

Civil Forfeiture, Unexplained Wealth Orders, and the Role of a Forensic Accountant

Research Project for Emerging Issues / Advanced Topics Course

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Executive Summary

The objective of this report is to provide a survey of global approaches to non-conviction based (NCB) forfeitures as a tool to control money laundering and particularly the application of Unexplained Wealth Orders (UWOs).

UWOs involve shifting the burden of proof to the respondent during civil proceedings to explain the origin of their wealth to verify that the property was obtained through lawful means. Civil forfeitures are generally sought as an alternative to criminal forfeiture because of their lower burden of proof and ability to target the property rather than the individual who owns it. Effectively, civil forfeitures are designed to deter criminal activity by removing the profit motive while not needing to prove that the owner of the property committed a crime beyond a reasonable doubt.

The survey covers the structure, application, and results of UWO legislation across the world with a focus on Canada and the role of forensic accountants.

UWOs follow a similar structure globally. Variations involve the inclusion of a recovery mechanism, scope of individuals to whom a UWO can be issued to, grounds on which a UWO can be sought, types of property considered, holding requirements, temporal limits, and consequences associated with respondent's providing false, misleading or unsatisfactory information. Although there are few outcomes at this stage where the use of a UWO resulted in a successful recovery, the value of the confiscations have been significant. Criticisms of the approach generally relate to violation of civil liberties, the potential for misuse, and application in less complex cases. In Canada, British Columbia is the pioneer and has pursued three cases publicly which target high-value properties where the proceeds are alleged to originate from sophisticated, multi-million dollar frauds

previously investigated by securities regulators. In BC, the role of the forensic accountant has been limited, something experts in that space attribute to the low bar set for proving the offence and the early stage of those proceedings. In more mature jurisdictions, such as Australia, the role of the forensic accountant involves the development and critique of net worth analysis.

Introduction

Serious organized crime, money laundering, corruption, and fraud represent significant threats to global security, the integrity of the financial system, the stability of an economy, governance, and bears social costs. These operations are driven by high-ranking criminals, often referred to as masterminds or kingpins, or by corrupt politically exposed persons who exploit legal and jurisdictional loopholes to evade detection and distance themselves from the criminal activity.

Although it is difficult to estimate the true extent of criminal proceeds, some estimates are available. The United Nations Office on Drugs and Crime (UNODC) estimated that in 2009, criminal proceeds (excluding tax evasion) were approximately US \$2.1 trillion or 3.6% of global GDP.¹

Almost all serious, organized, and acquisitive crimes are driven by the pursuit of financial profit.² The use of asset recovery is imperative in combatting these crimes as they play a crucial role in deterring criminal activity by removing the profit motive.³

Many jurisdictions have adopted NCB asset recovery and several have adopted unexplained wealth orders, dubbed as the “McMafia Law”,⁴ to bolster recovery.

Countries have struggled with criminal mechanisms because of the high-burden of proof required, one-sided disclosures, and the difficulty in pursuing professional money launderers who keep a distance from knowledge of the origins of the proceeds they handle - so that all wealth is legal unless is proved illegal. Unexplained Wealth Orders

¹ (United Nations Office on Drugs and Crime, 2011)

² (UK Home Office, 2017)

³ (Government of Ontario, 2017)

⁴ (Shalchi, 2022)

turn the tables on the accused, reversing the burden of proof, requiring disclosures to a civil standard, and adopting a converse theory - what is not legal is illegal.

Objective

The objective of this report is to provide a survey of global approaches to non-conviction based (NCB) forfeitures as a tool to control money laundering; particularly the application of Unexplained Wealth Orders (UWOs). The survey covers the structure, application, and results of UWO legislation across the world with a focus on Canada and the role of forensic accountants.

Scope of Review

This report relies upon the following sources of information:

- Academic journals and research papers on financial crime and asset recovery
- Reports and publications from government agencies, law enforcement authorities, and regulatory bodies
- Legislative and regulatory documents related to UWOs
- Cullen's Commission of Inquiry into Money Laundering in British Columbia
- Discussions with the following experts:
 - Jeffery Simser, Barrister and Solicitor - Former Legal Director at the Ministry of the Attorney General
 - Katelyn MacKellen, J.D., CAMS - Former Director at the British Columbia Ministry of Public Safety and Solicitor General

Specific documents that were reviewed and relied upon in preparing this report are referenced and outlined in the bibliography.

Summary of Findings

- Civil forfeitures are generally sought as an alternative to criminal forfeiture because of their lower burden of proof and ability to target the property rather than the individual who owns it. Many international conventions aimed at targeting proceeds of crime, including the Financial Action Task Force (FATF), encourage the adoption of NCB confiscations.
- UWOs are powerful legal tools that can be used in civil proceedings. They involve shifting the burden of proof to the respondent to explain the origin of their wealth to verify that the property was obtained through lawful means.
- UWOs follow a similar structure globally with some variations involving; the inclusion of a recovery mechanism within the tool, the scope of individuals to whom a UWO can be issued to, the grounds on which a UWO can be sought, the types of property considered, holding requirements, temporal limits, and consequences associated with respondent's providing false, misleading, or unsatisfactory information.
- Criticism of UWOs involve violation of civil liberties, the potential for misuse, and application in less complex cases.
- Following recommendations from the Cullen's Commission, British Columbia adopted UWOs and has pursued three cases publicly targeting high-value property. So far, in two of the cases, the respondents are arguing that their civil liberties are being violated.
- The adoption of UWOs in Canada appear to be gaining traction with Manitoba also working to implement a UWO framework. The upcoming FATF mutual evaluation

in 2025 and the inclusion of efforts to bolster Canada’s anti-money laundering and counter terrorist financing regime in the 2024 Federal Budget suggest that further efforts will be made for the adoption of UWOs.

- The expertise of forensic accountants can be utilized in locating hidden assets, determining ownership, and in the development and critique of net worth analysis.

Asset Recovery

Although other asset recovery remedies exist, the most frequently used are conviction based confiscations and NCB confiscations.⁵ Conviction based confiscations require a criminal conviction and are issued against a person and NCB confiscations do not require a criminal conviction and are issued against a property.

Below is an overview of the asset recovery process and, an analysis of conviction based and NCB asset forfeitures.

Steps of Asset Recovery Process

Regardless of whether the asset confiscation is pursued through a conviction-based or non-conviction based proceeding, the process for asset recovery is predominately the same.⁶ The asset recovery process involves identifying the assets, freezing or seizing the assets, the court proceedings and the enforcement of the order.

⁵ (Brun, Hauch, Julien, Owens, & Hur, 2023)

⁶ (Brun, Hauch, Julien, Owens, & Hur, 2023) (pg. 5) and (Brun, Gray, Scott, & Stephenson, 2011)

Investigative Phase

The initial and arguably the most important phase of a successful asset recovery is the investigative phase. This phase involves the collection of intelligence and evidence, and tracing of assets.

Authorities seek to establish whether an offence occurred in order to identify the perpetrator(s) and locate any proceeds from the offence such as cash or assets.⁷

Investigators can utilize many techniques to collect intelligence and evidence including but not limited to:⁸

- **Intelligence from Law Enforcement**
- **Physical Surveillance:** Direct observation of a suspect for the purposes of obtaining intelligence⁹
- **Open-Source Intelligence:** Intelligence produced by collecting and analyzing information from publicly available sources such as property registries, corporate filings, beneficial ownership databases, social media platforms etc.¹⁰
- **Witness Interviews:** Conducting interviews with witnesses
- **Electronic surveillance:** Interception of an individual's communication¹¹
- **Production Orders:** Compelling the custodian of specific information to produce certain documents or information
- **Search and Seizure Orders:** Conducting searches of premises and seizing relevant evidence.

⁷ (Brun, Hauch, Julien, Owens, & Hur, 2023)

⁸ (Brun, Gray, Scott, & Stephenson, 2011) (p. 5)

⁹ (Siljander & Fredrickson, 2002)

¹⁰ (Gill, 2023)

¹¹ (Brun, Gray, Scott, & Stephenson, 2011)

Establishing the correct team is highly important, particularly in complex cases. The team should consist of specific relevant expertise and can include forensic accountants or financial investigators.

Freezing/Seizing Assets

To ensure that property is not dissipated, transferred, or hidden before a thorough investigation can be conducted, the asset is restrained or seized.¹² This ensures security of any potential proceeds or instrumentalities that may be subject to forfeiture.¹³

Court Proceedings

Evidence will be presented in court, and the trier of fact will assess whether to lift the asset freeze to confiscate the assets.¹⁴

In complex files, demonstrating the link between an asset and an act could be difficult and the use of a forensic accountant or financial investigator could be helpful.¹⁵

Enforcement

Based on the decision of the trier of fact, the asset is returned, used, or disposed of.¹⁶

Conviction-based Confiscation

Conviction based confiscations, also known as criminal forfeitures are done against the individual “*in personam*”. They require a criminal conviction and the forfeiture process begins after an individual has been convicted.¹⁷

¹² (Brun, Gray, Scott, & Stephenson, 2011)

¹³ Ibid.

¹⁴ (Brun, Hauch, Julien, Owens, & Hur, 2023)

¹⁵ (Brun, Gray, Scott, & Stephenson, 2011)

¹⁶ (Brun, Hauch, Julien, Owens, & Hur, 2023)

¹⁷ Ibid.

Non-Conviction Based Confiscation

NCB Confiscations, also known as civil forfeitures, do not require a criminal conviction.¹⁸

These actions are taken against the property “*in rem*” rather than against the individual.

NCB Confiscations typically have a lower burden of proof, balance of probabilities, and the onus of proof is shared with the defendant.¹⁹

Shortfall/Challenges of Traditional Asset Recovery

Conviction based confiscations typically have a lower recovery rate due to their higher burden of proof as it can be difficult to establish the evidentiary standard and required connection between a convicted person, property, and offence.²⁰ Additionally, these confiscations are more difficult where the property results from a long-term accumulation of many crimes. Sometimes, confiscations cannot be possible; where the individual has deceased, has left the jurisdiction, or has immunity.²¹ Further a lack of international cooperation with mutual legal assistance can become a barrier to asset recovery.²²

Difficulty with NCB confiscations arise where asset ownership has been well concealed by the respondent.²³

¹⁸ (Schneider, 2023)

¹⁹ Ibid.

²⁰ (Brun, Hauch, Julien, Owens, & Hur, 2023)

²¹ Ibid.

²² Ibid.

²³ Ibid.

International Conventions on NCB Confiscation

Many international conventions aimed at targeting proceeds of crime encourage the adoption of NCB confiscations.²⁴

The Financial Action Task Force (FATF) is an intergovernmental body created by the G7 countries that develops and promotes policies to combat money laundering and terrorist financing.²⁵ The FATF plays a crucial role in setting standards and promoting and monitoring the effectiveness of regulatory and operational measures implemented by various jurisdictions. The FATF's recommendations 4 and 38 advocate for confiscation laws, and the use of NCB confiscations are specifically recommended for international cooperation.²⁶ These specific recommendations are discussed further in this report.

The United Nations has also encouraged adoption of NCB confiscation through the United Nations Convention Against Transnational Organized Crime (UNTOC) and the United Nations Conventions against Illicit Traffics in Narcotics Drugs and Psychotropic Substances.²⁷

Introduction to Unexplained Wealth Orders (UWOs)

What are UWOs?

UWOs are powerful legal tools that reverse the burden of proof by requiring an individual to explain how their wealth was acquired where their known income is disproportionate to their property.

²⁴ (Booz Allen Hamilton, 2012)

²⁵ (FATF, 2023)

²⁶ Ibid.

²⁷ (Booz Allen Hamilton, 2012)

Origin of UWOs

Following public outrage of the murders committed by drug dealers of a police detective and an investigative journalist who had been reporting on organized crime figures, Ireland enacted their Proceeds of Crime Act of 1996 to include NCB forfeitures and set forth the legislative framework for PoCA Orders in their act. PoCA Orders shift some of the burden of proof onto the defendant to prove the source of the asset, similar to UWOs.²⁸ However, under the Irish system, in order to confiscate property prosecutors must show that the property was derived from criminal activity.²⁹ Further, the court must be satisfied that there are reasonable grounds to believe that the respondent is in possession or control of the property and it is directly or indirectly the proceeds of crime.³⁰

Ireland also established an independent specialized body consisting of a multidisciplinary team of members comprised of; Ireland's national police and security service, officials from the Office of the Revenue Commissioners (Taxes and Customs), Ireland's Department of Social Protection, individuals from the Department of Justice, Forensic Accountants, Financial Crime Analysts, IT experts, and administrative staff. The well-resourced team has been considered the success factor of Ireland's UWO system.³¹

The powers afforded to the multi-disciplinary team in Ireland are vast and go beyond powers afforded in most jurisdictions.³² Police officers assigned to the Criminal Assets Bureau are able to make arrests and can conduct criminal investigations based on the information they receive, tax commissioners are able to ensure that the income generated

²⁸ (Keen, 2017)

²⁹ (Brun, Hauch, Julien, Owens, & Hur, 2023)

³⁰ Ibid.

³¹ (Booz Allen Hamilton, 2012)

³² (Austin F. Cullen, 2022)

by the respondent is taxed, and social welfare representatives can ensure that respondents are not unlawfully collecting welfare payments.³³

The Irish system attracted attention from many other jurisdictions including European countries, African countries, as well as Australia, who studied how it operated.³⁴

Advantages of UWOs

Below is an analysis of the benefits of UWOs.

Reinforce Investigations by Lowering Burden on Authorities

UWOs reinforce investigative efforts by shifting the burden of proof onto the respondent.

Where there is a discrepancy between the respondent's known income and wealth, the onus to produce evidence to support that wealth was acquired through legitimate means is shifted to the respondent.³⁵ The respondent is likely in control of or has access to the relevant information which is significantly more difficult for authorities to obtain.³⁶

Secondly, authorities generally do not need to link the asset in question to a crime - where a link to a criminal act may be required, the link required is a lot weaker.³⁷

Support Asset Recovery Efforts

UWOs can remedy ineffectiveness of a jurisdiction's existing asset recovery tools by establishing a legal obligation for the individual to explain the origin of the wealth used to purchase the property.³⁸ UWOs can also assist authorities in locating property and other unexplained wealth that was previously not known. For example, in the case of *Nat'l*

³³ (Austin F. Cullen, 2022)

³⁴ (Brun, Hauch, Julien, Owens, & Hur, 2023)

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

Crime Agency v. Hussain & Ors [2020], the UK's National Crime Agency (NCA) issued a UWO to Mansoor Mahmood Hussain (Hussain) with respect to eight properties where he was either the registered owner or they were owned indirectly by him through six companies wholly owned by him.³⁹ The eight properties had a market value of approximately £10 million (CA\$17.5 million), whereas his annual known income was less than £10,000 (CA\$17,500).⁴⁰ The NCA suspected that the respondent was involved in money laundering for individuals involved in organized crime.⁴¹ The respondent provided evidence which included a 76-page witness statement and documentary evidence in 127 binders which lead to the identification of additional properties not previously known to the NCA.⁴² This case ended in the respondent settling and a forfeiture to the NCA of 45 properties, cash, and other assets totaling £9.8 million (CA\$17.1 million).⁴³

UWOs can also have a high impact when it comes to asset recovery. In the UK, the average value of assets included on a UWO ranges from £5 million to £20 million and the average amount recovered is £10 million.⁴⁴

Further, UWOs can help expedite asset recovery. In certain instances, conviction-based or NCB asset recovery can take multiple years to confiscate assets, or sometimes cannot be possible due to inability to meet the court's standard of proof in the timeframes demanded

³⁹ (Brun, Hauch, Julien, Owens, & Hur, 2023) and (Royal Courts of Justice, 2020)

⁴⁰ (Brun, Hauch, Julien, Owens, & Hur, 2023)

⁴¹ (Brun, Hauch, Julien, Owens, & Hur, 2023) and (Royal Courts of Justice, 2020)

⁴² (Brun, Hauch, Julien, Owens, & Hur, 2023)

⁴³ Ibid.

⁴⁴ (GOV.UK, 2023)

by criminal cases.⁴⁵ UWOs can help expedite cases as the onus to provide support for acquisition of property is on the individual.

Target higher-ranking actors

UWOs can assist in holding higher-ranking criminal actors accountable. Individuals higher up in the criminal hierarchy often engage in more profitable but less visible criminal activity.⁴⁶ Accordingly, they are able to distance themselves from the crime decreasing the likelihood of being subject to prosecution or confiscation.⁴⁷ Australia's Inquiry into the Legislative Arrangements to Outlaw Serious and Organized Crime Groups noted that in most common law jurisdictions, leaders of criminal organizations could attract a lower penalty for a criminal offence, as they tend to create a corporate veil to protect themselves and do not openly engage in the criminal activity.⁴⁸ Often the "foot soldiers" are caught and convicted.⁴⁹ UWOs can compel these higher-ranking criminal actors to explain the origin of their wealth and can target more significant values of assets.⁵⁰

Target Complex Ownership and Nominees

UWOs can be helpful in cases of complex ownership structures and the use of nominees. Often, complex ownership structures including the use of shell companies, trusts, and offshore accounts are used to hide true beneficial ownership. Further, nominees or proxies are often used to hold property on behalf of an individual in order to avoid scrutiny.

UWO frameworks are generally broad in scope and consider various forms of property as

⁴⁵ (Brun, Hauch, Julien, Owens, & Hur, 2023)

⁴⁶ (Austin F. Cullen, 2022) p1617

⁴⁷ (Parliamentary Joint Committee on the Australian Crime Commission, 2009) p114-115

⁴⁸ Ibid. p63

⁴⁹ (Brun, Hauch, Julien, Owens, & Hur, 2023)

⁵⁰ Ibid.

well as ownership. The lower burden of proof of UWOs allows for application in such instances, for example being applied against a property even though it is not directly owned by the target. A UWO can compel the individual, a suspected nominee, to provide evidence regarding the nature of their interest in the property or risk potential asset confiscation.⁵¹

For example, in the case of *Nat'l Crime Agency v. A*, the NCA issued a UWO to Zamira Hajiyeva (Hajiyeva), the wife of a Jahangir Hajiyev, a former chairman of board for International Bank of Azerbaijan.⁵² Jahangir Hajiyev was charged in Azerbaijan with various offences including misappropriation, large-scale fraud, and embezzlement related to the bank and was convicted to 15 years in prison as well as making a payment of US\$39 million to the bank.⁵³ Hajiyeva had been infamously known for spending £16 million (CA\$27.9 million) from 2006 to 2016 at Harrods, a department store.⁵⁴ The NCA issued the UWO for property in London purchased for £11.5 million (CA\$20 million) by a company incorporated in the British Virgin Islands.⁵⁵ The company was connected to both Hajiyeva and Jahangir Hajiyev.⁵⁶ This UWO lead to a civil forfeiture case to seize property worth more than £20 million (CA\$34.9 million).⁵⁷

Strengthen Financial System

UWOs can assist in eliminating safe havens for illicit funds. Often, rational higher-ranking criminal actors are aware of and consider regulatory requirements when deciding

⁵¹ (Cullen, 2020)

⁵² (Brun, Hauch, Julien, Owens, & Hur, 2023) and (Royal Courts of Justice, 2019)

⁵³ (Brun, Hauch, Julien, Owens, & Hur, 2023)

⁵⁴ Ibid.

⁵⁵ (Brun, Hauch, Julien, Owens, & Hur, 2023) and (Royal Courts of Justice, 2019)

⁵⁶ Ibid.

⁵⁷ (Brun, Hauch, Julien, Owens, & Hur, 2023)

on the jurisdiction in which to launder illicit.⁵⁸ By having to provide relevant information to avoid forfeiture, a UWO may act as a deterrent, and placing illicit funds in jurisdictions with more lax regulations may be considered.⁵⁹

Decreases Barriers Related to International Cooperation

UWOs not only reduce barriers to information available domestically, but can also help reduce reliance on international cooperation to provide information. Asset recovery efforts can face difficulty when it comes to international cooperation due to requirements of mutual legal assistance agreements, bank secrecy, and a lack of NCB confiscation procedures in some jurisdictions.⁶⁰ Additionally, a lack of publicly available databases can pose difficulties during an investigation.⁶¹ UWOs assist in overcoming these types of barriers by shifting the burden of proof to the respondent to provide information thereby, reducing reliance on international cooperation.

UWO Frameworks in Various Jurisdictions

Although Ireland was the first to adopt a system comparable to the UWO system, for the purposes of this report, its framework has not been examined due to the fact that in order to confiscate property, the prosecutors must show that property was derived from criminal activity which does not align with how jurisdictions have been implementing the UWO framework.

⁵⁸ (Cullen, 2020)

⁵⁹ Ibid.

⁶⁰ (Brun, Hauch, Julien, Owens, & Hur, 2023)

⁶¹ Ibid.

UWOs have been adopted in various jurisdictions as a strategy to address corruption and financial crime. Each jurisdiction has tailored its UWO system to align with their legal framework and to tackle their specific challenges related to asset recovery.

This section analyses key elements of UWO systems and the approach adopted by various jurisdictions. UWO frameworks adopted in the UK, Australia, Mauritius and Kenya have been analyzed for the purposes of this report. Specifically, the following has been examined:

- Types of UWO: Investigative Tool or Recovery Mechanism
- Scope of Individuals Covered and the Grounds to Seek a UWO
- Authorities that can Seek a UWO
- Property Covered by the UWO
- Holding Requirements
- Time Limits
- Asset Freezes and UWOs
- Respondent's Obligations

Overview of Main Types of UWO Systems

Jurisdictions implement UWOs as either:

1. Investigative tools used to gather information regarding the source of assets; or
2. Investigative tools with their own recovery mechanisms.

As an investigative tool, the UWO works similarly to a preliminary disclosure order requiring the respondent to provide certain information to support in building a case. If the respondent either does not comply, or does not comply in a satisfactory manner, authorities typically have a legal presumption in their favour and can pursue subsequent

civil recovery of the property. Accordingly, these types of UWOs rely on the jurisdiction's existing foundation for NCB civil confiscation.

UWO frameworks with their own recovery mechanisms can be a more powerful tool as they are less reliant on existing asset forfeiture systems.

UK

In 2017 UK introduced the UWO under its Proceeds of Crime Act and function solely as an investigative tool.⁶² UWOs in the UK require the respondent to disclose how certain assets were acquired where there is suspicion that the respondent's known income would not have been sufficient for the acquisition. UK uses existing civil mechanisms thereafter.

Australia

In Australia, the UWO framework also includes a recovery mechanism. Should the respondent not be able to provide a satisfactory response with respect to the property in question during a *preliminary unexplained wealth order*,⁶³ the court can issue an *unexplained wealth order* which includes a recovery mechanism ordering the payment of the amount deemed unsatisfactory explained.⁶⁴

Kenya

In Kenya, the UWO is an investigative tool which requires the respondent suspected of corruption or economic crimes to explain how their assets were acquired where there is reasonable suspicion that the individual was involved with corruption or economic crimes.⁶⁵

⁶² (Brun, Hauch, Julien, Owens, & Hur, 2023)

⁶³ (Reurts, 2017)

⁶⁴ (AustLII, n.d.). and (Brun, Hauch, Julien, Owens, & Hur, 2023)

⁶⁵ (Brun, Hauch, Julien, Owens, & Hur, 2023)

Mauritius

In Mauritius, a UWO is both an investigative tool compelling an individual to provide an explanation of their unexplained wealth, and also serves as a recovery mechanism should the respondent fail to provide a satisfactory explanation.

Scope of Individuals Covered and Grounds to Seek UWO

The scope of individuals targeted by UWOs varies by jurisdiction, with some focusing on higher-risk individuals such as politically-exposed persons, and others trying to address specific challenges faced in their region.

UK

London had gained notoriety as the “money laundering centre of the world’s drug trade”.⁶⁶ Following the UK government’s attention to the issue, in October 2015 the UK National Risk Assessment of Money Laundering and Terrorist Financing was published which highlighted that money laundering was a significant threat to UK’s national security and that it was suspected that billions of pounds of proceeds of foreign corruption are laundered through the UK annually.⁶⁷ In April 2016 an action plan was published which included exploring new legal powers – UWOs – “to impose an obligation on an individual or entity to explain the source of their wealth in support of an investigation” to tackle money laundering.⁶⁸ Subsequently, the UWO came into force on January 21, 2018 in the UK’s Proceeds of Crime Act 2002.

Aligning with the challenges faced by the jurisdiction, in the UK, a UWO can be issued where there are reasonable grounds of suspecting that the individual is involved with or

⁶⁶ (Hanning & Connett, 2015) and (Shalchi, 2022)

⁶⁷ (HM Treasury, 2015)

⁶⁸ (HM Treasury, 2016) pg 22

connected to serious crime, or the individual is a foreign politically exposed person from outside the UK or a European Economic Area State.⁶⁹

Further, the UK also considered the use of complex corporate structures to hide the true beneficial ownership of an asset in an amendment made in 2022 which states that a UWO can also be issued to a “responsible officer” of the respondent.⁷⁰ This includes partners, directors, officers, managers, secretaries and any person that has powers to provide directions to the Board of Directors.⁷¹

In addition to the above, the court must be satisfied that:

- There is a wealth discrepancy or unlawful conduct. The court must be satisfied that there are reasonable grounds for suspecting that either the known lawfully acquired income would have been insufficient for the respondent to obtain the property, or that the property was acquired by unlawful conduct.⁷² The UK has specified that “known” sources of income, whether from employment, assets or otherwise include those that are reasonably available.⁷³
- There is reasonable cause to believe that the respondent both holds the property, and the value of the property is more than £50,000.⁷⁴

Australia

In 1999, the Australian Law Reform Commission reported that Australia’s conviction based confiscation regime was ineffective at deterring crime, and recovering assets.⁷⁵

⁶⁹ (Legislation.Gov.UK, 2024)

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ (Reurts, 2017)

Following this, the state of Western Australia was the first Australian jurisdiction to introduce unexplained wealth laws in 2000, which was followed by the Northern Territory in 2003.⁷⁶ In 2002, the Commonwealth government had considered the introduction of unexplained wealth laws, but it was ultimately tabled due to concerns about them being excessive measures.⁷⁷ Following findings noted in the Sherman Report in 2006 and another inquiry by the Parliamentary Joint Committee on the Australian Crime Commission into the legislative arrangements to outlaw serious and organised crime groups,⁷⁸ the Commonwealth government introduced a federal UWO regime in its Proceeds of Crime Act 2002.⁷⁹ Subsequently, other states including New South Wales, Queensland, and South Australia implemented their own UWO regimes.⁸⁰

In Australia, along with applying for an unexplained wealth order, the proceeds of crime authority must also swear by an affidavit that there are “reasonable grounds to suspect” that the individual’s total wealth exceeds their lawfully acquired wealth and include their reasoning for the suspicion.⁸¹

The court then makes a *preliminary unexplained wealth order*, requiring the individual to appear before the court to help the court decide whether or not the *unexplained wealth order* should be made.⁸²

⁷⁶ (Reurts, 2017)

⁷⁷ Ibid.

⁷⁸ (Parliamentary Joint Committee on the Australian Crime Commission, 2009)

⁷⁹ (Reurts, 2017)

⁸⁰ Ibid.

⁸¹ (Brun, Hauch, Julien, Owens, & Hur, 2023)

⁸² (AustLII, n.d.)

Kenya

In 2003, Kenya enacted its Anti-Corruption and Economic Crimes Act in an effort to prevent, investigate, and punish economic crimes.⁸³ Kenya's unexplained assets law is captured under its Anti-Corruption and Economic Crimes Act, and only the Ethics and Anti-Corruption Commission (EACC) has authority to investigate and begin forfeiture proceedings for unexplained assets.⁸⁴

In Kenya, a UWO can be issued for any person suspected of corruption or economic crime.⁸⁵ Prior to an amendment in 2023, economic crimes under the act only included fraudulent dealings in public property however, laundering proceeds of corruption was added.⁸⁶

The commission is to satisfy the court on a balance of probabilities that the individual has unexplained assets which include assets acquired at or around the time the individual is reasonably suspected of corruption or an economic crime, and where the value of the assets is disproportionate to the individual's known income.⁸⁷

Mauritius

The impact of a jurisdiction being viewed as a haven for illicit wealth can include reputational damage and deter investment.⁸⁸ In Mauritius, the inclusion of UWO in the Good Governance and Integrity Reporting Act, which aims to promote good governance and integrity, suggests concerns of reputational damage on investments.⁸⁹

⁸³ (National Council for Law Reporting with the Authority of the Attorney-General, 2016) and (Dornbierer, Defining an illicit enrichment law, 2021)

⁸⁴ (Brun, Hauch, Julien, Owens, & Hur, 2023)

⁸⁵ Ibid.

⁸⁶ (Parliament of Kenya, 2003)

⁸⁷ (National Council for Law Reporting with the Authority of the Attorney-General, 2016).

⁸⁸ (Brun, Hauch, Julien, Owens, & Hur, 2023)

⁸⁹ Ibid.

In Mauritius, no link to crime is required, however, a UWO can only be sought for the property of a Mauritian citizen and does not extend to non-citizens.⁹⁰

Limiting application of an order to citizens creates potential complexities such as cases of dual nationality and married couples where one individual is a citizen. In a case where an individual held a dual nationality of Mauritian and French, the Integrity Reporting Board decided that the individual was indeed a Mauritian citizen thus, the act applied.⁹¹

Although certain limitations exist, where unexplained wealth is suspected, the Integrity Reporting Services Agency (IRSA) also has the ability to apply for a disclosure order to the Judge in Chambers for any person, whether a Mauritian citizen or not.⁹²

Where law enforcement, civil regulatory authorities, or any other person has “reasonable grounds to suspect” that an individual has acquired unexplained wealth such that the wealth is disproportionate to their emoluments, known income, or lawful earnings, they can provide a written report to IRSA.⁹³

Authorities that can seek a UWO

Authorities empowered to seek to issue a UWOs vary across jurisdictions. Depending on the jurisdiction, this can be the responsibility of existing governmental or law-enforcement bodies, or may be the responsibility of a newly created specialized agency.

⁹⁰ (Government of Mauritius, 2015) and (Brun, Hauch, Julien, Owens, & Hur, 2023)

⁹¹ (Brun, Hauch, Julien, Owens, & Hur, 2023)

⁹² (Government of Mauritius, 2015)

⁹³ Ibid.

UK

In the UK, specific enforcement authorities can make an application to the High Court for a UWO. These authorities are detailed in section 262A (7) of the Proceeds of Crime Act 2002 and include the following:⁹⁴

- National Crime Agency (NCA): UK’s National law enforcement agency that investigates serious, organized, and complex crimes, including but not limited to human trafficking, weapon trafficking and drug trafficking, cyber-crimes and economic crimes;
- The Director of the Serious Fraud Office (SFO): Authority specialized to investigate and prosecute serious or complex fraud, bribery and corruption;⁹⁵
- Her Majesty’s Revenue and Customs (HMRC): UK’s tax authority;
- Financial Conduct Authority (FCA): UK’s financial regulatory body; and,
- The Director of Public Prosecutions for England and Wales, or the Director of Public Prosecution for Northern Ireland

Australia

Australia’s Proceeds of Crime Act 2002 specifies that a “proceeds of crime authority”, which includes the commissioner of the Australian Federal Police and the Director of Public Prosecution, can apply for a UWO.⁹⁶

Kenya

Kenya’s unexplained assets law is captured under its Anti-Corruption and Economic Crimes Act, and only the Ethics and Anti-Corruption Commission (EACC) can

⁹⁴ (Legislation.Gov.UK, 2024):

⁹⁵ (Serious Fraud Office, n.d.)

⁹⁶ (AustLII, n.d.)

investigate and initiate recovery proceedings for unexplained assets. The EACC is tasked with combatting corruption and economic crimes in Kenya and consist of lawyers, law enforcement, and policy officers. Without going to court, the EACC has the power to issue a notice requiring a “statement of suspect’s property”.⁹⁷

Mauritius

The Good Governance and Integrity Reporting Act 2015 governs UWOs in Mauritius. Mauritius established a two-tier review process by two newly formed specialized agencies, the Integrity Reporting Services Agency (IRSA), and the Integrity Reporting Board, that must be conducted before the UWO can be brought before the Judge in Chambers.⁹⁸

Based on reports provided by law enforcement, civil regulatory authorities, or based on its own initiative, the IRSA can initiate a UWO.⁹⁹

The Integrity Reporting Board is an independent and impartial board that consists of a chairperson, who is a retired judge of the Supreme Court of Mauritius, and two members who have “sufficient knowledge and experience in the field of law, accounting finance, financial services, public administration, economics, or fraud detection”.¹⁰⁰ The Integrity Reporting Board determines whether an application for a UWO shall be made, and what further action should be taken.¹⁰¹

⁹⁷ (Brun, Hauch, Julien, Owens, & Hur, 2023)

⁹⁸ Ibid.

⁹⁹ (Government of Mauritius, 2015) and (Brun, Hauch, Julien, Owens, & Hur, 2023)

¹⁰⁰ (Government of Mauritius, 2015) section 7 (b)

¹⁰¹ (Government of Mauritius, 2015).

Property Covered

In all jurisdictions, a wide range of assets can be subject to a UWO including:

Movable assets: Tangible assets that can be moved from one location to another such as vehicles, jewellery and paintings.

Immovable assets: Assets that cannot be moved from one location to another such as real estate.

Tangible assets: Physical assets such as buildings, cash and gold bars.

Intangible assets: Non-physical assets such as intellectual property, stocks and bonds.

All types of property including movable, immovable, tangible, and intangible property can be subject to UWOs.¹⁰² Accordingly, everything from real estate and vehicles to intellectual property can be subject to a UWO.

While all types of property can be subject to UWOs, the definition of what constitutes as unexplained wealth, including minimum values that can trigger a UWO, varies across jurisdictions. As detailed further below, in all jurisdictions except Australia and Kenya, the threshold of unexplained wealth applies to the value of property.¹⁰³

UK

In the UK, the threshold for unexplained wealth is a minimum *combined* value of £50,000 (CA\$88,000).¹⁰⁴

Australia

Australia has an optional minimum threshold of AU\$100,000 (CA\$91,000). In cases where the unexplained wealth, calculated as the value of the property less known lawfully

¹⁰² (Brun, Hauch, Julien, Owens, & Hur, 2023)

¹⁰³ *Ibid.*

¹⁰⁴ (GOV.UK, 2023)

acquired wealth, is less than AU\$100,000 (CA\$91,000), the court has the option of declining the UWO.¹⁰⁵

Kenya

Kenya does not have a specified minimum threshold for unexplained wealth.¹⁰⁶

Mauritius

In Mauritius, the minimum threshold for unexplained wealth is MUR 10 million (CA\$300,000). However, for cash seizures in criminal investigations the minimum threshold is lowered to MUR 2.5 million (CA\$75,000).¹⁰⁷

Holding Requirement

The holding requirement for property subject to UWOs varies by jurisdiction but all jurisdictions that have adopted UWOs have considered indirect ownership. This is of particular importance as sophisticated means of hiding illicit wealth includes the use of indirect ownership or control using proxies.

UK

Under UK's Proceeds of Crime Act 2002, property considered "held" by the respondent includes property over which the respondent has direct control, properties held in trust where the respondent is the trustee of the settlement, as well as properties where the respondent "is a beneficiary (whether actual or potential)".¹⁰⁸

¹⁰⁵ (Brun, Hauch, Julien, Owens, & Hur, 2023).

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ (Brun, Hauch, Julien, Owens, & Hur, 2023) and (GOV.UK, 2023)

Australia and Kenya

In Australia and Kenya property subject to UWOs can also include property that was sold consumed or gifted.¹⁰⁹ Under Australia’s Proceeds of Crime Act 2002, wealth includes any property owned by or in the effective control of the person at any time as well as “property that the person has disposed of (whether by sale, gift or otherwise) or consumed at any time”.¹¹⁰ Under Kenya’s Anti-Corruption and Economic Crimes Act 2003, property of others held in trust, gifts, and loans without adequate consideration are included.¹¹¹ Kenya and Australia’s approaches ensure that asset flows that often evade detection, including the use of proxies and rapid dissipation of assets through lavish lifestyles, are included.¹¹²

Mauritius

Although the scope of individuals that can be subject to a UWO is limited in Mauritius as discussed, under the Good Governance and Integrity Reporting Act 2015, Mauritius incorporated the indirect ownership of property. Specifically, Mauritius’ Good Governance and Integrity Reporting Act 2015 includes property under the “ownership, possession custody or control” of the respondent as well as property held by the respondent for another person.¹¹³

Time Limits

Time limits imposed on UWOs typically depend on the type of UWO. UWOs that are utilized as investigative tools typically do not have a time limit of their own, and any time

¹⁰⁹ (Brun, Hauch, Julien, Owens, & Hur, 2023)

¹¹⁰ (AustLII, n.d.).

¹¹¹ (Brun, Hauch, Julien, Owens, & Hur, 2023)

¹¹² *Ibid.*

¹¹³ *Ibid.*

limit enforced is typically from the substantive law forming the basis of the UWO such as any applicable civil statute of limitations.¹¹⁴

Time limits with respect to UWOs or specific property in question can also be applicable where interim freezing orders are utilized. This is further discussed in the section below.

UK

As the UWO is solely an investigative tool in the UK, there is no temporal limit imposed for seeking UWOs.¹¹⁵

Australia

Australia does not impose a temporal limit with respect to acquisition of the property as its legislation includes property owned, controlled, or disposed of at any point in time.¹¹⁶

Kenya

Kenya has some temporal limits, but does not specify by a fixed number of years.

Kenya's temporal limit is related to when the person was reasonably suspected of corruption or an economic crime. Specifically, Kenya's Anti-Corruption and Economic Crimes Act considers unexplained assets as those acquired at or around the time the individual was reasonably suspected of corruption or an economic crime.¹¹⁷

Mauritius

Due to issues faced with respondents prolonging the UWO procedure, Mauritius enacted an amendment stipulating that the initial step of the UWO procedure must be taken within seven years of acquisition of the property.¹¹⁸ Previously, Mauritius faced challenges with

¹¹⁴ (Brun, Hauch, Julien, Owens, & Hur, 2023)

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ (National Council for Law Reporting with the Authority of the Attorney-General, 2016).

¹¹⁸ (Brun, Hauch, Julien, Owens, & Hur, 2023).

respondents prolonging statutory requests in an effort to pass the time limit for making an application for a UWO.¹¹⁹

Strategically, the seven year limit aligns with the bank's recordkeeping requirements.

This limit only applies to when the property was acquired accordingly, it does not apply to funds utilized to acquire the property.¹²⁰

UWOs and Asset Freezes

Preservation of property during UWO proceedings are important thus, UWO are often coupled with an interim freezing order to ensure that the property is not dissipated, transferred, or hidden before a thorough investigation can be conducted. Interim asset freezes serve a number of critical functions in UWO proceedings including:

1. **Preventing dissipation of property:** when a UWO is initiated it alerts the respondent that their wealth is under scrutiny. This increases the risk of dissipation or movement of the asset as the respondent may attempt to transfer or hide their asset to avoid confiscation.¹²¹ Coupled with the UWO, an interim asset freeze temporarily halts the risk of such dissipation - especially since interim freezing orders are generally made ex-parte.¹²²
2. **Securing Potential Recoveries:** the interim freezing order ensures that the assets remain available for any potential confiscation.
3. **Facilitating Investigation:** investigators are able to more thoroughly and effectively investigate the asset by maintaining accessibility to the asset.

¹¹⁹ (Brun, Hauch, Julien, Owens, & Hur, 2023).

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid.

Legal frameworks for interim freezing orders vary across jurisdictions, but generally all include judicial oversight to balance the needs of the investigation while protecting the respondent's rights.

UK

Under section 362J of the Proceeds of Crime Act 2002, the court may make an interim freezing order for property subject to a UWO if the court considers it necessary to avoid the risk of any recovery order that might subsequently be obtained being frustrated.¹²³

Further Section 362J states that if the application for the UWO is made without notice, the application for the associated interim freezing order must also be made without notice to the respondent.¹²⁴

So far, in all cases where a UWO was issued in the UK, an interim freezing order has been issued alongside it.¹²⁵

Australia

Section 20A of Australia's Proceeds of Crime Act 2002 allows for authorities to apply for a restraining order¹²⁶ through an affidavit presented to the court outlining that there are reasonable grounds to suspect that the respondent has committed an offence and/or at least a part of the respondent's wealth was derived directly or indirectly from an offence.¹²⁷ The restraining order can encompass either only the property in question, the

¹²³ (Legislation.Gov.UK, 2024)

¹²⁴ Ibid.

¹²⁵ (Brun, Hauch, Julien, Owens, & Hur, 2023)

¹²⁶ Section 20A of Australia's Proceeds of Crime Act 2002 states that when a restraining order must be made (1) A court with * proceeds jurisdiction must order that: (a) property must not be disposed of or otherwise dealt with by any person; or (b) property must not be disposed of or otherwise dealt with by any person except in the manner and circumstances specified in the order

¹²⁷ (Brun, Hauch, Julien, Owens, & Hur, 2023)

entirety of the respondent's property, or can further include any property acquired by the respondent after the court makes the order.¹²⁸

Kenya

Under section 56 of Kenya's Anti-Corruption and Economic Crimes Act, if the court is satisfied that there are reasonable grounds to suspect the property was acquired as a result of corrupt conduct, on an ex-parte basis, the court may make an order prohibiting the transfer or disposal or other dealing of the property.¹²⁹ The freeze order would be in effect for six months, but it can be extended by the court on application.¹³⁰

Mauritius

Prior to an amendment in 2020, freeze orders could only be sought after the respondent was not able to provide a satisfactory explanation of their wealth, thus increasing the risk for the potential dissipation of assets or moving the assets outside the reach of the court.¹³¹ In 2020, amendments to the Good Governance and Integrity Reporting Act were made allowing for interim asset freeze requests to be available at the time of first notice to the respondent.¹³²

Implications of Freeze on Timelines

Even if the UWO's framework in a specific jurisdiction does not include a timeline, as soon as an interim freeze is in place, timing becomes an important and a relevant consideration. Blocking a respondent's full access to an asset for an unreasonable time

¹²⁸ (Brun, Hauch, Julien, Owens, & Hur, 2023)

¹²⁹ (National Council for Law Reporting with the Authority of the Attorney-General, 2016)

¹³⁰ Ibid.

¹³¹ (Brun, Hauch, Julien, Owens, & Hur, 2023)

¹³² Ibid.

can interfere with their right to their property.¹³³ Accordingly, authorities must adhere to strict deadlines or may be put in a position where they must drop the case.¹³⁴

UK

In the UK, where authorities have obtained an interim freeze order for a UWO, and the respondent has complied, further legal action must be pursued within 60 days.¹³⁵

However, up to two 63-day extensions can be granted by the court subject to satisfying the court's requirement that the extension is reasonable and that the agency was working in a diligent and expeditious manner.¹³⁶

Kenya

Under section 56(4) of Kenya's Anti-Corruption and Economic Crimes Act, within 15 days of the respondent being served with the freeze order, the respondent may apply to the court to discharge or vary the order.¹³⁷ This discharge, or change to the order can only be issued by the court, if it is satisfied that on a balance of probabilities that the property subject to the order was not acquired as a result of corrupt conduct.¹³⁸

Respondent's Obligations

In all jurisdictions, respondents have the obligation to provide the requested information in the manner specified by the relevant court. Failure to provide a response has consequences in all jurisdictions. Below is an overview of the respondent's obligations in various jurisdictions as well as consequences as a result of non-compliance.

¹³³ (Brun, Hauch, Julien, Owens, & Hur, 2023)

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ (National Council for Law Reporting with the Authority of the Attorney-General, 2016)

¹³⁸ *Ibid.*

UK

The respondent or responsible officer is responsible for providing a statement, outlining the nature and extent of the respondent's interest in the property, how the respondent obtained the property including how costs related to the property were paid for and any other information related to the property that may be requested.¹³⁹ Further, if the property is held by trustees, the respondent is also responsible for outlining details of the settlement.¹⁴⁰

Based on section 362C of UK's Proceeds of Crime Act, where the respondent fails to provide a statement without a reasonable excuse, the property is automatically presumed to be recoverable.¹⁴¹

Australia

In response to the preliminary unexplained wealth order, the respondent is responsible to appear in court for a hearing to explain the unexplained wealth. Should the court not be satisfied, an unexplained wealth order will be issued including the amount the respondent is subject to pay.¹⁴²

Kenya

Where the respondent is "reasonably suspected of corruption or economic crime" the Secretary can require a written statement "within a reasonable time".¹⁴³ The written statement is to list the respondent's property, the time it was acquired, the manner in

¹³⁹ (Legislation.Gov.UK, 2024)

¹⁴⁰ *Ibid.*

¹⁴¹ (Legislation.Gov.UK, 2024) and (Brun, Hauch, Julien, Owens, & Hur, 2023)

¹⁴² (AustLII, n.d.) (Brun, Hauch, Julien, Owens, & Hur, 2023)

¹⁴³ (National Council for Law Reporting with the Authority of the Attorney-General, 2016)

which it was acquired (such as by purchase, gift, or inheritance), and what consideration (if any) was given for the property.¹⁴⁴

Based on section 26(2) of Kenya's Anti-Corruption and Economic Crimes Act, where the respondent fails to provide a statement in relation to the property, they are deemed to be guilty of a criminal offence, and on conviction can be liable to a fine of up to 300,000 shillings (CA\$3,000) and/or imprisonment of up to three years.¹⁴⁵

Mauritius

The respondent must reply to the UWO in writing by way of affidavit, within 21 working days, unless the Director of the agency stipulates a longer period.¹⁴⁶

Should the agency not receive a reply within the specified period, the respondent may be afforded with another opportunity to provide information. The agency can apply for a disclosure order to the Judge in Chambers to obtain information on the property held by or on behalf of the respondent, or to require disclosure of the source of funds used to acquire, possess, or control the property.¹⁴⁷

In the event the respondent does not provide a response to the UWO, the property is deemed as unexplained wealth.¹⁴⁸

Misleading or False Information

Respondents subject to UWO's are obligated to provide accurate and complete information. Misrepresentation or omission of relevant information can have serious legal

¹⁴⁴ (National Council for Law Reporting with the Authority of the Attorney-General, 2016)

¹⁴⁵ Ibid.

¹⁴⁶ (Brun, Hauch, Julien, Owens, & Hur, 2023) and (Government of Mauritius, 2015)

¹⁴⁷ (Brun, Hauch, Julien, Owens, & Hur, 2023)

¹⁴⁸ Ibid.

repercussions, and in many jurisdictions offences for providing false or misleading information to the court exist.

UK

In the UK, a new and standalone offence was established for providing false or misleading information in response to a UWO.¹⁴⁹ A respondent that makes a statement known to be false or misleading, or recklessly makes a statement that is false or misleading, can be subject to a fine and/or imprisonment of up to 2 years.¹⁵⁰

Australia

In Australia the penalty associated with providing false or misleading information is imprisonment for 5 years and/or a fine subject their penalty units.¹⁵¹

Kenya

Kenya's Anti-Corruption and Economic Crimes Act has a provision that states that if a person deceives or knowingly misleads, destroys, alters, or conceals documentation records or evidence that may be relevant to an investigation under the act, on conviction they can be liable to a fine up to 500,000 shillings (CA\$5,200) and/or imprisonment of up to five years.¹⁵²

Mauritius

Mauritius' Good Governance and Integrity Reporting Act also has provisions related to receipt of false or misleading information. Specifically, it states that if a person

¹⁴⁹ (Brun, Hauch, Julien, Owens, & Hur, 2023)

¹⁵⁰ (Legislation.Gov.UK, 2024)

¹⁵¹ (Attorney General Australia, 2023)

¹⁵² (National Council for Law Reporting with the Authority of the Attorney-General, 2016)

knowingly makes a false, malicious, or vexatious disclosure, they can be liable to a fine up to MUR 50,000 (CA\$1,500) and imprisonment of up to one year.¹⁵³

Respondent Complies but Unsatisfactory Response Provided

Although there is a variation across jurisdictions in how unsatisfactory responses to UWOs are dealt with, generally it results in asset confiscation and/or further legal or investigative actions.

UK

In the UK, an unsatisfactory response to a UWO can lead to assets to be presumed recoverable and the initiation of separate “enforcement of investigatory proceedings” in which the NCA, or other relevant authority can seek to undertake separate confiscation proceedings.¹⁵⁴

Australia

Australia’s UWO framework includes recovery mechanisms. Accordingly, should the respondent not be able to provide a satisfactory response with respect to the property in question, the court can issue a UWO which includes an order to pay the amount deemed unsatisfactory explained.¹⁵⁵

Kenya

If the court is not satisfied on a balance of probabilities that the assets in question were not acquired as a result of corrupt conduct, the respondent may be ordered to pay an amount equivalent to the value of the unexplained assets.¹⁵⁶

¹⁵³ (Government of Mauritius, 2015)

¹⁵⁴ (Legislation.Gov.UK, 2024)

¹⁵⁵ (Brun, Hauch, Julien, Owens, & Hur, 2023)

¹⁵⁶ (National Council for Law Reporting with the Authority of the Attorney-General, 2016) and (Brun, Hauch, Julien, Owens, & Hur, 2023)

Mauritius

In cases where the Integrity Reporting Board has reasonable grounds to believe that the respondent has unexplained wealth, they instruct the IRSA to apply for an Unexplained Wealth Order for the confiscation of the wealth in question.¹⁵⁷ The Judge in Chambers can then make the unexplained wealth order for the payment of a monetary equivalent of the unexplained wealth.¹⁵⁸

Provisions to Avoid Double Counting

In instances where multiple forfeiture proceedings are taking place, there is a risk that the same property may be considered across the various forfeiture proceedings. Arguably, as the same property cannot be physically confiscated twice, a person should not be subjected to pay a monetary equivalent multiple times for the same asset, or a person should not have to both pay the monetary equivalent as well as have the property confiscated.¹⁵⁹ This can be a particular issue in jurisdictions where UWOs include their own recovery mechanism, as the confiscation proceedings may overlap with the jurisdiction's other statutes.¹⁶⁰ Approaches used by jurisdictions to coordinate asset recovery mechanisms include a legal hierarchy or a mathematical approach.¹⁶¹

Legal Hierarchy

The legal hierarchy approach involves prioritizing one proceeding over another and is the least resource intensive. In cases where multiple forfeiture proceedings for the same property are commenced, either “(a) one of the agencies “shall” prevail over the others or

¹⁵⁷ (Government of Mauritius, 2015)

¹⁵⁸ *Ibid.*

¹⁵⁹ (Brun, Hauch, Julien, Owens, & Hur, 2023)

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*

(b) one type of forfeiture system will prevail over the others”.¹⁶² A limitation of the legal hierarchy approach is that it only applies to enforcement authorities in the same jurisdiction and cannot be used in cases of foreign forfeiture orders.¹⁶³

The legal hierarchy approach is used in Mauritius. The Good Governance and Integrity Reporting Act specifies that the Integrity Reporting Board’s confiscation of property prevails in instances where there is concurrent jurisdiction with another authority.¹⁶⁴

Mathematical Approach

The mathematical approach involves deducting the value of any outstanding forfeiture order in cases where multiple forfeiture proceedings for the same property were issued.¹⁶⁵

The mathematical approach is used in Australia. Section 179J of Australia’s Proceeds of Crime Act 2002 specifies that in calculating the unexplained wealth, the value of any property forfeited under either a forfeiture order, an interstate forfeiture order, or a foreign forfeiture order should be deducted.¹⁶⁶

A Focus on Canada

FATF Mutual Evaluations

The Financial Action Task Force (FATF) has developed 40 Recommendations to combat money laundering, terrorist financing, and other threats to the financial system.¹⁶⁷ FATF also assesses the effectiveness of implementing their recommendations based on 11

¹⁶² (Brun, Hauch, Julien, Owens, & Hur, 2023)

¹⁶³ *Ibid.* pg. 51

¹⁶⁴ (Government of Mauritius, 2015)

¹⁶⁵ (Brun, Hauch, Julien, Owens, & Hur, 2023)

¹⁶⁶ (AustLII, n.d.)

¹⁶⁷ (FATF, 2023)

Immediate Outcomes.¹⁶⁸ FATF’s mutual evaluations are intended to assess compliance of jurisdictions with FATF’s recommendations¹⁶⁹ and the effectiveness¹⁷⁰ of their measures to combat money laundering and terrorist financing in their jurisdiction.¹⁷¹

Recommendation 4

Recommendation 4 focuses on jurisdictions adopting a robust framework to enable confiscation of criminal proceeds. Specifically, the recommendation states that countries should include legislative measures to enable authorities to “identify, and evaluate property that is subject to confiscation”.¹⁷² By design, UWOs provide a legal mechanism for relevant authorities to assist in the potential confiscation of illicit funds. Further, as UWOs place the burden to provide the origin on the respondent’s wealth, evidence obtained through a UWO can also help facilitate the identification and tracing of assets that may otherwise remain hidden.

¹⁶⁸ (FATF, 2023)

¹⁶⁹ FATF assesses technical compliance on a scale of “compliant” to “non-compliant”. Compliance ratings can be either C – compliant, LC – largely compliant, PC – partially compliant or NC – non compliant.

¹⁷⁰ FATF assesses effectiveness based on the following scale: HE - High level of effectiveness (minor improvements needed), SE – Substantial Level of Effectiveness (moderate improvements needed), ME – Moderate Level of Effectiveness (major improvements needed) or LE – Low Level of Effectiveness (fundamental improvements needed)

¹⁷¹ (FATF, 2023)

¹⁷² Ibid. pg. 29

RECOMMENDATION 4**CONFISCATION AND PROVISIONAL MEASURES**

- 4.1 Countries should have measures, including legislative measures, that enable the confiscation of the following, whether held by criminal defendants or by third parties:
- (a) property laundered;
 - (b) proceeds of (including income or other benefits derived from such proceeds), or instrumentalities used or intended for use in, ML or predicate offences;
 - (c) property that is the proceeds of, or used in, or intended or allocated for use in the financing of terrorism, terrorist acts or terrorist organisations; or
 - (d) property of corresponding value.
- 4.2 Countries should have measures, including legislative measures, that enable their competent authorities to:
- (a) identify, trace and evaluate property that is subject to confiscation;
 - (b) carry out provisional measures, such as freezing or seizing, to prevent any dealing, transfer or disposal of property subject to confiscation¹⁴;
 - (c) take steps that will prevent or void actions that prejudice the country's ability to freeze or seize or recover property that is subject to confiscation; and
 - (d) take any appropriate investigative measures.
- 4.3 Laws and other measures should provide protection for the rights of *bona fide* third parties.
- 4.4 Countries should have mechanisms for managing and, when necessary, disposing of property frozen, seized or confiscated.

Source: FATF Methodology for Assessing Technical Compliance with the FATF

Recommendations and the Effectiveness of AML/CFT Systems, 2023.

Recommendation 38

Recommendation 38 focuses on international cooperation, in relation to the identification, freezing, and confiscation of assets. The recommendation includes providing assistance for NCB confiscations and related measures.¹⁷³ UWOs can assist in gathering information for the purposes of international cooperation in their asset recovery efforts.

¹⁷³ (FATF, 2023)

RECOMMENDATION 38**MUTUAL LEGAL ASSISTANCE: FREEZING AND CONFISCATION**

- 38.1 Countries should have the authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize, or confiscate:
- (a) laundered property from,
 - (b) proceeds from,
 - (c) instrumentalities used in, or
 - (d) instrumentalities intended for use in,
- money laundering, predicate offences, or terrorist financing; or
- (e) property of corresponding value.
- 38.2 Countries should have the authority to provide assistance to requests for co-operation made on the basis of non-conviction based confiscation proceedings and related provisional measures, at a minimum in circumstances when a perpetrator is unavailable by reason of death, flight, absence, or the perpetrator is unknown, unless this is inconsistent with fundamental principles of domestic law.
- 38.3 Countries should have: (a) arrangements for co-ordinating seizure and confiscation actions with other countries; and (b) mechanisms for managing, and when necessary disposing of, property frozen, seized or confiscated.
- 38.4 Countries should be able to share confiscated property with other countries, in particular when confiscation is directly or indirectly a result of co-ordinated law enforcement actions.

Source: FATF Methodology for Assessing Technical Compliance with the FATF

Recommendations and the Effectiveness of AML/CFT Systems, 2023.

Comparison of Jurisdictions

In both recommendations 4 and 38, Australia and the UK have attained and maintained the highest rating of “compliant”. In the latest mutual evaluation for Mauritius, it has also attained a rating of “compliant” for recommendation 4. Although Kenya attained a rating of “compliant” for recommendation 38, a much lower rating of “partially compliant” was attained for recommendation 4 due to not all competent authorities, particularly the National Police Service, not having the “legal provisions empowering them to identify, trace, freeze, seize, preserve and manage property suspected to be proceeds of crime and

subject to confiscation”.¹⁷⁴ While Canada appears to be performing well by attaining ratings of “largely compliant” up to its latest evaluation in September 2021, there does appear to be a need to improve regulations.

Canada’s next FATF mutual evaluation is in 2025.¹⁷⁵ A number of inclusions in Canada’s 2024 Federal Budget regarding bolstering anti-money laundering and counter terrorist financing regime, findings and recommendations from the Cullen’s Commission (discussed below), in addition to the adoption of UWOs in British Columbia (BC) and Manitoba (awaiting Royal assent¹⁷⁶) suggest that further efforts will be made for the adoption of UWOs.

Immediate Outcome 8 relates to the assessment of the effectiveness of a country’s ability to confiscate the proceeds and instrumentalities of crime.¹⁷⁷ UK has attained a rating of “substantial level of effectiveness” where FATF believes that only moderate improvements are needed. Canada currently has a lower rating of “moderate level of effectiveness” for its ability to confiscate the proceeds and instrumentalities of crime. Although the rating aligns with Australia, another developed nation, this rating stresses that Canada needs to make major improvements related to confiscations.

¹⁷⁴ (Eastern and Southern Africa Anti-Money Laundering Group, 2022) pg. 176

¹⁷⁵ (FATF)

¹⁷⁶ (Wiebe, 2024) (Province of Manitoba, 2024)

¹⁷⁷ (FATF, 2023)

Jurisdiction (click on the country name to go to the report on www.fatf-gafi.org)	Report Type	Report Date	Assessment body/bodies	IO8	R.4	R.38
Australia	MER+FURs	Mar-24	FATF	ME	C	C
Australia	MER	Apr-15	FATF/APG	ME	C	C
Australia	FUR	Oct-18	FATF/APG	ME	C	C
Australia	FUR	Mar-24	FATF	ME	C	C
Canada	MER+FUR	Sep-21	FATF	ME	LC	LC
Canada	MER	Sep-16	IMF/FATF/APG	ME	LC	LC
Canada	FUR	Sep-21	FATF	ME	LC	LC
Kenya	MER	Jan-23	ESAAMLG	ME	PC	C
Mauritius	MER+FURs	Jan-23	ESAAMLG	LE	C	LC
Mauritius	MER	Jul-18	ESAAMLG	LE	LC	LC
Mauritius	FUR	Apr-19	ESAAMLG	LE	LC	LC
Mauritius	FUR	Sep-19	ESAAMLG	LE	C	LC
Mauritius	FUR	Dec-20	ESAAMLG	LE	C	LC
Mauritius	FUR	Jan-23	ESAAMLG	LE	C	LC
United Kingdom	MER+FUR	Jun/22	FATF	SE	C	C
United Kingdom	MER	Dec/18	FATF	SE	C	C
United Kingdom	FUR	Jun/22	FATF	SE	C	C

Source: FATF Consolidated Assessment Ratings, 2024

Cullen’s Commission and UWOs

Due to serious public concerns about the nature, prevalence, and the effectiveness of detecting and combatting money laundering in BC, an order¹⁷⁸ was issued by the BC’s Lieutenant Governor in May 2019 to establish a commission of inquiry into money laundering in BC.¹⁷⁹ Following a comprehensive study and investigation including testimony from 199 witnesses, in June 2022, the Commission of Inquiry into Money Laundering in British Columbia (Cullen’s Commission) was published.¹⁸⁰ The report details findings and a total of 101 recommendations aimed to enhance transparency and

¹⁷⁸ (Province of British Columbia, 2019)

¹⁷⁹ (Austin F. Cullen, 2022)

¹⁸⁰ Ibid.

improve regulations and enforcement mechanisms used against money laundering in BC.¹⁸¹

While the Cullen’s Commission could not provide a precise volume of funds laundered through BC annually, it does state that estimates are within the realm of billions of dollars.¹⁸² The Cullen’s Commission emphasizes the importance of relevant regulatory and enforcement bodies to “take strong and decisive action to respond to the problem”.¹⁸³

Recommendation 101: I recommend that the Province proceed with its plan to develop an unexplained wealth order regime in British Columbia.

Source: Commission of Inquiry into Money Laundering in British Columbia, 2022

Recommendation 101 of the Cullen’s Commission recommends BC to develop a regime for unexplained wealth orders.¹⁸⁴ Specifically, the Cullen’s Commission recommended implementing a UWO regime similar to UK’s model.¹⁸⁵ The Cullen’s Commission discussed potential benefits of adopting this regime. Firstly, the ability to target assets of higher-ranking criminals who often engage in more profitable but less visible criminal activity as well as circumstances where nominee ownership through UWOs was emphasized.¹⁸⁶ Secondly, the ability to discourage foreign officials and criminals from purchasing real estate and other assets in BC with illicit funds was highlighted.¹⁸⁷ FATF’s 2016 Mutual Evaluation for Canada noted that Canadian real estate was highly vulnerable

¹⁸¹ (Austin F. Cullen, 2022)

¹⁸² *Ibid.*

¹⁸³ *Ibid.* pg. 2

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.* pg. 1616

¹⁸⁶ *Ibid.* pg. 1617

¹⁸⁷ *Ibid.* pg. 1617

to money laundering, including international money laundering due to high-risk clients such as politically exposed persons from Asia and investors from jurisdictions of concern.¹⁸⁸ The FATF also noted that China did not provide assistance to BC despite the fact that BC appeared to be at a higher risk of proceeds of crime generated in China being laundered in BC's real estate sector.¹⁸⁹

Thirdly, the Cullen's Commission noted that often higher-ranking criminals engaged in profit-oriented criminal activities are aware of regulatory requirements across various jurisdictions, and take these factors into consideration when deciding on where to launder illicit earnings.¹⁹⁰ Introducing the risk to demonstrate the legitimacy of their assets, a UWO may act as a deterrent, and these individuals may opt to place their illicit funds into another jurisdiction.¹⁹¹

The Cullen's Commission also highlights that in most instances where legitimate funds were used to purchase assets, it should not be difficult for an individual to provide evidence to avoid civil forfeiture proceedings.¹⁹²

Civil Forfeitures in Canada and the Adoption of UWOs

Overview of legal framework governing Civil Forfeitures in Canada

In Canada, NCB forfeitures, known as civil forfeitures, are a legal mechanism through which the proceeds and instruments from unlawful activity can be recovered.¹⁹³ Unlike

¹⁸⁸ (Austin F. Cullen, 2022) pg. 775

¹⁸⁹ *ibid.* pg. 775

¹⁹⁰ *ibid.* pg. 1617

¹⁹¹ *ibid.* pg. 1617

¹⁹² *ibid.* pg. 1617

¹⁹³ (Simser, 2023)

criminal asset forfeitures, civil forfeiture proceedings are brought against the property (*in rem*) rather than against the person associated with the property (*in personam*).¹⁹⁴

In 2001, Ontario was the first jurisdiction to introduce civil forfeitures in Canada. As of the date of this report, these nine jurisdictions have adopted civil forfeiture regimes: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, and Northwest Territories.

The constitutionality of civil forfeiture was considered in both the Supreme Court of Canada and the Ontario court of appeal in *Chatterjee v. Ontario (Attorney General)*.¹⁹⁵

These cases upheld the constitutionality of civil forfeiture to fight crime and compensate victims.¹⁹⁶

UWOs in British Columbia

Following the Cullen’s Commission, BC adopted UWOs as an investigative tool in its Civil Forfeiture Act.

Property covered

UWOs in BC only apply to property or interest in property located within BC.¹⁹⁷

For the purposes of the UWO, the respondent is deemed to have acquired the property (whole or portion of) at fair market value.¹⁹⁸ Further, any mortgage, charge, or other security available for acquiring or maintaining the property may be taken into consideration.¹⁹⁹

¹⁹⁴ (Simser, 2023)

¹⁹⁵ (*Chatterjee v. Ontario (Attorney General)*, 2009)

¹⁹⁶ (Krane, 2010) and (*Chatterjee v. Ontario (Attorney General)*, 2009)

¹⁹⁷ (Government of British Columbia, 2024)

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*

Holding Requirement for Properties to be Subject to UWO

BC's Civil Forfeiture Act considers a broad range of ownership structures for property that can be subject to a UWO that goes beyond direct ownership.

Firstly, both direct and indirect ownership in property is considered as the respondent could be the registered or unregistered owner of the property.²⁰⁰ Secondly, the respondent could have an interest in the whole property, or only a portion of the property.²⁰¹

BC's Civil Forfeiture Act also considers circumstances where the respondent is a partner in a partnership that hold partial or complete interest in the property and circumstances where the respondent may be connected to a partnership, corporation, or a trustee of a trust that holds a partial or complete interest in the property.²⁰²

A respondent is considered connected to a partnership where the individual is:²⁰³

- a partner in the partnership,
- a beneficial owner with either the entire or partial interest of property held by the trustee of the trust that is a partner in the partnership, or
- connected to either a partnership, corporation or a trustee of a trust which is a partner in a partnership.

A respondent is considered connected to a corporation where the individual is:²⁰⁴

- a director²⁰⁵ of the corporation as defined in the Business Corporations Act,

²⁰⁰ (Government of British Columbia, 2024)

²⁰¹ *Ibid.*

²⁰² *Ibid.*

²⁰³ *Ibid.*

²⁰⁴ *Ibid.*

²⁰⁵ The Business Corporations Act specifies that "director" include the following: (a) in relation to a company, an individual who is a member of the board of directors of the company as a result of having been elected or appointed to that position, or (b) in relation to a corporation other than a company, a person who is a member of the board of directors or other governing body of the corporation regardless of the title by which that person is designated.

- a legal or beneficial owner, or has control directly or indirectly of 10% or more of the value of the corporation’s equity or 10% or more of the voting rights,
- directly or indirectly has the right to appoint or remove majority of the Board of Directors of the corporation, or,
- directly or indirectly has the ability to exercise significant influence or control over the corporation.

A respondent is considered connected to a trustee of a trust where the individual is:²⁰⁶

- another trustee of the trust,
- a beneficial owner with either the entire or partial interest of a property held by the trustee of the trust, or
- a settlor of the trust.

Accordingly, the ownership considerations included in BC’s Civil Forfeiture Act ensures that UWOs can target a broad range of complex ownership structures.

Scope of Individuals Covered

The Director can issue a UWO to an individual where there are “reasonable grounds to suspect” that the individual was directly or indirectly engaged in unlawful activity, or if the individual is a foreign politically exposed person²⁰⁷ as defined by the Proceeds of

²⁰⁶ (Government of British Columbia, 2024)

²⁰⁷ (Justice, 2000) Canada’s Proceeds of Crime (Money Laundering) and Terrorist Financing Act defines a “politically exposed foreign person” as a person who holds or has held one of the following offices or positions in or on behalf of a foreign state: (a) head of state or head of government; (b) member of the executive council of government or member of a legislature; (c) deputy minister or equivalent rank; (d) ambassador, or attaché or counsellor of an ambassador; (e) military officer with a rank of general or above; (f) president of a state-owned company or a state-owned bank; (g) head of a government agency; (h) judge of a supreme court, constitutional court or other court of last resort; (i) leader or president of a political party represented in a legislature; or (j) holder of any prescribed office or position.

Crime (Money Laundering) and Terrorist Financing Act, or is affiliated with a politically exposed foreign person.²⁰⁸

Further, similar to the UK, BC has considered the use of complex corporate structures to hide the true beneficial ownership of an asset. A UWO can also be issued to a “responsible officer” of the respondent.²⁰⁹ For corporations this includes all directors²¹⁰ as defined in the Business Corporations Act and the senior officers of the corporation.²¹¹ For limited partnerships and partnerships other than limited partnerships, a “responsible officer” not only includes an individual who is a partner but also includes an individual that is a “responsible officer” in relation to a corporation or partnership, that is a general partner or partner in the partnership.²¹²

Respondent’s Known Income

The respondent’s known income is based on sources that are reasonably ascertainable at the time the Director files the notice of application for a UWO.²¹³ Based on discussion with a legal expert, although the Director is not able to obtain tax documents directly from the Canada Revenue Agency, they may be supplied with tax documents from a prior search and seizure by the police. Further, information from production orders of bank account records can be requested.

²⁰⁸ (Government of British Columbia, 2024)

²⁰⁹ *Ibid.*

²¹⁰ The Business Corporations Act specifies that "director" include the following: (a) in relation to a company, an individual who is a member of the board of directors of the company as a result of having been elected or appointed to that position, or (b) in relation to a corporation other than a company, a person who is a member of the board of directors or other governing body of the corporation regardless of the title by which that person is designated.

²¹¹ (Government of British Columbia, 2024)

²¹² *Ibid.*

²¹³ *Ibid.*

Grounds to Seek UWO

In addition to satisfying the court that the individual is within the scope of whom a UWO can be issued to, the court must also be satisfied that:²¹⁴

- The Director has reason to believe that the fair market value of the property is greater than CA\$75,000 and the respondent has a direct or indirect interest in either the entire property or a portion of the property, and,
- One of the following must also be satisfied:
 - The respondents lawfully obtained income would have been insufficient to allow the respondent to acquire, or maintain the property (in whole or the portion of their interest),
 - The property was used to engage in unlawful activity, or,
 - The property was acquired or is maintained directly or indirectly as a result of unlawful activity.

UWO Process in BC

Application for UWO

Where the Director has “reasonable grounds to suspect” that an individual was directly or indirectly engaged in unlawful activity, or if the individual is a foreign politically exposed person or affiliate, they may apply to the court for a UWO. The application for the UWO must:²¹⁵

- a) Detail the property to which the UWO relates to,

²¹⁴ (Government of British Columbia, 2024)

²¹⁵ *Ibid.*

- b) Outline the factual basis for the “reasonable grounds” on which the Director suspects that the respondent is directly or indirectly engaged in unlawful activities, or is a foreign politically exposed person,
- c) Outline the factual basis on which the Director believes that the respondent has a direct or indirect interest in either the entire property or a portion of the property;
- d) Outline the factual basis for the Director believes that the fair market value of the property is greater than CA\$75,000,
- e) The factual basis for including a responsible officer, if specified in the application; and,
- f) Be supported by the Director’s affidavit.

Notice of Hearing

The Director is responsible for serving the respondent and responsible officer (if any) a copy of the notice of application for the UWO, as well as the supporting affidavit at least 14 days before the date scheduled for the hearing of the application.²¹⁶

Respondent’s Response to Notice of Hearing

Up to 5 business days prior to the hearing of the application (or a shorter period if deemed by the court), the respondent or responsible officer can file and serve a response to the application and provide any supporting materials.²¹⁷

²¹⁶ (Government of British Columbia, 2024)

²¹⁷ Ibid.

Hearing

The application for the unexplained wealth order must be heard within 180 days after the Director files the notice of application, and can be scheduled for no more than two days.²¹⁸

Issuance of UWO and the Respondent's Obligations

Regardless of whether the respondent or responsible officer attends the hearing, the court makes a UWO if it is satisfied that the respondent or responsible officer has been served with a notice of application.²¹⁹

In response to the UWO, the respondent has a number of obligations. This includes the obligation to disclose; financial information, supporting documentation, provide an explanation of their wealth, provide any other information requested by the court, and cooperate with authorities.

Specifically, the respondent or responsible officer is to provide a statement detailing the nature and extent of the respondent's interest in the property subject to the UWO, and details regarding the acquisition and maintenance of the respondent's interest in the property, including how costs related to the acquisition and maintenance of the property were met.²²⁰ For instances where the property is held by a trustee, the respondent is obligated to provide information with respect to the trust.²²¹

Additionally, the respondent is required to disclose any supporting information or records in their custody or control related to their statement.²²² The respondent's statement is to

²¹⁸ (Government of British Columbia, 2024)

²¹⁹ *Ibid.*

²²⁰ *Ibid.*

²²¹ *Ibid.*

²²² *Ibid.*

also specify the location of the originals of any of the relevant supporting information or records.²²³

BC has specified that the statement and any supporting information or records are to be provided by solemn declaration to the Director “as soon as reasonably practicable”.²²⁴

The obligation to provide statements and documents by solemn declaration holds the respondent accountable and acts as a deterrent from providing false information and documents.

Additionally, BC has included provisions that state that the respondent or responsible officer must allow the Director to inspect and copy the originals of any records disclosed to the Director at the location specified in the statement during normal business hours.²²⁵

This provision reduces the risk of document tampering and expedites the investigative process by allowing investigators including Investigative Forensic Accountant (IFAs) physical access to necessary evidence.

Failure to Comply with UWO

Section 19.07 of BC’s Civil Forfeiture Act states that if a respondent or responsible officer does not provide all of the information and records required under the UWO or otherwise fails to comply with the UWO’s requirements, the property in question is presumed to be proceeds of unlawful activity.²²⁶ Following this, separate asset forfeiture proceedings can be initiated.²²⁷

²²³ (Government of British Columbia, 2024)

²²⁴ *Ibid.*

²²⁵ *Ibid.*

²²⁶ *Ibid.*

²²⁷ *Ibid.*

Misleading Information

Section 19.09 of BC's Civil Forfeiture Act states that if a court finds that a fact included in the respondent's statement is not true or that an unauthentic record was provided, the court may draw an adverse inference against the respondent.²²⁸

Time Limit

Unless otherwise specified by the court, the application for a UWO must be heard within 180 days after the Director files the notice of application and the respondent can file a response with respect to the notice of application up to 5 business days prior to the hearing.²²⁹

UWOs Currently Issued in BC

As the adoption of UWOs in BC is relatively new, at the time of this report, all of the cases in which a UWO was issued are still in progress. Accordingly, the outcome of the UWO cannot be detailed.

Salt Spring Island Home

The first UWO in BC was issued to Skye Lee (Lee), also known as Gordie Lee, and was related to a purchase of a house in 2017 without a mortgage for CA\$1 million. Neither Lee nor his spouse, Alicia Valerie Davenport (Davenport), allegedly had the known lawfully obtained income to purchase or maintain the property.²³⁰

²²⁸ (Government of British Columbia, 2024)

²²⁹ Ibid.

²³⁰ (Hoekstra, Man says B.C.'s demand that he explain source of money used to buy Salt Spring Island house violates his rights, 2024)

Funds used to acquire the house allegedly originated from a CA\$225 million international pump-and-dump stock fraud and were moved through shell companies in an effort to conceal the origin of the proceeds prior to the purchase of the Salt Spring Island home.²³¹

The alleged trail of funds used to purchase the Salt Spring Island home were as follows:²³²

- On October 25, 2017 instructions from a Colombian man were faxed to a UK citizen, Roger Knox (Knox) specifying to send a CA\$1.15 million wire transfer from a company named Hilton Capital in the Marshall Islands to an RBC bank in Toronto, Canada.²³³
- The funds were then to be sent in trust to Biancardi Law Corp., a law firm located in West Vancouver for the purchase of the Salt Spring Island home.²³⁴
- From October 30 to November 2, 2017 the funds were sent to Lee as alleged to be loans.²³⁵
- On November 3, 2017 Davenport purchased the Salt Spring Island home for CA\$1 million cash.

Based on a press release from the United States Attorney's Office, Knox was the founder and operator of a Swiss asset management firm engaged in the international pump-and-dump stock fraud.²³⁶ In 2020, Knox pled guilty to charges related to assisting in hiding

²³² (Hoekstra, How B.C. is using 'unexplained wealth orders' to pierce the secrets of suspected money launderers, 2024)

²³³ *Ibid.*

²³⁴ *Ibid.*

²³⁵ *Ibid.*

²³⁶ (U.S. Attorney's Office, 2020)

ownership of stocks in the international pump-and-dump stock fraud and funneling the proceeds of the fraud scheme to co-conspirators.²³⁷

This is a classic example of the three stages of money laundering in which funds collected from illicit activity are placed into the financial system, then moved through series of financial transactions to obscure the origin of the funds, and finally the funds are integrated back into the economy through purchases of luxury goods, and/or investments. Further, Lee has denied any wrongdoing in a response filed to the court.²³⁸ He has denied having proprietary interest in the property, denied that the property was obtained from proceeds of unlawful activity, and denied having any knowledge of participating in a securities fraud.²³⁹

The couple argues that actions based on the UWO is an infringement on their constitutional rights.²⁴⁰ Lee's legal counsel argues the UWO oversteps the division of power between the federal and provincial government, and that the UWO deals with the criminality of an individual, which is within the jurisdiction of the federal government.²⁴¹ Davenport's legal counsel argues that forfeiture of the property would not be in the public interest as Davenport and her three children have continued to reside in the home following a separation from Lee.²⁴²

²³⁷ (Hoekstra, How B.C. is using 'unexplained wealth orders' to pierce the secrets of suspected money launderers, 2024) and (U.S. Attorney's Office, 2020)

²³⁸ (Hoekstra, Man says B.C.'s demand that he explain source of money used to buy Salt Spring Island house violates his rights, 2024)

²³⁹ *Ibid.*

²⁴⁰ (Kenney, 2024)

²⁴¹ (Hoekstra, How B.C. is using 'unexplained wealth orders' to pierce the secrets of suspected money launderers, 2024)

²⁴² *Ibid.*

Lawyer's Trust Account

BC's second UWO was issued to a UK citizen, Kevin Patrick Miller (Miller), related to an estimated CA\$4.5 million held in a lawyer's trust account.²⁴³ Allegedly, the funds originated from a US\$78 million pump-and-dump stock fraud, in which multiple individuals had already been successfully prosecuted by the SEC.²⁴⁴ Miller was a beneficial owner of at least two shell companies, which the SEC determined helped conceal the proceeds of the fraud.²⁴⁵ Miller reached a US\$900K settlement with the SEC in 2017 without denying or admitting the allegations.²⁴⁶ The lawyer, Ronald Norman Pelletier (Pelletier), was disbarred for knowingly assisting in money laundering and the trust account had been frozen as part of the law society tribunal proceedings.²⁴⁷ In a response filed to the B.C. Supreme Court, Miller denied any wrongdoing and argued that the issuance of the UWO as an abuse of process.²⁴⁸ Specifically, he argued that due to the case being settled, he is entitled to the funds in the trust account, however the BC civil forfeiture office's stance is that Miller should not receive the money as on a balance of probabilities, the funds are likely to be proceeds of alleged securities fraud.²⁴⁹

²⁴³ (Hoekstra, B.C. demands accused fraudster explain source of millions in lawyer's trust account, 2023)

²⁴⁴ *Ibid.*

²⁴⁵ *Ibid.*

²⁴⁶ *Ibid.*

²⁴⁷ *Ibid.*

²⁴⁸ (Hoekstra, Demand to explain source of millions in Vancouver lawyer's account is 'abuse of process,' says accused fraudster, 2024)

²⁴⁹ (Hoekstra, B.C. demands accused fraudster explain source of millions in lawyer's trust account, 2023)

Quadriga CX Co-Founder

Michael Patryn (Patryn), who is also known by various aliases, such as Michael Dhanani, Omar Dhanani, and Omar Patryn, was a co-founder of Quadriga CX, a Canadian cryptocurrency exchange.²⁵⁰

Patryn co-owned Quadriga CX with Gerald Cotton (Cotton) from 2013 to 2016 at which point, Cotton had sole ownership.²⁵¹ Quadriga CX is infamously known for the disappearance of approximately CA\$215 million of client assets following Cotton's mysterious death in India in 2018.²⁵²

An OSC investigation found that Cotton misused client assets through fraudulent trading, moving and trading client funds on external trading platforms without their knowledge or authorization, and misappropriating millions in client assets in order to fund his lifestyle.²⁵³

Of the CA\$215 million of client assets that had disappeared, bankruptcy trustees were only able to recover CA\$46 million.²⁵⁴

During the OSC investigation, multiple attempts to contact Patryn were made. However, he refused to respond.²⁵⁵

In June 2021, through a search warrant on Patryn's safety deposit box located at a bank in downtown Vancouver, the Royal Canadian Mounted Police (RCMP), seized:²⁵⁶

- CA\$250,200 cash in bundles of approximately CA\$50,000 each,

²⁵⁰ (Larsen, 2024)

²⁵¹ (Ontario Securities Commission)

²⁵² *Ibid.*

²⁵³ *Ibid.*

²⁵⁴ *Ibid.*

²⁵⁵ *Ibid.*

²⁵⁶ (Larsen, 2024)

- 45 gold bars including “three one-kg gold bars, 12 one-ounce gold bars, 10 small gold bars from Australia and 20 gold bars of unlisted sizes from the Canadian mint”,
- 5 luxury watches including “Two Rolex DateJusts, one with diamonds; a Chanel J12 Black Diamond and a Baume & Mercier Men's Clasima Executive”,
- 7 pieces of jewellery including rings, cufflinks, a necklace and a pendant,
- A pistol with ammunition,
- Birth certificates,
- Name change certificates, and,
- Credit cards and cheques in various aliases used by Patryn.

On March 27, 2024, a UWO for Patryn was issued detailing property including CA\$250,200 cash, 45 gold bars, 4 watches and other pieces of jewellery.²⁵⁷ Although not formally disclosed, the UWO appears to largely mirror the property seized in the June 2021 search warrant.

UWOs in Manitoba

In May 2021, a “preliminary disclosure order” was included in Manitoba’s Criminal Property Forfeiture Act.²⁵⁸ The preliminary disclosure order is an investigative tool that closely resembles UK’s UWO with certain exceptions.²⁵⁹ Parties that can be included in the proceedings includes the property owner, any individual in possession of the property,

²⁵⁷ (Public Safety and Solicitor General, 2024)

²⁵⁸ (Dornbierer & Simser, Working Paper 41 - Targeting unexplained wealth in British Columbia, 2022) (Province of Manitoba, 2022)

²⁵⁹ (Dornbierer & Simser, Working Paper 41 - Targeting unexplained wealth in British Columbia, 2022)

and any other person the Director believes may have interest in the property.²⁶⁰ Subject to satisfying certain requirements to the court, the preliminary disclosure order can compel the respondent to provide the nature and extent of interest in the property.²⁶¹ Not doing so can result in a rebuttable presumption that the property is either the proceeds or instrument of an unlawful act, thus could result in civil forfeiture proceedings.²⁶²

Unfortunately, no orders have been obtained as of the date of this report, therefore it is not possible to analyze its application.²⁶³

Following BC, Manitoba is working to enact its own UWO. Currently Bill 30, The Unexplained Wealth Act, is awaiting royal assent.²⁶⁴ Bill 30 includes amendments to both Manitoba's Criminal Property Forfeiture Act²⁶⁵ and Corporations Act.²⁶⁶

Criticism related to UWOs

Criticism of UWOs typically relate to civil liberties of the respondent, the potential for misuse, and application in only less complex cases.

Right to not Self-incriminate

The primary criticism of the UWO is that it violates an individual's right to not self-incriminate. Critics of the UWO argue that shifting the burden of proof to the individual to demonstrate that property was acquired with legitimate funds departs from the presumption of innocence and the right to not self-incriminate.

²⁶⁰ (Dornbierer & Simser, Working Paper 41 - Targeting unexplained wealth in British Columbia, 2022) (Province of Manitoba, 2022)

²⁶¹ (Dornbierer & Simser, Working Paper 41 - Targeting unexplained wealth in British Columbia, 2022)

²⁶² *Ibid.*

²⁶³ *Ibid.*

²⁶⁴ (Wiebe, 2024) (Province of Manitoba, 2024)

²⁶⁵ (Province of Manitoba, 2022)

²⁶⁶ *Ibid.*

Thus far, courts have noted that the presumption of innocence and the right to not self-incriminate normally does not apply to civil proceedings.²⁶⁷ In the *National Crime Agency v Hajiyeva* case, the UK High Court held that there was no violation of the right to not self-incriminate as this privilege only applies to criminal offences.²⁶⁸

Based on discussion with a legal expert, in Canada, the right to not self-incriminate is not an absolute right and the reversal of the onus of proof is not unique to only UWOs.

Potential Misuse

There is concern that UWOs would be misused by authorities.²⁶⁹ They could be misused for political gain, to intentionally target innocent parties or for the purposes of virtue signaling.

Use only in Less Complex Cases

In the UK, there has also been criticism that UWOs have only been used for simpler cases, and not ones with more complexity.²⁷⁰ Specifically, a situation where the respondent has a good relationship with individuals charged with power in the foreign jurisdiction the source of wealth is from, was provided as a more complex case.²⁷¹

In British Columbia, thus far, UWOs have only been issued in circumstances where there is not significant complexity including an instance where property from a safety deposit box was included and two situations where related proceedings had occurred by a foreign jurisdiction.

²⁶⁷ (Brun, Hauch, Julien, Owens, & Hur, 2023)

²⁶⁸ (Organised Crime, Financial Crime, and Criminal Justice, 2023) (Royal Courts of Justice, 2019)

²⁶⁹ (Brun, Hauch, Julien, Owens, & Hur, 2023)

²⁷⁰ (Shalchi, 2022)

²⁷¹ Ibid.

Forensic Accountant's Role in UWOs

Based on discussion with industry leaders, the skills of a forensic accountant are not leveraged as much as they could be in asset forfeiture proceedings in Canada. This can largely be attributable to resource constraints. The Cullen Commission also recommended incorporating the expertise of forensic accountants and investigators to assist in the identification and targeting of illicit assets.²⁷²

Recommendation 99: I recommend that the Civil Forfeiture Office significantly expand its operational capacity by adding investigators and analysts capable of identifying and targeting unlawfully obtained assets and instruments of unlawful activity beyond those identified in the police file.

Source: Commission of Inquiry into Money Laundering in British Columbia, 2022

Further, with respect to Australia, the report *Pocketing the proceeds of crime: Recommendations for legislative reform* which was co-authored by Professor Natalie Skead – a witness at the Cullen Commission – stated the following:²⁷³

*“What clearly emerged from many interviews was that, while unexplained wealth confiscations have the potential to target sophisticated organized crime syndicates, to be successful they require significant resourcing and skills, specifically in forensic accounting”.*²⁷⁴

The use of forensic accountants for UWOs have been highlighted in some cases from Australia. For example, in the *New South Wales Crime Commission v. Elskaf*, Ali Elskaf

²⁷² (Cullen, 2020) pg. 1613

²⁷³ (Skead, Tubex, Murray, & Tulich, 2020)

²⁷⁴ *Ibid.* pg. 84

(Elskaf) was suspected of committing fraud by deception by allegedly obtaining loans using falsified information.²⁷⁵ Based on a forensic accountant's calculation, unexplained wealth of AU\$4,467,941.90 (CA\$4 million) which included real property, vehicles, bank account balances, as well as past withdrawals and loan drawdowns.²⁷⁶ This case resulted in a forfeiture of over AU\$4 million (CA\$3.6 million).

Skills and Expertise

The skills of an IFA are useful with respect to UWOs, as establishing the quantum of unexplained wealth can be a difficult process and requires extensive forensic accounting expertise.²⁷⁷ Further, IFAs can utilize their skills to help uncover ownership structures and hidden assets.

IFAs have extensive knowledge of financial transactions, the flow of funds, and are able to apply their accounting skills, investigative mindset, and professional skepticism during an investigation involving UWOs, especially in complex cases.

Investigative Skills

IFAs possess strong investigative mindsets. This allows them to identify and obtain relevant information about a respondent's assets and income and enables them to analyze and compare different types and sources of information while considering the possibility that the information might be "biased, false, unreliable and/or incomplete".²⁷⁸ Their skeptical mindset allows them to recognize and consider ways in which information provided could be "fabricated or concealed" which can assist in identifying information

²⁷⁵ (New South Wales Crime Commission, 2017)

²⁷⁶ (New South Wales Crime Commission, 2017) and (Brun, Hauch, Julien, Owens, & Hur, 2023)

²⁷⁷ (Cullen, 2020) pg. 54

²⁷⁸ (Moulton & Gottschalk, 2006) pg.15

that cannot be relied upon, identifying further information required and may help in developing hypotheses about the source of the wealth.²⁷⁹

Accounting Skills

IFAs possess specialized financial knowledge and expertise as they not only have strong accounting skills, but typically also have significant knowledge of fraud, money laundering, and valuation of property. They possess a deep understanding of how financial transactions and purchases of property are documented, recorded, and controlled. This can help in tracing the flow of funds, identifying discrepancies in the financial records and to gather information on potential ownership structures and who ultimately benefited. They also possess the knowledge and skills to quantify financial impact of transactions and to perform relevant analysis. Further, they understand complex financial structures and techniques typically used to hide assets.

Investigative Techniques and Mechanisms

Asset Tracing

Asset tracing is an investigative process used by IFAs to locate and identify misappropriated or hidden assets and can also uncover true beneficial ownership and interest in an asset. IFAs are able to meticulously analyze bank statements, wire transfers, and other financial and non-financial records to identify irregular transactions and potential asset concealment strategies. IFAs can trace the flow of funds through various accounts and entities by following the money trail, which can reveal hidden ownership structures. This can be particularly helpful in cases where complex corporate structures

²⁷⁹ (Moulton & Gottschalk, 2006)

and shell companies are used to hide assets and conceal true ownership. Tracing schedules are particularly helpful in potential money laundering cases.²⁸⁰

Link Analysis

Link analysis is a technique used to visualize and analyze the relationships and associations between entities and individuals. IFAs can assist in mapping out connections between financial transactions and relationships between individuals and organizational structures. The link analysis can help in identifying ownership of assets, identify intermediaries, and potentially uncover assets previously not known.

Indirect Methods of Reconstructing Income and Wealth

Investigative methods IFAs can use for investigations related to UWOs often leverage techniques used for tax investigations but extend beyond what tax laws require.²⁸¹ These methods include meticulous documentation and analysis of the individual's financial activities in order to locate any discrepancies between their known income and wealth.

UK Capital Statement

Under the UK Companies Act 2006, all limited companies are required to submit a statement of capital to companies house, which includes information regarding the company's share capital structure, nominal value, and shareholder details.²⁸²

In cases of suspected tax evasion, the HMRC, the UK's tax authority, prepares capital statements. They are also used for the preparation of UWOs in the UK.²⁸³ These

²⁸⁰ (Crumbley & Fenton, 2021)

²⁸¹ (Brun, Hauch, Julien, Owens, & Hur, 2023)

²⁸² (Government of UK, 2006) Section 108

²⁸³ (Brun, Hauch, Julien, Owens, & Hur, 2023)

statements are a comprehensive accumulation of the taxpayer's capital worth, income, and expenditures.²⁸⁴

Capital Statements are prepared on the basis that total income for the period should equate to the taxpayer's personal and private expenditures plus any increases/decreases in total wealth during the same period.²⁸⁵ Where the person's total income is less than the sum of the person's movement in assets, the deficiency is assumed to be "business profits omitted from the accounts and used by the proprietor or directors in the absence of any satisfactory explanations".²⁸⁶

The capital statement includes all of the respondent's assets and liabilities at a particular date including:²⁸⁷

- Assets held abroad by the individual or on behalf of the individual
- Balances of all bank accounts, savings accounts, building accounts, credit card statements
- Cash on hand and/or in any safety deposit boxes
- Full amounts of any outstanding loans made by the individual regardless of recoverability
- Cost price including any associated legal, brokerage, and other costs of purchase of any properties and investments such as stocks, shares, savings certificates, premium bonds, and life insurance policies

²⁸⁴ (GOV.UK, 2024)

²⁸⁵ *Ibid.*

²⁸⁶ *Ibid.*

²⁸⁷ *Ibid.*

- Cost price of personal possessions acquired during the statement period such as jewellery, vehicles, furniture, collections, antiques etc.

Any amounts owing on loans, mortgages, bank overdrafts and credit or charge card liabilities are then deducted from the sum of the aforementioned.²⁸⁸

The financial relationship between spouses or civil or domestic partners can be vital when trying to understand an individual's capital position. Accordingly, the spouse or partner of the individual under inquiry can voluntarily provide information about their assets and spending in either a joint capital statement or provide relevant information within the respondent's capital statement.²⁸⁹ Should the spouse or partner be incorporating their assets and spending into the respondent's capital statement, the following is reflected:²⁹⁰

- Expenditures would include money given by the respondent to the spouse or partner to fund spending or assets, or the cost of assets gifted to the spouse or partner
- Income would include money given to the respondent to fund spending or assets, or the value of assets gifted to them
- Assets would include any assets given by the spouse or partner to the respondent, including any loans or money held by them on behalf of the respondent
- Liabilities would include any loans from the spouse or partner, or money, held by the respondent on their behalf

²⁸⁸ (GOV.UK, 2024)

²⁸⁹ *Ibid.*

²⁹⁰ *Ibid.*

Lifestyle Audits

Lifestyle audits are utilized to detect discrepancies between an individual's declared income and their actual lifestyle. They attempt to quantify an individual's living expenses and spending patterns and compare them to their known income.²⁹¹

These audits typically require a reason for initiation based on red flags such as suspicious activity published in the media, public tips, or as a result of visible assets that clearly far exceed the person's reported income.²⁹² Certain lifestyle changes that indicate living beyond one's means can include lavish residences, travel, vacation properties, expensive vehicles, children attending private schools, and expensive clothing and jewellery.²⁹³

Lifestyle audits are utilized by some tax authorities but are also used in investigations related to UWOs.²⁹⁴ For example, South Africa and Zimbabwe conduct lifestyle audits to investigate potential tax fraud, in addition to establishing UWOs.²⁹⁵

Based on the World Bank and the UNODC, lifestyle audits are particularly effective in identifying whether public officials have concealed corrupt or illicit proceeds in the names of their family members or close associates, who may not be subject to disclosure requirements.²⁹⁶

Lifestyle audits seek to compare the net assets of the individual at the beginning to end of the tax year and any significant discrepancies found, which cannot be explained by the individual's reported income, can indicate hidden or illicit sources of wealth.²⁹⁷

²⁹¹ (France, 2021)

²⁹² (Brun, Hauch, Julien, Owens, & Hur, 2023)

²⁹³ (Crumbley & Fenton, 2021)

²⁹⁴ (Brun, Hauch, Julien, Owens, & Hur, 2023)

²⁹⁵ Ibid.

²⁹⁶ (France, 2021)

²⁹⁷ (Brun, Hauch, Julien, Owens, & Hur, 2023)

As lifestyle audits are expensive and intrusive, IFAs should keep in mind that high-living styles may also be the result of accruing debt, or through legitimate inheritances from a family member.

Net Worth Method

The net worth method is an investigative technique commonly used to investigate tax evasion. The net worth method is commonly used in the United States by its Internal Revenue Agency.

The net worth method includes comparing and analyzing changes in the individual's net assets at the beginning and end of a specified period and comparing to their known income.²⁹⁸ First, the individual's net worth is calculated as the known assets minus known liabilities at the beginning and ending of a specified period.²⁹⁹ Next, non-deductible living expenses are added to the individual's net worth.³⁰⁰ These can include items such as gifts, losses on sale of assets, personal living expenses, inheritances etc. Any significant discrepancies between the individual's calculated net worth and their known reported income is analyzed to see if the difference is with respect to non-taxable income, or is an unidentified difference found which cannot be explained by the individual's reported income. This can indicate hidden or illicit sources of wealth.

Determining non-deductible living expenses can be a difficult process. Suggestions for determining non-deductible living expenses provided by Kalman Barson in his book titled "Investigative Accounting" include reviewing the individual's banking information and

²⁹⁸ (France, 2021)

²⁹⁹ (Crumbley & Fenton, 2021)

³⁰⁰ Ibid.

making relevant assumptions, conducting interviews to construct the individual's standard of living, and to make assumptions on general expenses such as food.³⁰¹

IFA Standards

The Standard Practices for Investigative and Forensic Accounting Engagements (IFA Standards) provides guidelines for IFAs conducting investigative and forensic engagements. These standards protect public interest by maintaining a minimum standard of practice. By leveraging the use of IFAs, this standard of practice is applied to work related to UWOs and civil forfeiture proceedings.

Conflicting Information

For example, during the investigation, the IFA may come across additional information or conflicting information regarding the respondent's wealth. The IFA must ensure that relevance, reliability, reasonableness, completeness, and consistency of the information with other known information.³⁰² IFAs should also consider the possibility that certain information may be "biased, false, unreliable and/or incomplete".³⁰³ This may be particularly important in instances where the respondent provides information from a foreign jurisdiction.

Assumptions

IFAs may need to make assumptions regarding the respondent's wealth. Any assumptions made should be reasonable and consistent with other evidence.

³⁰¹ (Crumbley & Fenton, 2021) and (Barson, 1986)

³⁰² (Moulton & Gottschalk, 2006)

³⁰³ *Ibid.* pg. 13

Reliance on work of others

During an investigation related to UWOs, an IFA would likely also be relying on the expertise and work conducted by other professionals such as legal experts, law enforcement, investigators, and valuation experts. IFA Standards emphasizes that work relied upon should be evaluated by the IFA.³⁰⁴

Maintaining Independence and Expert Testimony

An IFA's duty is to the court. Maintaining independence is important for IFAs during an investigation to ensure work does not have undue influence or bias. Particularly in forensic investigation involving UWOs, this could mean avoiding or managing situations where the IFA's professional judgement could be affected by external pressures. Further, the role of an IFA can include providing impartial and objective assistance to the trier of fact through expert testimony.³⁰⁵ Accordingly, they must maintain their independence and objectivity, and should not act as an advocate when providing expert testimony. Failure to satisfy independence requirements can lead to an IFA not being able to provide expert testimony in writing or orally.³⁰⁶

Conclusion

In the fight against crime and the attempt to remove the profit from crime, UWOs are a powerful tool for civil forfeiture. By design, civil forfeitures allow authorities to target potential proceeds of crime without the necessity of a criminal conviction, circumventing the higher burden of proof associated with traditional conviction-based confiscations.

³⁰⁴ (Moulton & Gottschalk, 2006)

³⁰⁵ Ibid.

³⁰⁶ (White Burgess Langille Inman v. Abbott and Haliburton Co. , 2015)

Whether as an investigative tool, or one with its own recovery mechanism, UWOs disrupt illicit activity by reversing the burden of proof onto the respondent where known income is disproportionate to their assets.

Engaging the expertise of IFAs in UWOs and NCB forfeitures can be highly beneficial.

IFAs can meticulously trace assets, analyze financial transactions, locate additional assets, and locate patterns that may suggest illicit activity and/or other potential actors.

This synergy between NCB forfeitures, UWOs, and leveraging the expertise of a multi-disciplinary team including forensic accountants can form a robust framework to deter illicit activity by removing the profit from crime.

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