very least, it appears that the approval of the federal government is a practical necessity.

190 Evidence of C. Pecknold, Transcript, April 6, 2021, p 34. For example, JIGIT was staffed using existing vacancies within the RCMP provincial police service.

191 Ibid.

192 Exhibit 788, Police Service Agreement, art 9.1. Examples include wildfires and floods.

193 Ibid, arts 9.3, 9.4.

Likewise, the federal government is entitled to temporarily withdraw up to 10 percent of the RCMP provincial police service where there is a need to use those officers in connection with a major event (defined as "an event of national or international significance that is planned in advance, within Canada, that requires additional police resources, if the overall responsibility for security for that event rests with Canada").[194]

While there is no doubt that the deployment of RCMP officers in these circumstances is necessary and appropriate, it has a significant impact on the core responsibilities of the RCMP provincial police service, particularly where resources are already constrained.[195]

Proposals for Reform

In order to respond to perceived "gaps" in provincial policing, the RCMP provincial police force often develops proposals for new provincial units. These proposals are broad in nature and are normally made in response to "changing community needs, changing expectations on the police [and] changing requirements for the courts."[196]

In 2016, the RCMP developed a business case for the creation of a provincial financial crime unit designed to fill the gap between the large commercial frauds investigated by federal investigators and mid-level frauds that did not meet the threshold for a federal investigation but had a significant impact on vulnerable citizens in the community.[197] While the proposal was never implemented, it provided the impetus for an exchange of proposals concerning the creation of a dedicated provincial money laundering unit.

On November 21, 2017, Clayton Pecknold, then director of police services, wrote to RCMP Deputy Commissioner Brenda Butterworth-Carr acknowledging receipt of a business case for the creation of a provincial fraud unit and advising that the province would be interested in receiving a proposal for the creation of a provincial financial integrity unit. The proposed unit would be similar in nature to the provincial fraud unit but focused on the "prevention, disruption and enforcement against organized crime infiltration, and compromise of public and private institutions critical to the British Columbia economy," including the investigation of money laundering.[198]

194 Ibid, arts 1.0, 9.5. Examples include security for G7 meetings and the Olympic Games.

195 Evidence of B. Taylor, Transcript, April 16, 2021, pp 10–18. Note, however, that because the RCMP has more time to prepare for the loss of resources within its core policing operations, major events have less of an impact than emergencies such as wildfires and floods.

196 Evidence of W. Rideout, Transcript, April 6, 2021, pp 92–93. Examples include the creation of an emergency response team or changing the focus of highway patrols.

197 Exhibit 796, RCMP "E" Division, Business Case Proposal for a Provincial Financial Crime Unit (November 9, 2016) is one version of this business case. However, as an iterative document, it changed over time, leaving numerous versions of the business case in circulation: see Evidence of W. Rideout, Transcript, April 6, 2021, pp 96–97; Exhibit 795, Business Case for Provincially Funded ML Unit, p 1; Exhibit 799, Ministry of Public Safety and Ministry of Attorney General, Joint Briefing Note (February 7, 2018).

198 Exhibit 798, Letter from Clayton Pecknold to Brenda Butterworth-Carr, re Request for Proposal Provincial Economic Integrity Unit (November 21, 2017), p 1; Exhibit 795, Business Case for Provincially Funded ML Unit, p 1.

On January 22, 2018, the RCMP developed a business case for the creation of a provincial financial integrity / financial crime unit comprising 38 members at an approximate annual cost of $7.7 million as well as start-up costs of $825,000.[199]

Upon the release of Dr. German's 2018 *Dirty Money* report, that proposal was updated to include a specific focus on money laundering. A "concept paper" produced by the RCMP in February 2019 states that there is currently "no dedicated agency, team or department in place within BC to organize or lead a coordinated, collaborative and focused effort around the prevention, disruption and enforcement of provincial financial crime priorities [including money laundering]."[200] It goes on to state that the FSOC section is focused on national priorities dictated by Ottawa and will only address money laundering activities that occur in BC when the criminality is multi-jurisdictional or international in scope. The next level of policing would be economic crime units within municipal police departments, which are focused on smaller scale financial crimes and do not have the capacity to address regional or provincial-level issues or priorities.[201]

The solution proposed in that paper is a dedicated provincial financial crimes unit that would be responsible for "identifying, engaging and bringing together various stakeholders (government, private, public, prosecution, associations and regulators) to organize and lead a coordinated / collaborative effort of addressing money laundering in BC."[202] The proposed unit would be focused on provincial priorities but would be supported by the FSOC section.[203]

While that proposal was being developed, the Province was developing an "alternative" model that contemplated the creation of a provincial unit to be housed within CFSEU. The idea was to maintain the "core expert teams" designed to address gang violence but add a team of financial crime specialists to enhance its ability to disrupt organized crime and gang activity.[204]

On June 7, 2019, the Policing and Security Branch sent a briefing note to the minister of public safety recommending the creation of a financial intelligence and investigations unit (FIIU) to "gather actionable intelligence for enforcement and prosecution."[205] A draft proposal indicates that the FIIU "will identify and address cases

199 Exhibit 804, RCMP "E" Division, Draft Proposal for a Provincial Financial Integrity / Crime Unit (January 22, 2018), pp 1–2. The proposal contemplates that these costs would be shared on a 70/30 basis, with the Province's share of the annual costs being in the range of $5.4 million.

200 Exhibit 805, RCMP "E" Division FSOC, Concept Paper: Designated Provincial Financial Crimes Unit (February 15, 2019), p 1.

201 Ibid.

202 Ibid, p 2.

203 Ibid, p 4.

204 Exhibit 799, Ministry of Public Safety and Ministry of Attorney General, Joint Briefing Note (February 7, 2018), p 2.

205 Exhibit 800, Ministry of Public Safety and Policing and Security Branch – Decision Note (June 7, 2019); Exhibit 60, Anti–Money Laundering Financial Intelligence and Investigations Unit – Draft Proposal (May 7, 2019) [FIIU Draft Proposal], p 4.

of money laundering … that are linked to public safety concerns and social harms."[206] The proposal called for a total of 78 police and support positions and had an estimated cost of $18.5 million in the 2019–20 fiscal year (with that number decreasing somewhat in subsequent years).

While the proposal contemplated a governance model that would allow for ongoing dialogue and co-operation with national partners,[207] it advocated for the unit to be 100 percent provincially funded and housed within the CFSEU / OCABC structure given the "historical realities" of the 70/30 cost-share structure.[208] The proposal also suggests that tethering specialized units such as the FIIU to the federal RCMP or a provincial force would "compromise human resource capacity and expertise, staffing levels, provincial priorities, information flow, and the agility to respond to emerging issues."[209] Finally, it notes that the nature of the work to be undertaken by the FIIU calls for "expertise, specialists, and continuity under a provincial strategic vision that identifies and responds to BC priorities.[210]

In recognition of the "widely held" view that police agencies are unlikely to achieve any notable success without multidisciplinary support, the proposal recommends a multidisciplinary approach that includes various police officers, experts, and analysts broken down into two units: (a) an intelligence unit responsible for the intake, analysis, and dissemination of information; and (b) an investigative unit responsible for the investigation and disruption of money laundering offences that fall within its mandate.[211]

The proposed intelligence unit would be made up of numerous police officers, analysts and subject-matter experts and include (among other things):

- a senior management team responsible for the overall management of the intelligence unit;
- an intake team responsible for receiving information from other law enforcement agencies, Crime Stoppers, confidential informants, mainstream media, social media, and other sources;
- an intelligence analysis support team responsible for compiling information from various open and closed sources, and assisting with the creation and analysis of intelligence work product;

206 Examples include the opioid crisis, gang violence, and housing affordability: Exhibit 60, FIIU Draft Proposal, p 4.

207 Ibid, p 7. Interestingly, the proposal is complementary to federal efforts to address the problem, noting that "in March 2019, the federal government made significant financial commitments towards their national priorities related to money laundering by announcing a proposal that mirrored, in many ways, this FIIU proposal."

208 Ibid, p 15.

209 Ibid.

210 Ibid.

211 Ibid, p 10.

- a covert asset support team responsible for the recruitment, development, and management of confidential informants; and
- an administrative and operations support team responsible for human resources, IT support, media relations, and various other tasks.[212]

The proposed investigative unit would primarily consist of police and investigator positions supported by forensic accountants, subject-matter experts and two embedded prosecutors (one from the federal Public Prosecution Service of Canada and the other from the BC Prosecution Service).[213]

The FIIU proposal is substantially similar to the proposal made in a report prepared for the Commission by Christian Leuprecht, Jeff Simser, Arthur Cockfield, and Garry Clement,[214] which is discussed in greater detail below.

After considering these proposals, I am strengthened in my view that there is a need for a specialized money laundering unit similar to the FIIU to lead the law enforcement response to money laundering in this province. I am also persuaded that the new unit must have both an intelligence and an investigative function and should be located within the CFSEU structure to avoid "hollowing out" the RCMP provincial police force; ensure the new unit has the flexibility it needs to hire and retain officers and staff with the requisite knowledge and expertise to conduct effective money laundering investigations; and enable the Province to direct the strategic priorities of the new unit. I return to the mandate and structure of the new unit in Chapter 41.

CFSEU / OCABC

While the RCMP provincial police service is primarily responsible for provincial policing in British Columbia, there are a number of other units which perform designated, and in many cases, specialized policing functions. One such unit is CFSEU, a provincially funded law enforcement agency established to respond to the spike in gang violence in the province.

CFSEU is made up of seconded police officers from 14 police agencies, including the RCMP, the VPD, and OCABC (a designated police agency created under section 4.1 of the *Police Act*).[215]

212 Ibid, pp 20–22.

213 Ibid, p 24.

214 Exhibit 828, *Detect, Disrupt and Deter: Domestic and Global Financial Crime – A Roadmap for British Columbia* (March 2021) [Leuprecht Report].

215 Section 4.1 allows the Province to create a designated policing unit to provide policing and law enforcement services "in place of or supplemental to the police and law enforcement otherwise provided by the provincial police force or a municipal police department." It appears that the *provincial* officers working within the CFSEU are seconded to that unit from OCABC, with the remaining officers seconded from the RCMP or municipal police departments.

While the RCMP provides operational leadership, CFSEU has its own board of governance that is responsible for providing "policy objectives and operational strategic direction" to the officer-in-charge of CFSEU.[216] The board of governance is accountable to the minister of public safety and includes representatives from various federal, provincial, and municipal police agencies, including the commanding officer of "E" Division (who chairs the CFSEU Board of Governance), the "E" Division criminal operations officer, the commander of the RCMP's Lower Mainland District, and the chief constable of the VPD.[217]

CFSEU also has stringent reporting requirements, which give the Policing and Security Branch a high degree of visibility into its operations.[218] It is also responsible for the provincial tactical enforcement priority, a prioritization tool that allows for the identification and investigation of individuals who pose the greatest risk to public safety.[219]

Mr. Rideout testified that the establishment of CFSEU and other similar agencies allows the province to build a "separate police agency that is integrated with the RCMP."[220] The RCMP contribution to these agencies comes out of the authorized strength of the RCMP provincial police force (as negotiated under the provincial Police Services Agreement). However, seconded police officers from OCABC are not taken from the RCMP provincial police force, with the result that there is less of an impact on core policing.[221]

Joint Illegal Gaming Investigation Team

Over the past few years, the province has been exploring ways to enhance the capacity of CFSEU to allow it to take on additional issues beyond its current mandate. One example is JIGIT, a specialized unit within CFSEU that was created in April 2016 to provide a "dedicated, coordinated, multi-jurisdictional investigative and enforcement response to unlawful activities" in BC gaming facilities.[222] A March 10, 2016, letter from the minister of public safety, Mike Morris, identifies JIGIT's strategic objectives as "targeting and disrupting top-tier organized crime and gang involvement in illegal gaming, and the prevention of criminal attempts to legalize the proceeds of crime

216 Exhibit 803, Doug LePard and Catherine Tait, Review of the Joint Illegal Gaming Investigation Team (JIGIT) (November 2020) [LePard Report], pp 72–73.

217 Exhibit 803, LePard Report, pp 72–73. The Policing and Security Branch also exercises its oversight and stewardship responsibilities by meeting twice monthly with the officer-in-charge of CFSEU and the heads of each of the fenced-funding units. It uses its annual delegation letter to ensure these units are on mandate and aligned with provincial priorities: ibid, p 77.

218 Evidence of C. Pecknold, Transcript, April 6, 2021, pp 84–85; Evidence of W. Rideout, Transcript, April 6, 2021, p 37 ("We also participate with the CFSEU board of governance and are aware on an ongoing basis as to where that particular agency is performing and we receive reports relative to that performance").

219 Evidence of C. Pecknold, Transcript, April 6, 2021, p 67; Evidence of T. Steenvoorden, Transcript, April 6, 2021, pp 68–69.

220 Evidence of W. Rideout, Transcript, April 6, 2021, p 117.

221 Ibid, pp 116–17.

222 Exhibit 902, Letter from Mike Morris to Michael de Jong, re Creation of JIGIT (March 10, 2016), p 1.

through gaming facilities."[223] It goes on to identify a secondary objective of public education with respect to the "identification and reporting of illegal gambling in British Columbia."[224] In many ways, JIGIT provides a model for the creation of a provincial anti–money laundering investigative unit.

JIGIT has an annual budget of $4,285,700 and consists of 22 law enforcement positions along with four investigators from GPEB. The provincial government covers 70 percent of those costs, with the federal government covering the remaining 30 percent.[225]

While the initial plan was to create two investigative teams (one to handle long-term investigations and the other to handle "quick-hit" investigations), the lack of actionable intelligence on gaming-related offences was quickly identified as a key challenge, and a decision was made to reorganize JIGIT into a single investigative team supported by an intelligence team, which became known as the gaming intelligence and investigative unit (GIIU).[226] Staff Sergeant Joel Hussey, unit commander of JIGIT, explained the rationale for that decision:

> We noted a lack of coordinated collaborative intelligence model and we sought to change that … we did form a team called the gaming intelligence and investigation unit, which … allowed timely, actionable intelligence and combined the GPEB resources with our JIGIT resources. And today … it's an intelligence hub that's effective in guiding law enforcement and GPEB in their regulatory and criminal investigations as well. So we feel we are a centralized hub for gaming intelligence that is very effective and we're very proud of that.[227]

In carrying out its intelligence functions, the GIIU uses the Crime Analysis Search Tool (CAST) to query various police databases and cross-reference that information with information from other sources, including suspicious transaction reports and unusual financial transaction reports, to produce actionable intelligence for use by investigators.[228]

A November 2020 report by Doug LePard and Catherine Tait (the LePard Report) concludes that JIGIT has delivered on key parts of its mandate while also developing considerable subject-matter expertise. The report goes on to state that JIGIT provides a "valuable tool for prevention, disruption, and enforcement against money laundering in casinos and the operation of illegal gaming houses" and acts as a "force multiplier" in increasing the knowledge and ability of other police departments to take action.[229]

223 Ibid.

224 Ibid.

225 Ibid; Exhibit 803, LePard Report, pp 46–47.

226 Exhibit 803, LePard Report, p 11; Evidence of J. Hussey, Transcript, April 7, 2021 (Session 2), p 15.

227 Evidence of J. Hussey, Transcript, April 7, 2021 (Session 2), p 15.

228 Exhibit 803, LePard Report, pp 115–16.

229 Ibid, p 17. In preparing the report, the authors interviewed a number of prosecutors who commented positively on the quality of JIGIT investigations. One prosecutor with experience on several JIGIT files described its work as of the "highest quality" and "exceptionally thorough": ibid, p 106.

At the same time, the LePard Report makes a number of findings and recommendations aimed at increasing the overall effectiveness of the unit. One of these recommendations is that consideration be given to expanding JIGIT's mandate to include the investigation of money laundering activity in all sectors of the economy. In what follows, I review some of the key findings and recommendations contained in the LePard Report with particular emphasis on the performance of that unit in the investigation of money laundering.

Governance

With respect to governance, the report indicates that the CFSEU Board of Governance is primarily focused on the performance of CFSEU as a whole and recommends that it take a more active role in providing strategic guidance to individual teams (such as JIGIT) to ensure that their work remains on mandate, that they are achieving expected outcomes, and that they are furthering the goals of the agency as a whole.[230] It also recommends that an advisory committee be established to advise on JIGIT's mandate, role, and priorities, including its role within the provincial anti–money laundering strategy.

At the same time, the LePard Report indicates that there is a well-defined and robust management process in place *within* CFSEU, which ensures appropriate oversight of the team, its operations, human resources, and finance.[231]

Interviews with JIGIT team members indicate there is a high degree of satisfaction with the internal management of the team and the decisions made by their superiors.[232]

Mandate

With respect to mandate, the LePard Report notes that there is some debate within JIGIT as to the value of investigating illegal gaming houses, with some members expressing frustration about the resources needed to conduct a successful investigation as well as the minimal sentences that typically result.[233] While recognizing that the police and the public often believe that penalties for these offences are inadequate, the authors emphasize that consideration must be given to other factors, including the highly profitable nature of illegal gaming as well as the collateral crimes (loan sharking, extortion, assaults, etc.) arising from these operations.[234] They write:

> While there are many offences in BC for which sentences appear to police to be "too short," the likely sentence cannot be the only determining factor in deciding whether to pursue an investigation; rather, consideration must also be given to the impact on public perception of safety, the ability and willingness of the police to take action regarding community concerns, the

230 Ibid, p 79.
231 Ibid, p 76.
232 Ibid.
233 Ibid, p 53.
234 Ibid.

> suppression of illegal activities, and the deterrent effect. Given that gaming houses presented 50% of the General Occurrence files … it is important to ensure there is a provincial entity providing support for the investigation of these offences. Further, despite relatively few cases and the perceived insufficient sentences, seizures of gaming paraphernalia and cash for referral to the CFO [Civil Forfeiture Office] also have a beneficial impact that may be greater than the consequences of the criminal charge.[235]

With respect to money laundering, there was no debate within JIGIT about the value of pursuing investigations into such activity and the LePard Report praises the work undertaken by JIGIT in connection with the E-Nationalize investigation (which is described in the report as a "groundbreaking," "extraordinary," and highly complex investigation into a multimillion-dollar casino-related money laundering operation).[236]

Structure and Resourcing

With respect to the structure of JIGIT, there was a "strong consensus" that the creation of the gaming intelligence and investigative unit (as opposed to the creation of a "quick-hit" investigative team) was a better model that made better use of GPEB members' knowledge and skills, resulted in better information sharing and intelligence, and allowed the investigative team to focus more of their efforts on investigative tasks.[237] However, the LePard Report raises a number of capacity concerns, including the fact that the long-term investigative team could become completely consumed by a complex investigation, leaving nobody to conduct quick-hit investigations of illegal gaming houses.[238]

The officer-in-charge of the RCMP's Richmond detachment, who praised JIGIT's work, made the following comments about the need for a quick-hit team:

> [T]here really needs to be the team that does the quick hits like when JIGIT started. They learn a lot doing those investigations, and it's good for the public to see the reactiveness, that the police are doing something. The quick hits help with deterrence, demonstrating to the targets we're there and looking for them, even the lower level ones. We're really remiss if we don't have a quick hit team because the bigger team can get bogged down in complex investigations, disclosure and so on.[239]

Importantly, the LePard Report also raises significant concerns about vacancy rates within JIGIT, especially at the senior levels. From the end of 2017 to the end of 2018, there was no staff sergeant assigned to the team, and a number of other senior positions were filled in an acting capacity in the four years preceding the review.[240] There was also

235 Ibid, p 56. See also Evidence of D. LePard, Transcript, April 7, 2021 (Session 1), pp 29–31.

236 Because of the ongoing nature of these investigations, I have not had the opportunity to assess the work undertaken by JIGIT. My comments are based solely on the information in the LePard Report.

237 Exhibit 803, LePard Report, pp 65–66.

238 Ibid, pp 66–67.

239 Ibid, p 67.

240 Ibid, p 59.

a high level of attrition within JIGIT caused in part by the failure to incorporate OCABC members as part of the JIGIT structure in any meaningful way.[241] Mr. LePard explained the impact of these vacancies as follows:

> [I]t just makes it very difficult because if you don't have that continuity, you're always onboarding new members and they have to get up to speed and be developed and they're being trained as they're working … [T]his is not unique to JIGIT. It's just one of the realities of policing where you have members coming in and out.
>
> The attrition in JIGIT, just based on my experience, did seem to be quite high but also they're mostly RCMP members, and … the RCMP have so many and varied demands on them as, you know, municipal, provincial and federal policing that it didn't surprise me to see that. I note in the RCMP's own report, for example, describing the proposal for the FIIU, it talks about the 30 percent vacancy in federal positions and so on.
>
> So it …is more difficult to function well when you've got that sort of turnover. At one point we were told … when we were doing the review that only three of the original members from 2016 were still in the unit. So that's quite a bit of turnover and it just makes it more challenging because … you're constantly bringing people up to speed, getting them the training they need. They're learning on the fly essentially.[242]

Another issue raised by Mr. LePard was the lack of available surveillance capacity within CFSEU. In policing, surveillance resources are generally shared among various units rather than being attached to a particular unit. They are always in high demand and police managers generally allocate these resources based on the risk posed to the public. For example, surveillance to gather evidence against a homicide suspect will take priority over a break-and-enter suspect.[243]

At present, there are four surveillance teams within CFSEU, which are shared among the various units and may also be used to assist external units such as the Integrated Homicide Investigative Team (IHIT). Because these resources are, quite properly, allocated to investigations where there are significant public safety concerns, there are often no surveillance resources available to JIGIT, with the result that JIGIT members spend considerable time doing their own surveillance. Not only does that take them away from other investigative tasks (and decrease their capacity to take on more cases), but it makes for less effective surveillance and risks compromising investigations.[244]

241 Ibid, p 60. Indeed, the original JIGIT business case contemplated that these members would provide "expertise, tenure, and operational continuity … required to achieve results."

242 Evidence of D. LePard, Transcript, April 7, 2021 (Session 1), pp 19–20.

243 Exhibit 803, LePard Report, p 61.

244 Ibid, pp 61–62. It is important to note that surveillance is a highly specialized field of policing that carries with it considerable risk and liability. Training for surveillance teams is extensive, and the standards for surveillance operations are high: ibid.

In response to these concerns, the LePard Report recommends the creation of an additional surveillance team that is able to prioritize JIGIT's needs. It notes that such units are not without precedent and have been successfully created in other police agencies:

> The only way to address this resource gap is to create a surveillance team that prioritizes JIGIT's needs. There is certainly precedent for such an initiative. For example, the VPD created two "Strike Force" surveillance teams in the 1980s … to provide 24/7 capacity when needed … The members are trained to a very high level to conduct mobile surveillance of often high-risk targets, usually for units in the Major Crime Section (e.g., Homicide, Robbery/Assault) or the Specialized Crime Section (e.g. Sex Crimes, High Risk Offenders Unit). However, VPD managers responsible for addressing property crime – which affects more citizens than any other crime type – experienced the same frustrations as JIGIT in accessing these resources, and so eventually additional surveillance teams were created whose priority is property crime. There are currently two such teams, which report to the Inspector in charge of the Property Crime Section, as well as one more team responsible to conduct [surveillance] for the Organized Crime Section. It is in a similar situation to JIGIT in that its investigations are proactive, rather than in response to an imminent risk to public safety.
>
> There is a case to be made that an additional surveillance team should be created in CFSEU-BC whose priority would be JIGIT investigations. It could also support any other CFSEU-BC unit engaged in investigations that are currently not prioritized because of a lack of imminent risk to the public.[245]

A third issue relating to the structure and staffing of JIGIT is the need for prompt, ongoing legal advice. The report indicates that "policing has become increasingly complex and that it is important that police have competent legal advisors throughout the life cycle of the investigation."[246] It also states that "having expert legal advice leads to better search warrant and wiretap applications, and improved disclosure to Crown."[247]

In addressing this issue, the authors explored three different models for providing prompt, ongoing legal advice. One model is to have an organized crime prosecutor embedded within JIGIT to provide legal advice to investigators on an ongoing basis. However, one prosecutor interviewed by the authors suggested that the embedded prosecutor model "could create problems with respect to the mutual independence of police and Crown." They also raised concerns about "potential problems created by having a prosecutor giving advice to police in circumstances where the prosecutor was not responsible for the charge approval and prosecution phases [of the investigation]."

245 Ibid, p 62.

246 Ibid, p 67.

247 Ibid, pp 67–68.

A second model is for the investigative agency to retain dedicated in-house counsel to provide JIGIT with legal advice and liaise with Crown counsel to ensure that Crown is in agreement with their legal analysis.[248]

A third model (which the authors describe as "the WorkSafeBC Model") involves the creation of a pre-assigned group of prosecutors with expertise in the relevant area. When investigators need legal advice, they can contact the director of the group who will assign a prosecutor to assist. If a Report to Crown Counsel is submitted, that prosecutor (or another prosecutor from the group) will be responsible for reviewing it and making a decision on whether to proceed with criminal charges.[249]

The report recommends that JIGIT adopt the WorkSafeBC Model and create a stable of prosecutors with the requisite expertise to provide ongoing legal advice and prosecute money laundering / illegal gambling offences. They write:

> The advantages of this model are that rather than relying on a single embedded prosecutor, who will not always be available due to absences, there are a group of prosecutors to draw on with expertise in the relevant areas of law. Further, there is a consistency in approach because of the centralization of this expertise. Finally, just as discussion and brainstorming is important in police investigative teams to develop the best investigative approach, in this model, the preassigned group of prosecutors benefits from the round-tabling of cases and the synergy that results, rather than being isolated from their Crown colleagues and precluded from regular discussion on legal issues.[250]

I agree that this model has a number of advantages and return to this issue in my discussion of the provincial anti–money laundering intelligence and investigation unit.

Information Sharing and Public Outreach

One of the most important aspects of JIGIT's mandate is to engage in public outreach activities aimed at *preventing* financial crime. Mr. LePard described the benefits of prevention as a law enforcement strategy as follows:

> [I]f war is a failure of diplomacy, crime is a failure to a great extent of policy … [P]olicing is not necessarily the best response except where police can be very influential and effective in prevention because investigating is complicated and expensive and the results are uncertain. And even when they are successful, the nature of the crime may be that the sentences don't provide necessarily deterrent or incapacitation of the offenders.
>
> So that's why police recognize that it's far better to look upstream and engage in prevention activities and police have an important role

248 Ibid, p 68.

249 Ibid.

250 Ibid.

> in that, but so do many others. And so around policy and legislation and regulation, cooperation between businesses and government and so on, far better to prevent than to try to investigate or to use investigation as the way to address a problem.[251]

One of the key outreach activities undertaken by JIGIT was the bank draft intelligence probe (which ultimately led to the creation of Project Athena and the Counter Illicit Finance Alliance of British Columbia). The authors note that this initiative was "… critical to exposing criminal activity, identifying new trends and activities, and contributing to informed decision-making so as to deter money laundering activity at BC casinos."[252]

The LePard Report also notes that JIGIT has delivered on its mandate with respect to providing education to police and industry stakeholders, with the authors indicating that they were impressed by the "passion, knowledge and articulateness" of the JIGIT members.[253]

Conclusion

Overall, the LePard Report concludes that JIGIT has delivered on key portions of its mandate while also developing considerable subject matter expertise in the identification and investigation of money laundering activity.

While the E-Nationalize investigation is still in the charge approval stage, the authors describe it as a "groundbreaking" investigation into a sophisticated money laundering operation, and I view the bank draft intelligence probe and subsequent creation of Project Athena as one of the most important anti–money laundering initiatives in recent years.

In light of these successes, I have carefully considered whether JIGIT's mandate should be expanded to include the investigation of money laundering activity in all sectors of the economy. While there is some appeal to this approach, given that the unit exists and has, by all accounts, been doing some very good work, I believe the Province would be better served by creating a specialized provincial money laundering intelligence and investigation unit with an exclusive focus on proceeds of crime and money laundering.

Like many investigative agencies, JIGIT has faced significant resourcing challenges in recent years. Asking it to take on the resource-intensive work of conducting money laundering investigations has already interfered with its mandate to investigate illegal gaming. It also bears repeating that money laundering activity is not limited to one sector of the economy and requires a coordinated response across multiple sectors.

In light of the challenges faced by investigators in responding to money laundering in all its various forms, it is essential that investigators have an exclusive focus on

251 Transcript, April 7, 2021 (Session 1), pp 21–22.

252 Exhibit 803, LePard Report, p 117.

253 Ibid, p 123.

money laundering / proceeds of crime offences and not have additional responsibilities for investigating illegal gaming. I do, however, acknowledge the significant money laundering knowledge, expertise, and infrastructure developed by JIGIT over the past five to six years, including the expertise it has developed in money laundering typologies and the information-sharing agreements it has developed with various public- and private-sector entities. I believe it is essential for CFSEU to incorporate those elements into the new money laundering unit as much as possible. Moreover, CFSEU may also wish to consider whether the new unit would benefit from the incorporation of individuals who have developed money laundering knowledge and expertise through their work with JIGIT.

Municipal Policing

Under section 3(2) of the *Police Act,* municipalities with a population of more than 5,000 persons must provide policing and law enforcement services within their municipality. They can do so in one of three ways. First, they can enter into an agreement with the minister of public safety to have the RCMP provide policing and law enforcement services within their municipality. Second, they can establish a municipal police department to provide policing and law enforcement services. Third, they can enter into an agreement with a municipality that has a municipal police department to have that police department service both municipalities.[254]

In 2019, there were 77 municipalities in British Columbia with a population over 5,000. Of these 77 municipalities, 65 opted to have the RCMP provide policing and law enforcement services within their municipality and 11 opted to create their own municipal police department (Vancouver, Victoria, Saanich, Central Saanich, Oak Bay, Delta, Abbotsford, New Westminster, West Vancouver, Nelson, and Port Moody). One municipality (Esquimalt) entered into a contract with another municipality (Victoria) for the provision of policing and law enforcement services within both municipalities.[255]

RCMP Municipal Police Services

RCMP municipal police services are provided pursuant to an agreement between the federal and provincial government known as the municipal police service agreement.

Like the provincial police service agreement, the municipal police service agreement states that contract policing is increasingly recognized as an effective national policing model to address the cross-jurisdictional (i.e., municipal, provincial, territorial, national, and international) and evolving nature of crime.

254 *Police Act,* s 3(2).

255 Exhibit 789, *Police Resources in British Columbia,* p 3. In 2018, the City of Surrey opted to create a municipal police service, and efforts are currently underway to transition from the RCMP to the Surrey Police Service.

It also states that the federal and provincial government both receive benefits from the RCMP acting as the provincial police service by:

i. facilitating the flow of intelligence between all levels of policing;

ii. having a direct connection, though the RCMP, between municipal, provincial, territorial, national and international policing that is important to modern policing and the security of provincial infrastructure and communities;

iii. promoting Canadian sovereignty through the RCMP's presence across Canada including in isolated communities and at Canada's borders;

iv. having RCMP members available for redeployment;

v. sharing the costs and use of common police and administrative services; and

vi. having a professional, efficient and effective police service that reflects reasonable expenses for operating and maintaining a police service.

Under the terms of that agreement, municipalities with a population between 5,000 and 14,999 pay 70 percent of the policing costs, with the federal government covering the remaining 30 percent. Municipalities with a population over 15,000 pay 90 percent of their policing costs, with the federal government covering the remaining 10 percent. Municipalities are also responsible for 100 percent of costs such as accommodation and support staff.[256]

In 2019, the total authorized strength of the RCMP municipal police service was 3,969 officers, with 3,512 serving municipalities with a population over 15,000 and 457 serving municipalities with a population between 5,000 and 14,999.[257]

In many areas of the province, the RCMP operates integrated detachments (defined as a detachment comprising two or more provincial and/or municipal police units). For example, the North Vancouver detachment includes three policing units: two municipal units (North Vancouver District and North Vancouver City) and one provincial unit (North Vancouver Provincial). The detachment works on a post-dispatch system, which means that members respond to calls in any of the three policing jurisdictions regardless of their assignment.[258]

The RCMP also maintains a number of regional detachments that offer a central point of management and coordination for integrated or stand-alone detachments in a particular area. For example, the Kelowna Regional Detachment provides a central point of management for the Kelowna municipal unit, the West Kelowna integrated

256 Exhibit 789, *Police Resources in British Columbia,* p 3.

257 Ibid, pp 4, 16. These numbers will likely change with the establishment of the Surrey Police Service.

258 Ibid, p 3.

detachment (consisting of the West Kelowna municipal unit, the Peachland municipal unit, and the Kelowna provincial unit), and the Lake Country municipal unit.[259]

Municipal Police Departments

Eleven municipalities have elected to create their own police department to provide policing and law enforcement services in their communities. Each municipal police department is governed by a police board that determines the priorities and objectives for the municipal police department.[260] Under section 25 of the *Police Act,* the mayor of the municipality is the chair of the municipal police board. In 2019, the total authorized strength of all municipal police departments across the province was 2,461 officers.[261]

While each municipal police department is organized differently, they generally consist of front-line (or "patrol") officers who are responsible for responding to calls for service as well as general, and in some cases, specialized investigative units. For example, the Abbotsford Police Department is made up of 224 sworn members in four separate branches: a patrol branch responsible for responding to calls for service; an investigative support branch that conducts investigations beyond the scope of front-line patrol officers; a major crime unit that conducts investigations into serious offences such as homicide, assault, arson, and missing persons; and an operational support branch that is made up of a community policing unit, a youth squad, and a traffic branch.[262]

The Vancouver Police Department is made up of approximately 1,348 sworn members and 441 civilian members divided into three divisions: an operations division made up of front-line patrol officers responsible for responding to calls for service; an investigations division made up of a number of specialized investigative units including organized crime, major crime (homicide and robbery), sex crime, domestic violence, child exploitation, and forensic identification; and a support services division that provides research and administrative support to members of the VPD.[263]

The VPD also has 72 members seconded to other units including the RCMP FSOC section, the Integrated Market Enforcement Team, the Waterfront Joint Forces Operation, and CFSEU.[264]

While municipal police departments come across money laundering in the investigation of other offences, their primary focus is on violent crime and other public safety concerns, and they do not have the resources or expertise to embark on complex proceeds of crime investigations. For example, Inspector Christopher Mullin testified that the New Westminster Police Department is largely concerned with local issues such as violent and property crime:

259 Ibid, p 4.

260 *Police Act,* s 26.

261 Exhibit 789, *Police Resources in British Columbia,* p 3.

262 Evidence of B. Crosby-Jones, Transcript, March 30, 2021, pp 17–18.

263 Evidence of L. Rankin, Testimony, March 30, 2021, pp 20–22.

264 Ibid, p 22.

> [O]ur priorities really do fall to local level issues as it relates to violent crime. Property crime is a significant fact for our organization. Our major crime unit focuses primarily on … investigations such as robberies or crimes against children, sexual exploitation type investigations, attempted murders, those sorts of things. Our street crime unit essentially is our only proactive unit, and when they're not assisting major crime on some of the more significant investigations that they have underway, they do tend to focus a lot on local drug trafficking and distribution. Through there we do have good working relationships with our partner agencies within the Lower Mainland and even provincially if the case may take us to that level. But that's more or less the focus of our proactive efforts as far as targeting anyone that may be tied to money laundering.[265]

He went on to state that his department takes financial crime investigations as far as it can but does not have the capacity to follow through on those investigations and sees its contribution to these investigations occurring mainly through secondments to regional units such as FSOC and CFSEU.[266]

Deputy Chief Brett Crosby-Jones gave similar evidence concerning the Abbotsford Police Department. He stated that the primary focus of his department is responding to calls for service and ensuring that front-line resources are properly staffed to deal with issues such as domestic violence, mental health, homelessness, and gang violence:

> We're governed by a police board. We have a strategic plan that we come out with every year. It's Abbotsford-centric. Basically responding to calls for service, ensuring we staff our frontline resources in order to meet public safety needs. We're looking at domestic violence, our advancing mental health response, our dealing with homelessness and our gang crime issue. Proactively, similar to New West, we have a gang crime unit, a drug enforcement unit, a crime reduction unit. So based on some of their investigations we do enter into financial crime type files, but we are limited [in] our ability to investigate and respond to those.[267]

Even the larger municipal departments – such as the VPD – lack the expertise to investigate sophisticated money laundering schemes. Inspector Michael Heard, an experienced investigator with the VPD, gave the following evidence with respect to these matters:

> [T]hese investigations are extremely complex. I think that they're very nuanced, and quite frankly from a municipal perspective … our predicate offences are the ones that identify the money laundering … in a lot of money, vehicles, car leases, et cetera. But I think that when you start

265 Transcript, March 30, 2021, pp 28–29.

266 Ibid, p 31.

267 Transcript, March 30, 2021, p 30.

> getting into more sophisticated investigations where you're doing trade-based money laundering, you start involving shell companies, you have some more level of sophistication, we just don't have the subject matter experts that have the ability to investigate these on a continual basis.[268]

Another concern that arises in this context is the need to get certain offenders off the street for public safety reasons. Because proceeds of crime investigations are often slow and time-consuming – particularly where they require production orders or assistance from international partners – municipal police departments often elect to proceed only on the predicate offence without following up on the money laundering aspect of the investigation. Inspector Heard explained that dynamic as follows:

> I think that for public safety and … to ensure that we meet our disclosure obligations to obtain a criminal charge or have judicial conditions on the person upon release. We will go forward with the charges for the substantive offence … [but] with the other offences, unfortunately based on timelines and seeking multiple production orders and obtaining all the orders required to follow the money and follow where it's going, we just don't have the time or the resources … if we have a substantive offence that requires us to … put someone in custody right away for public safety.[269]

For these reasons, I have concluded that it is unreasonable and unrealistic to expect municipal police departments to take on any significant responsibility for the investigation of complex money laundering schemes. Such investigations must be undertaken by specialized units that have the time, expertise, and resources to conduct a proper investigation.

At the same time, it is important that municipal police officers involved in the investigation of profit-oriented criminal offences (particularly at the project level) have the training, confidence, and available expertise to follow the money and pursue money laundering charges of low to medium complexity in conjunction with the underlying investigation. These investigations are well within the competence of most municipal police officers and present a number of significant disruption opportunities, including additional criminal charges and the identification of assets for seizure and/or forfeiture.

I turn now to some of the key challenges faced by law enforcement bodies in the investigation and prosecution of money laundering offences.

268 Transcript, March 30, 2021, pp 42–43.

269 Transcript, March 30, 2021, p 33.

Chapter 40
Challenges Faced by Investigators

While there can be little doubt that law enforcement results in British Columbia are not commensurate with money laundering risks, it is useful to consider some of the challenges associated with the investigation and prosecution of money laundering offences in order to make effective recommendations to the Province concerning the investigation of these matters. These challenges include (a) the legal complexity of money laundering investigations and prosecutions; (b) the inability of FINTRAC to reliably produce actionable intelligence concerning money laundering threats; and (c) the complexity of many money laundering schemes. Each of these challenges are discussed in greater detail (below).

Legal Complexity

One of the key challenges associated with the investigation and prosecution of money laundering offences is the complexity of these investigations. Such complexity begins with the definition of the offence. Section 462.31 of the *Criminal Code* provides:

> **Laundering proceeds of crime**
>
> **462.31 (1)** Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that, or being reckless as to whether, all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of

> **(a)** the commission in Canada of a designated offence; or
>
> **(b)** an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.[1]

Over the course of the evidentiary hearings, I repeatedly heard evidence that proving the predicate offence (i.e., proving that the property or proceeds were obtained or derived from the commission of a designated offence) is a significant hurdle for investigators in many cases. For example, an RCMP report with respect to the large amounts of suspicious cash entering BC casinos makes the following comments concerning the need to draw a "concrete" or "definite" link to criminal activity:

> Although intelligence gleaned to-date indicates that these "bags of cash" involved in these large buy-ins have their ultimate origins in street-level criminal activity, drawing a concrete link to those activities has thus far been an elusive goal. In order for IPOC [Integrated Proceeds of Crime units] to pursue a successful prosecution for Possession of Proceeds or Money Laundering, it is essential to show a definite link to criminal activity. IPOC will task E Div CIS [Criminal Investigation Service] to provide this "missing link" to criminal activity. The task for CIS would be to gain sufficient information and evidence to conduct enforcement action, resulting in the seizure of currency and the successful prosecution of the individual(s) involved in the money-laundering activity. If an opportunity for significant enforcement action does not come to light in the course of the CIS intel-probe, it is anticipated that CIS will be able to open new investigative avenues for IPOC to pursue upon conclusion of the intel-probe.[2]

I also heard evidence with respect to the considerable difficulties faced by investigators in proving the knowledge element of the offence (i.e., that the accused knew or believed, or was reckless as to whether, the property or proceeds were obtained or derived from the commission of a designated offence).[3] For example, Mr. Baxter made the following comments with respect to proof of these elements in connection with the casino probe:

> [I]n order to conduct the criminal side of the investigation, you got to prove knowledge. You got to prove intent. You have to show the source of funds. And those were hurdles that were very, very difficult for investigators to locate to a sufficient level of beyond a reasonable doubt … [T]here was lots of … levels of intelligence and conclusions, but to get to that threshold, we just weren't there yet.[4]

1 *Criminal Code*, RSC 1985, c C-46.

2 Exhibit 760, RCMP "E" Division IPOC, Investigational and Planning Report: Money Laundering – B.C. Casinos (January 30, 2012), pp 3, 5.

3 In order to prove the knowledge element of the offence, the prosecution must prove that the accused knew that the proceeds were obtained or derived from the commission of a *specific* designated offence (e.g., drug trafficking). However, it is not necessary to prove that the accused knew about the details of the offence (e.g., what specific drugs were trafficked or how the trafficking was carried out): *R v Tejani* (1999), 138 CCC (3d) 266 (Ont C.A.) [*Tejani*] at para 36.

4 Transcript, April 8, 2021, p 88.

While the essential elements of the offence are a matter of exclusive federal jurisdiction under section 91(27) of the *Constitution Act, 1867*, I make two observations with respect to these matters which may be useful to law enforcement agencies in the investigation and prosecution of money laundering offences. First, the 1997 amendments to the *Criminal Code* (which replaced the term "knowing" with the terms "knowing or believing") may obviate the need to prove that the property or proceeds *were* obtained or derived from the commission of a designated offence in circumstances where the Crown can prove that the accused *believed* the property was obtained in that manner.

While it is not my place, as a Commissioner, to decide that issue, a plain reading of section 462.31 suggests that the *actus reus* of the offence is complete when an offender deals with any property or the proceeds of any property in any of the ways set out in that provision (using, transporting, sending, delivering, etc.), and the knowledge element will be satisfied where the offender did so knowing *or believing* that the property or proceeds were obtained or derived through the commission of a designated offence.[5]

Second, I note that section 462.31 was recently amended to include recklessness as one of the mental elements of the offence, thereby expanding the circumstances in which criminal liability can be imposed. The inclusion of recklessness in section 462.31 will no doubt make it easier for law enforcement to make out the mental element of the offence in circumstances where the evidence is insufficient to prove knowledge but the accused was aware of the *risk* that the property was obtained or derived from the commission of a designated offence.

It strikes me that these amendments will be particularly useful in bringing criminal proceedings against third-party money launderers, including professional money launderers who were not involved in the commission of the predicate offence but who receive a commission for laundering illicit funds generated by other criminal groups.

The inclusion of recklessness as one of the mental elements of the offence also increases the number of individuals and groups who could potentially be caught by these provisions. For example, a currency exchange or money services business that becomes aware of a *risk* that certain funds were obtained or derived from the commission of a designated offence may acquire criminal liability if it chooses to convert those funds into another form. Lawyers, accountants, realtors, mortgage brokers, financial institutions, and others could also face criminal penalties in circumstances where they become aware of a money laundering risk and proceed nonetheless.

Another form of legal complexity relates to the labour-intensive nature of most major money laundering investigations. Even getting a basic financial picture can take multiple production orders (which typically have a 30- to 60-day turnaround) and require a significant amount of time to review and analyze the results. Investigators

5 For case law on the essential elements of the offence see *United States of America v Dynar*, [1997] 2 SCR 462 at paras 39–45, 69–71, *Tejani* at para 29, R v Bui, 2010 ONSC 6180 and *R v Drakes*, 2006 Carswell Ont 1585 (Ont. S.C.J.). While *Dynar* appears to be dispositive of the issue, it is important to note that the decision was rendered before the 1997 amendments to section 462.31.

may also need to seek the assistance of professionals – such as forensic accountants – to understand the information they receive and need to cope with the constantly evolving ways in which organized crime groups are laundering illicit funds through the BC economy. Inspector Heard described some of these challenges as follows:

> [D]uring a course of an investigation to follow the money we may come into unexplained wealth like cars, houses, et cetera, that … aren't consistent with the lifestyle that they're leading. And during the course of our investigation we may uncover banking information from a myriad of different banks … depending on the level of sophistication to … disguise their money to [a] multitude of financial institutions, but each of those require production orders for us to get the information back from the bank. Production orders … are supposed to have a 30-day turnaround, but unfortunately … everybody has capacity issues, even the financial sector. So production orders that were supposed to get back within 30 days now are leading up to towards 60 days of being returned … I always say one production order turns into about three or four more once you start gleaning information. And then you start thinking about … between 30 and 60 days upon return of each order and you keep kind of adding and compounding those on top of each other … and then by the time you analyze the information and have someone that either we can bring in people with financial backgrounds, we have people in our financial crime units that are accountants, but to go over the information to make assessments on the money it just isn't feasible.[6]

A serious money laundering investigation will almost certainly require the use of other investigative techniques, including wiretaps, search warrants, undercover operations, and police agents, which significantly increase the cost and complexity of these investigations.[7]

On a related note, I heard a great deal of evidence concerning the challenges faced by investigators in complying with the requirements of *R v Stinchcombe*[8] (which requires the Crown to make full disclosure, to the accused, of all evidence needed to make full

6 Evidence of M. Heard, Transcript, March 30, 2021, p 34–35. See also Exhibit 821, RCMP, A Resourcing Overview of Major Money Laundering Investigations in BC, p 5, where the RCMP states that a production order for a bank typically exceeds 100 pages, takes approximately 35 hours to review and produces up to 300 pages of disclosure. Another source of delay arises from the Mutual Legal Assistance Treaty (MLAT) process, which is often used when the investigation extends beyond Canada. Jeffrey Simser, a lawyer with the Ontario Public Service and an expert on money laundering issues, described that process as ponderous, slow, and bureaucratic – and one that often results in the production of "stale" information: Transcript, April 9, 2021, pp 105–6. For additional evidence concerning the labour-intensive nature of money laundering investigations, including the work required to properly analyze FINTRAC reports, see Evidence of M. Paddon, Transcript, April 14, 2021, pp 78–81.

7 Indeed, an RCMP analysis of money laundering investigations indicates that a major money laundering investigation can require ten times as many person hours as a major drug operation and cost four times as much. Money laundering investigations may also require twice as many judicial authorizations as a major drug investigation and can involve as many as 20,000 documents, 35,000 intercepts, dozens of electronic devices, and various other types of evidence that must be reviewed and analyzed: see Exhibit 821, RCMP, A Resourcing Overview of Major Money Laundering Investigations in BC, pp 1, 5.

8 *R v Stinchcombe*, [1991] 3 SCR 326 [*Stinchcombe*].

answer and defence) and *R v Jordan*[9] (which requires the Crown and the courts to get the matter to trial within strict time limits). Multiple witnesses testified that the disclosure requirements that arise in this context require law enforcement to expend considerable time and resources organizing and facilitating disclosure.[10]

I also understand that the disclosure requirements mandated by *Stinchcombe* can cause challenges for Canadian law enforcement agencies when working with international partners who have less stringent disclosure requirements. These challenges are particularly acute when dealing with police agents and confidential informants (which form an essential part of many organized crime files). Indeed, Mr. Chrustie testified that there were many instances where law enforcement bodies were unable to take action in Canada because of the requirement to disclose source information:

> [W]ith transnational organized crime networks … the matrix and the enforcement activity and the operations take place … worldwide. And … our own legal system really precluded us because of the disclosure laws under *Stinchcombe* to take enforcement action here because a lot of the key pieces of … intelligence and/or source information quite often came out of places like Colombia at the highest level. And those parties were quite often in, what we would refer to, the agent capacity within the Canadian legal system, which meant we had to disclose that information if it reached the Canadian court.
>
> So … when we looked at making a decision where to prosecute, where to arrest, knowing that it wasn't going to be compatible to the Canadian courts and trying to mitigate those four threats … social harm, public safety, national security and financial integrity – collectively as a collaborative group of investigators from around the world, we would pick places that were going to likely result in a trial and a conviction. And quite often it was never Canada because of those problems.[11]

While I appreciate that complex financial crime investigations involve massive amounts of disclosure and that mistakes in the disclosure process – particularly as it relates to source information – can sometimes "blow up" an entire prosecution,[12] it is important to understand the constitutional basis of *Stinchcombe* disclosure and the critical role it plays in ensuring the fairness of the criminal justice system. Before *Stinchcombe*, there were no uniform rules governing pre-trial disclosure and there were cases where prosecutors used the element of surprise to their advantage or did not disclose exculpatory evidence to the accused.[13] Such practices have repeatedly been identified as one of the leading causes of wrongful convictions. For example, the Royal

9 *R v Jordan*, 2016 SCC 27 [*Jordan*].

10 For reference to the "punishing" nature of these disclosure requirements, see Evidence of J. Simser, Transcript, April 9, 2021, pp 68–69.

11 Evidence of C. Chrustie, Transcript, March 29, 2021, pp 109–10.

12 Evidence of J. Simser, Transcript, April 9, 2021, p 69.

13 Exculpatory evidence is any evidence that may show an accused's innocence or justify his or her actions.

Commission on the Donald Marshall, Jr., Prosecution found that the failure to disclose prior inconsistent statements to the accused was an important contributing factor to the wrongful conviction and concluded that "anything less than complete disclosure by the Crown falls short of decency and fair play."[14]

In *Stinchcombe,* the court recognized that the constitutional right to make full answer and defence demands that the prosecution make full disclosure of all relevant information (subject to certain exceptions). It also emphasized that the right to make full answer and defence is one of the pillars of the criminal justice system "on which we heavily depend to ensure that the innocent are not convicted"[15] and held that the practical arguments in favour of such a duty are overwhelming. In the 30 years since that decision was rendered, the precise contours of the duty have been the subject of thousands of decisions, which have not been without criticism. However, *Stinchcombe* is one of the most important decisions in recent history and the principles underlying it are unlikely to change any time soon. Nor, in my view, should they.

The implication is that law enforcement bodies must put the necessary infrastructure in place to ensure they can comply with their disclosure obligations. Jeffrey Simser, a lawyer with the Ontario Public Service and an expert on money laundering issues, gave the following evidence with respect to these matters:

> [I]f you're really serious about going after organized crime and about going after money laundering, aside from the data analytics you need an infrastructure to do it. Disclosure requirements are punishing, they're massive, and the last thing that you want to do is two or three or four years into a major project on organized crime [is] discover whoops, in the first tranche we revealed three confidential informants in our disclosure to the defence lawyer or whatever because that will blow up the entire prosecution and the best you'll be able to do is maybe a civil forfeiture action. So you need the technology and you need the people that know how to use it and war game it strategically so that you don't end up investing massive amounts of resources going after a target and then losing it in the year three or four because that will [undermine] confidence in the whole system.[16]

While the *Jordan* decision is more recent than *Stinchcombe,* it has also led to significant changes within the criminal justice system. In that decision, the Supreme Court of Canada sought to cure the "excessive delays" and "culture of complacency" within the criminal justice system by introducing a presumptive ceiling on the time it should take to bring an accused person to trial.[17] For cases going to trial in the provincial

14 Royal Commission on the Donald Marshall, Jr., Prosecution, *Vol. 1: Findings and Recommendations* (1989), pp 238, 243 as cited in *Stinchcombe* at para 17.

15 *Stinchcombe,* para 17.

16 Evidence of J. Simser, Transcript, April 9, 2021, pp 68–69.

17 *Jordan,* paras 4, 40–41.

court, the presumptive ceiling is 18 months. For cases going to trial in the superior court, the presumptive ceiling is 30 months. If the total delay from charge to the actual or anticipated end of trial (minus defence delay) exceeds the presumptive ceiling, the delay is presumptively unreasonable.[18] The Crown can rebut the presumption of unreasonableness by showing that the delay was attributable to exceptional circumstances outside the Crown's control such as family and medical emergencies.[19]

If the Crown cannot establish the presence of exceptional circumstances, the court will be required to find that the delay is unreasonable and enter a stay of proceedings.

While *Jordan* undoubtedly poses challenges for law enforcement bodies, it is important to note that the *Jordan* clock starts to run from the time the information is sworn (i.e., from the time criminal proceedings are commenced) and *not* from the time of the offence or the time the police commence their investigation. The implication is that law enforcement can prepare the disclosure package and otherwise ready the case for trial before starting the *Jordan* clock. Indeed, the main issue with *Jordan* seems to be that drug investigations and proceeds of crime investigations often progress at a different pace, with investigators being forced to choose between waiting for the proceeds of crime investigation to be completed before laying charges on all counts or proceeding only on the drug charges in order to get the offender off the street.

Superintendent Peter Payne, current director of financial crime at RCMP national headquarters, explained:

> Q Just to pick up on the *Jordan* point. The way I understand that the Supreme Court of Canada decision articulates … the ticking clock on cases is that … the start of when the stopwatch goes is when a charge is brought in court, so an information or indictment is preferred. And if that's the case, is it not the case that *Jordan* imposes pressure on the prosecutor once the case starts in court to get it done within the timeline but doesn't necessarily impose pressure on the police to get an investigation done in a certain period?
>
> A Yes, that's correct. But I think where some issues might come into play, let's say we have a large scale investigation into an organized drug group and we wait until that investigation is done and charges are laid against those drug charges [*sic*]. Then we start our POC/ML [proceeds of crime / money laundering] investigation. It's going to take time for us to get success – the required evidence for that POC/ML charge down the road, which could take another year or two while the *Jordan* clock is ticking on the other charges.[20]

18 Ibid, paras 46–47.

19 Ibid, paras 71–74, 77.

20 Evidence of P. Payne, Transcript, April 16, 2021, pp 106–7. See also Evidence of M. Heard, Transcript, March 30, 2021, p 33 with respect to the need to move forward immediately with the substantive offence in order to get dangerous offenders off the street.

In my view, these considerations underscore the need for investigators to consider and pursue money laundering / proceeds of crime charges at the same time as the predicate offence (as recommended in Chapter 39). While there may be cases in which public safety concerns require the Crown to lay charges on the predicate offence before the money laundering / proceeds of crime investigation is complete, these cases should be the exception if a serious attempt is made to implement my recommendation.

I would add that there is a perception within law enforcement that there is little to be gained by pursuing money laundering charges because the courts will often impose concurrent sentences for the predicate and the money laundering offence. While I would certainly encourage prosecutors to give greater consideration to seeking consecutive sentences in these circumstances, there is much to be gained from conducting a money laundering / proceeds of crime investigation even if concurrent sentences are imposed (see above).

FINTRAC

A second challenge faced by law enforcement is the ineffectiveness of FINTRAC in producing timely, actionable intelligence for use by investigators. Christian Leuprecht, an internationally renowned money laundering expert and lead author of the Leuprecht Report, testified that FINTRAC is a "very good entity that is very good at watching things and observing things, but there's relatively little that it can actually do with what is provided."[21]

Similar evidence was given by Nicholas Maxwell, one of the world's leading experts on financial information-sharing partnerships, as well as individual law enforcement officials such as Inspector Heard, who spoke to the lack of timely disclosures by FINTRAC.[22]

While it is not my intention to make recommendations to the federal government concerning the management and administration of federal entities, it is essential to explore the shortcomings in the current regime in order to understand the constraints faced by those charged with investigating and prosecuting money laundering offences and make effective recommendations to the Province concerning the law enforcement response to money laundering. In what follows, I review four specific criticisms of the financial intelligence provided to law enforcement bodies.

21 Evidence of C. Leuprecht, Transcript, April 9, 2021, p 42.

22 Evidence of N. Maxwell, Transcript, January 14, 2021, p 93 ("that's the whole point of the AML/ATF regime, that it provides useful information to law enforcement"). See also Evidence of M. Heard, Transcript, March 30, 2021, p 78

High-Volume, Low-Quality Information

One of the key criticisms of FINTRAC is the ratio between the volume of information collected and the number of proactive disclosures made to law enforcement.

In the 2019–20 fiscal year, a total of 31,417,429 individual reports were submitted to FINTRAC (up from 28,119,852 in the 2018–19 fiscal year and 25,319,625 in the 2017–18 fiscal year).[23] Of these reports, 386,102 were suspicious transaction reports (up from 235,661 in 2018–19 and 179,172 in 2017–18).[24]

However, there were only 2,057 "unique" disclosures made to law enforcement (down from 2,276 in 2018–19 and 2,466 in 2017–18)[25] and it appears that only 1,582 of these disclosures were directly related to money laundering (with 296 related to "terrorism financing and threats to the security of Canada" and 179 related to "money laundering, terrorism financing and threats to the security of Canada").[26]

Law enforcement agencies in British Columbia received 335 disclosures during the 2019–20 fiscal year (though a large number of disclosures were provided to national headquarters, which may have been used to support investigations in this province).[27]

Even more concerning is the fact that FINTRAC received 2,519 voluntary information records from law enforcement agencies across the country in the 2019–20 fiscal year (down from 2,754 in 2018–19).[28] Voluntary information records are used by law enforcement to prompt FINTRAC to provide information relevant to ongoing investigations. Investigators will provide FINTRAC with information relating to an ongoing investigation (such as the name of a target). FINTRAC will review that information and determine whether it is in possession of any additional information that could assist with the investigation. If so, it will disclose that information to investigators, provided the statutory conditions for disclosure are satisfied.[29]

While there is limited evidence before me concerning the number of FINTRAC disclosures made in response to voluntary information records, I expect that most of the 2,057 unique disclosures made to law enforcement in 2019–20 were made in response to these requests. If so, the number of proactive disclosures (i.e., disclosures not prompted

23 Exhibit 828, Christian Leuprecht, Jeff Simser, Arthur Cockfield, and Garry Clement, *Detect, Disrupt and Deter: Domestic and Global Financial Crime – A Roadmap for British Columbia* (March 2021) [Leuprecht Report], Appendix 3, p 2 (Table 5).

24 Ibid.

25 Ibid, Appendix 3, pp 2–3 (Table 6). It is my understanding that "unique" disclosures represent the number of distinct reports disclosed, as opposed to the total number, as in some cases, the same report is sent to multiple law enforcement agencies: ibid, p 2 (Table 6), footnote 4. See also Evidence of C. Leuprecht, Transcript, April 9, 2021, pp 138–39.

26 Exhibit 733, *FINTRAC Annual Report 2019–20*, p 8.

27 Ibid, p 9.

28 Ibid, p 10.

29 See, for example, Evidence of P. Payne, Transcript, April 16, 2021, p 149; Evidence of M. Heard, Transcript, March 30, 2021, p 78; Evidence of B. Baxter, Transcript, April 8, 2021, pp 12–13; Exhibit 828, Leuprecht Report, p 22.

by voluntary information requests) would be considerably smaller than the 1,582 unique disclosures referenced in FINTRAC's 2019–20 annual report.[30]

The issue is important because proactive disclosures may prompt the commencement of a new investigation (or assist in identifying a new target), whereas voluntary information records are typically made to support an investigation already underway. If the number of proactive disclosures is small, it could be a sign that the financial intelligence unit is not able to effectively identify and report money laundering activity.

On one hand, the small number of disclosures that make their way into the hands of law enforcement could suggest that FINTRAC is taking its statutory obligations very seriously and is disclosing information to law enforcement agencies only where there are reasonable grounds to suspect that the information would be relevant to the investigation and prosecution of a money laundering offence.

On the other hand, I have serious concerns about the number of proactive disclosures made to law enforcement agencies, given that the primary purpose of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act,* SC 2000, c 17 [*PCMLTFA*] is to detect money laundering activity and provide actionable intelligence to law enforcement.

Legitimate concerns could also be raised about the cost of the *PCMLTFA* regime in light of these concerns. At present, there are approximately 24,000 individuals and businesses with reporting obligations under the *PCMLTFA* and a 2019 survey by LexisNexis put their annual cost of compliance in the range of $6.8 billion.[31]

Moreover, I understand that FINTRAC's annual expenditures are in the range of $55 million[32] and that the reporting obligations mandated by the *PCMLTFA* impose a considerable burden on many designated non-financial businesses and professions.

While I appreciate that FINTRAC's mandate extends beyond the production of actionable intelligence, it is difficult to reconcile those costs with the production of 2,057 disclosures, particularly when many of those disclosures were likely prompted by voluntary information records. It may be that there are better, and more cost-effective, measures the Province could put in place to identify money laundering activity.

Mr. Maxwell testified that the large number of reports submitted to FINTRAC, as compared to the extremely low number of disclosures being provided to law enforcement, is the product of a "defensive" reporting regime in which reporting entities are required to report everything from a $20 transaction to a $20 million transaction.[33] He also indicated that Canadian reporting entities file roughly 10 million

30 Of course, that assumes that the number of unique disclosures includes disclosures made in response to voluntary information records. However, even if voluntary information record disclosures are not included in those statistics, the number of proactive disclosures is still very small.

31 On this point see Evidence of N. Maxwell, Transcript, January 14, 2021, pp 53–54, 59.

32 Exhibit 733, *FINTRAC Annual Report 2019–20,* p 35.

33 Transcript, January 14, 2021, pp 65–66, 72–73.

more reports each year than their counterparts in the United States, and 30 million more reports each year than their counterparts in the United Kingdom (notwithstanding the population differences between these countries).[34] This places a huge financial burden on the private sector without a corresponding increase in the ability of law enforcement to identify and disrupt financial crime because of broader information-sharing challenges.[35]

Another concern that arises in this context is uneven reporting among reporting entities in different sectors of the economy. For example, I heard evidence that reporting entities in the BC real estate sector submitted only 37 suspicious transaction reports in the 2019–20 fiscal year (though I note that other reporting entities such as banks and credit units will sometimes file reports concerning suspicious activity in the real estate sector).[36] The lack of consistent reporting in these areas gives rise to serious concerns about the quality and comprehensiveness of information in the FINTRAC database.

Lack of Direct, Real-Time Access

Another factor that impairs the ability of law enforcement to conduct effective money laundering investigations is the lack of direct and real-time access to information in the FINTRAC database. Mr. Simser testified that the federal government took a "timorous" approach when it created FINTRAC because of concerns about privacy.[37] He contrasted the Canadian system with the US system – where investigators can "literally go right into the database and look at the [suspicious transaction reports] or [suspicious activity reports] and the currency transaction reports and then try and see whether something fits with the investigative footprint they're developing for a particular target."[38]

While I have no doubt it would assist law enforcement agencies to have direct and real-time access to information in the FINTRAC database, it is important to understand that the constraints on access in Canada are the product of constitutional limitations

34 Ibid, pp 72–73.

35 Ibid, pp 72–73. In concrete terms, I understand that Canadian reporting entities filed approximately 31 million reports in 2019–20, whereas US reporting entities filed approximately 21.6 million reports, and reporting entities in the UK filed 573,085 reports. Note, however, that the number of suspicious transaction reports filed by Canadian entities was 386,102, as compared with 5,596,620 in the US and 573,085 in the UK (which only requires reporting entities to file suspicious activity reports). The large number of FINTRAC reports made by reporting entities also has a significant impact on privacy rights: see, for example, Evidence of N. Maxwell, Transcript, January 14, 2021, pp 73–76. While constitutional constraints prohibit me from making recommendations concerning the administration of federal entities such as FINTRAC, the solution proposed by Mr. Maxwell is increased tactical and strategic information sharing between the public and the private sector to guide the collection of intelligence by reporting entities: see, for example, Transcript, January 14, 2021, pp 90–93.

36 Evidence of D. Achimov, Transcript, March 12, 2021, pp 94–95. Indeed, it appears that 90 percent of reports filed with FINTRAC come from major financial institutions: Evidence of B. MacKillop, Transcript, March 12, 2021, p 96.

37 Transcript, April 9, 2021, p 102.

38 Ibid, pp 102–3. Detective Inspector Craig Hamilton gave evidence of a similar database in New Zealand that is accessible by police when investigating financial crimes: Transcript, May 12, 2021, pp 71–76. Other witnesses also testified that it would be of great use to law enforcement to have real-time access to financial data: see, for example, Evidence of M. Heard, Transcript, March 30, 2021, pp 79–80.

rooted in section 8 of the *Canadian Charter of Rights and Freedoms*, which protects against state interference with privacy rights and will be engaged whenever law enforcement conducts a search that interferes with a recognized privacy interest.[39]

One of the privacy interests protected by section 8 is informational privacy (i.e., the right to control how much information about ourselves and our activities we can shield from the "curious eyes of the state").[40] While there are circumstances in which law enforcement can access information protected by section 8, investigators will normally be required to apply for and obtain a production order before they can access that information. With respect to financial records, investigators normally require reasonable and probable grounds to suspect that an offence has been or will be committed, and must establish that the information will assist in the investigation of the offence).[41]

Given this legal landscape, law enforcement bodies cannot realistically expect to receive unfettered access to information in the FINTRAC database.

Lack of Timely Disclosure

While constitutional considerations may prevent FINTRAC from giving law enforcement agencies direct and real-time access to its database, the lack of *timely* disclosure is not rooted in any recognized constitutional principle and is a source of significant frustration for investigators. For example, Inspector Heard testified that FINTRAC disclosures often arrive many months after the information has been requested, which creates significant challenges for investigators in formulating investigative plans and otherwise moving forward with their investigations:

> [W]hen it comes to proactive investigations, in my experience, FINTRAC hasn't been as timely. Unfortunately as an investigation goes on you provide FINTRAC with the information you're looking for, targets you're looking at obtaining information on. [For] [s]ome of those the return on information is three, four, five months past when it's been asked for or requested … if you have whatever the predicate offence is and you're coming up with your plans to investigate the person for the named offences and then three, four, five months later the investigation is progressing, the information comes forward with the FINTRAC information, it definitely delays and it makes it challenging trying to investigate when the information isn't timely, in my opinion.[42]

39 *R v Cole*, 2012 SCC 53 at para 34 ("An inspection is a search and a taking is a seizure, where a person has a reasonable privacy interest in the object or subject matter of the state action and the information to which it gives access").

40 *R v Tessling*, 2004 SCC 67 at paras 20–23.

41 *Criminal Code*, s 487.018(1).

42 Evidence of M. Heard, Transcript, March 30, 2021, pp 78–79.

These comments were echoed by Inspector Mullin of the New Westminster Police Department, who testified that he has seen instances of sophisticated targets selling off assets while investigators wait for FINTRAC disclosures:

> Targets are sophisticated, they do know how we work and we've had instances where the information from FINTRAC has been delayed and by the time we've traced some of the money to properties, the properties have been sold off, so it makes it difficult for us ... from a civil forfeiture aspect [to] capture all of the assets people possess that may be linked to the proceeds.[43]

While I acknowledge that the experiences of these senior officers are anecdotal, there is no excuse for these types of delays in getting information to law enforcement. I recommend that the Policing and Security Branch develop a way of tracking FINTRAC disclosures made in response to voluntary information records, in order to ensure that they are received promptly. If there are systemic delays with the receipt of these disclosures, the Policing and Security Branch should bring these concerns to the attention of the federal minister of public safety as well as the AML Commissioner.

Recommendation 93: I recommend that the Policing and Security Branch develop a way of tracking FINTRAC disclosures made in response to voluntary information records, in order to ensure that they are received promptly.

If law enforcement agencies are to be successful in their efforts to investigate money laundering / proceeds of crime offences, it is essential that they have as much support as possible from FINTRAC through the production of timely disclosures.

Lack of Useful Disclosure

Finally, I note that some witnesses raised issues with respect to the quality of FINTRAC disclosures received by law enforcement bodies. For example, Christian Leuprecht and his co-panellists gave evidence that much of the intelligence provided by FINTRAC to law enforcement agencies is often nothing more than information concerning specific transactions and is not connected to other suspicious activity or otherwise accompanied by any explanation about what is happening from a money laundering perspective.[44]

43 Evidence of C. Mullin, Transcript, March 30, 2021, p 82.

44 See, for example, Evidence of A. Cockfield, Transcript, April 9, 2021, p 41 ("they take it all in, but they don't necessarily turn it into operationalized intelligence for law enforcement") and p 140 ("it's not ... what we call actionable intelligence ... like they've got a cross border transfer of over 10,000, maybe it has to do with a real estate transaction, and they send that to some agency, but they don't necessarily tell the agency what exactly is happening. Nor do they know themselves, FINTRAC ... [T]hey're just coughing up information. It may or may not be useful"). See also Evidence of G. Clement, Transcript, April 9, 2021, p 101; Evidence of J. Simser, Transcript, April 9, 2021, p 104; Evidence of A. Cockfield, Transcript, April 9, 2021, pp 123–24.

So, as not to jeopardize any ongoing criminal investigation or proceeding, I have not conducted a comprehensive review of the disclosures received by law enforcement agencies in this province and am unable to comment on the quality of the information received by law enforcement. However, it is essential that law enforcement bodies receive timely, useful intelligence with respect to money laundering networks and typologies in addition to information concerning specific transactions. If law enforcement bodies have concerns about the quality of these disclosures, I would encourage them to bring their concerns to the attention of the Policing and Security Branch and the AML Commissioner to ensure they are properly addressed.

While law enforcement should continue to seek access to and make use of FINTRAC disclosures when available, the issues set out above, including, in particular, the lack of timely, proactive disclosures, have led me to conclude that law enforcement agencies in this province cannot rely on FINTRAC to provide timely, proactive intelligence with respect to money laundering threats and must take steps to develop their own intelligence with respect to money laundering activity within the province.

Accordingly, I have recommended that the provincial anti–money laundering intelligence and investigative unit recommended in Chapter 41 include a robust intelligence division with the expertise and resources to identify money laundering activity in the province. I have also recommended that the intelligence division explore new ways of developing intelligence with respect to money laundering activity.

Complexity of Money Laundering Schemes

A third challenge for law enforcement in the investigation and prosecution of money laundering offences is the ever-increasing sophistication of higher-level money laundering schemes. Examples of these schemes are reviewed in previous chapters of this Report and include the use of shell corporations and offshore financial havens, trade-based money laundering, and the use (or, more accurately, misuse) of cryptocurrency and informal value transfer systems to transfer illicit funds from person to person. When new and emerging technologies are added to the mix, or when these techniques are used in combination, it becomes exponentially more difficult for law enforcement to follow the money and uncover evidence of criminal activity. Moreover, there is evidence that transnational organized crime groups are using increasingly sophisticated countermeasures – such as encrypted communications devices – to defeat attempts by law enforcement to investigate money laundering schemes:

> [A] lot of these organized crime groups today, they're using encrypted communications. So having secure comms is a big factor in a lot of these major investigations.

> Virtual currency is at the forefront now. I mean, they look at different ways, more secure ways of looking at the funds going back and forth as they try to normalize the funds and [bring] them into the regular system.
>
> Dark web marketplace, et cetera. So all these areas are themselves complex and they create the extra burden on these types of investigations.[45]

The Leuprecht Report suggests that it is unreasonable to expect even the most highly trained investigator to become an expert in all of these areas, which underscores the need for a multidisciplinary team comprised of legal experts, forensic accountants, computer specialists, and others to investigate money laundering activity. It also suggests that law enforcement bodies must make better use of experts in the private sector to gain a more complete understanding of complex money laundering schemes:

> To be more effective and disrupt criminal organizations and their activities, law enforcement must explore recruiting private experts who fully understand some of these more complex techniques. There has been a real reluctancy in Ontario and Canada to enter in public-private partnerships and, unlike most countries, it has been relatively absent from law enforcement investigations. Although there is no real legal framework for these relationships, it is mostly absent due to ignorance, legal uncertainty, security clearance and cost.[46]

While I appreciate the added costs associated with the use of outside experts, I agree that they can sometimes add great value and would encourage law enforcement agencies to reach out to private-sector experts in appropriate cases.

I hasten to add that consultations with *legal* experts in the private sector may also be useful for law enforcement bodies in understanding the structures put in place to launder illicit funds (either generally or in connection with a specific investigation). While law enforcement bodies are always entitled to seek legal advice from prosecutors, the intricacies of these structures may be such that specific expertise in areas such as company law, real estate, debt financing, and international trade may be required in order to unravel some of the more sophisticated money laundering schemes.

45 Evidence of P. Payne, Transcript, April 16, 2021, p 99. Mr. Simser also gave the example of "peekaboo" trusts, which are set up so that the money is automatically wired to an account in another jurisdiction as soon as a law enforcement demand is made for information about the trust. The problem with these trusts is that investigators will "spend all this time fighting to get information and when you finally get it you find out that the money has then transited to Panama or somewhere else and it's then put beyond your reach" (see Evidence of J. Simser, Transcript, April 9, 2021, pp 36–37). Investigation of money laundering offences is also hampered by the fact that criminals deliberately exploit weaknesses in the anti–money laundering regimes of different countries: Evidence of G. Clement, Transcript, April 9, 2021, pp 35–36.

46 Exhibit 828, Leuprecht Report, p 44.

Chapter 41
A Dedicated Provincial Anti–Money Laundering Unit

One of the key recommendations made in this Report is the creation of a specialized provincial anti–money laundering investigation and intelligence unit to lead the law enforcement response to money laundering in this province. While I acknowledge – and appreciate – the submissions of the BC Civil Liberties Association concerning the effectiveness of specialized police units in the fight against money laundering, I am persuaded that the investigation of sophisticated money laundering activity by a specialized, multidisciplinary team has the potential to significantly disrupt organized crime activity in this province and that the new provincial unit will make substantial progress in the fight against money laundering if it is properly structured and resourced.

I also expect that the cost of the new unit will be offset through the increased asset forfeiture opportunities created by that unit, though I would not tie the funding of the new unit to that revenue to avoid potential conflicts. The New Zealand experience (reviewed in Chapter 39) demonstrates that a focused and effective asset forfeiture regime can have a significant impact on organized crime, and lead to substantial financial benefits for the state, which can be used to fund a range of important government services.

In what follows, I review what I consider to be the essential components of the new unit with particular emphasis on its location and governance, mandate, and organizational structure.

Location and Governance

While I have considered whether the new unit should be located (or "housed") within the RCMP provincial police force as suggested by the RCMP in its January 22, 2018 business case,[1] I have concluded that the Province would be better served by placing the new unit within the Combined Forces Special Enforcement Unit (CFSEU) framework for three principal reasons.

First, the placement of that unit within CFSEU gives the Province a higher degree of oversight and visibility into its operations. Unlike the RCMP provincial police force, CFSEU has its own board of governance which is responsible for providing policy objectives and strategic direction to the officer-in-charge of CFSEU.

The board of governance is accountable to the provincial minister of public safety and includes representatives from various federal, provincial, and municipal police agencies, including the commanding officer of "E" Division (who chairs the board of governance), the "E" Division criminal operations officer, the commander of the RCMP's Lower Mainland District and the chief constable of the Vancouver Police Department.[2]

The Policing and Security Branch also meets regularly with the officer-in-charge along with the heads of each of the fenced-funding units and has a compliance and evaluation group that monitors the performance of CFSEU on an ongoing basis.[3]

While there is also communication between the Policing and Security Branch and the RCMP provincial police force, that communication is less specific and less frequent.[4]

Second, there is a very real risk that the creation of a new unit within the RCMP provincial police force would have a cascading effect on core police services. A decision note prepared for the minister of public safety in connection with the Financial Intelligence and Investigations Unit (FIIU) proposal indicates that the pressures and resource shortages in front-line policing have reached a "critical point" and I have serious concerns about further "hollowing out" the provincial police force.[5]

Third, the placement of the new unit within CFSEU gives the Province greater flexibility to hire *and retain* police officers and civilian specialists with the knowledge, skills, and abilities to do the work. Mr. Rideout summarized these factors as follows:

1 A full discussion of the RCMP's business case can be found in Chapter 39.

2 Exhibit 803, Doug LePard and Catherine Tait, Review of the Joint Illegal Gaming Investigation Team (JIGIT) (November 2020) [LePard Report], pp 72–73.

3 Evidence of W. Rideout, Transcript, April 6, 2021, p 37. I note as well that CFSEU maintains the provincial tactical enforcement priority (PTEP) which may assist in identifying high-level targets involved in money laundering: see Evidence of C. Pecknold, Transcript, April 6, 2021, p 67; Evidence of T. Steenvoorden, Transcript, April 6, 2021, p 68.

4 Evidence of W. Rideout, Transcript, April 6, 2021, p 37.

5 Exhibit 800, Ministry of Public Safety and Solicitor General, Policing and Security Branch, Decision Note (June 7, 2019), p 4; Evidence of W. Rideout, April 6, 2021, pp 116–17. A full discussion of the FIIU proposal can be found in Chapter 39.

> I think it's an important distinction [that] simply providing the funding to the provincial force doesn't necessarily immediately solve the problem because as you accurately describe, … those experienced resources have to come from somewhere. So if you stand up a unit say like FIIU and you need 30 police officers immediately, you need to pull them from other locations, detachments, provincial resources that are often already under great pressure, and as described in the provincial force there's already some resource gaps that exist on an ongoing basis; federal resources have similar if not greater pressures.
>
> So when we're establishing significant units we have to look at the global picture and understand that when we look to staff large units there is [a] cascading effect on the provincial force and it has to be considered holistically. I think part of the reason that this proposal and others look at building some permanent legacy infrastructure within our designated policing unit such as OCABC is that it can operate outside of that environment so that it's not having a direct impact at least permanently on the ebb and flow of the provision core resources.
>
> In other words you're essentially building a separate police agency that is integrated with the RCMP. I think that also provides the ability to hire specialists rather than your traditional gun-wearing police officer but somebody with the right academic and/or experienced credentials to do this kind of work.[6]

Likewise, the FIIU proposal states that "tethering specialized units, such as the FIIU, to the federal RCMP or a provincial force that used the 70/30 cost-share would compromise human resource capacity and expertise, staffing levels, provincial priorities, information flow, and the agility required to respond to emerging issues."[7]

I want to be clear, however, that what is contemplated by this recommendation is the contribution of *additional* resources to CFSEU using the existing Organized Crime Agency of BC (OCABC) structure. This will require a significant investment by the Province and does not appear to have happened with the Joint Illegal Gaming Investigation Team (JIGIT), which has mostly been staffed by RCMP officers drawn from the RCMP provincial police, as opposed to new members seconded by OCABC).[8]

6 Evidence of W. Rideout, April 6, 2021, pp 116–17. For evidence with respect to the need to *retain* police officers with the necessary knowledge and expertise to conduct complex investigations, see Evidence of D. LePard, Transcript, April 7, 2021 (Session 1), pp 18–20.

7 Exhibit 60, Anti–Money Laundering Financial Intelligence and Investigations Unit – Draft Proposal (May 7, 2019) [FIIU Draft Proposal], pp 4, 15. I would add simply that CFSEU is seen by municipal police departments as a "capable organization" with the ability to take on significant money laundering files, possibly in collaboration with a major municipal police department: Evidence of C. Mullin, March 30, 2021, p 51; Evidence of B. Crosby-Jones, March 30, 2021, p 51.

8 Exhibit 803, LePard Report, p 60. Of course, there may also be RCMP officers and officers from municipal police departments who are seconded to the new unit.

It is also essential that the new unit does not distract from the critically important work that CFSEU is already doing in other areas. My objective in making this recommendation is to maintain the "core expert teams" designed to address gang violence but add a team of financial crime specialists to enhance its ability to disrupt organized crime activity.[9]

Mandate

In my view, the mandate of the new unit should be to lead the law enforcement response to money laundering in this province by (a) identifying, investigating, and disrupting sophisticated money laundering / proceeds of crime offences occurring in the province; and (b) training and otherwise supporting other investigators in the investigation of money laundering / proceeds of crime files of low to medium complexity. There may also be a role for the new unit in liaising with regulatory bodies, conducting public outreach activities, and advocating for legislative and regulatory change.[10]

I would not limit the mandate of the new unit to one sector of the economy, nor would I limit it to one type of offender (though I would note that most serious money laundering activity is committed by or on behalf of organized crime groups).[11]

In carrying out this mandate, the new unit will need to be aware of federal efforts to tackle money laundering and should work closely with Federal Serious and Organized Crime's (FSOC) Financial Integrity Unit in developing a coordinated, co-operative, and collaborative approach to the investigation of money laundering activity. I note, in particular, that FSOC may be better placed to investigate money laundering activity involving transnational organized crime groups, as well as specific types of money laundering (such as trade-based money laundering) that fall within the exclusive jurisdiction of the federal government. Conversely, the provincial unit may be better placed to investigate money laundering activity that predominantly occurs within the province. That said, the provincial unit should not shy away from targeting or investigating national or even international organized crime groups who seek to launder illicit proceeds through the BC economy or hold illicit proceeds in this province (for example, in real estate).

I understand that FSOC and CFSEU currently have an excellent relationship and I have full confidence that will continue when the new unit is created.

I also expect that both units will be fully immersed in new files almost immediately and that there will be many opportunities for collaboration.

9 On this point see Exhibit 799, Ministry of Public Safety and Ministry of Attorney General, Joint Briefing Note (February 7, 2018), pp 2–3.

10 While money laundering and proceeds of crime offences are separate offences involving different elements, it is my expectation that the new unit will come across a variety of proceeds of crime offences in the conduct of money laundering investigations. For this reason, it makes a great deal of practical sense for the new unit to investigate both offences.

11 In this respect, the mandate of the new unit fits well within the CFSEU structure.

For these reasons, I do not see any redundancy in having two units charged with the investigation of sophisticated money laundering activity within the province. To the contrary, the existence of two units, each with a slightly different mandate, may create some synergy in the law enforcement response and allow each unit to focus on money laundering activity that properly falls within its mandate.[12]

Organizational Structure

With respect to the structure of the new unit, I believe it is essential for the new unit to have both an intelligence division and an enforcement division in order to mount an effective response to money laundering.

Intelligence Division

One of the key components of an effective money laundering investigation unit is an intelligence division capable of developing actionable intelligence concerning money laundering threats. While FINTRAC was created to fulfill that role, it has proven to be incapable of reliably producing proactive, actionable intelligence concerning money laundering threats (see Chapter 40). Further, it does not do everything needed from an intelligence perspective. For example, FINTRAC does not conduct interviews, perform surveillance, or cultivate informant information.

It is therefore essential that the Province put in place additional measures to identify money laundering activity.

It is also important that the Province put in place a deliberate triage process to ensure that law enforcement resources are put toward money laundering investigations that provide maximum disruption of organized crime networks.[13]

A robust intelligence division would help to ensure that investigators receive timely intelligence with respect to money laundering activity in the province and are able to tailor their investigations to the most serious threats.[14]

12 For example, where FSOC comes across money laundering activity that falls within the federal prioritization matrix but has important implications for the province, it could refer that file to the provincial unit for investigation. Likewise, there may be files the provincial unit refers to FSOC because the nature of the investigation demands that it be investigated by the RCMP.

13 On these points, see Evidence of G. Clement, April 9, 2021, p 35; Evidence of C. Leuprecht, April 9, 2021, pp 62–63, 141–42; Evidence of N. Maxwell, January 14, 2021, pp 92–93.

14 While the Province could also create a separate financial intelligence unit like FINTRAC to receive reports from financial institutions and other reporting entities, that unit would suffer from many of the same problems as FINTRAC, including the fact that disclosure could only be made to law enforcement where there are reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of a criminal offence. Moreover, information included in that database would be largely the same as the information in the FINTRAC database. For additional evidence concerning the utility of developing an intelligence division within the money laundering intelligence and investigation unit based on the New Zealand model, see Evidence of C. Hamilton, May 12, 2021, pp 17–18. Law enforcement has access to a broad range of information, including information from police databases, confidential sources, and active investigations, which can significantly enhance their ability to identify and target money laundering activity.

The FIIU proposal recommends the creation of an intelligence division made up of a senior management group along with the following support teams:

- an intake team responsible for receiving information from FINTRAC, other police agencies, regulators, banks, confidential informants, the media, and other sources;
- an intelligence analysis support team responsible for gathering and compiling information from various open and closed sources, assisting with the creation and analysis of intelligence work product, and liaising with foreign partners;
- a covert asset support team responsible for the recruitment, development, and management of confidential informants; and
- an administrative and operations support team responsible for human resources, IT support, media relations, and various other tasks.[15]

While I am not inclined to make any specific recommendations with respect to the number of sworn officers and civilian analysts assigned to the intelligence division, the staffing level identified in the FIIU proposal is the minimum that will be required.[16] I would add that, in staffing this division, and the investigative division, the province should prioritize expertise and experience relevant to the investigation of money laundering and proceeds of crime offences. The mandate of the new provincial unit is to identify and disrupt sophisticated money laundering operations. A high level of knowledge and expertise will be required if the new unit is to achieve those objectives.

I would also emphasize the need for the new intelligence division to be proactive in its efforts to identify money laundering activity and take active steps to seek out information concerning money laundering threats. Land title records, court filings, and other government and commercial databases can be valuable sources of information, especially when combined with information in the possession of law enforcement.[17] Moreover, the intelligence division should be making use of conventional law enforcement tools such as witness interviews, surveillance, and informant information to identify money laundering activity.

I also believe that the intelligence division should have primary responsibility for the development of tactical information-sharing initiatives with public and private sector entities within the province. While I appreciate that there are a number of challenging legal issues that arise in this context, I believe that the development of tactical information-sharing partnerships is a critical step in addressing the money laundering threat. I also believe it is essential that the intelligence division continue to explore new ways of sharing tactical information with stakeholders in the public and private sector.

15 Exhibit 60, FIIU Draft Proposal, pp 20–22.

16 Ibid.

17 I would add that there are emerging resources that should prove valuable, such as the provincial Land Owner Transparency Registry and the new pan-Canadian corporate beneficial ownership registry discussed in Chapter 24.

In making these comments, it strikes me that the legal issues associated with tactical information sharing are highly contextual. For example, the issues that arise in the gaming sector may be very different from the issues that arise in the real estate sector. Likewise, the issues that arise with public sector entities may be very different from the issues that arise in the private sector.

With that in mind, it may be advisable for the new unit to take a sector-specific approach and explore independent information-sharing agreements and initiatives that respond to the specific issues that arise in each sector of the economy. The approach taken in the early days of Project Athena may be a useful way of approaching the *Charter* issues that arise in this context.[18]

As I understand that approach, law enforcement entities would provide tactical information, such as the name of a potential target, to stakeholders in the public and private sector (such as financial institutions). If those stakeholders had relevant information to provide, they would respond by filing reports with FINTRAC, referencing Project Athena. FINTRAC would analyze that information and disclose it to law enforcement if it was satisfied that there were reasonable grounds to suspect the information would be relevant to the investigation or prosecution of a money laundering or terrorist financing offence.

Investigation Division

At the heart of the new unit is an investigation division capable of taking on complex money laundering investigations. The FIIU proposal recommends the creation of an investigation unit supported by a surveillance support team, a proceeds-of-crime support team, a civil forfeiture support team, and an international support team.[19] The proposed investigation team is comprised of various investigators, criminal analysts, and disclosure facilitators who would perform some or all of the following duties:

- arresting suspects;
- handling the seizure of exhibits;
- providing witness security and management;
- preparing and executing judicial applications;
- conducting structured interviews and interrogations; and
- preparing Reports to Crown Counsel and supporting prosecutions, including by giving evidence in the Provincial and Supreme Court of British Columbia.[20]

18 A full discussion of Project Athena can be found in Chapter 39.

19 The FIIU proposal contemplates that 15 of the 29 officers would be seconded by OCABC, with nine officers being seconded from the RCMP and five officers being seconded by municipal police departments: Exhibit 60, FIIU Draft Proposal, p 23.

20 Ibid, p 24. The FIIU proposal also contemplates that most, if not all, of these investigations would be conducted in accordance with major case management principles.

In terms of staffing, the numbers identified in the FIIU proposal are the minimum that will be required to mount a robust response to the money laundering problem facing the province. Moreover, it is essential that the new unit make efforts to hire *and retain* police officers and civilian staff with the requisite knowledge, skills, and abilities to conduct effective money laundering investigations. Professor Leuprecht testified that the investigation of sophisticated money laundering activity is "not something a regular investigator in a law enforcement agency or your regular sort of prosecutor can pick up. It requires very particular skill sets."[21] Likewise, Mr. Clement emphasized the need for investigators with the proper skill set who are going to be there for the long term:

> Setting this up and going about it, I think there has to be right at the start recognition that this requires specialized skills and we've got to get away – and this is a fundamental problem within law enforcement that they are still designed under paramilitary frameworks and resulting in promotion versus paid for skill. *So if you're going to get a unit and invest all that time and money, you want to have people that have longevity and the proper skill set going in. You need to have these people that are as I said going to be there for a long term. And then what you want to have is an allocation of positions or full-time equivalents that are, as I said, concentrated in this and are allowed to expand their abilities through training, et cetera*. [Emphasis added.][22]

I expect that most of the investigations undertaken by the new unit will be complex, resource-intensive investigations requiring the implementation of major case management principles. It is therefore essential that the new unit have the infrastructure and technology in place to prepare disclosure packages and otherwise ready cases for trial before the information is sworn and the *Jordan* clock starts.

I would also highlight Professor Sharman's evidence with respect to the "pattern of incentives" faced by many law enforcement officials.[23] Based on confidential interviews with law enforcement officials in the United Kingdom and Australia, he concluded that law enforcement careers are often hurt more by investigations that fail than ones that succeed. In this sense, the career incentive is to avoid investigating crime or to take on simple cases that can be concluded quickly, rather than the time-consuming, complicated investigations needed to effectively address financial crime.[24] If the new unit is to make a meaningful difference in the fight against money laundering it must be innovative in its approach and create a culture where law enforcement officials are incentivized to take on challenging investigations and bring forward new initiatives.

21 Evidence of C. Leuprecht, Transcript, April 9, 2021, pp 97–98.

22 Evidence of G. Clement, Transcript, April 9, 2021, p 110. See also Evidence of J. Simser, Transcript, April 9, 2021, pp 126–27. As set out above, the placement of the new unit within CFSEU will help to ensure that it can hire and retain officers with the requisite training and expertise. To attract and retain individuals with specialized expertise in financial crime and money laundering (forensic accountants, lawyers, etc.) it may also be necessary to pay a premium to compete with the private sector (see below).

23 Exhibit 959, Jason Sharman, *Money Laundering and Foreign Corruption Proceeds in British Columbia – A Comparative International Policy Assessment*, pp 7–8.

24 Ibid.

Other Necessary Elements

While the intelligence and investigative divisions are at the heart of the new provincial unit, there are a number of additional components that must be in place for it to be successful in the investigation of money laundering / proceeds of crime offences.

First, it is essential that the new unit have access to prompt, ongoing legal advice with respect to investigations undertaken by investigators.

While various models have been proposed for the provision of that advice, I tend to prefer the WorkSafeBC model, which involves the creation of a stable of prosecutors with the knowledge and expertise to give advice to investigators and prosecute money laundering / proceeds of crime offences where the evidence is sufficient to support those charges.[25]

I would therefore encourage the new unit to work with the BC Prosecution Service and the Public Prosecution Service of Canada to identify prosecutors with training and expertise in this area, who are available to provide prompt legal advice.

In order for the WorkSafeBC model to be successful, the BC Prosecution Service (and, if applicable, the Public Prosecution Service of Canada) will need to develop training programs to ensure that prosecutors assigned to these groups have the requisite knowledge and expertise to provide informed advice on money laundering / proceeds of crime issues. These programs should include substantive training on money laundering risks, vulnerabilities, and typologies. They should also include training on the investigative techniques needed to conduct a thorough investigation into such activity, as the legal advice sought by investigators may relate more to these techniques than money laundering risks, vulnerabilities, and typologies.

Second, it is essential for the new unit to develop and maintain a team or "cadre" of money laundering and financial crime experts who can help investigators understand the evidence and give expert evidence in court. One need only review Simon Lord's description of the UK's expert evidence cadre to appreciate the value of this expertise:

> In around about … 2008, 2010, when we started dealing more with some of the more complicated types of money laundering, there was a situation [that] arose where cases were failing because people didn't understand them essentially. The people who were presenting the case in court, so the investigators and sometimes the prosecutors themselves, didn't understand it. The judge didn't necessarily have much experience in dealing with this type of activity. And when you're in that type of situation, the jury aren't going to get it either.
>
> So the NCA [National Crime Agency] already had at this point in time an expert cadre in respect of drug trafficking. So people who could go

25 A full discussion of the WorkSafeBC model can be found in Chapter 39.

> into court and to explain the sort of evidence that you typically get in a drug trafficking investigation – so things like ledgers and drug prices and cutting agents and various different things like that. And so … it was thought a sensible idea to see whether we could end up with a bunch of individuals, a cadre of individuals who were subject matter experts in their own right, who could demystify money laundering to a jury to enable them to understand the evidence properly and to make the appropriate decisions based on the evidence in front of them.
>
> …
>
> What we can also do is, if we are approached by a law enforcement body, and they might say to us, okay, well, we're doing a drug trafficking investigation and maybe a money laundering investigation, and there's a guy in this investigation who's one of our suspects and he runs an MSB, money service business. We haven't got a clue what we need to ask this guy because we don't understand how MSBs work.
>
> And in a situation like that, what one of us might do is say, okay, we will provide advice to your investigation, and it might be the situation that … we will sit down with you and help to plan in interview strategy for the MSB owner when he's arrested and what have you.[26]

While the primary role of these experts should be to support the work of the specialized anti–money laundering unit, they may also be valuable source of information and evidence for other investigators conducting money laundering investigations.[27]

Third, I am satisfied there is a pressing need to create more surveillance capacity within CFSEU to support the activities of the new unit. At the time of writing, there are four surveillance teams within CFSEU, which are shared among the various units and may also be used to assist external units such as the Integrated Homicide Investigation Team. Because these resources are, quite properly, allocated to investigations where there are public safety concerns, there are often no surveillance resources available to assist other units such as those investigating financial crime.[28]

The LePard Report notes that "[t]he only way to address this resource gap is to create a surveillance team that prioritizes JIGIT's needs" and asserts there is precedent for such an initiative.[29] While I appreciate the significant cost associated with the creation of a new surveillance unit, I am satisfied that the ability to conduct proper surveillance is critical

26 Evidence of S. Lord, Transcript, May 28, 2020, pp. 35–36, 40. For greater certainty, the expert cadre can be staffed by members of the new unit as long as they develop the requisite knowledge and expertise to give expert evidence in court proceedings. These experts may also be able to assist front-line investigators in other units who are conducting money laundering / proceeds of crime investigations.

27 They may also be able to support the work of the Civil Forfeiture Office.

28 Exhibit 803, LePard Report, pp 61–62.

29 Ibid, p 62.

to the success of the new unit, and confident that the associated cost will be offset by new asset forfeiture opportunities. I therefore recommend that the Province ensure that there is sufficient surveillance capacity within CFSEU to support the work of the new unit.

I anticipate that this will require additional funding and a direction that at least one surveillance team prioritize the work of the new unit.

Recommendation 94: I recommend that the Province ensure that there is sufficient surveillance capacity within the Combined Forces Special Enforcement Unit to support the work of the new dedicated provincial money laundering intelligence and investigation unit.

Fourth, it is essential that the new unit incorporate or otherwise have access to individuals with expertise in a wide range of disciplines. While legal experts and forensic accountants are usually cited as the professions that could provide the most assistance, there is also a very real need for computer experts, including those with expertise in blockchain technology.

For these reasons, the new unit must be given the flexibility to hire or retain new experts in order to respond to new and emerging typologies.[30] It is also important that the new unit have the flexibility to consult with experts from the private sector where it would be of assistance to investigators.

I appreciate that these measures will add to the size and cost of the new unit, but I strongly believe they are essential to its success and strongly recommend that the provincial government ensure they are incorporated into the new unit.

Performance Metrics and Reporting

In order to ensure that the new unit is properly resourced, and effective in fulfilling its mandate, it is essential that the Province track its performance.

I believe the following metrics are of critical importance in tracking the performance of the new unit (though there may well be other important metrics):

- number of sworn members assigned to the new unit, including the intelligence and investigation divisions;
- number of civilian members assigned to the new unit, including the roles and responsibilities of these members;

30 In some cases, it may also be necessary for the new unit to invest in the technology that would allow these experts to identify, detect, and disrupt money laundering activity. For example, the use of after-market software tools such as Chainalysis and CipherTrace are of considerable importance in addressing money laundering activity involving cryptocurrency.

- number of money laundering referrals received from regulators and private sector entities;
- number of money laundering and proceeds of crime investigations commenced by the new unit;
- number of arrests made;
- number of money laundering and proceeds of crime investigations that resulted in charges being recommended;
- number of money laundering and proceeds of crime investigations that resulted in charges being approved;
- number of money laundering and proceeds of crime investigations resulting in guilty pleas / convictions;
- number of referrals to other provincial or federal units;
- number of outside files in respect of which assistance was provided;
- number and value of assets seized and/or forfeited in connection with criminal proceedings; and
- number of cases referred to civil forfeiture.

While I appreciate that these metrics are not the sole measure of success,[31] they provide a good starting point for evaluating the performance of the new unit and should be reported to the CFSEU board of governance and the Policing and Security Branch regularly. The AML Commissioner should also be given access to these statistics in order to fulfill his or her mandate.

While the AML Commissioner should be at liberty to report on the performance of the new unit as he or she sees fit, it is important to continually assess the performance of the new unit, and I recommend that the AML Commissioner undertake a comprehensive review every five years to ensure it remains relevant and effective.

Recommendation 95: I recommend that the AML Commissioner conduct a comprehensive review of the provincial money laundering intelligence and investigation unit every five years to ensure it remains relevant and effective.

31 For example, it may be preferable for the new unit to focus on a small number of major investigations with significant disruption potential, as opposed to a large number of less serious investigations.

Relationship with Regulators

Finally, it is important that the new unit develop a good working relationship with provincial regulators such as the BC Financial Services Authority and the Law Society of British Columbia. At present, there is a perception among regulators that law enforcement is not interested in information about potential money laundering activity. The new provincial unit must work to make its genuine interest in receiving investigative leads known to regulators. It should also ensure that it brings relevant information to the attention of regulators where it comes across instances of misconduct, even if the evidence is insufficient to pursue a criminal investigation.

In many cases, regulators have significant investigative powers including, in the case of the Law Society, the power to review information that would otherwise be subject to privilege. These powers can be deployed much more effectively if law enforcement agencies bring relevant information to their attention.

Conclusion

The investigation and prosecution of money laundering / proceeds of crime offences is one of the cornerstones of an effective anti–money laundering regime. Not only does it have a significant deterrent effect on organized crime activity, but it also allows for the identification of assets for seizure through the criminal or civil forfeiture process (see Chapters 42 and 43). In recent years, however, law enforcement agencies have failed to respond to the explosive growth of money laundering in this province, allowing those involved in such activity to operate with relative impunity. I am particularly troubled by the apparent disconnect between federal law enforcement priorities and the situation on the ground in British Columbia (where hundreds of millions, if not billions of dollars are being laundered through the BC economy).

While the failure to respond to the money laundering threat has various causes, I believe the RCMP's decision to disband Integrated Proceeds of Crime units, without putting in place the necessary infrastructure or resources to address the ever-increasing volume of illicit funds being laundered through the BC economy, is one of the primary causes of the poor law enforcement results in this province. If the province truly wishes to address the money laundering problem, it must take matters into its own hands and invest in the creation of a specialized money laundering intelligence and investigation unit to lead the law enforcement response in this province. It is also essential that law enforcement units charged with the investigation of profit-oriented criminal offences consider money laundering / proceeds of crime charges at the outset of their investigations and conduct a financial investigation with a view to pursuing these charges and identifying assets for seizure and forfeiture.

While the investigation and prosecution of money laundering offences has many challenges and complexities, it is my sincere belief that meaningful progress can be made on this issue through sustained effort by law enforcement bodies.