

**PROCEEDINGS AT HEARING
OF
MAY 12, 2021**

COMMISSIONER AUSTIN F. CULLEN

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May 12, 2021

(Via Videoconference)

(PROCEEDINGS COMMENCED AT 12:00 P.M.)

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

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

MS. ROSE: Thank you, Mr. Commissioner. Today we have with us a witness from the New Zealand Police, Detective Inspector Craig Hamilton, who I understand will be sworn.

THE COMMISSIONER: Thank you.

**CRAIG HAMILTON, for the
commission, affirmed.**

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

THE WITNESS: Craig James Hamilton. Craig spelled C-r-a-i-g, Hamilton spelled H-a-m-i-l-t-o-n.

THE REGISTRAR: Thank you.

THE COMMISSIONER: Yes, Ms. Rose.

MS. ROSE: Thank you, Mr. Commissioner. Thank you, Madam Registrar. Madam Registrar, if we could please have Detective Inspector's CV on the screen.

1 **EXAMINATION BY MS. ROSE:**

2 Q Detective Inspector Hamilton, do you
3 understand -- do you recognize this document as
4 being your CV?

5 A Yes, I do.

6 Q Okay. And until yesterday you were the acting
7 Detective Superintendent and national manager of
8 the Financial Crime Group of New Zealand; is
9 that right?

10 A That's right, yes.

11 Q And you periodically fill that role when there
12 is a gap between Detective Superintendents. Do
13 I have that right?

14 A That's right, yes.

15 Q And as of yesterday you have returned to your
16 role as Detective Inspector, national manager of
17 the asset recovery units and money laundering
18 investigation teams, which are part of the
19 Financial Crime Group in New Zealand; is that
20 right?

21 A That's right, yes.

22 Q Okay. And how long have you been in that role?

23 A Since 2017, but I've relieved at various periods
24 prior to that.

25 Q Okay. And prior to that you were a Detective

1 Senior Sergeant in Waikato/Bay of Plenty?

2 A That's right, yes.

3 Q And you've been involved in investigating money
4 laundering and dealing with asset recovery
5 measures since 2000?

6 A That's correct, yes.

7 Q And prior to that you were an investigating
8 officer and a uniformed Constable of the police?

9 A That's right, yes.

10 MS. ROSE: Okay. Mr. Commissioner, I will ask that
11 this CV be entered as the next exhibit, which I
12 believe is exhibit 975.

13 THE COMMISSIONER: I think it's 974, but I stand to
14 be corrected.

15 THE REGISTRAR: 974. That's right.

16 **EXHIBIT 974: Curriculum Vitae of Craig Hamilton,**
17 **Redacted**

18 MS. ROSE: 974. Thank you. Okay. We can take that
19 off the screen. And the next document I'll ask
20 to be on the screen, Madam Registrar, is the
21 mutual evaluation report.

22 Q Detective Inspector Hamilton, do you recognize
23 this document?

24 A Yes, I do.

25 Q And what is this document?

1 activities out there, so we've got a good solid
2 understanding of risk across both our law
3 enforcement and our supervisory framework.

4 In terms of our international cooperation,
5 we perform very well in terms of that
6 assessment. We're well connected. We're a good
7 partner with international law enforcement and a
8 good partner in the supervisory space.

9 In terms of the use of financial
10 intelligence, we use it widely across police and
11 other agencies, which is another good indicator
12 of a good system here in New Zealand. In terms
13 of our investigations, we have improved them in
14 more recent years. I mean, we've always
15 undertaken AML investigations, but it has become
16 more of a focus to us in more recent years and
17 the quality of our investigations is very good.
18 The quantum of our investigations or the number
19 of them, there's a bit of room for improvement
20 there, but certainly our ability to investigate
21 some of the most complex money laundering is
22 something we can do.

23 In terms of forfeiture that's a real
24 strength of New Zealand, and I'm sure we'll
25 discuss that later on this morning. But that's

1 an area that in the last ten years we have
2 really focused on as a police organization and
3 that is one of the highlights of our report. In
4 terms of areas for improvement, the area around
5 targeted financial sanctions and those sorts of
6 areas in the prevention space needs a bit more
7 work. We do need to ensure that the reporting
8 entities understand their obligations in that
9 space, and there's a lot of room for improvement
10 in that area.

11 In terms of our sort of new reporting
12 entities, our phase 2 reporting entities, it's
13 our lawyers and accountants and high value
14 dealers. They have sort of come on more
15 recently. So again, supervisory compliance in
16 that space and the need to ensure they
17 understand what the requirements is another area
18 that we need to do a little bit more work on.
19 But having said that, supervisory or supervision
20 of reporting entities is actually largely pretty
21 good. You know, there are -- it's a big part of
22 our system ensuring that all reporting entities
23 are complying with the AML obligations. But
24 having said that, you know, there is room and
25 acknowledged room for improvement in that space.

1 In terms of terror financing, you know, we
2 had some -- we've only had one significant
3 investigation we've undertaken here in our
4 country and that occurred a couple of years ago.
5 I'm sure you're familiar with it. And that was
6 reviewed as part of the mutual evaluation and it
7 identified again that our investigative skills
8 in that space were very good.

9 In terms of -- the final parts of the report
10 are around some of those prevention measures
11 around terrorism-related activities. Both those
12 two areas, the final two immediate outcomes,
13 require a little bit more work. But again, you
14 know, that's probably in alignment with our risk
15 profile. So it's probably a high level sort of
16 overview of our effectiveness.

17 In terms of our technical compliance, you
18 know, we do need to do some work in terms of
19 bringing our legislation up to speed. We are
20 doing -- starting a review of it right now, a
21 statutory review, and that should resolve most
22 of those issues identified through the mutual
23 evaluation. But having said that, despite those
24 sort of deficiencies in the legal frameworks,
25 you know, overall we're very pleased with the

1 report. We think it's an accurate report. Our
2 performance is well reflected and as you would
3 have read if you reviewed the report that our
4 performance is actually very good.

5 Q So overall a positive review?

6 A Absolutely.

7 MS. ROSE: Okay. Madam Registrar, we can take this
8 down off the screen now. Thank you.

9 Q Detective Inspector Hamilton, could you briefly
10 describe the Financial Crime Group structure,
11 the roles and responsibilities of the respective
12 work groups and the performance objectives and
13 measures of that group?

14 A Yeah. Okay. So the Financial Crime Group sits
15 within the criminal investigations part of New
16 Zealand Police. We have one police service in
17 our country and that is obviously split into
18 various parts, you know, the response work and
19 then investigations.

20 So within investigations is the Financial
21 Crime Group. Within that group there are three
22 subgroups. The first one is our financial
23 intelligence unit and that's a function of
24 receiving financial intelligence analysis and
25 dissemination of that intelligence. And the

1 second group is our asset recovery teams, which
2 are scattered throughout New Zealand and in fact
3 we have a presence in every police district.
4 There's the 12 police districts across New
5 Zealand. We have a footprint in those
6 districts. And then finally we have our money
7 laundering investigative teams which are in
8 Auckland, our largest city. Those teams deal
9 with that sort of high end facilitator type
10 money laundering involving the full range of
11 covert investigative techniques, you know,
12 wiretapping, undercover agents, that sort of
13 thing to target those high risk-high,
14 high-impact money launderers. That's the three,
15 you know, parts of our broader group.

16 Q And so I understand that the police have
17 implemented both a prosecution target with
18 respect to money laundering as well as an asset
19 recovery target. Could you tell us about those
20 targets.

21 A Yeah, the target for asset recovery with respect
22 to that first was -- has since moved on. We
23 concluded that target at the end of this month,
24 the end of June, so from 1 July that target
25 disappears off our sort of strategic, high-level

1 documents. The concept around the target, and
2 it was a \$500 million target over four years,
3 our strategy is on a one-page document. Our
4 police strategy sits on a single page document.
5 To reinforce the need to target criminal wealth
6 and illicit income the number 500 was put on
7 that strategy document as an objective for the
8 whole organization.

9 We're about to achieve that target. We'll
10 probably achieve it tomorrow. And it's been
11 useful in that it reflects our strategy of
12 targeting income from crime, disrupting criminal
13 activities in terms of illicit flows of income
14 and repatriating, you know, illicit wealth back
15 into the community to treat and repair
16 communities that have been affected largely by
17 drugs and the like. So although the number 500
18 is a number, it actually is simply a strategy
19 that is displayed on that document as a number.

20 And it's really been quite useful in terms
21 of, you know, engaging our whole organization in
22 terms of, you know, pursuing illicit wealth.
23 You know, money is a driver of much crime but
24 because of the existence of a strong sort of,
25 you know, AML framework, it's also organized

1 crime's particular -- sort of biggest
2 vulnerability. So targeting on money is -- in
3 addition to targeting on, you know, illicit
4 commodities has been successful for us.

5 In terms of the money laundering
6 prosecutions, those targets aren't sort of set
7 as a performance measure. It's really more of
8 an indicator when we set those teams up in terms
9 what sorts of volumes of work they would be
10 dealing with. And some initial numbers were put
11 through in some of our strategy documents, sort
12 of 20 to 40 prosecutions. We're sitting on
13 about 30, I think, and, you know, we are
14 performing in that mid-range with those, but
15 some of those investigations we're undertaking
16 are quite complex, lengthy, very time-consuming
17 investigations targeting, you know, our risk
18 areas. And that involves risk of money leaving
19 New Zealand to fund the acquisition of illicit,
20 you know, products or drugs coming into New
21 Zealand.

22 So as well as sort of strengthening our
23 borders in terms of stopping stuff crossing our
24 border, we're also targeting areas where, you
25 know, funds can leave our country to finance

1 transnational crime or transnational imports of
2 drugs. So those investigations are very
3 complex. Very -- sort of our strong -- very
4 strong investigations were put forward to the
5 mutual evaluation team. I think we showed them
6 close to a hundred and they had a good
7 assessment in terms of, you know, what we're
8 doing in that space.

9 Q And when you say that those prosecutions can be
10 quite lengthy, I understand that the average
11 length of time for a money laundering
12 prosecution is about two years, but some of the
13 more complex ones can be a lot longer than that.
14 Do I have that right?

15 A That's right, yes. Some of them have been
16 multiple accused. Lots of surveillance-type
17 information and data, lots of financial
18 materials, evidence obtained from offshore
19 foreign jurisdictions which makes them, you
20 know, lengthy prosecutions.

21 Q And then when you were referring to the
22 \$500 million target over four years for asset
23 recovery, I take it that that's in forfeitures,
24 not simply restrained funds?

25 A Yeah, that was in restrained funds. In

1 restrained funds. And the reason restrained
2 because forfeiture often trails behind criminal
3 prosecutions or takes a little bit longer to
4 process, and we often can't control that because
5 of often when forfeiture occurs is dependent on
6 the respondent's behaviour, so it's a restraint
7 value.

8 Q I see. And that's under your criminal
9 recovery -- your criminal forfeiture program not
10 the civil forfeiture or is it both?

11 A That's a civil forfeiture program, but a small
12 amount of it is criminal forfeiture. That's
13 instruments of crime but the vast majority of it
14 is non-conviction based restraint in forfeiture.

15 Q Okay. And turning back to one of the other
16 branches of the Financial Crime Group, the
17 financial intelligence unit, one thing I was
18 curious about in reviewing the mutual evaluation
19 report is the FIU's prioritization of suspicious
20 activity reports. So could you just tell us a
21 little bit about how the FIU approaches its role
22 in processing suspicious activity reports. I'm
23 not sure if that's an area of expertise for you
24 or not.

25 A Yeah, well, I can speak to that. So when

1 reports come through, we look at them all. And
2 some of those are prioritized for analysis and
3 then dissemination quickly. Some of them may
4 well go to, you know, police districts. Some of
5 them might come to the asset recovery teams or
6 the AML teams. Some of them may go to the
7 supervisors or to tax. So they're screened and
8 filtered and disseminated.

9 Some of those were extremes that we see come
10 through are placed on a monthly sort of report
11 that we disseminate to districts simply to tell
12 them what -- you know, what we're seeing in some
13 of the financial data. That sort of information
14 would contain generally a name of a suspect,
15 suspected criminality and a bit of brief detail
16 around the transactions that have been observed.
17 So -- and that gets distributed across the
18 entire country to the intelligence units so
19 that, you know, criminals who will move around
20 the country, it just brings awareness as to sort
21 of, I guess, hot targets that may be subject to
22 investigation within the districts.

23 Q Okay. And I just want to ask you another more
24 specific question about that.

25 MS. ROSE: And so perhaps I'll ask, Madam Registrar,

1 if you could bring up the mutual evaluation
2 report. And if we could turn to the PDF
3 page 52, please. And zoom in on paragraph 159.

4 Q And so, Detective Inspector Hamilton, here this
5 paragraph is describing a process in which the
6 FIU is using a set of keywords to cross-check
7 the suspicious activity reports against the
8 police database. You see that there?

9 A Yes.

10 Q And it goes on to describe 20 percent of those
11 SARs are prioritized and escalated for review
12 and while the remaining 80 percent are not
13 individually reviewed but still are maintained
14 within the database. You see that description
15 there?

16 A Yes.

17 Q And that's accurate?

18 A Yes. So some -- the words are words like "money
19 laundering," "drugs," "cannabis." A range of
20 sort of words that might be feature in a
21 suspicious transaction report that may well, you
22 know, require, you know, closer attention.

23 Q Right. And I wonder if you could just speak to
24 the efficiency or the effectiveness of this
25 approach or why this approach has been

1 undertaken.

2 A Yeah, so in terms of effectiveness, we think it
3 can be a lot more effective and the reason is is
4 because the keywords are going out across
5 individual reports. So just to expand on this
6 point because it is an interesting point, you'll
7 note in the report that there was a comment
8 around the use of technology in an FIU. And we
9 have -- we are really well advanced in terms of
10 bringing in new technology that will start
11 looking at the data in its entirety and matching
12 up pieces of data as opposed to relying on
13 triggers that might be contained in individual
14 pieces of data, if you understand that concept.

15 So how that will work is that not only will
16 it be looking for transactions, sets of
17 transactions, locations where transactions are
18 occurring both internationally and domestically,
19 it will be looking at transactions as they
20 relate to legal persons by automatically
21 searching across the companies register in a
22 light to bring a much richer picture to the
23 analysts when the transactions are being
24 reported. So all of that will appear in very
25 much an automated way.

1 Ultimately we would like to get it to the
2 point where the data would also be searched
3 across, you know, police files, criminal
4 histories and the like so that, you know,
5 analysts get the very best reports to start
6 piecing together information in an automated
7 way.

8 Further to that, it will start learning. As
9 it starts producing reports and learns from
10 those reports as we feed back into it, you know,
11 the success of the machine learning associated
12 with that data, it will start to improve the
13 quality of the data even more.

14 Q And we've heard -- the commission has heard some
15 testimony from a previous witness Mr. Garry
16 Hughes on the relative merits of including the
17 FIU within the New Zealand Police, and I wonder
18 what your views are on that topic.

19 A Yeah. Certainly in terms of our setting in New
20 Zealand in terms of our organization, it works
21 very well for us. The FIU as part of the --
22 obviously before the CRB, the broader CRB has
23 access to the widest range of information that
24 the police have, including a lot of our covert
25 information, and information is that's coming in

1 on active investigations has access to our, you
2 know, stored intelligence as well as all the
3 public access points. We have staff in there
4 that are investigators, have come through
5 currently the manager of that team is a
6 Detective Sergeant -- Detective Inspector,
7 sorry, but we have brought Detective Sergeants
8 in, Detective Seniors that move through that
9 team. So sort of senior investigators.

10 They're very accessible to our
11 investigations themselves and we've put staff
12 out into investigations, to support
13 investigations as required. So it's very
14 central to our strategies around prevention
15 first. The FIU also forms part of that
16 strategy. That strategy drives some of their
17 decision-making, their deployment and the like.

18 So in terms of contributing to the safety
19 and security of our country, it serves us very
20 well that they are part of police. But, you
21 know, we know that that's, you know, not the
22 same situation in other countries or other
23 jurisdictions but it certainly works very well
24 for us.

25 MS. ROSE: And then -- well, Madam Registrar, we can

1 take this document down off the screen now.

2 Thank you.

3 Q I wonder if you could share some data on the
4 number of suspicious activity reports received
5 by New Zealand's FIU annually and also the
6 resources available to process those reports.

7 A So we have about 30 staff in the FIU with
8 various functions in there, including the
9 compliance team and the analytical team that do
10 the technical work. The numbers are steadily
11 increasing as we -- that's the numbers of
12 reports, as the new reporting entities come on
13 stream. If I look at last year, you know, we
14 had about 12,000 SARs and STRs and, you know, we
15 had large -- much, much larger volumes of
16 reports coming through from international funds
17 transfers and cash, which are our -- you know,
18 our prescribed transaction reporting. So we're
19 getting, you know, increasing amounts of data.

20 In terms of where this data goes, I
21 mentioned before, the various, you know,
22 government agencies we would send that out to,
23 but largely it comes into our national organized
24 crime response and our district policing
25 response. That's where most of that information

1 goes. The initial work-up on that intelligence
2 occurs in the FIU. Each of the districts have
3 their own intelligence capability and
4 investigative capability of course. It will
5 move out to those teams where it can be, you
6 know, enriched even further subject to what
7 information may be known locally.

8 Are we maximizing the use of that
9 intelligence, I guess is a good question. And I
10 think the answer to that is no, we're not
11 maximizing, you know, the fantastic enriched
12 data we received from reporting entities. And
13 again, I think that's not so much a lack of
14 desire; it's simply a lack of that technological
15 assistance that we need to really ensure we
16 capture and pull all the data together in a much
17 bigger picture. And [indiscernible] spoke to in
18 terms of, you know, where we want to take our
19 FIU.

20 Q And just picking up on that. In terms of the
21 quality and level of information that the FIU is
22 receiving from reporting entities, do you have a
23 view on whether you are receiving too many
24 reports, too few reports or just right?

25 A Look, I think that the quality is always a

1 challenge because we've got a large number of
2 reporting entities out there. There's about
3 4 1/2 thousand of them. Some of them don't
4 report many transactions a year because they're
5 not required to, which means that, you know, we
6 do get that variance in terms of quality.

7 Ideally we would like to see a much better
8 quality, you know, report but having said that,
9 you know, there are a large number of --
10 particularly the big reporting entities who
11 provide, you know, high quality intelligence.

12 Q And the budget of the FIU, is that somewhere in
13 the range of 300 million?

14 A No. So the budget -- no, the budget of the FIU
15 falls within the budget of the Financial Crime
16 Group, which falls within the budget of the New
17 Zealand Police, which is a couple of billion a
18 year. What's useful about, you know, the fact
19 that we're part -- or the FIU's part of a much
20 bigger organization is that when we need sort of
21 investment -- technology investment, you know,
22 we can leverage that out of the broader
23 organization. So the budget is not set
24 specifically for the FIU. It's set for the
25 Financial Crime Group which comes under the

1 investigation stream, but if we need additional
2 funding for a particular project like
3 technology, then we've got avenues to get that
4 investment.

5 Q And so what would you say is the budget
6 dedicated to the FIU?

7 A We don't have a specific budget. Like, the
8 staffing, you know, the 30 staff in there, so
9 that's, you know, 3 million a year in sort of
10 staffing costs, I guess. All the technology
11 that is in there is part of a broader police IT
12 budget and the like. So it's not a specific
13 budget for the FIU. But there is, like I say,
14 capability to invest heavily when we require,
15 you know, large investment. You know,
16 multi-million dollar technology investments is
17 not funded to the FIU; it's funded through our
18 IT programs.

19 Q I see. And could you speak to the relationship
20 between police and the Department of Internal
21 Affairs vis-à-vis its role with AML compliance
22 prosecutions?

23 A Yeah, so they're a key partner for us. They
24 undertake their own statutory duties and
25 obligations and responsibilities under the act

1 and they will do their own enforcement actions.
2 Interesting enough we often use or we do
3 generally use the same prosecutors to prosecute
4 both the regulatory compliance enforcement work
5 as well as the criminal work which is actually
6 quite beneficial. That simply occurs because
7 our prosecution groundwork involves Crown
8 solicitors, which are warranted Crown solicitors
9 across the country. And most of the compliance
10 work that the DIA have undertaken have been in
11 Auckland. And they do -- because of the
12 population base, they do most of our AML -- our
13 serious AML investigation prosecutions and a
14 large percentage of our asset recovery work.

15 So we're using the same firm, the same legal
16 practice to do that work, which is beneficial.
17 We would certainly support their prosecutions as
18 they do share information and support some of
19 our money laundering investigations. The
20 relationship is good. It's close.

21 Q And turning now to the Financial Crime
22 Prevention Network. What is the purpose of that
23 network?

24 A It's a private-public partnership involving key
25 banks, our reserve bank, which is our supervisor

1 for the banks, and customs -- New Zealand
2 customs service. That is a relatively new
3 network. When I say "new," it's a few years
4 old. It provides us with a forum to sit down
5 with the major banks and talk about some of our
6 planned operations, telling them who we're
7 targeting, what our concerns are around risk.

8 They then go back and start looking at their
9 own banks, looking for information and reporting
10 financial intelligence to us that relates to
11 those inquiries. So it's -- you know, the banks
12 operate on a risk-based approach. Us providing
13 them with key indicators as to what risks might
14 look like allows them to provide us with quality
15 intelligence that we respond to. So it's a
16 high-trust relationship.

17 We're looking to expand the partnership to
18 other reporting entities and other types of
19 reporting entities. Its, you know, early
20 successes for us have indicated that it's
21 something that we do want to encourage and
22 support, and we bring our investigators in to
23 present to the FCPN. And we have, you know,
24 undertaken some joint intelligence projects with
25 them. You know, we relied on and used some of

1 their analytical work to support some sort of
2 joint, you know, projects like trade-based money
3 laundering and the like. So we'll produce
4 documents together to inform wider sector.

5 Q Okay. So I'd like to turn now to the topic of
6 asset forfeiture. And I think we will -- I
7 expect we'll do a bit of a deep dive on both
8 streams. But perhaps you could just give us a
9 brief overview of the process for a criminal
10 forfeiture in New Zealand as well as a civil
11 forfeiture?

12 A I'll start with the criminal forfeiture. So
13 instruments of crime that's properly used to
14 facilitate the commission of offending in our
15 *Sentencing Act*, if instruments or property is
16 used as part of that offence, the court must
17 consider confiscation of that property as part
18 of the sentencing process. So that's sentencing
19 alone. And a sentence might look like --
20 someone may receive a custodial sentence and
21 lose potentially a portion of their home or a
22 vehicle or alike.

23 The civil framework is quite discrete in
24 terms of it being unrelated to any parallel
25 criminal investigation, although often, you

1 know, subject to civil forfeiture, respondents
2 are also subject to criminal charge, but
3 nonetheless those processes are dealt with quite
4 discretely. The civil process targets, you
5 know, largely the property. So it's an
6 investigation into property or benefit. It's
7 quantum of benefit as opposed to behaviour.

8 We obviously need to have some evidence of
9 the criminality associated with the behaviour,
10 but only a civil standard of balance of, you
11 know, probabilities or, you know, reasonable
12 grounds to believe in terms of restraint. So no
13 conviction is necessary. Convictions that are
14 quashed, people that are acquitted, has no
15 bearing on that outcome. And, you know, it's
16 proven to be a very successful tool for us in
17 terms of having a big impact.

18 As you're seeing the data, you know, we --
19 our successes, you know, have been relatively
20 significant both with domestic and transnational
21 crime. I mean, our mantras -- we want to make
22 this country of ours New Zealand the hardest
23 place for criminals to do business. And as part
24 of that, depriving them of illicit gains,
25 illicit wealth is a strategy that helps us, you

1 know, in pursuit of that objective.

2 We are looking currently at some more
3 reforms in terms of our civil framework to
4 strengthen it even more. And those two areas I
5 can speak to now if you like, Kelsey, because
6 they might be of interest to you.

7 Q Sure. Please go ahead.

8 A Okay. The two areas. One is in relation to
9 transnational crime where, you know, illicit
10 wealth has come to New Zealand from a foreign
11 jurisdiction. What we're wanting to do there is
12 release or reduce the burden on us here in New
13 Zealand to prove the crime that sits behind that
14 wealth because often that requires us to rely on
15 offshore, you know, jurisdictions to provide
16 that evidence. I'm not sure if it's been
17 discussed so far in this commission, but, you
18 know, there are challenges with mutual legal
19 assistance in terms of it often taking a long
20 time.

21 And the desire here is to sort of navigate
22 that and place more onus or more obligation on
23 the owner of the property to prove the origin
24 and support the origin, that it's not criminally
25 acquired. So we're moving in that direction

1 supporting the broader AML framework and
2 increasing our ability to reach in behind some
3 of the beneficial ownership issues that exist
4 and make this country of ours the hardest place
5 for, you know, criminals to do business.

6 Q And so do I have it right, then, that forfeiture
7 of an asset under the criminal regime, that
8 asset itself would have had to have a nexus with
9 the crime. It would have had to have been used
10 in the commission of a crime, whereas in the
11 civil regime it's profit based and not it's not
12 necessary for the asset to be connected to the
13 commission of crime?

14 A That's right. That's right. And often the
15 property is used in the commission of a crime
16 and it's also proceeds of crime. And when that
17 occurs we may well deal with it as a criminal
18 forfeiture, and it's included in the sentencing
19 process. But of course in terms of its impact
20 on sentencing, it would be -- you know, it would
21 be significantly reduced. And I guess just
22 providing you an example, a simple example.

23 An offender who is manufacturing
24 methamphetamine using his home as a safe and
25 secure environment to manufacture

1 methamphetamine. He gets arrested and
2 prosecuted for manufacturing methamphetamine.
3 At a sentencing we would tell the court that his
4 property, his home was used as the environment
5 in which he offended. And the court would
6 confiscate or may confiscate their property.
7 And if it does that, it must be reflected in the
8 sentence. So he may well get -- that individual
9 may well get a reduced custodial sentence
10 because of that confiscation, that forfeiture.

11 If in fact that property was acquired
12 through, you know, his offending and therefore
13 it was proceeds of crime, that process would
14 still occur, but that reduction in sentence
15 would be negligible or may not occur. But it
16 may all still be forfeited under that process.

17 If he was manufacturing at a -- in a motel
18 unit but had a property and a home, if that was
19 his home that was proceeds of crime, the net
20 proceeds of crime will be dealt with under the
21 civil framework. So -- because it wasn't used
22 in the offending, a motel unit was used, he
23 would be sentenced and -- for that behaviour,
24 but the forfeiture of his home would be pursued
25 civilly.

1 Q And the civil forfeiture system, who are the
2 individuals that investigate and pursue that
3 regime?

4 A So that's the police. The Commissioner of
5 police has the responsibilities and duties under
6 the *Criminal Proceeds (Recovery) Act* to
7 undertake those civil investigations. So the
8 staff are a mixture of both sworn and non-sworn
9 investigators, forensic accountants and
10 analysts. And we have the ability under our act
11 to bring in others, you know, outside
12 investigators when required. We seldom do that,
13 but that's a possibility as well. It's a police
14 function. Basically it's a police function.

15 Q And does that fall within the ambit of the
16 Financial Crime Group as well?

17 A Yes. Yes. I should add, you know, forfeiture
18 is about protecting the community. So we -- you
19 know, we're not about -- the 500 number is not
20 about collecting proceeds of crime. Actually
21 it's about that, but it's also about collecting
22 proceeds of crime to protect. To make our
23 community safer and more secure. It's, you
24 know, collect to protect. It's about making
25 sure that we have removed illicit income so that

1 enterprises -- criminal enterprises aren't, you
2 know, financed to expand their criminal
3 activity. So yeah.

4 Q You've sort of anticipated my next question
5 there. I was going to ask what criteria are
6 used to select files as appropriate candidates
7 for either the civil or the criminal stream of
8 asset forfeiture?

9 A So criminal is simple. If it's used in the
10 facilitation of offending, it comes to our
11 attention or the court's attention. If it's
12 civil, our focus is largely on areas of risk.
13 That's risk identified in our either national
14 risk assessment but also risk in terms of
15 community safety and security. So, you know,
16 gangs, drugs are the primary focus of that
17 framework. But, you know, we have also
18 undertaken, you know, a range of other civil
19 investigations to protect our reputation as a
20 country.

21 So some of the foreign-based predicate
22 activity that's -- where money's been introduced
23 in New Zealand and legal structures have been
24 abused here, we will certainly aggressively
25 investigate those to take recovery actions

1 because we want to discourage people from
2 bringing illicit income to our country.

3 MS. ROSE: Okay. Mr. Commissioner, I have a document
4 that I would like to put to the witness. It was
5 distributed to participants this morning, which
6 is somewhat late in our process. And so I have
7 not heard any objections to it being put to the
8 witness, but I'd like to make sure that
9 participants do have an opportunity to object
10 now.

11 And then I also expect to be seeking leave
12 to have the document not displayed on the
13 livestream as I understand that there are some
14 redactions to the document that may be necessary
15 before it's made public.

16 THE COMMISSIONER: All right. Thank you, Ms. Rose.
17 If there are any objections, I encourage counsel
18 for the participants to raise them now. If not,
19 then I will grant you leave to introduce the
20 document.

21 Hearing no objections, Ms. Rose, I think
22 you're free for proceed.

23 MS. ROSE: All right. Madam Registrar, if we could
24 please have the dashboard document on the screen
25 and, again, not have this livestreamed.

1 Q So, Detective Inspector Hamilton, could you tell
2 us what this document is, please.

3 A So we have performance measures as indicated
4 with the 500, which you can see is on the top
5 right of this document. But the usefulness of
6 this document is that we share across our
7 organization with our senior police leaders, we
8 share it with our CRB. Our minister of police
9 receives it. And what it's done is it's really
10 highlighted the work we're doing across the
11 country in terms of forfeiture.

12 It's raised the profile of this part of our
13 policing and it gives us some good indications
14 of where the workers, the crime types, the sorts
15 of property we are restraining and the organized
16 crime groups that we're focusing on. And its
17 performance is -- success has driven success.
18 And having good optics over, you know, the work
19 we're doing across the organization, like I say,
20 is driving the quality of referrals and it's
21 certainly helping us to take some leverage off
22 this part of our AML framing. This important
23 part of our system to maximize our impacts.

24 MS. ROSE: And so again, Mr. Commissioner, just to --
25 just in case I forget, if we could please have

1 this document marked as the next exhibit.

2 THE COMMISSIONER: Yes, very well.

3 THE REGISTRAR: Exhibit 976.

4 **EXHIBIT 976: Dashboard - Criminal Proceeds**
5 **(Recovery) Act 2009 - April 30, 2021**

6 MS. ROSE:

7 Q And, Detective Inspector, could you describe for
8 us what happens once assets are forfeit.

9 A Yes.

10 Q What becomes of the assets? Where do they go?

11 A Sure. When the assets are forfeited, they are
12 liquidated by the official signee and those
13 funds go into our proceeds of crime fund. And
14 from that fund a range of government agencies
15 can make application or bids for those moneys
16 for a range of initiatives. And those -- you
17 know, that money is returned back to communities
18 to treat, heal repair, support various
19 initiatives around community resilience and harm
20 reduction.

21 So we're using proceeds of crime recoveries
22 to support our communities to -- in terms of the
23 impacts that crime has had on them.

24 Q And do any of the funds that are forfeit go to
25 funding the Financial Crime Group?

1 A Initially with some of the very early bids, we
2 increased our resources. But now largely our
3 funding stream is limited to our legal fees. We
4 -- the Commissioner, because he is a civil
5 applicant, pays for all his legal fees. Pays
6 for counsel to represent us in the high court.
7 We recover those fees each year from the fund
8 because that's coming out of our baseline. So
9 we basically use the criminals' money to recover
10 our legal expenses. We also often seek costs as
11 part of our litigation. So we recover -- you
12 know, we do offset some of our litigation costs
13 with cost awards as one would expect in the
14 civil court.

15 Q And so the funds would go to covering some legal
16 fees but would not go to covering investigation
17 fees or the salaries of the individuals who are
18 involved in the civil forfeiture process, for
19 example?

20 A No. But if we've had to use interpreters, which
21 are relatively a low cost, we would get that
22 reimbursed as well. Those reimbursements are
23 approved by cabinet. It's a government decision
24 to reimburse us. It's not something that we're
25 directly involved in. But we obviously make --

1 seek that funding support for the work we're
2 doing.

3 Q Based on your experience over time with some
4 change in this regard, in your view if a
5 self-funding requirement were imposed, would
6 that impact on the Financial Crime Group's
7 decision-making process in terms of whether to
8 pursue a particular asset? For example, if it
9 was known that asset was rather small and the
10 cost of pursuing it might outweigh the cost of
11 the asset itself, if it were a self-funding
12 model, would that impact decision-making?

13 A No. The value of return is only one part of the
14 decision-making process we make around pursuing
15 property. Some of our communities across New
16 Zealand, you know, they're not high-value
17 communities. You know, real estate might be
18 relatively low value, but in terms of preventing
19 crime, deterring crime, disrupting crime, it's
20 still valid to potentially take an action.

21 You know, we have a low end and we've had a
22 number of very low-end proceedings that are
23 important to a particular community for a
24 particular reason. And that's what drives our
25 decision-making. It's around community safety,

1 community security, disrupting, dismantling
2 criminal networks. If we simply targeted the
3 most high-end criminal enterprises and ignored
4 all the low-end ones, then what we would be
5 doing would be allowing a lot of damage to occur
6 to our communities before we positioned
7 ourselves to respond, and that's not fair on our
8 community.

9 So value is only one part of the
10 decision-making process. Impact is equally
11 important.

12 Q And so I understand that the Financial Crime
13 Group does not use what we might call a
14 self-funding mechanism in the sense that the
15 proceeds that are forfeit fund the activity of
16 the group, but hypothetically if there was -- if
17 you were to shift to that type of model, do you
18 see that as being a risk that there might be an
19 undue prioritization of high-value assets?

20 A No. No. All of our operating costs in terms of
21 our wages and vehicles and protective equipment
22 that's all funded out of police budget. So the
23 only parts we get are the legal fees, which are
24 a relatively, you know, modest amount of money
25 compared to the amount of work we do. So no,

1 our focus is on preventing crime. Making our
2 country safer, the safest country in the world
3 as we are one of the -- the objectives of our
4 organization in making it the hardest place for
5 a criminals to do business. And this is a core
6 and important policing activity, depriving
7 criminals of wealth, stopping the flow of
8 illicit funds and disrupting those activities
9 disrupts, you know, crime, which means less
10 harm. Less harm to our communities.

11 Q Okay. Turning now to focus specifically on
12 criminal asset forfeiture. What powers of
13 compulsion are typically used in a criminal
14 prosecution that results in asset forfeiture?

15 A So in the criminal framework we don't have any
16 powers of compulsion other than to
17 non-defendants. We can require information from
18 banks and so forth in a court order, production
19 order, but nothing from the accused themselves.

20 In the civil framework it's different. That
21 operates outside of the bill of rights because
22 we're targeting property, not people. We can
23 compel information and documents from our
24 respondents. We can compel them to
25 answer questions and tell us about where the

1 property came from. But when they make
2 disclosures of criminality that can't be used as
3 evidence in a criminal setting. It's -- there
4 is -- they cannot refuse to answer questions for
5 fear of self-incrimination, but there are
6 limitation in terms of that ability to use that
7 evidence against them.

8 The only offence is perjury. That is if
9 they provide us evidence under an examination
10 order where they're compelled to provide us with
11 information and give later evidence in a court
12 setting under oath or affirmation, then we can
13 use the evidence we obtained through those
14 compulsory powers to support an allegation of
15 perjury. But that's the extent of it.

16 Q And I've -- I wanted to ask you one question
17 about this document before taking it off the
18 screen, Detective Inspector. Is there anything
19 that you wanted to highlight about what this
20 document shows about the recovery of assets in
21 New Zealand?

22 A I guess one of -- the volume of work is there.
23 You can see the number of proceedings under --
24 you know, the case numbers. We've had large
25 numbers of referrals increasing. But if you

1 look at the crime types in terms of value,
2 you'll see money laundering is a real feature of
3 these actions.

4 Money laundering is not a victimless crime.
5 It is not a victimless crime and it is an area
6 that -- it's an offence or an activity that we
7 can target and has a big impact on community
8 safety. So it's often an offence, I think,
9 that's sort of out on the edges for lots of
10 jurisdictions but, you know, it's an area that
11 we are focusing on and it has an effect, has an
12 impact. It's an important crime type for
13 policing services to focus on both in a
14 forfeiture setting and in a behavioural setting.

15 Q And there you're referring to the table that
16 is -- that has the header "By Restraints Against
17 \$500 Million Target" and there's line next to
18 "money laundering" which shows 255.85 million.
19 That's the figure you're referring to?

20 A That's right.

21 MS. ROSE: Okay. I think, Madam Registrar, we can
22 take this document down for now.

23 Q And so, Detective Inspector, you were speaking
24 about some of the complexities of dealing with
25 compelled information in the civil forfeiture

1 regime. And I just wonder how do you ensure
2 that those two, the criminal asset and civil
3 forfeiture regimes, are kept separate when it
4 comes to the complications arising from
5 compelled information?

6 A So if in fact there is a criminal investigation
7 ongoing and a criminal prosecution afoot we
8 don't -- generally do not exercise those powers
9 against defendants or accused persons. We may
10 well do it, apply them against other people that
11 may help us with an investigation, but not the
12 accused because that presents a risk to us if we
13 know something about a defence before they have
14 had the fairness of -- trial fairness is
15 central, so often some of those restraints may
16 have to wait a number of years until
17 prosecutions have resolved.

18 If in fact there is no associated criminal
19 prosecution, it's purely civil, then there is no
20 risk because the file is discrete from a
21 criminal prosecution and it sits in the civil
22 registry at the high court. So, you know, we
23 primarily do not pursue those intrusive tools or
24 investigative tools when someone is before the
25 court.

1 Q And do you see there being any risk with that
2 process of incentivizing resort to the civil
3 forfeiture system as opposed to prosecution of
4 criminal money laundering?

5 A Yes, there is a risk. There is a risk but it's
6 something you have to be mindful of, we all have
7 to be mindful of, but it's not something that
8 impacts on us here. You know, we're committed
9 to addressing behaviour and property in
10 proceeds, not one at the expense of the other.
11 And I think that's important because -- it's
12 important from an integrity perspective that
13 we -- you know, we deliver justice outcomes that
14 are fair to our community and they're -- often
15 requires or -- you know, there's an expectation
16 that will address behaviour.

17 And if we don't do that, we -- it's an
18 unbalanced response to crime. You know, simply
19 removing illicit property and letting them --
20 you know, without responding to their behaviour
21 doesn't necessarily disincentivize criminal
22 behaviour. So you've got to have that balance.

23 I think we do it well here. I think we
24 committed to that understanding and that need
25 that should occur and it does occur. And I know

1 certainly when we were look at the civil
2 forfeiture and where it should be placed, there
3 were some concerns about placing it in a police
4 organization and it should be externalized to
5 avoid that conflict. We're well aware of that.
6 And there is some logic to that argument. But
7 for that reason, you know, we are particularly
8 careful and mindful of not trading off restraint
9 and preference to actually pursuing someone's
10 criminal behaviour.

11 Q And again, you've anticipated my next question.
12 So I'll just ask with respect to that
13 carefulness that you've just described, is that
14 enshrined in any piece of legislation? Is that
15 a policy or is that just choices that are made
16 by the group?

17 A Yeah. No, it's not enshrined in legislation. I
18 mean, we're all police, so we have that
19 underlying desire to make people responsible to
20 bring a justice outcome that is fair and
21 balanced. So it's not enshrined anywhere, but
22 it's something that we are well aware of
23 potential criticism if we chose to do that.
24 Trust and confidence of our community is, you
25 know, central to our ability to police and

1 provide the services that we want to, to our
2 community, and we won't undermine that by
3 cutting corners and the like.

4 So having said all that, you know,
5 there's -- on occasion it is preferable to
6 certainly pursue, you know, confiscation as
7 opposed to address behaviour, and that may well
8 be because there's not sufficient evidence to
9 respond to behaviour, but we still want to
10 provide a justice outcome. And under those
11 circumstances we would initiate a civil
12 investigation early.

13 And our civil tools relate to property. Our
14 investigative tools that relate to the
15 behaviours still sit in our criminal framework.
16 So we still -- you know, we still need search
17 warrants under our surveillance legislation to
18 go out and establish evidence of criminality.
19 So most investigations do start off as a
20 criminal investigation under the normal
21 processes that apply when we conduct criminal
22 investigation. And we need that foundation
23 evidence before we can even commence the process
24 of restraining property.

25 Q Okay. You've mentioned the prevention first

1 policing strategy, and I understand that there's
2 been sort of a shift in New Zealand from a focus
3 on traditional criminal prosecution of money
4 laundering to more of an asset recovery focus.
5 And I just wonder if you can describe that for
6 us in your words, which I'm sure will be better
7 than mine, and what that looks like in practice.

8 A I'm not quite sure that is completely accurate.
9 I mean, we had -- we moved into the civil
10 framework in 2009 and before that we were -- you
11 know, had an operated under a conviction-based
12 framework where. We had to convict somebody for
13 a certain amount of drug dealing, for instance,
14 to be able to pursue the recovery of equivalent
15 value associated with that offending.

16 And then in 2009 when the *Criminal Proceeds*
17 (*Recovery*) *Act* came into play, which was our
18 civil framework, we also changed or brought in
19 our anti-money laundering legislation as well.
20 And these two pieces of law obviously both have
21 a prevention focus, anti-prevention. They're
22 one in the same.

23 So we've never been dismissive of pursuing
24 money laundering as a crime type but what we
25 have done is the -- I guess the threat of money

1 laundering has become clearer as we've slightly
2 tweaked our money laundering offence. And as
3 we've started to get good intelligence coming
4 through from our broader framework, we have
5 developed the expertise in terms of our money
6 laundering teams. But having said that we also
7 provide training across our whole organization
8 in response to money laundering and that's
9 managed within the Financial Crime Groups. We
10 provide, develop expertise across the whole
11 organization.

12 Prevention first, though, is really about
13 putting people in our community at the centre of
14 our policing model. So we deploy the demand --
15 you know, we target the drivers of demand. And
16 the drivers of demand are such things as
17 organized crime, but it's also such things as
18 money. And that is where we sit as having that
19 broader prevention orientated, you know, focus
20 to our policing that we want to not only deal
21 with criminal behaviour as we encounter it, but
22 we also want to deal with it in such a way as we
23 sort of, you know, maximize prevention capital
24 from that engagement with somebody so that we
25 don't have to deal with all that event again.

1 It's a mindset shift, but it's obviously a
2 very logical mindset shift and it is serving us
3 well.

4 Q The mutual evaluation report -- and I can take
5 you to this, if you like, but perhaps you'll be
6 familiar with it off the top of your head -- it
7 describes some difficulties with money
8 laundering prosecutions as such in that perhaps
9 there's a preference for prosecution of
10 predicate offences along with asset recovery
11 measures but sometimes a choice not to proceed
12 with a money laundering prosecution in and of
13 itself. Could you just describe what's
14 happening there.

15 A Yeah. So sometimes with some of the more
16 serious offences -- and a serious drug offence
17 is a good example, someone dealing large
18 quantities of methamphetamine, that we may well
19 do a parallel financial investigation and that
20 investigation for argument sake might identify
21 a million dollars worth of proceeds of crime
22 from that offence. Instead of then -- as we
23 prosecute for, you know, selling methamphetamine
24 to the value of million dollars, the laundering
25 of that million dollars is obviously a criminal

1 behaviour, but the maximum penalty associated
2 with that is much less than the drug dealing
3 offence.

4 So in terms of just bringing charges before
5 the court for the sake of bringing charges, what
6 we will do is pursue the most serious offence,
7 the lead offence, and also deal with the
8 confiscation of property. It doesn't diminish
9 our focus on the money. Quite the reverse. The
10 money becomes central to that investigation,
11 central to that prosecution. That's simply how
12 we use that evidence, and we can use it simply
13 to recover the million dollars and we use it in
14 the criminal context to support the allegation
15 that someone has sold a million dollars worth of
16 drugs.

17 The only bit that's missing and the only
18 criticism in the report is that on occasion we
19 elect not to pursue money laundering because it
20 serves little purpose other than it doesn't
21 change the sentencing outcome; it simply results
22 in one less conviction on someone's criminal
23 history. And that is not in itself a reason to
24 pursue that prosecution.

25 I guess that is the tension. That's the

1 tension that is referred to in the report. Now,
2 does it concern me? It doesn't overly concern
3 me for the lead offender, the meth dealer. It
4 would concern me if we were walking past third
5 parties and third-party launderers who were
6 laundering money for that offender in preference
7 of simply securing a conviction against that
8 lead offender. That would be a concern.

9 And as you'll have seen in the ME report and
10 our prosecution data is checking up in terms of
11 our response to money laundering, we're making
12 people accountable for it more than we ever have
13 been. And that's again just that sort of
14 general mindset shift around obviously a
15 prevention focus. We don't want people to
16 launder money for others, but it also sort of
17 aligns with, you know, the broader AML framework
18 and changes I talked about before that we're
19 looking to reduce in relation of the forfeiture
20 framework.

21 Q And the MER, the mutual evaluation report, I
22 believe refers to those third parties as
23 gatekeepers. And so you're referring there to
24 lawyers, accountants, those that might act as
25 nominee owners; is that right?

1 restrained criminal proceeds. I mean, it's
2 important. It's an important part of our AML
3 framework and that focus has been -- is
4 important. We're delivering on it.

5 Q And how have police and particularly the
6 Financial Crime Group, how have you implemented
7 that shift? What measures have been integral to
8 that shift?

9 A So we created a separate structure that's
10 centralized, so -- and pre 2009 our proceeds of
11 crime investigators -- and I was one of those --
12 were reporting through a district, through -- so
13 we would often be required to deal with other
14 crime that came through the front door of the
15 police station. Because, you know -- because
16 there was a response demand, which -- but now we
17 are discretely managed from the centre, from
18 headquarters and that structure allows us to
19 really focus on this part of policing without
20 other response demands. Although we're in
21 districts, we're separate from districts, so
22 we're building a really good structure around
23 our people so that we can focus on this work.
24 Sometimes it's time-consuming work and it needs
25 development of expertise without distraction has

1 allowed us to be successful.

2 Having said that, being in districts
3 alongside crime investigators allows us the
4 opportunity to be successful. So central
5 reporting, but being out there in the districts
6 working with investigators and detectives, drug
7 squads and organized crime teams allows us to
8 identify that opportunity where we can deploy
9 out people to the biggest impact, and that's
10 important.

11 And the other part of is just raising the
12 awareness of this part of this policing
13 responsibility and, you know, success breeds
14 success. So as we -- the community really
15 enjoys seeing us turning up at a drug dealer's
16 home and putting his vehicles and bikes on the
17 truck and taking them away. It encourages
18 information flow, it rewards the financial
19 sector who are investing heavily in terms of
20 reporting financial intelligence. That supports
21 the activities that the FIU are doing in terms
22 of feeding us this vital intelligence to allow
23 us to respond.

24 So it sort of completes the circle in some
25 respects of what a good AML system looks like.

1 You know, private sector investing reporting;
2 public sector prosecuting and restraining, both
3 of which are working together, hardening that
4 environment out there for criminals to operate,
5 making our country the hardest place for
6 criminals to do business.

7 Q And are there any requirements for both officers
8 in the Financial Crime Group as well as other
9 uniformed officers to consider asset recovery
10 options at the outset of a file?

11 A Yes. So that's where 500 becomes important
12 because that is a whole of police responsibility
13 and a whole of police target. So what we want,
14 all of our staff, you know, our road policing
15 people right through the organization to be
16 vigilant looking for accrued criminal wealth.
17 That's an important part of that strategy.
18 That's what 500 targeted, targeted getting the
19 whole organization on board with looking for
20 proceeds of crime and removing it. Protecting
21 our communities through taking away the ability
22 of criminals to expand criminal activity or
23 criminal enterprise.

24 So yeah, this is everyone's business, not
25 just the financial crime groups. This is our

1 organization's business. We provide the service
2 across government to other agencies, customs,
3 tax and alike as well in terms of the parts of
4 their business where we can support them. You
5 know, it's central to our framework.

6 Q And in your view --

7 A I just I can just add one more thing because
8 it's probably a useful thing.

9 Q Please.

10 A Because this has been successful for us,
11 because, you know, we have developed quite some
12 expertise in this space, it's been useful in
13 terms of developing the skills around money
14 laundering as a crime type in itself. The
15 skills, whether they be the accountancy skills
16 or the investigator skills, are very similar.
17 So developing expertise in the space of
18 forfeiture flows across, has an impact on
19 broader expertise to respond to financial crime
20 generally, in particular money laundering which
21 is quite complementary.

22 Some jurisdictions invested heavily in money
23 laundering first. I think our approach of
24 forfeiture first and in growing money laundering
25 has actually worked for us. It may not work for

1 everyone, but it certainly, you know, broadened
2 the skill set of this organization to respond to
3 financial crime generally.

4 Q And again you've anticipated my next question,
5 which was just going to be the effectiveness of
6 asset forfeiture as an anti-money laundering
7 strategy as compared to traditional criminal
8 prosecution, so if you wanted to add anything to
9 your last comment there.

10 A I think it's broadened and deepened our
11 understanding of risk. You know, focusing on the
12 end result of a laundering cycle where property
13 ends up -- gives us some good understanding of
14 our risk which allows us to reinform and inform
15 our community and our reporting entities around
16 what to go look for. It's also allowed us to be
17 more responsive to particularly foreign
18 predicate activity or foreign laundering in New
19 Zealand because often these criminals in other
20 parts of the world, great effort is required to
21 recovery them. But by recovering their money
22 here, we discourage them and others from sending
23 more money here. So in terms of that
24 transnational money laundering response,
25 forfeiture is central to that deterrence.

1 I think just the other point I made earlier
2 which is a really good point is that it rewards
3 sector -- it rewards those reporting entities.
4 They see it. They know that the work they're
5 doing, which is often difficult for work for
6 them, is actually helping, contributing to their
7 safety as well as the rest of us. So it's
8 really a central part of our framework. It's
9 one of our strengths and we need to leverage off
10 to harden that environment out there to make our
11 anti-money laundering framework as strong as we
12 can.

13 Q So the commission heard from Mr. Hughes that in
14 his view it appeared from the outside that
15 strong use of asset forfeiture measures is
16 having a significant deterrent effect on gang
17 activity. Do you agree with that
18 characterization?

19 A The gang activity is a constantly changing
20 beast. You know, we have external factors that
21 have influenced in our organized crime
22 environment and they aren't necessarily ones we
23 have created ourselves. You know, we're heavily
24 influenced by one country in particular
25 returning New Zealand-born criminals to our

1 country when they fail character assessment
2 overseas, and that's having an impact on your
3 gang scene here in our country.

4 We're working hard to combat that problem,
5 but certainly what the forfeiture's doing --
6 forfeiture work is doing is exposing to our
7 community, our broader community what some of
8 these groups are involved in, and I think that
9 in itself has been useful. So it's certainly an
10 impact and there's some more work to do in that
11 space to maximize that impact.

12 Q And sorry, I have another comment from
13 Mr. Hughes that I want to put to you just to
14 ensure that you have an opportunity to respond
15 and provide your views. He described the
16 function of reporting entities reporting to
17 police and then feeding law enforcement and
18 asset recovery work, he described this process
19 with the police as being the fulcrum to the
20 whole system. So do you agree with that
21 characterization?

22 A I think I do in terms of response. You know,
23 response we are. In terms of prevention we
24 fully accept and appreciate the work that's
25 being done out there by the supervisors and the

1 reporting entities in terms of preventing -- you
2 know, we respond to events when they occur. You
3 know, they prevent activities from occurring.
4 So they carry a very heavy responsibility in
5 terms of prevention. Because we are a small
6 country I guess police -- we're very visible
7 police service.

8 We naturally have -- are perceived to have a
9 leadership role in the space, but the
10 supervisors in particular do some great work and
11 the reporting entities themselves are well
12 engaged in this process and without them we
13 wouldn't be successful, so -- as we are. So all
14 three elements are very, very important.

15 Q And I've just realized I neglected to ask you a
16 question earlier when we had the dashboard
17 document in front of us. I just wanted to ask
18 you if you were aware of the GDP of New Zealand.

19 A No. It will be in our ME. I just -- I don't
20 know that number off the top of my head, yeah.

21 Q If I were to suggest to that you it were sitting
22 around \$206 billion, would that sound right to
23 you?

24 A That would sound right to me.

25 Q Just in terms of appreciating the scale of asset

1 recovery in comparison to GDP. Okay. And so I
2 now wanted to turn to asking you a couple of
3 questions about specific cases. Could you tell
4 the Commissioner about Operation Pinion
5 [phonetic], if you're familiar with that one.
6 And if not, I can pull up a document --

7 A Yes, you can please share that document with me.
8 There's many work streams.

9 Q Sorry, I'm having a little trouble finding my
10 reference. Perhaps -- are you familiar with the
11 case of Alexander Vinnik?

12 A Yes, very familiar.

13 Q Perhaps you could tell us about that one, and
14 then I'll find the reference and take you back
15 to the first one.

16 A Okay. So Vinnik currently is in prison in
17 France, convicted of money laundering. The
18 allegation was that he was involved in a range
19 of crime types operating out of -- operating out
20 of the United States. Funds were derived and
21 they were placed in a New Zealand company and
22 bank accounts in another offshore jurisdiction.
23 Because they were under the control of the New
24 Zealand company, they were within the reach of
25 our legislation. We became aware of those

1 funds, aware of the New Zealand company. We
2 responded and have recovered in that case
3 \$140 million back to New Zealand which are
4 proceeds of, like I say, quite a significant
5 range of crime types, involving some of the new
6 crimes, the cybercrimes and alike.

7 He's subject to various extradition requests
8 at the moment, but our focus is primarily on
9 confiscation of the illicit incomes that came
10 within the reach of our jurisdiction.

11 Q And so was there any asset forfeiture of the
12 virtual assets that were involved in that case?

13 A Yes. The virtual assets had been converted to
14 fiat assets before our restraining orders were
15 obtained, so all we recovered were a range of
16 currencies, fiat currencies held offshore by
17 order in New Zealand. We returned those funds
18 to New Zealand they're currently here in our
19 country in a bank account here in New Zealand.

20 We have of course -- we have restrained and
21 forfeited virtual assets and other pieces of
22 work. Yeah. That's something we actively look
23 for.

24 Q And was there anything additional on the virtual
25 asset side that you'd like to add there?

1 A Well, I think it's an emerging area of
2 opportunity for money laundering. It's also an
3 emerging area of opportunity for regular career
4 enhancement and policing response. It's here to
5 stay. We need to understand it and our people
6 need to understand it. We need to be vigilantly
7 looking for it. It's not something to be scared
8 of or intimidated by. Quite the reverse. And
9 it's an area that, you know, law enforcement
10 globally need to work together to respond to
11 because the way it operates is that money can
12 obviously transfer very, very quickly between
13 people and certainly almost in other parts of
14 the world, and it can finance illicit activity.
15 And we need to be responsive to those issues.

16 Q Okay. So I've found my reference to Operation
17 Pinion, and unfortunately it's not in one of the
18 documents we have in evidence, and so I'm just
19 going to see if I can refresh your memory with a
20 couple of questions.

21 Are you familiar with the proceedings
22 against Lucky Campbell?

23 A Off top of my head right this minute, no. I do
24 know that name, but I can't tell you the detail
25 of that.

1 Q Okay. Are you familiar -- that's fine. Are you
2 familiar with a seizure of \$470,000 in
3 December of 2020?

4 A Are you looking at the mutual evaluation at the
5 moment? Which page is that?

6 Q I'm actually not. I'm looking at my notes. And
7 so perhaps I'll leave it there. That's fine.
8 We don't need to explore that topic.

9 A Yeah, we -- I think currently we've got about
10 \$200-odd million of cash under restraint from --
11 so there's a lot of jobs and I'm not across
12 every one of them.

13 Q That's perfectly understandable. I wonder some
14 of the areas that have been -- that are
15 particularly mentioned in the commission's terms
16 of reference are real estate -- money laundering
17 in connection with real estate and money
18 laundering in connection with gambling and
19 particularly in the casino sector. I wonder if
20 those are areas of concern in New Zealand. And
21 if so, if you have any comments to add about
22 your process there.

23 A Yeah. Certainly I'll start with casinos.
24 Certainly it has historically been an area of
25 concern to us. The casinos are regulated. We

1 don't have that many in New Zealand. They're
2 regulated quite well. The AML compliance from
3 the casinos, I would suggest, is reasonably
4 vigilant. We do get good reporting out of the
5 casinos but of course it is a high cash
6 intensive operation which presents itself with
7 risk.

8 A lot of the casino junkets are not
9 occurring here as of recently. We have used the
10 casino extensively in supporting prosecutions
11 for AML and other crime types. We have a good
12 relationship with the casinos, but without a
13 doubt casinos present a challenge. We've done
14 some interesting things with some of our
15 investigations with casinos particularly with,
16 you know, high-volume play and things like, you
17 know, machines, poker machines. We have
18 obtained data from the casinos and created their
19 own simulators to establish the possibility of
20 explanations of wealth having been derived from
21 gambling. That sort of has proven to be
22 successful for us.

23 But coming back to your original point, do
24 casinos present as a risk. The answer is yes,
25 they do. Are they regulated here in New

1 information tax has but because tax can confirm
2 they don't have information. Criminals
3 regularly don't pay their taxes and that in
4 itself is an indicator of the illicit origin of
5 their property. In terms of things like
6 customs, they're a key partner for us. They
7 police our borders. We work with them closely
8 with a range of crime type such, you know, the
9 drug importations and alike.

10 They also have some capable themselves to
11 undertake financial investigations. There is
12 some scope -- more scope there to do with them
13 trade-based money laundering. We're a primary
14 producing country, we do a lot of trade and it's
15 an area we're starting to focus on.

16 And across the other law enforcement
17 community, scattered across the various
18 ministries in our country, you know, we have
19 good partnerships. Yeah. Good partnerships.
20 Partnerships are one of our key focuses in terms
21 of prevention first, in terms of developing.
22 And using partnerships and supporting
23 partnerships is a real police focus for us.

24 Q Okay. Just before we move on. Are there any
25 other cases, any specific instances that we

1 should be aware of in your view?

2 A Well, there's one other case that's probably
3 useful to talk to given I'm speaking to you in
4 Canada, and that's a matter that originated over
5 in Ontario. And that relates to a guy by the
6 name of Gong who was selling securities in
7 Canada to people in China, and he was remitting
8 his proceeds of that offending to New Zealand.
9 And we've taken action together with our
10 Canadian colleagues to bring that matter to a
11 resolution here, working on that direction.
12 Understanding there's been resolution in Canada
13 and we're working towards same direction here
14 with regards to the proceeds of that crime.

15 I guess that's reflective of -- I've used
16 Canada as an example but, you know, law
17 enforcement generally in terms of the anti-money
18 laundering space. It's a borderless crime to
19 some extent. It's a global problem in
20 establishing good international partnerships and
21 good international cooperation really is quite
22 critical in terms of being able to respond to it
23 appropriately.

24 So it's a dimension that is a little bit
25 unique to money laundering as a crime topic that

1 need to have strong international connectivity
2 with their law enforcement in financial sectors
3 offshore to bring some of these matters to
4 successful resolution.

5 In terms of cases generally, there are lots
6 of them and I could speak to many of them, but I
7 think we have covered the key points in terms
8 of, you know, what we think our strengths are
9 and how we think we are effective.

10 I'm not overly familiar with the Canadian
11 system, but if there's queries or questions
12 about that that we can contrast that with New
13 Zealand, I'm more than happy to do that.

14 Q Yes, I was going to ask you through your work
15 with Ontario, for example, and previously, I'm
16 sure, do you have any views on how the Canadian
17 process for pursuit of money laundering compares
18 to the New Zealand approach?

19 A Not intimately across the investigation file
20 that was in Canada. I did travel and speak to
21 some of the Canadian investigators fairly early
22 on. One area that did sort of interest me a
23 little bit was around legal privilege, how that
24 operates in Canada and it's challenges for
25 enforcement agencies to get behind issues with

1 privilege.

2 Those issues are alive here in New Zealand
3 as well, but I recall at the time thinking they
4 were fairly onerous to manage and challenging to
5 be fast enough to respond, particularly the
6 movements of illicit wealth. You know, if they
7 can't get access to information in a timely way
8 through claims of privilege, it can be quite
9 obstructive in terms of delivering, you know,
10 fair and just outcomes. So -- and that was an
11 issue that I know was being managed, but it was
12 challenging for our Canadian colleagues.

13 Q And there you're speaking to the fact that
14 lawyers in New Zealand are reporting entities
15 and have reporting obligations with perhaps a
16 bit of a carve-out for solicitor-client
17 privilege as Mr. Hughes has testified to, but
18 whereas in Canada there's more of a strict lock
19 on sharing of information that is between a
20 lawyer and their client?

21 A I think the information or the privileged
22 communication is understandably completely
23 proper. It's the transactional activity that is
24 the issue, and if a lawyer receives large sums
25 of money from a criminal and deals with that

1 money, then that part of that relationship needs
2 to be something that there's some transparency
3 around. And if that transparency is obstructed
4 through a claim of privilege, then that will be
5 challenging for law enforcement to address their
6 behaviour and potentially recover that money.

7 And, you know, that is a challenge.

8 MS. ROSE: Okay. I note that now would be the normal
9 time for our morning break. Mr. Commissioner, I
10 anticipate having about another half hour of
11 questions and then we have an hour of
12 cross-examination anticipated from participants.
13 So I wonder if now might be the right time for
14 the break.

15 THE COMMISSIONER: All right. We'll take 15 minutes
16 then, Ms. Rose.

17 THE REGISTRAR: This hearing is adjourned for a
18 15-minute recess until 1:49 p.m. Please mute
19 your mic and turn off your video.

20 **(WITNESS STOOD DOWN)**

21 **(PROCEEDINGS ADJOURNED AT 1:33 P.M.)**

22 **(PROCEEDINGS RECONVENED AT 1:48 P.M.)**

23 **CRAIG HAMILTON, for the**
24 **commission, recalled.**

25 THE REGISTRAR: Thank you for waiting. The hearing

1 is now resumed. Mr. Commissioner.

2 THE COMMISSIONER: Thank you, Madam Registrar.

3 Yes, Ms. Rose.

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

5 **EXAMINATION BY MS. ROSE (continuing):**

6 Q Detective Inspector Hamilton, I'd like to ask
7 you a few questions about data sharing and
8 privacy. So first could you tell us a little
9 about the GoAML database?

10 A It's -- the GoAML database is an UNRDC product.
11 It's used by many jurisdictions around the
12 world. It provides a mechanism where reporting
13 entities can report into a portal into their
14 database. The database is securely held here
15 within police and all of our AML reporting is
16 contained within that database. It's a discrete
17 database; it's not part of our broader databases
18 we have here. It's its own database, and when
19 an inquiry is made into that database it
20 requires particular access.

21 That access is available to staff when they
22 apply to get access to it. That comes through a
23 number of senior people, including myself, who
24 can authorize access. We require an
25 understanding of the purpose for that access.

1 The staff that are involved in intelligence,
2 organized crime, investigations are able to have
3 access to that database directly from police
4 stations around the country. So there's --
5 outside of police there's no other agency at
6 this point that has direct access. We are
7 looking at trying to facilitate access to the
8 database by the likes of the security agencies
9 and others that we have a need or a purpose of
10 using the data for AML/CFT purpose.

11 Q And just so clarify, when you say that a number
12 of other jurisdictions use the GoAML database,
13 do you mean they use the same technology for
14 their own database?

15 A Sorry. That's right, yes. Their own database,
16 yes.

17 Q Okay. And when you say that police have access
18 to this database, is there any restriction on
19 that or a uniformed constable is able to access
20 the database equally to investigative officers,
21 or is there any restriction within police on who
22 has access to it?

23 A There are restrictions on what they can see
24 within the database, but there are no
25 restrictions on who can have access if they have

1 a reason to have access and a purpose to have
2 access. Like all of our databases in police,
3 you can't go into those databases unless it's
4 obviously for work purpose. There are warnings
5 placed on the various access points and if
6 people do use data for a purpose other than for
7 their duty, then they are held account for it.

8 But in terms of this one, this database,
9 it's not a right of access like most of them,
10 you know, that are available to police. This is
11 one that has to come through the Financial Crime
12 Group to approve that access. We have to be
13 clear as to the purpose for it. And it's only
14 when we have that understanding that we
15 authorize it.

16 Q And so if an officer was conducting a street
17 arrest, for example, they would not be able to
18 look at their computer in their patrol car and
19 find out if anyone had filed a suspicious
20 activity report on the individual that they had
21 arrested, for example?

22 A No, no, not unless they had been given specific
23 access for a purpose. If they had been, if it
24 was an organized crime investigator, for
25 instance, they may well be able to access it.

1 But it's not open to all members of the
2 organization.

3 Q I see. And I think you've touched on this, but
4 just so that we're clear, what types of data are
5 included in this database?

6 A The report -- the data reported from the
7 reporting entity so it's sort of raw data, it's
8 content. But it's not -- it doesn't to add
9 value to the data, to check, for instance,
10 criminal histories or vehicle ownership or
11 property registration, then we have to search
12 external databases to the GoAML database so that
13 only contains transactions that are reported
14 through from the reporting entities. And that
15 includes the full descriptor of the purpose and
16 who reported it and the like. All that
17 information is contained there, but it's purely
18 limited to the data reported.

19 Q And again, just so that I have it right, the
20 asset recovery teams both in terms of criminal
21 prosecutions as well as the civil forfeiture,
22 they would be the types of officers that would
23 be authorized for use of this database?

24 A Yes. I should add in terms of the database, it
25 also provides a mechanism for us to engage with

1 the reporting entity, so it's -- we can post
2 information to reporting entities. We can
3 provide them with guidance through the database.
4 They have to register as users and register as
5 reporting entities, so we can -- you know, we
6 see who is out there reporting and alike.

7 But in terms of your question just now, yes,
8 the vast majority of our money laundering team
9 investigators and asset recovery teams and our
10 organized crime teams would have direct access
11 to the database. And those that don't are
12 probably receiving information from one of their
13 colleagues for their duty.

14 Q And what purposes would these groups access the
15 database for typically?

16 A You know, the whole purpose of the framework is
17 to report suspicious financial activity, so they
18 are looking into the database to determine if
19 the people they're there investigating have been
20 the subject of any reporting because that
21 information, that intelligence could be used to
22 identify accounts or assets but also can be used
23 to support broader crime investigation tools
24 such as applying for production orders or search
25 warrants or interception warrants or whatever.

1 So they would be seeking specific
2 information about those that are investigating
3 or they may well be looking at addresses and
4 alike, bank accounts, reporting entities to try
5 and enrich their investigation through the use
6 of their intelligence.

7 The intelligence is there to be used and it
8 must be used. If we don't use it, we fail the
9 system. So we want to encourage our staff to
10 use the data, to obviously use it in a very
11 respectful way but nonetheless use it because if
12 we don't use it, we can't prevent crime, which
13 is the whole objective of the AML system.

14 Q You mentioned that you are looking at expanding
15 access to other reporting entities. Currently
16 what access is available to reporting entities?

17 A Well, we would provide them with -- sorry,
18 reporting entities or other agencies that would
19 be using financial intelligence?

20 Q Reporting entities.

21 A The reporting entities get access via their
22 portal to upload reports to the database. So
23 they are users. They can see on the notice
24 boards information we might be providing them,
25 but basically they use their access to provide

1 us with intelligence and information.

2 Q Is there a mechanism for reporting entities to
3 make a request for information through that
4 portal?

5 A So reporting entities are required by law to
6 report, but dissemination as -- we conduct
7 dissemination to other agencies, law enforcement
8 agencies, tax authorities directly, so they can
9 inquire of the FIU for information and when
10 appropriate it will be provided to them. Again,
11 we ensure that the requests are valid and are
12 proper. We do spontaneously disseminate
13 information when we can clearly see that it
14 would be of interest to, you know, another one
15 of the other agencies that is entitled to have
16 information, so security agencies. We will
17 provide that information, you know, if it's
18 clearly, for instance, tax crime or tax
19 evasion-type behaviour that we -- that have been
20 reported and that will be spontaneously
21 disclosed to, say, the tax authorities.

22 Q So with these other agencies such as the
23 securities group that you mentioned, what models
24 are you looking at in terms of expanding their
25 access?

1 A Yeah. So we would like -- we are exploring
2 opportunities to provide them with direct access
3 so that they -- we don't have to provide that
4 access to them. Our people can focus on
5 developing intelligence as opposed to simply
6 providing them with information that they
7 justifiably are entitled to.

8 There obviously will be, you know, controls
9 around it. It's not -- it's required by
10 regulation or statute as to their lawful purpose
11 for having access to the information and what
12 they are able to do with it and use it for.
13 There are the control elements to it, but we
14 certainly want to make it available and
15 encourage the use of it for reasons that, you
16 know, it is a rich source of data that can, you
17 know, protect our people. So -- and reduce the
18 occurrence of crime and victimization. So we
19 want to fully exploit this data for the benefit
20 of us.

21 Q I'm sorry. I had the technical issues unmuting
22 myself there.

23 And do you see any tensions between the need
24 for ready access to the database and the privacy
25 interests of the subjects of the reports within

1 the database?

2 A Yes. Yeah, there is a definitely a tension
3 there. And it has to be managed it and it
4 depends on the nature of the transaction. I
5 mean, obviously the statute says that reporting
6 entities must report it. By law they must
7 report it, and that has got clear purpose and
8 intent. So it's reported and then we have to
9 manage it. We have a responsibility to manage
10 that data in a way that we don't compromise
11 people's privacy without purpose.

12 If we do so, we undermine the whole system.
13 The whole integrity of the system starts to
14 unwind if that occurs. So for that reason we
15 are careful and very respectful of this
16 intelligence, but at the same time it would be
17 improper not to use it and make it available.

18 So the controls within the police
19 environment around access to information are
20 strong. You know, there's strict controls and
21 this falls within that ambit of those controls.
22 So we are careful, respectful, but we want to
23 leverage off it in terms of, you know,
24 performing our other duty, our wider duty.

25 Q And so you mentioned certain controls that are

1 in place and you've already described
2 limitations on access and the need for approval
3 through the Financial Crime Group. Are there
4 any other controls that you've used to resolve
5 these tensions?

6 A No. I think that if there's concern about the
7 purpose of or the misuse of it, obviously we
8 respond to it. But we would respond to the
9 misuse of any of our technology, and we do
10 respond to that sort of behaviour. I'm not
11 aware of there ever being an instance where we
12 have had to respond to misuse of financial
13 intelligence. There certainly have been
14 instances where staff have, you know, used our
15 databases for other purposes, but I am not aware
16 of a single incidence where it extends to our
17 financial intelligence database and that is
18 because there are a range of those other
19 controls in place to ensure that we have
20 oversight of who we're giving access to.

21 Q Are there, for example, audits or is there any
22 monitoring of the access of -- that individuals
23 have to the database?

24 A Not specifically, no. I mean, access to the
25 database -- we don't check, we don't monitor

1 footprints of individuals as they work through
2 the database no, but certainly going in and out
3 we do. Other parts of our system, we have --
4 you know, we do track footprints of where people
5 go. But this is an area we would like to
6 improve on in terms of technology, not so much
7 to monitor people's -- what they're doing in
8 there, but more so as to being able to monitor
9 feedback to reporting entities about how the
10 information is being used, how it's being used
11 to -- for the correct purpose. To give them
12 some guidance and feedback around what's
13 valuable to us and what is not.

14 Q And so one of the areas for improvement
15 identified in the mutual evaluation report was
16 that law enforcement agencies obtain additional
17 information directly from the database in order
18 to detect activity by those that are not already
19 known to law enforcement. Are you familiar with
20 that comment or feedback?

21 A Yes. Yes, yes.

22 Q And do you have any views on that or do you
23 agree that there could be improvement in that
24 area?

25 A Yeah, I do agree with that. And that is the

1 area of sort of, you know, learning and
2 connecting transactions that in a way that is
3 efficient and that helps us identify known
4 unknowns. And we know there's some -- there's
5 opportunities to able to use the data in a more
6 effective way and that's what we're wanting to
7 explore at the moment. It's a query-based data
8 set, so you have to search for an individual or
9 whatever. What we want the database to do is to
10 actually start matching up sets of transactions
11 to create that enhanced concern so as that we
12 can respond to it. Particularly in the
13 international funds transfer space, there's so
14 much data. I mean, there's millions and
15 millions of transactions coming through from the
16 reporting entities and our technology has
17 limitations in terms of how we can use that huge
18 volume of data.

19 Q Another comment with respect to the database in
20 the mutual evaluation report that you may be
21 familiar with is that it is sometimes used to
22 find beneficial ownership information. And so I
23 just wondered, picking up from that, if you have
24 any views on the adequacy of the availability of
25 beneficial ownership information in New Zealand

1 and what role that information plays in
2 investigations for both forfeiture and
3 prosecution.

4 A Yeah. So it's a central issue being able to
5 connect property to ownership and ownership to
6 criminal activity. In New Zealand, you know, we
7 have a large number of trusts, for example. We
8 do have good oversight of things like foreign
9 trusts but some of our domestic trusts, you
10 know, beneficial ownership or interest in those
11 trusts is only known to the deeds that creates
12 the trust and where they're located are often
13 hard to find, I mean -- and the same applies
14 with legal persons. Generally companies where
15 we can have nominee ownership of companies and
16 that can create us with a challenge to
17 reconstruct, you know, where money may well be
18 concealed.

19 Having said had that, we've had, you know,
20 numerous successes where through investigation
21 and hard work we've been able to evidence and
22 establish beneficial interest and effective
23 control over assets held in the name of third
24 parties and nominees. But certainly this is in
25 the area, again, not unique to New Zealand in

1 terms of challenge, that as a challenge to many
2 [indiscernible] investigations generally. And
3 for that reason, you know, you'll see those
4 recommendations in the area around looking at
5 the likes of beneficial ownership registers and
6 alike.

7 Q And then one question that arises from the
8 testimony of Professor Jason Sharman. He made
9 some comments about the ease of access to form
10 corporations in New Zealand and how that has
11 figured in some international crime. Do you
12 have any views on that? Is there any role for
13 police involvement in that area?

14 A Yes. So, you know, companies can be formed in
15 New Zealand that can misbehave offshore. Often
16 they have no presence in New Zealand or they
17 have historically had no presence in New Zealand
18 and they have featured in the sorts of behaviour
19 he has referred to.

20 Now, things have changed a little built in
21 that we do have to have some presence in New
22 Zealand which allows us in our ability to
23 commence investigations. But also I mentioned
24 before cases involving the likes of Vinnik, we
25 want to make sure that New Zealand legal persons

1 aren't abused by people that are offshore. And
2 therefore having those and taking response like
3 we have with that one and others, we're trying
4 to or we are signalling clearly that, you know,
5 we won't tolerate that New Zealand is not a soft
6 place in terms of, you know, committing or
7 depositing money or funds through the use of
8 legal persons in our country and if we identify
9 them, we'll take action.

10 This is a country where if you want to use a
11 legal person created here for bad behaviour, you
12 know, you'll lose that money more likely than
13 anywhere else in the world. You know, we want
14 to have an economy that is open for business and
15 does good business, but as I mentioned in the
16 earlier session it's important that this country
17 of ours is also the hardest place for criminals
18 to do business.

19 Q So I understand that you've been involved as
20 well in the FATF mutual evaluation of China. I
21 wonder if you're able to share any comments on
22 that process or on your perspective there?

23 A China is a huge country and one of the issues
24 that will be familiar to you, I'm sure, is
25 certainly familiar to law enforcement around the

1 world is the issues around the currency control
2 measures that China has in place and how that's
3 created remittance services to pop up around the
4 world as people in China remove property from or
5 move money from China without contravening those
6 currency controls.

7 And they do that through swap remittance
8 services, which means that, you know, funds are
9 in effect not crossing the border in or out of
10 China but transactions are paired up. Someone
11 in China wants to send money to New Zealand or
12 Canada and someone in Canada wants to send money
13 back to China. Those two transactions are
14 swapped and funny moneys don't leave their
15 respective jurisdictions. And because the
16 moneys never cross the border or never move
17 through international banking, you know, they
18 can be challenging to reconstruct.

19 And China is doing some pretty amazing work
20 in that space of, you know, targeting
21 underground bankers in China. That's the China
22 end of these transactions. Certainly countries
23 like New Zealand are targeting the remitting
24 sector here that's involved in the movement of
25 illicit funds via that channel because it's a

1 channel that is able to be exploited and abused
2 by criminals and many countries have seen that,
3 including our own, including your country. But
4 again, China has capability up here to forward
5 those investigations and we need to work closely
6 with them to counter the risk and the problems
7 with that sort of behaviour.

8 I could talk quite a lot about China because
9 I spent quite a lot of time there, but I don't
10 know -- I think that is probably a key point in
11 terms of Canada's challenges with China. The
12 same as the challenges we have.

13 Q And I just wanted to ask about your expertise in
14 that area. So you're speaking there from your
15 experience with the New Zealand Police as well
16 as being involved in the mutual evaluation
17 process. Do you have any other expertise with
18 respect to your comments there?

19 A I've done investigations in China for predicate
20 activities that have resulted in confiscations
21 here in New Zealand. So been there and worked
22 with Chinese investigators, you know,
23 reconstructing and evidencing fraud and alike
24 and the movements of moneys that originated from
25 those activities into our country here.

1 MS. ROSE: Okay. Mr. Commissioner, those are my
2 questions for this witness.

3 Thank you, Detective Inspector Hamilton.

4 THE COMMISSIONER: Thank you, Ms. Rose. I'll call
5 now on Ms. Stratton on behalf of the Province,
6 who has been allocated 15 minutes.

7 MS. STRATTON: Thank you, Mr. Commissioner.

8 **EXAMINATION BY MS. STRATTON:**

9 Q Detective inspector, can you hear me all right?

10 A Yes, I can.

11 Q Excellent.

12 MS. STRATTON: Madam Registrar, could we please pull
13 up exhibit 976. It's the dashboard statistics.
14 And if you wouldn't mind just zooming in on the
15 top left quadrant. And this is the document
16 that is not to be displayed on the livestream,
17 so perhaps at this time I'll just ask Ms. Rose
18 to jump in if she has any concerns or the
19 witness has any concerns. The question I want
20 to ask is about that top left quadrant under the
21 "Forfeiture Restraints and Cases Created"
22 heading.

23 MS. ROSE: Thank you, Ms. Stratton. I think the
24 concern with this document is in the right-hand
25 side of the document, so I don't think your --

1 if your questions are in that area, I don't
2 think they present any concern. Thank you for
3 asking.

4 MS. STRATTON: Excellent. Thank you.

5 Q So you'll see there just in between the arrows
6 it says for every \$1 restrained there is \$3.30
7 of crime disrupted. And then for every \$1
8 forfeited there is \$3.50 of crime disrupted.
9 And I was just wondering, how is it that this
10 crime disruption was measured?

11 A So this measurement emerges from -- initially
12 from studies undertaken in Australia where
13 academic research looked at the value of
14 extracting money from the criminal economy in
15 terms of the downstream impact that has on crime
16 prevention. We replicated that research here
17 through one of our New Zealand universities
18 supported by academics in Australia, and their
19 conclusion was that -- those ratios as you
20 identify on the dashboard. So what this is
21 telling us is that, you know, our actions are
22 having their preventative impact and preventing
23 and disrupting crime.

24 Now, the science behind these numbers is
25 validated, but it is challenging to provide you

1 with some assurance that it's absolutely
2 accurate. I guess what is however sufficient to
3 tell you that there is a broader benefit in
4 terms of crime disruption that can be measured
5 through the extraction of illicit accrued wealth
6 from the criminal economy.

7 Q Thank you. That is helpful. I'd like to --

8 MS. STRATTON: That document can be taken down now,
9 Madam Registrar. Thank you.

10 Q I'd like to ask you about asset recovery now. I
11 believe you told Ms. Rose when she was asking
12 you questions that most asset forfeiture files
13 start out as criminal investigations because you
14 typically need an investigation before you can
15 restrain property. Was that an accurate summary
16 of your evidence?

17 A Yes. Although some of them, they require the
18 criminal application of criminal investigation
19 tools to establish a civil case. So although we
20 require those tools, that doesn't mean in every
21 case that we are, you know, pursuing evidence to
22 prosecute. It may well be pursuing evidence of
23 criminality to advance a civil forfeiture
24 proceeding.

25 Q Okay. And I understand under the *Criminal*

1 *Proceeds (Recovery) Act* that police officers
2 have many of the same powers afforded to police
3 conducting criminal investigations, including
4 the powers to obtain search warrants, production
5 orders and examination orders. Is that correct?

6 A Yes. So our staff in the asset recovery space
7 largely have [indiscernible] all of those powers
8 for general crime investigation. However, in
9 reverse the general crime investigation do not
10 have the powers available under the *Criminal*
11 *Proceeds (Recovery) Act*. Those are delegated
12 powers by the Commissioner to individual staff
13 member in our structure.

14 Q Okay. So when you say that the officers are
15 using the criminal investigative tools, are you
16 referring to these tools under the *Criminal*
17 *Proceeds (Recovery) Act* or different tools and
18 powers?

19 A So the tools under the *Criminal Proceeds*
20 *(Recovery) Act* are production tools and
21 examination tools where we can ask people for
22 information and those can be applied for at the
23 same time. But in terms of evidencing crime
24 itself, establishing the foundation for crime,
25 those tools are not present in the *Criminal*

1 *Proceeds (Recovery) Act*. Those tools are our
2 search and surveillance, general search and
3 surveillance-type legislation to allow us to
4 investigate criminality.

5 Q Okay. Could you explain a little bit more,
6 then, when officers would use the tools under
7 the *Criminal Proceeds (Recovery) Act*?

8 A Yes, generally we would use them when we have
9 identified a criminal who has wealth or the
10 proceeds of crime. In terms of the examination
11 tools, generally -- when I say "examination" I'm
12 talking about the compulsory interview tools.
13 Generally they would occur post-restraint. So
14 once we have secured property, we would then
15 start more overt investigations with those sorts
16 of tools. And the reason we wouldn't generally
17 do them -- on occasion they have been done
18 before restraint -- is because once we start
19 those investigations and they know we're looking
20 at property, then of course we might find it
21 harder to find that property when we do
22 eventually restrain it because it will be hidden
23 or concealed or whatever.

24 So generally we try and conduct an
25 investigation, seek an *ex parte* restraining

1 order and then we would advance those -- the
2 restraining order is obtained on "with
3 reasonable grounds to believe," so that lower
4 threshold of evidence. That secures our
5 property and allows us to then move in with
6 those civil investigation tools to build a case
7 to the balance of probabilities so we can
8 advance it to forfeiture.

9 Q Thank you. And is it fair to say are these
10 tools used frequently, routinely in cases or are
11 they --

12 A Yes.

13 Q Okay. Thank you.

14 A Routinely, yes.

15 Q I'd like to ask you a little bit about money
16 laundering training now. In your CV -- which I
17 don't think we need to go to but please let me
18 know if you'd like it see it. But it states
19 that when -- in your role as national manager of
20 the asset recovery units in the money laundering
21 teams you were responsible for the delivery and
22 coordination of national training associated
23 with money laundering and terrorist financing
24 investigation and criminal proceeds recovery.
25 And I was wondering if you could tell us more

1 about that training.

2 A So our staff deliver a course at the Royal New
3 Zealand Police College. It's a money laundering
4 course. There's sort of been two different
5 courses. An initial course focused largely on
6 awareness. The second course sort of focuses
7 largely on investigative techniques and
8 practices. So we're trying to lift awareness of
9 what to look for, but we're also trying to
10 provide skills to our investigators that's not
11 financial crime investigators. That's
12 investigators across police and some of our
13 partner agencies to support investigation and
14 prosecution outcomes through training.

15 These courses are popular. They are in
16 demand by our staff. They are in demand
17 internationally. We have delivered our
18 investigators course in Vietnam on a number of
19 occasions and we've supported training across
20 the Pacific. And it's an important element of
21 success is giving people the right skills to
22 conduct these investigations to achieve
23 appropriate outcomes.

24 Q Thank you. And is this training -- is it
25 mandatory or is it optional within the New

1 Zealand Police?

2 A It's optional in terms of those intensive
3 courses, but money laundering and drug crime and
4 violence and sex crimes are all part of our
5 general investigation training. So to become a
6 detective in New Zealand you have to be
7 obviously a sworn constable who has service as a
8 police officer and then that training occurs
9 over a 30-month period with various, you know,
10 in-college or in-class components plus field
11 learning requirements to qualify as a detective.
12 And that includes exposure to, you know,
13 financial crime and money laundering. The
14 courses -- the money laundering specific courses
15 are specific to that offence and we run other
16 specialist courses in the police here with some
17 of our, you know, investigative techniques
18 drug-type training targeting particular crime
19 types.

20 Q Thank you. My final area of questions for you
21 is about the casino sector. Ms. Rose asked you
22 a few questions about money laundering and
23 casinos. And I was wondering in New Zealand are
24 casinos run by private companies or some sort of
25 government entity?

1 A Private. Supervised by the government but
2 private under licence.

3 Q Okay. So it's fair to say casinos are private
4 companies but they're regulated by government
5 and therefore as regulated entities they follow
6 the regulations by government?

7 A Yes.

8 Q Okay.

9 A Yes.

10 MS. STRATTON: Thank you. Madam Registrar, may I
11 please have exhibit 975 pulled up. And I'm
12 looking for page 25. I am on a paper copy, so
13 I'm not sure what that is in the PDF. And I'm
14 looking for bullet (f) there where it says
15 "Casinos."

16 Q So this is the FATF report and it says:
17 "New Zealand has three casino operators
18 with six casinos."
19 I guess, first of all, the three casino
20 operators, that refers to the private companies,
21 I imagine?

22 A Yes.

23 Q And then just:

24 "S. New casino
25 licences are prohibited but existing

1 licenses may be renewed. Online casinos
2 are illegal."

3 And then this is the sentence I'm interested in.
4 It says:

5 "DIA --"

6 Which is the Department of Internal Affairs; is
7 that right?

8 A Yes. That's right, yes.

9 Q Their 2009 SRA, and I believe that SRA is sector
10 risk assessment; is that right?

11 A Yes. That's correct, yes.

12 Q So the SRA:

13 "... found the sector to be medium-high
14 risk due to the ease of access to casinos,
15 coupled with high risk services/products
16 and their use in every phase of [money
17 laundering/terrorist financing] and in
18 many different typologies."

19 Do you have any further insight into the risk in
20 casino sector and why it's medium to high risk in
21 New Zealand?

22 A I think largely because it's cash intensive.

23 And risk doesn't mean that lots of money
24 laundering is occurring in the casino. It just
25 means that there's a risk because of activity

1 that occurs in there and particularly, you know,
2 it's a high cash-intensive environment and it's
3 a fast environment that it presents risks. If
4 people want to launder lots of money that's an
5 option for them.

6 Having said that, it's a highly surveilled
7 environment. And by highly surveilled I mean
8 that the surveillance that occurs in there is,
9 you know, some of the best in any premises in
10 the country. And I guess that's -- you know,
11 it's a casino mitigator for cheating or
12 whatever. So it's a high risk, but there are
13 risk mitigation in response that we can apply to
14 that sector.

15 Q So it's fair to say --

16 A It has occurred. There's no doubt money
17 laundering has occurred in the casino sector.
18 There's no question of it. The sector is not
19 suggesting for a second the sector is complicit
20 in it, but, you know, criminals would be
21 criminals. And they will go to a casino like
22 they will go to a bank. And we have to
23 therefore be vigilant and we have to acknowledge
24 that that sector presents risk.

25 Q Right. So I take your point because it is high

1 risk that is why there's a higher level of
2 control and regulations in place, not
3 necessarily that there's money laundering taking
4 place? Is that a yes, just for the transcript?

5 A Yes, yes. There's no doubt. I'm not denying
6 and I'm not suggesting that casinos -- that
7 money laundering does not occur in casinos. It
8 does. I mean -- and we have investigated and
9 prosecuted people for doing just that. And it's
10 because of the amounts of cash that move around
11 that environment.

12 MS. STRATTON: Thank you. Madam Registrar, if --
13 could we please go to page 18 of this report.
14 Down towards the very bottom, bullet (e).

15 Q So at this part of the report it says:
16 "Cash and cash deposits are primary
17 vehicles to launder the proceeds of
18 domestic drug and economic crimes,
19 including through cash-intensive
20 businesses and casinos."

21 So does that accord with the point you are making
22 that casinos are high risk due to the volume of
23 cash that go through them?

24 A Yes, cash as a value of transfer is high risk
25 because it's anonymous. Despite serial numbers

1 being on cash, they are not captured, so it is
2 completely anonymous and that is why cash is a
3 challenge. Any business that's dealing in lots
4 of cash is exposed to money laundering risk
5 because of the anonymity that cash presents.

6 Q And so accordingly, you would expect the casino
7 sector to have controls in place to deal with
8 this high risk of cash; is that fair?

9 A Yes. And they are supervised along those lines
10 as a high-risk sector by the DIA. So
11 understanding risk is central to performance of
12 the system. So the fact that we acknowledge
13 they're high risk means that they are supervised
14 in accordance with that and monitored in
15 accordance with that to mitigate risk.

16 Ms. Stratton: Thank you. Mr. Commissioner, those
17 are all my question for the witness.

18 THE COMMISSIONER: Thank you, Ms. Stratton.

19 I'll turn now for Ms. Herbst on behalf of
20 the Law Society of British Columbia, who has
21 been allocated ten minutes.

22 Ms. Herbst: Thank you very much, Mr. Commissioner.

23 **EXAMINATION BY MS. HERBST:**

24 Q And thank you, Detective Inspector Hamilton. I
25 just want to start with a few questions about

1 your background. Your CV refers to -- and I
2 don't think we need to pull it up, although I'm
3 happy to if it's more convenient for you --
4 refers to your Bachelor of Arts degree and has
5 in parentheses after that "economics endorsed."
6 Is that -- and I realize this is probably just a
7 difference in terminology. Would that be, if
8 you know now what I'm going to be talking about,
9 sort of the equivalent of a major in economics
10 as part of your --

11 A That's correct, yes. That's right. Yes.

12 Q Okay. And did you choose that -- I realize it's
13 a degree that you obtained in 2010. Did you
14 choose that field as one that you thought would
15 be useful in terms of your existing
16 investigation work -- or investigative work into
17 financial crime?

18 A I think so. I mean, I've got a general interest
19 in economics and economically motivated crime,
20 which a large amount of crime is economically
21 motivated. So my -- most of my study was more
22 in the macro as opposed to micro space, so
23 getting a good understanding of money and how it
24 moves around the world and how economies work
25 was interesting.

1 Q Got it. And your degree is from Massey
2 University. Is that a university in New
3 Zealand?

4 A Yes.

5 Q And not for a moment am I suggesting that you
6 should have a law degree, but just to clarify.
7 Do you have a law degree as well as your
8 Bachelor of Arts degree?

9 A No.

10 Q Now, you have a long history as described in
11 your CV and through Ms. Rose's questions to you
12 with the New Zealand Police. Have you ever
13 worked as an employee of a law enforcement
14 agency in Canada?

15 A No.

16 Q And I take it flowing from that -- so excuse me
17 for asking the question, but you've never
18 personally sworn an information to obtain a
19 search warrant in a Canadian court?

20 A No. I have received information in relation to
21 Canadian-based investigations.

22 Q Yes.

23 A And supported Canadian-based investigations,
24 yes.

25 Q Absolutely. And you've never personally

1 executed a search warrant in Canada?

2 A No.

3 Q Now, just in terms of a couple of other points,
4 I noticed both on the dashboard, although I
5 don't think we need to pull it up, and in your
6 description -- in your discussion with Ms. Rose
7 of search terms that you -- the police may use
8 in searching through suspicious activity reports
9 a reference to cannabis. In New Zealand is the
10 sale of cannabis a criminal offence?

11 A Yes. It is a criminal offence, but I would
12 describe it as not a priority offence for us to
13 respond to. It is definitely criminal behaviour
14 still, but it's -- yes.

15 Q Okay. And then just a final question. There
16 are some references in the documents and of
17 course in your testimony as well to money
18 laundering investigation teams in the plural.
19 Is there a fixed number of teams, or does it
20 vary -- does the makeup and number vary
21 depending on the caseload that's being worked
22 on?

23 A A little bit. But we have three dedicated money
24 laundering teams in the Financial Crime Group.
25 And as I mentioned earlier, money laundering has

1 an offence type as investigated and known by
2 police, not just our group. So particular
3 investigation teams and, for instance, national
4 organized crime teams, they might focus on money
5 laundering as an investigation type and, you
6 know, that will produce outcomes in response to
7 their investigation. Yeah.

8 MS. HERBST: Okay. Thanks very much. Those are my
9 questions. I appreciate it.

10 THE COMMISSIONER: Thank you, Ms. Herbst. I'll turn
11 now to Mr. Usher on behalf of the Society of
12 Notaries Public of British Columbia, who's been
13 allocated ten minutes.

14 MR. USHER: Thank you, Mr. Commissioner.

15 **EXAMINATION BY MR. USHER:**

16 Q Good Thursday morning to you, Detective
17 Inspector. Thank you for joining us today.

18 A Good morning.

19 Q I just wanted to ask a couple of questions about
20 a statute you have in New Zealand that we don't
21 seem to have an equivalent of here.

22 MR. USHER: If I could ask Madam Registrar to bring
23 up the *Criminal Disclosure Act* 2008. That is
24 document that I had earlier provided to the --
25 and was circulated. Thank you.

1 Q Detective Inspector, do you recognize this law?
2 Are you familiar with the Criminal Disclosure
3 Act as it is in New Zealand?

4 A Yes.

5 MR. USHER: And may this be marked as the next
6 exhibit, Mr. Commissioner.

7 THE COMMISSIONER: Yes, very well.

8 THE REGISTRAR: Exhibit 977.

9 **EXHIBIT 977: *Criminal Disclosure Act 2008***

10 MR. USHER: Thank you for doing that.

11 Q Could you tell us a bit about this law. I take
12 it this law applies in criminal matters, not so
13 much in your civil forfeitures. Would that be
14 correct?

15 A That's correct. So this is a piece of statute
16 that was designed to ensure that there is
17 fairness in terms of compliance with disclosure
18 obligations when we prosecute somebody, ensuring
19 that all the relevant that relates to that
20 prosecution is provided to an accused person
21 within a set time frame and also provides
22 processes if there are particular reasons why
23 information cannot or should not be disclosed
24 for a particularized reason.

25 So its purpose has intent as around

1 fairness. Ensuring that the process of
2 prosecution is fair.

3 Q Thank you. And can you tell us from your point
4 of view as a police officer, how is this -- I
5 take it this act came into being in 2008. Was
6 there a law in place before this?

7 A There was a -- you know, I can't tell you what
8 that law was before, but certainly disclosure
9 has been, you know, a big part of our system for
10 a long time. This certainly formalized and
11 brought into being all of the frameworks around
12 that and the mechanisms to resolve disclosure
13 issues. It certainly always been with us that
14 we have provided, you know, disclosure
15 requirements but this certainly formalized a
16 framework around how we do that.

17 Q Can you provide just what your experience has
18 been with the act? Has it solved problems? How
19 has it been to comply with it in terms of
20 criminal cases?

21 A I think it puts a real structure around what the
22 requirements are and when. Time frames, initial
23 disclosure. It doesn't impede the process from
24 our perspective, in fact rather reverse. I
25 think it brings that real sense of fairness to

1 the process and allows us in our forum to
2 respond to particularly sensitive pieces of
3 information that, you know, we may not
4 ordinarily want to disclose in a prosecution for
5 good reasons. And it puts a framework around
6 how those issues are resolved.

7 Q Thank you. It sounds like your experience has
8 been positive, then, working under this act?

9 A Yeah. From a fairness perspective I think it
10 gives our system a good sense of fairness. That
11 people are not disadvantaged by -- disclosure is
12 a big piece of police work. It's a big part of
13 our business making sure that all the material
14 gets out there, and sometimes it's very
15 challenging to get so much material out there in
16 time, but it's important. An important part of
17 the justice process.

18 MR. USHER: Thank you, Detective Inspector. Those
19 are all my questions. Thank you.

20 THE COMMISSIONER: Thank you, Mr. Usher. I'll call
21 now on Mr. Duong on behalf of the British
22 Columbia Lottery Corporation, who's been
23 allocated five minutes.

24 MR. DUONG: Thank you, Mr. Commissioner. I don't
25 have any questions for the Detective Inspector.

1 Thank you.

2 THE COMMISSIONER: Thank you, Mr. Duong. I will now
3 call on Ms. Tweedie and behalf of the British
4 Columbia Civil Liberties Association, who has
5 been allocated ten minutes.

6 MS. TWEEDIE: Thank you, Mr. Commissioner.

7 **EXAMINATION BY MS. TWEEDIE:**

8 Q Detective Inspector Hamilton, can you hear me?

9 A I can, yes.

10 Q Great. Thank you. I'd like to take you to two
11 documents I circulated. They were downloaded
12 from a website that allows New Zealanders to
13 publicly lodge official Information Act requests
14 online.

15 MS. TWEEDIE: So, Madam Registrar, if you don't mind
16 pulling up the response from the Financial Crime
17 Group that I circulated last week. Thank you.

18 Q Detective Inspector, do you recognize this
19 correspondence as coming from the office of the
20 Financial Crime Group?

21 A Yes.

22 Q Yes. AND you've had a chance to review this
23 document?

24 A Yes.

25 Ms. Tweedie: Great. May I please ask to mark this

1 as the next exhibit.

2 THE COMMISSIONER: Very well.

3 THE REGISTRAR: Exhibit 978.

4 **EXHIBIT 978: New Zealand Police Financial Crime**
5 **Group response - July 10, 2017 - Redacted**

6 MS. TWEEDIE: Thank you.

7 Q So this letter is a response to an information
8 request for the total value of New Zealand
9 dollars in assets and cash that were seized
10 under asset forfeiture from 2011 to 2016. And
11 beneath -- sorry, if you mind scrolling down so
12 that both tables are visible. Thank you.

13 So those two tables set out the value of
14 assets restrained and then the value of assets
15 that have actually been forfeited from the years
16 2011 to 2016. So if we look at the second chart
17 under forfeitures, for instance, in 2011,
18 16 million was forfeited. In 2012, 16 million
19 and so on. Do these figures accord with your
20 knowledge? Do they seem accurate to you?

21 A I haven't checked those numbers against the data
22 here, but I'm sure they are yes.

23 Q Okay. Thank you.

24 MS. TWEEDIE: Madam Registrar, can we now please
25 bring up the second letter and that is from the

1 Ministry of Health.

2 Q And it's in response to --

3 A Would you like me to explain why there's a
4 difference in those numbers? Is that of use to
5 you.

6 Q Between assets restrained and assets forfeited?

7 A Yes.

8 Q Yes. I believe I understand, but for the
9 benefit of everyone perhaps you could explain.
10 That would be great. Thank you.

11 A Okay. So the restraint in one year will
12 feature in forfeiture that same year. More
13 likely it will feature at a future time. But
14 importantly our restraint value is the total
15 value of assets. So, for instance, if we
16 restrained a house that was -- had a mortgage on
17 it of \$500,000 and the house was worth
18 \$1 million, it would be captured as a restrained
19 value of \$1 million unless we specifically
20 excluded the bank's interest. We're not going
21 to forfeit the bank's interest, of course, so we
22 would only forfeit the equitable interest owned
23 by our respondent.

24 So in term of the data that would feature as
25 a \$1 million property restrained, but a \$500,000

1 forfeiture. Does that make sense to you? And
2 the reason being is because we excluded the
3 bank's interest at the time of forfeiture or any
4 other third party's interest at the time of
5 forfeiture.

6 Q Yes. Thank you. I also imagine that some of
7 the assets that are restrained are just
8 ultimately not forfeited to the Crown. Is that
9 also fair?

10 A A small number are. They would be abandoned.
11 Most likely the difference between restraint
12 really and forfeited value is likely to be
13 third-party interest. That is a finance company
14 or a bank or an interested parties, a spouse, a
15 family member or some other person who has a
16 vested interest in the property that was an
17 associate or involved in crime -- with that
18 crime.

19 MS. TWEEDIE: Okay. Thank you. Madam Registrar, can
20 we please pull up that second letter from the
21 Ministry of Health.

22 Q So, Detective Inspector, this is in response to
23 the same information request, and it comes from
24 the Ministry of Health. Have you had a chance
25 to review this document?

1 A Briefly, yes. Yes.

2 Q Okay. Thank you. And in this sheet -- sorry,
3 the person who requested the information asks
4 for how much money was spent on funding
5 rehabilitation services, and then also asks to
6 name specific rehabilitation centres or
7 projects. It then goes on to state that --
8 okay. So sorry, under the heading "Value of
9 Cash and Assets Seized" it states that the
10 annual funds paid into the proceeds of crime
11 fund since the passing of the *Criminal Proceeds*
12 *(Recovery) Act* were 4 million in 2012/2013, just
13 under 7 million in 2013/2014.

14 So I notice that these amounts that the
15 Ministry of Health is saying were paid into the
16 proceeds of crime fund are significantly less
17 than the previous table we saw on assets
18 forfeited.

19 So for instance in 2012 the previous table
20 stated that 16 million had been forfeited, but
21 then we see here that only about 4.1 million was
22 paid into the proceeds of crime fund in 2012 and
23 2013. I'm wondering if you could speak to this
24 discrepancy.

25 A I'd have to have a closer look at this, but

1 there are a couple of reasons. One is that when
2 property is forfeited it may not get liquidated
3 or sold. Well, certainly the process won't
4 start for at least seven months after the
5 forfeiture. Then [indiscernible] to the sort of
6 property it is, it may well take some time to
7 actually be liquidated. So it may not occur
8 within the same calendar year as forfeiture.
9 That could be a reason. Although we try our
10 best to maintain and manage the property to
11 preserve its value, that does incur a cost and
12 the official assignee recovers a cost for that
13 process.

14 And In addition to that we also pay out of
15 forfeited property any fines and reparations a
16 respondent might have for property hence the
17 proceeds of crime fund. So if a subject has
18 been subject to a forfeiture order and they owe,
19 for instance, reparation to victims or others or
20 they have fines that will be paid by the
21 official assignee before the funds are made
22 available to the proceeds of crime fund. And
23 lastly if a respondent has had any state funded
24 or legal services payment. So in New Zealand a
25 respondent can apply for public defence funds,

1 it's funded by the community. As part of that
2 forfeiture process, those funds are reimbursed.

3 So if in fact when the property is
4 forfeited, they owe money to legal services or
5 legal aid they have received relating to any
6 matters that are criminal and civil that will be
7 reimbursed before the funds are placed into this
8 fund. Sometimes that can be a significant
9 amount of money.

10 Q Okay. Thank you. That makes sense. So in
11 light of those factors you just spoke to, the
12 value of assets forfeited, what ends up going to
13 the proceeds of crime fund can end up being just
14 a percentage of assets that are forfeited.
15 That's correct?

16 A Yes. Yes.

17 Q Thank you.

18 A Those deductions are in statute in the act. We
19 must pay those deductions.

20 MS. TWEEDIE: Okay. Great. Thank you. And if you
21 scroll down, Madam Registrar.

22 Q And I appreciate you might not have detailed
23 knowledge of this, but you've seen this chart.
24 And I just want to ask if these are typical
25 examples of the types of drug and rehabilitative

1 programs that some of the forfeited -- or some
2 funds in the proceeds of crime fund might go to
3 financing?

4 A I think they're reasonably typical. The
5 criteria for allocation of funding out of the
6 fund changes from time to time and it's actually
7 getting broader so that the number of agencies
8 or ministries that can apply for funding is
9 increasing. There have been some significant
10 amounts of money that have gone into the fund
11 that have gone out in terms of supporting
12 community resilience and initiatives.

13 MS. TWEEDIE: Okay. Thank you. Can we please have
14 this marked as the next exhibit,
15 Mr. Commissioner.

16 THE COMMISSIONER: Yes, very well.

17 THE REGISTRAR: Exhibit 979.

18 **EXHIBIT 979: New Zealand Ministry of Health**
19 **response - July 13, 2017 - Redacted**

20 MS. TWEEDIE: Thank you.

21 Q And just to go back to one of Ms. Rose's line of
22 questioning earlier. You stated that proceeds
23 of crime funds that are received by the police
24 are limited to legal fees and can sometimes go
25 to interpreters. Are there any other categories

1 within the police that proceeds of crime funds
2 go to?

3 A Not automatically. They're the two that sort of
4 annual bids from police, but police have made
5 funding application for various initiatives to
6 improve, you know, understanding particular
7 crime types or for resource allocations. As I
8 mentioned early on, we did make bids
9 successfully for some resource allocations for a
10 specific purpose. We've been trialing things
11 like working particularly with methamphetamine
12 addiction, obtaining resource to work with joint
13 outcomes with, say, the Ministry of Health to
14 provide, you know, a different approach to drug
15 addiction issues. And the pilot schemes for
16 those would be, you know, funded out of this
17 fund in joint partnership with another ministry.
18 And subject to success, then, with a view that
19 those pilots be expanded with baseline funding.
20 So that does occur and has occurred.

21 Q Okay. So to be clear, the police, they are one
22 of the agencies that are capable of applying for
23 funding from the proceeds of crime fund?

24 A Yes, that's correct. But we aren't involved in
25 the decision-making around the allocations of

1 that money. It's a cabinet decision. So in
2 effect we compete with everyone else for our
3 initiatives and success is often achieved with
4 working with other ministries to develop joint
5 initiatives. The criteria around the funding,
6 though, is really focused on harm reduction. So
7 it's got a strong focus on alcohol and drug
8 addiction and community resilience, community
9 repair-type initiatives.

10 Q Fair to say that harm reduction is a top
11 priority?

12 A Yeah. It's a top priority for everything we do.
13 Prevention first is all about reduction. So --
14 and we acknowledge we can't do that ourselves.
15 We have to do it with partners, and that's why
16 that forms part of our prevention first strategy
17 I spoke of earlier.

18 MS. TWEEDIE: Thank you. Those are my questions.

19 THE WITNESS: Thank you.

20 THE COMMISSIONER: Thank you, Ms. Tweedie. And I'll
21 turn now Mr. Rauch-Davis on behalf of
22 Transparency International Coalition, who has
23 been allocated ten minutes.

24 MR. RAUCH-DAVIS: Thank you. Madam Registrar, I
25 wonder if we might pull up exhibit 975, which is

1 at FATF report. And in particular I'm looking
2 for page 137 of the PDF, which is 135 of the
3 report. Thank you. That's great.

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

5 Q So, Detective Inspector Hamilton, you gave some
6 evidence on the access to beneficial ownership
7 information, and this is the finding in FATF.
8 This kind of elaborates on some of your evidence
9 earlier. And I'll just take you through a few
10 of them. At -- paragraph (a) sets out that
11 beneficial ownership information is not always
12 available. And I take it you would agree with
13 that; right?

14 A Yes.

15 Q Yeah. And then skipping ahead to section (c) or
16 finding (c), which is one of the findings I was
17 most interested in getting your perspective on.
18 It sets out that there are insufficient
19 mechanisms for authorities to obtain adequate,
20 accurate and current beneficial ownership
21 information.

22 And I am wondering, does the content of that
23 finding accord with your experience?

24 A To an extent it does. I mean, I think the
25 concept there is -- or the concept is clearly

1 that if it's a trust, for instance, and we don't
2 know who the beneficial beneficiaries of that
3 trust are, then that presents us with a
4 challenge. Typically if they're held in nominee
5 for third parties, then that's where the
6 challenge sits, being able to identify that
7 information and identify where it's even
8 located.

9 Q Right. And in the past those types of
10 challenges, those have been active challenges
11 and investigations to your knowledge; right?

12 A Yes.

13 Q Yeah. So from your perspective do you think
14 that more timely access to beneficial ownership
15 information would improve money laundering
16 investigations?

17 A Yes.

18 Q Then finding (d), subparagraph (d), it talks
19 about sanctions for failure to comply with
20 information requirements and in particular sets
21 out that there are insufficient sanctions
22 applied to individuals and to breaches of
23 information requirements for other types of
24 structures, an example is partnerships and
25 trusts.

1 And again, do you agree with this content,
2 with this finding?

3 A Yes.

4 Q And are you able to comment or provide context
5 on the ramifications of having low sanctions
6 from an investigative standpoint?

7 A It comes down to a compliance issue. That if
8 the sanctions aren't there to retain and
9 preserve the highest quality of information,
10 then it won't be there when we come looking, and
11 it's important. That information is available
12 to us during money laundering investigation.

13 Q All right. And so there's a known risk that if
14 the sanctions aren't high enough, that money
15 launderers will just eat any low sanction as a
16 cost of doing business; right?

17 A Correct.

18 MR. RAUCH-DAVIS: Okay. So if we go to the next
19 page, Madam Registrar.

20 Q These are the recommendations. And just briefly
21 going over them, recommendation (a) sets out
22 that New Zealand should introduce measures to
23 improve availability of accurate and up-to-date
24 beneficial ownership information and there
25 should be a consideration of a register. Do you

1 see that recommendation?

2 A Yes.

3 Q And then recommendation (b) is to improve
4 transparency of domestic express trusts and
5 introduce measures to improve the availability
6 of up-to-date ownership and, again, consider a
7 registry of trusts.

8 And I take it there is a difference between
9 the offshore trusts and -- the information
10 available for offshore trusts and domestic
11 trusts. Right?

12 A Right. The offshore trusts are already
13 captured.

14 Q Right.

15 A Yeah.

16 Q So this is talking about the domestic trusts.
17 Right. And then skipping ahead to subheading (e)
18 is New Zealand should ensure proportionate and
19 dissuasive sanctions are available in force for
20 breaches of basic beneficial ownership
21 information which goes back to what we were just
22 discussing; right?

23 And I guess my question is you gave some
24 evidence that New Zealand is doing a statutory
25 review right now and should --

1 A Yes.

2 Q -- resolve most of the FATF issues identified.

3 Are you aware --

4 A Yes.

5 Q -- of whether these issues are being identified
6 and assessed in that statutory review?

7 A They certainly have been identified and are
8 being discussed. Whether or not they will be
9 features of that piece of statute as part of
10 that review or another piece of statute is
11 needed to be worked through. But certainly
12 these issues and these conversations are
13 occurring now. For me having had the report for
14 maybe a month, these conversations are ongoing.

15 Q Right.

16 A Whether it's appropriate to put some of that
17 structural requirement into the *AML/CFT Act* or
18 into another piece of statute will be a
19 question.

20 MR. RAUCH-DAVIS: Thank you, sir. Those are my
21 questions.

22 THE COMMISSIONER: Thank you, Mr. Rauch-Davis.

23 Anything arising, Ms. Tweedie.

24 MS. TWEEDIE: Nothing arising. Thank you.

25 THE COMMISSIONER: Mr. Usher?

1 MR. USHER: Nothing arising. Thank you.

2 THE COMMISSIONER: Ms. Herbst?

3 MS. HERBST: Nothing arising. Thank you.

4 THE COMMISSIONER: Ms. Stratton?

5 MS. STRATTON: Nothing arising. Thank you.

6 THE COMMISSIONER: And Ms. Rose?

7 MS. ROSE: Nothing arising. Thank you,

8 Mr. Commissioner.

9 THE COMMISSIONER: Thank you very much for taking the
10 time to provide us with your evidence, your
11 experience and your expertise in these areas,
12 Detective Inspector Hamilton. It's always very
13 helpful to hear from different jurisdictions as
14 to how they're grappling with the issues of
15 money laundering and particularly so where the
16 jurisdiction is sort of similar in size to ours,
17 that is British Columbia, and similar in its
18 GDP, although of course we have different
19 constitutional imperatives here than you do.
20 But I think your evidence has been very helpful
21 and I am grateful to you for giving up your
22 early morning to be with us. Thank you very
23 much. You are excused now.

24 **(WITNESS EXCUSED)**

25 THE COMMISSIONER: And, Ms. Rose, I think we have an

1 early morning tomorrow, so we are adjourning
2 until 7:00 a.m.

3 MS. ROSE: That's right, Mr. Commissioner.

4 THE COMMISSIONER: Thank you.

5 THE REGISTRAR: This hearing is adjourned to
6 May 13th, 2021, at 7:00 a.m. Thank you.

7 **(PROCEEDINGS ADJOURNED AT 3:00 P.M. TO MAY 13, 2021)**

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