MONEY AND DRUGS: AN EXAMINATION OF PROCEEDS OF CRIME AND FORFEITURE LEGISLATION

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Abstract

The illegal drug trade is a remarkably profitable venture that attracts a variety of people into the business. The appeal of the industry to a young person is the prospect of seemingly limitless amounts of money and a lifestyle that traditional employment cannot offer. These people often join organized crime groups to participate in one of the largest illegal industries in the province of British Columbia that seldom results in a criminal conviction or punishments such as incarceration. For these people the prospect of traditional sanctions by the criminal justice system is simply a cost of doing business and the reward is wealth. Since 2005 the province of British Columbia, Crown prosecutors, and the police have been using different tools to combat the wave of organized crime groups that are responsible for an increasing number of murders and violent acts in the province. This is in response to the limited effect traditional criminal charges has had on these gang members. After the introduction of the Civil Forfeiture Act, the government and police are now focusing on the illegally obtained assets of these groups and attempting to decrease profits from these illicit activities. The researcher interviewed 30 criminal lawyers and police in the Okanagan region of British Columbia. The data collected from the interviews was organized using thematic network analysis into a single global theme, which was to reduce gang profitability, which in turn reduces their capability. Implications for policy, research and theoretical development are described considering that finding.
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Dedication

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CHAPTER ONE

Introduction

1.1 Overview

The thesis examines the perception of police officers and criminal lawyers in the Okanagan regarding the Civil Forfeiture Act and its effect on organized crime. The study focused on gathering data from interviewing criminal trial lawyers and police officers in the Okanagan about whether civil forfeiture legislation is an effective tool to remove profits from organized crime groups and if it can disrupt their operations.

The criminal justice system in the province of British Columbia, Canada is an institution premised on fairness, equality, and justice. Based on the legal rights provided for in the Canadian proceedings in criminal and penal matters (Constitution Act, 1982), every citizen has the opportunity to have a fair trial if he or she is accused of committing a criminal act. In order for a person to be found guilty of committing a criminal act, the Crown prosecutor must prove beyond a reasonable doubt that the accused committed this offence. The courts in British Columbia, as in other areas of the country, are committed to upholding this standard to ensure that an innocent person is not convicted of a crime they did not commit. This is crucial as it ensures that the administration of justice does not fall into disrepute and the community can trust the justice system, which holds so much power.

Canada’s legal system aims to promote fairness and equality, utilizing legal principles from the past, and developing and incorporating them into reasonable practices in the present. As our society evolves, the criminal justice system is continually adapting to respond to new types of criminal activity and social disobedience. An example of the
evolution of crime is the new threat of cybercrime. Das, Hine, and Bussu (2018) explain that there is a paradigm shift from traditional crime problems to a new era of crime, wherein investigations involve the internet. Levin (2011) states that there are rapidly occurring changes in regard to cyber security and Canada needs to adopt the most efficient practices to secure cyberspace while protecting civil liberties. The same can be said about effectively policing organized crime groups in the Okanagan. Implementing effective crime control legislation while upholding the fundamental principles of the Canadian Charter of Rights and Freedoms (“the Charter”) could give the criminal justice system the proper legal tools to make their communities safer.

One issue that has become more apparent over the past few decades is the expansion of organized crime and the drug trade. In British Columbia, the number of organized crime groups has increased from a handful of unsophisticated groups in the 1980s, to approximately 188 criminal enterprises in 2014 that are fighting for a piece of the province’s drug trade according to the Combined Forces Special Enforcement Unit (2014) a joint task force of municipal and Royal Canadian Mounted Police (RCMP) officers in British Columbia dedicated to the investigation of organized crime groups. The role of Combined Forces Special Unit (2014) is to combine police resources in the province that monitor and investigate organized crime in and gang activities. The motivation that underlies and expands gang activities in the province according to Combined Forces Special Unit (2014) is the rapid expansion of the drug trade.

According to Statistics Canada (Cotter, Greenland, & Karam, 2009), the rate of drug offences in the country has been increasing since 1993, and in 2007 reached a 30-year high. Statistics Canada says that the increase in drug offences may relate to a
“crackdown” on narcotic-related crime rather than more incidences actually occurring.

The number of drug related offences for British Columbia is higher than its provincial counterparts. Allen (2018) reported that British Columbia has the highest rate of police reported drug offences in the country for cannabis and other drugs and is about two times higher than the national average. Allen (2018) also reported that the city of Kelowna, the largest city in the Okanagan region, had the highest rate of drug offences in the country. The drug offence rate in Kelowna was 713 per 100,000 residents which is more than twice Vancouver's rate (350 offences per 100,000 residents) in the same period (Allen, 2018). The regional disparity between Vancouver and Kelowna is very concerning considering Kelowna has double the number of drug offences compared to a city like Vancouver which is home to high drug use areas such as the downtown east side. This is important to mention because it shows that Kelowna has significantly higher drug offences rate then a major metropolitan center like Vancouver.

1.2 The Illegal Drug Trade in British Columbia

The illegal drug trade in British Columbia is a massive black market industry but it is difficult to put the scope of the illegal drug trade into perspective because, as a black market industry, it does not report business and market statistics to shareholders or to the government like a legitimate business. Because of the lack of reliable financial data on the industry, it makes accurate estimations of the size and scope very difficult. The research in this section demonstrates the prevalence of the marijuana industry in British Columbia based on a collection of estimates from a number of different researchers who have examined the subject.

1.3 The Value of the Illegal Drug Market
A literature review revealed four articles that estimated the extent of the illegal marijuana trade in British Columbia. These researchers estimate that the value of the marijuana trade is between $443 million to $6 billion per year. These scholars use different methodologies to arrive at these estimates, and regardless of how they calculated those numbers remain only an estimate of an industry that is unregulated and unreported. Describing this research is important as it provides a background for readers unfamiliar with the illegal drug trade and gives some perspective to assist them in understanding the context for the analysis presented.

Werb and colleagues (2012) state that the province of British Columbia has a large marijuana black market that has led to the expansion of organized crime groups. These scholars estimated the value of the British Columbia marijuana market is between $443 and $564 million. This estimate was based primarily on the value of the drugs seized by police, but does not include undiscovered drug operations.

By contrast, Garis (2009) estimated that the British Columbia marijuana industry alone is worth $6 billion annually. He estimated that total by calculating the amount of marijuana produced in British Columbia and then determining the street value of the drug. This estimate is based on the research done by Plecas, Diplock, and Garis (2009) from the University of the Fraser Valley and far exceeds the estimate of Werb and colleagues (2012). The variance in these two estimates shows that it is very difficult to develop a consensus on the value of the industry. If we assume the British Columbia marijuana drug trade alone is worth $6 billion annually, that would equal 3.4% of the provincial gross domestic product of $173 billion (Ministry of Finance, 2012). This shows the massive size of the illegal marijuana trade in British Columbia.
There are a number of limitations to the validity of these estimates. Easton (2004) suggested that it is difficult to determine the extent of the drug trade in British Columbia. If the police dismantle 2,800 grow operations annually, it is unknown what percentage of the total number of grow operations police actually discovered. Easton (2004) estimated that if the police discovered 10% of the total number of grow operations in the province then there would have been 28,000 in total, but the true figure could range between 5% and 20%. While Easton (2004) suggested there are approximately 28,000 grow operations in British Columbia, Plecas and colleagues (2009) estimated that the province has approximately 12,500 marijuana grow operations.

The estimate provided by these researchers gives us a basic understanding of the value of these operations. However, like any business, there are costs associated with running these enterprises and not all the money collected is profit. A person who wants to establish an indoor marijuana grow operation will need services and equipment before any marijuana can be grown, and these include: space, air conditioning and ventilation systems, renovations, electricity, lights, start-up chemicals, hydroponic equipment, filters, and labour. Initial start-up costs for a small marijuana grow operation can start at $25,000 and this number increases with the size of the operation. In addition, there are ongoing costs associated with maintaining an operation, and they include heating and air conditioning, salaries, security systems, marijuana seeds, chemicals, and rent. The amount of the upkeep costs would depend upon the size of the grow operation.

The marijuana black market is just one part of the larger drug operations in British Columbia involving illegal substances like cocaine, heroin, and crystal meth. One of the most concerning new substances that has recently become common is fentanyl. McKee
(2015) states that fentanyl is an opioid that is used to manage pain. However, when illicitly produced, it can be mixed with other illegal substances to be sold to drug users through the black market. The fentanyl sold is usually sold as a pill or powder and given the potency of the drug, the risk of an overdose is high. The dangers of this drug can be seen with the sudden rise in fentanyl overdose deaths in the Okanagan. The Coroners Service of British Columbia (2019) stated that the city of Kelowna had 50 overdose deaths from fentanyl in 2018 compared to one in 2014.

1.4 Effects of the Illegal Drug Trade

Organized crime groups use violence to control the drug trade and protect the lucrative profits generated by the industry. Mangat (2015) stated that since 2010 gang activity in the greater Vancouver area increased as organized crime groups are competing for control of the province’s drug trade. This has led to an increase in the number of shootings not always reflected in the homicide rates as advances in health care and emergency medical response time has led to more shooting victims surviving their gunshot wounds. Boyce and Cotter (2013) observe that the rate of gang-related homicides in British Columbia has increased steadily since 2002. David (2017) states that in 2016, 29 gang-related homicides were recorded although they fluctuated throughout the prior ten years. The violence is not isolated to a remote corner of a city or a gangster’s residence and it is not uncommon to hear in the news about a busy public area being the scene of a violent shooting. An example of this is was a shooting that occurred at a busy upscale Vancouver restaurant. On January 20, 2012, two gang members were killed inside a restaurant and a third was taken to the hospital in critical condition after being shot multiple times (Fong, 2012).
Rehm and colleagues (2006) stated that the total cost of the criminal justice system (including policing, courts, and corrections) to respond to the illegal drug trade is very high. It costs approximately $8.2 billion annually to enforce drug related offences and the offender’s subsequent incarceration. This number climbs even higher when the social and health related costs, medical expenses, and lost productivity is taken into account.

In 2005, the government of British Columbia enacted laws that allow the courts to more easily seize the assets of criminals in an effort to decrease gang influence and violence in the province. This legislation was the result of public concern over the violence associated with the drug trade. Vago and Nelson (2010) stated that there is a reciprocal relationship between changes in society and laws in the criminal justice system. Changes in public opinion on a particular issue can influence the criminal justice system. Thus, with the rise in homicide rates and drug related offences, new approaches were needed to combat these problems (Vago & Nelson, 2010). The British Columbia Civil Forfeiture Act (2005) is one piece of legislation that has been used in combating organized crime in that province.

1.5 The Civil Forfeiture Act

The justice system responds to the issue of organized drug related crime as it has for years, charging people with producing or trafficking controlled substances and then, if they are found guilty, the court will administer a sentence. However, in terms of deterrence, the sentences handed down by the courts do not appear to be in and of themselves deterring people from committing criminal offences. In response, the government of British Columbia introduced the Civil Forfeiture Act (2005) to combat
organized crime in the province. This legislation has been introduced in every province except for Prince Edward Island, Newfoundland, and the territories.

The *Civil Forfeiture Act* was introduced in 2005 with a goal of seizing the illegally obtained profits from organized crime groups. The British Columbia’s Ministry of Public Safety (2008) states that civil forfeiture is a self-funded program that partners with law enforcement to target the profits from organized crime groups. The funds from these seizures are then redistributed to community programs, victims, and police agencies. The operating costs of the program are funded through the assets that have been seized by the Civil Forfeiture Office of the British Columbia Ministry of Public Safety.

The legal proceedings related to these seizures are carried out in civil rather than criminal court. As a result, lawsuits are filed against the property itself (in *rem*), not the owner, or the person in possession of the property. Eastwood and Kroeker (2012) explain that the intent of the statute is to remove the working capital from organized crime groups. As the statute is civil in nature the standard of proof is the “balance of probabilities”, which is a much lower standard of proof than in criminal court proceedings where proof beyond a reasonable doubt is required. This makes it easier for the Civil Forfeiture Office to successfully seize the proceeds of crime because the standard of proof is lower.

**1.6 Research Questions**

The current study has five research questions. First, it investigated the perceived effectiveness of the British Columbia Civil Forfeiture Act (2005) in combating organized crime and the illegal drug trade in the Okanagan by interviewing police officers and criminal lawyers. Second, the current study examined the possibility for the civil
forfeiture legislation to expand in British Columbia. Third, it explored whether serving police officers and criminal lawyers in the Okanagan believe that seizing property obtained by crime is an effective approach to deter the illegal drug trade. Fourth, it investigated potential problems with using the Civil Forfeiture Act (2005) in British Columbia. Last, the current study assessed varying factors that could lead to the success of this model in other jurisdictions.

1.7 Structure of the Thesis

The thesis is structured into five chapters. Chapter 1 briefly describes the relevant research that has been carried out in this area and estimates the extent of the drug trade in British Columbia. Chapter 2 reviews the literature surrounding civil forfeiture and its application in addressing the illicit drug trade. Chapter 3 provides an overview of the methodological approach utilized in this research and it describes the strengths and limitations of employing the qualitative methodological paradigm in this research, the sampling framework used in this study, the data collection method undertaken, as well as the analytical strategy used to examine the data.

Chapter 4 reports the data and analysis component of the thesis. Attride-Sterling’s (2001) thematic network analysis is used to explain the relationships between the use of the Civil Forfeiture Act (2005) and its effect on the illegal drug trade in British Columbia. The source of information for this study is a series of qualitative interviews of professionals involved in the criminal justice system in the Okanagan. The data collected was categorized to determine the relationships between the Civil Forfeiture Act (2005) and its effect on organized crime in the Okanagan for future research and policy
implications. Chapter 5 presents the conclusions that have surfaced from the research and its potential implications.
CHAPTER TWO

Literature Review

In the field of criminal justice, a number of scholars have described the relationship between organized crime and the illegal drug trade. This is not a new topic and there are several different areas of research in this field. Governments in various countries have funded research to study this topic and to develop interventions to deter potential offenders. In the United States, for example, Beittel (2013) explains that the country is concerned with Mexican drug cartels trafficking illegal narcotics into their country and the level of violence that is associated with the drug trade. In April 2013, the Congressional Research Committee released a report on the dangers of the cartels and the violence they use to meet their objectives. This report is just one of many that describe different areas of organized crime and its effects. The province of British Columbia is no different, and research has been conducted on the drug trade and organized crime groups in that province.

2.1 The Civil Forfeiture Act

The Civil Forfeiture Act was enacted in British Columbia in 2005 for the purpose of seizing assets that have been obtained by crime. The following pages describe some of its important sections. Section 5, for example, describes what actions the government can carry out under the legislation:

Forfeiture order

5 (1) Subject to section 6, if proceedings are commenced under section 3 (1), the court must make an order forfeiting to the government the whole or the portion of an interest in property that the court finds is proceeds of unlawful activity.
Subject to section 6 and section 13 (1), if proceedings are commenced under section 3 (2), the court must make an order forfeiting to the government property that the court finds is an instrument of unlawful activity.

This section of the *Civil Forfeiture Act* (2005) outlines the authorities that are given to the government if a proceeding is initiated against someone who holds property obtained through illegal activities. Once a court makes a finding, section 14 outlines the orders that the court can make in relation to the seizure of which are as follows:

Orders related to forfeiture orders and protection orders

**14** On application, a court may make, at the time of or subsequent to making a forfeiture order under section 5, one or more of the following orders:

(a) an order requiring

(i) the disposition or transmission of property or the whole or the portion of the interest in property forfeited, or

(ii) the disposition or transmission of property that includes the whole or the portion of the interest in property forfeited;

(b) an order directing the manner of disposition of property or the whole or the portion of the interest in property referred to in paragraph (a) (i) or (ii), including the appointment of a receiver manager to manage and dispose of the property or the whole or the portion of the interest in property;

(c) an order directing that the money arising from the disposition of property or the whole or the portion of the interest in property referred to in paragraph (a) (i) or (ii) is applied in accordance with the direction of the court after taking into account all encumbrances;

(d) an order requiring the severing or partition of property, or the whole or a portion of an interest in property;

(e) an order requiring the cancellation of the whole or a portion of an interest in property;

(f) an order providing that, subject to the interest of an uninvolved interest holder or another person, the government, on forfeiture, may take possession of or seize
(i) the property forfeited or the property in which an interest in property or a portion of an interest in property is forfeited, or

(ii) the interest in property or a portion of an interest in property that is forfeited;

(g) any other order that the court considers appropriate in the circumstances.

This is a powerful piece of the legislation as it enables the government to seize property presumed to be the product of the commission of a crime, and two key features of the Civil Forfeiture Act (2005) are distinctive. First, the legislation does not require that an offence has occurred. Second, section 16 provides that the standard of proof required to seize assets is based on the civil standard of proof, which is a balance of probabilities. The balance of probabilities standard of proof is a lower standard than what is required in criminal court. These two features make the process less cumbersome for the government to seize an offender’s assets.

2.2 Chatterjee v. Ontario (2009)

Civil forfeiture statutes have been enacted in most jurisdictions in Canada in order to reduce the profitability of crime and deter potential offenders. However, it was only a matter of time before these provincial statutes were challenged as being ultra vires under the provincial powers defined in the Constitution Act (1867). The Ontario Civil Remedies Act (2001) was challenged in court to determine if the province of Ontario had the authority to enact this legislation under sections 92 (27), (13), (14), (15) and (16) of the British North America Act, 1867 (Constitution Act, 1867).

Chatterjee v. Ontario (2009) was heard by the Supreme Court of Canada in 2009 and involved police arresting Robin Chatterjee for breach of probation. During the arrest, police conducted a search of the accused’s vehicle and discovered a large sum of cash they believed was associated with the illicit drug trade. Although Chatterjee was never
charged with a drug offence, the Attorney General of Ontario made an application to have the money forfeited under sections 3 and 8 of the Civil Remedies Act (2001). Chatterjee challenged the constitutionality of the Act, arguing that its forfeiture provisions were ultra vires and the province could not encroach on the federal government’s power to enact criminal law. In short, the challenge stated that the province was unable to enact civil forfeiture law because it did not have the constitutional power to do so under sections 91 and 92 of the Constitution Act (1867).

Both the applications judge and the Court of Appeal concluded that the Civil Remedies Act (2001) is a valid provincial legislation. The constitutional question before the Supreme Court was stated at paragraph 14, as follows:

Are sections 1 to 6 and sections 16 to 17 of the Remedies for Organized Crime and Other Unlawful Activities Act, 2001, S.O. 2001, c. 28, ultra vires the Province of Ontario on the ground that they relate to a subject matter which is within the exclusive jurisdiction of the Parliament of Canada under section 91 (27) of the Constitution Act (1867)?

The court noted that on hearing the appeal the appellant, Chatterjee, narrowed his challenge to argue that the Civil Remedies Act (2001) is ultra vires to the extent that it provides for forfeiture of the proceeds of federal offences because to that extent the Act is, in pith and substance, criminal law. Pith and substance is a legal doctrine that is used to determine if a piece of legislation falls under federal or provincial constitutional powers under the Constitution Act (1867). The Chatterjee argument attempts to determine if the province has the constitutional power to enact civil forfeiture legislation.
The Supreme Court analyzed the “pith and substance” of the *Civil Remedies Act* (2001), referring to the essence of the law and what is it intended to do. At paragraph 17, the court reviewed the four stated purposes of this Act found in section 1, which are to provide civil remedies that will assist in:

(a) compensating persons who suffer pecuniary or non-pecuniary losses as a result of unlawful activities;

(b) preventing persons who engage in unlawful activities and others from keeping property that was acquired as a result of unlawful activities;

(c) preventing property, including vehicles as defined in Part III.1, from being used to engage in certain unlawful activities; and

(d) preventing injury to the public that may result from conspiracies to engage in unlawful activities

The court also made an important finding in paragraph 18 that:

The internal evidence of purpose thus suggests a credible intent to recover from the proceeds of crime found in Ontario the costs to victims and to the public of criminality that would otherwise fall on the provincial treasury. Forfeiture is the transfer of property from the owner to the Crown. Forfeiture does not result in the conviction of anybody for any offence. On its face, therefore, the Civil Remedies Act targets property rights

The court addressed the constitutionality of the legislation, referring to the “classes of subjects” listed in sections 91 and 92 to determine if the *Civil Remedies Act* (2001) comes within the jurisdiction of the enacting legislature. Justice Binnie, writing for the court, found at paragraph 25, that the “[Canada Revenue Agency] fits neatly into the
provincial competence in relation to Property and Civil Rights in the Province 
(Constitution Act, 1867, [section] 92(13)) or matters of a merely local or private nature in 
the province ([section] 92(16)).” In its analysis, the court acknowledged that the live 
question was to what degree or extent legislative measures taken to suppress crime 
become in itself, “criminal law”. Here, however, the court agreed “that the Civil 
Remedies Act was enacted ‘in relation to’ property and civil rights and may incidentally 
‘affect’ criminal law and procedure without doing violence to the division of powers.” 

The court also considered the potential overlap of the *Civil Remedies Act* with the 
forfeiture provisions of the *Criminal Code* found in section 462.37(1), which provides as 
follows:

**Order of forfeiture of property**

462.37 (1) Subject to this section and sections 462.39 to 462.41, if an offender is 
convicted, or discharged under section 730, of a designated offence and the court 
imposing sentence on or discharging the offender, on application of the Attorney 
General, is satisfied, on a balance of probabilities, that any property is proceeds of 
crime obtained through the commission of the designated offence, the court shall 
order that the property be forfeited to Her Majesty to be disposed of as the Attorney 
General directs or otherwise dealt with in accordance with the law.

At paragraph 46, the court explained its reasoning that the *Civil Remedies Act* 
(2001) does not provide operational interference with the forfeiture provision of the 
*Criminal Code* (1985) because:

The Civil Remedies Act does not require an allegation or proof that a 
particular person committed a particular crime. For example, a drug dealer 
might, in a fit of conscience, gift the proceeds of a drug sale to a 
charity. Under the Civil Remedies Act, the money would constitute the 
proceeds of unlawful activity, and the charity would not be a “legitimate
owner” within the scope of section 2 because the charity would have acquired the property after the unlawful activity occurred and would not have given “fair value” for it. The money would, thus, be subject to forfeiture. In the present case, the Civil Remedies Act judge could have accepted wholeheartedly the appellant’s claim that he was entirely innocent of any involvement with marijuana cultivation, yet still ordered forfeiture.

The Supreme Court dismissed the appeal stating that the Civil Remedies Act (2001) forfeiture provisions are constitutional, and the purpose of the Act is to make crime in general unprofitable and to capture resources tainted by crime. The court held that these are valid provincial objectives and the province has the legislative authority to enact this legislation.

While this was an Ontario decision, because it is a ruling by the Supreme Court of Canada, it is binding in all the provinces and territories with similar legislation. This is very important for the British Columbia Civil Forfeiture Act (2005) because the Supreme Court affirmed that British Columbia, with similar legislation, is within its constitutional authority to enact the Civil Forfeiture Act (2005).

From, Bolger, and Phillips (2016) discuss the civil forfeiture legislation in Canada and explain that these laws allow provincial governments to seize and transfer ownership of property that is suspected of being used to commit illegal acts. The purpose of the legislation is to deter crime and compensate victims using the assets seized from offenders. However, in some cases, this does not happen and this legislation is used to supplement, or in some instances, become an alternative to the criminal law. Any revenue that is recovered through successful proceedings is returned to the government to be
distributed. Since this legislation provides a source of funds for the government, they may use civil forfeiture proceedings as way for the province to generate revenue (From et al., 2016). This research suggests that civil forfeiture legislation can be used in a negative manner and a way for the government to prioritize revenue collection rather than just and fair law enforcement.

Daley (2014) states that the Civil Forfeiture Act in British Columbia is a useful tool for the province and law enforcement. Daley (2014) argues that the spirit of the legislation must be upheld and careful consideration must be given when confiscating private property. This could result in inefficient policy uses and an ultimate termination of the legislation if not used properly. Daley (2014) suggests that a review of the law and its impact be conducted to ensure that it is being used properly.

The research accumulated for the literature review of this thesis can be categorized into these different themes. The first issue describes the extent of organized crime in British Columbia. The phenomenon of organized crime groups and their place in society is complex, and there are a number of different subthemes that can be explored in this topic. Plecas and colleagues (2009) explain that the consensus among researchers is that the largest single source of income for these groups is the illegal drug trade. The traditional means of dealing with these issues is to bring criminal charges against these people and groups. However, the rise in production of drugs in British Columbia since 1995 makes it clear that criminal sanctions are not decreasing drug-related crime. The second research issue involves how the illegal drug trade contributes to organized crime and violence in British Columbia. The final research theme is about the police response to the illegal drug trade in British Columbia. Over the past 30 years, the police have used,
with varying degrees of success, a number of different strategies to deal with the problem of organized crime. To gain a proper understanding of the three major points of research, it is important to have a perspective on the current proceeds of crime legislation and traditional sentencing in British Columbia.

2.3 Organized Crime in British Columbia

Understanding how organized crime affects British Columbia is a vital first step in determining effective and practical means to deal with the problem. Between 2008 and 2018, criminal organizations have become a threat to different communities in the province. They have been in the public spotlight more frequently, committing serious violent acts in public places and during high-traffic daytime hours. These types of violent acts have become more frequent, especially in the Vancouver area. The Vancouver Police Department (2010) stated that gang violence is directly related to the illegal drug trade. They contend that organized gangs will use any method they can to enhance their profits and dispose of their competitors; such as grow rips, stealing product from a competitor’s marijuana grow operation, robberies, and shootings (Vancouver Police Department, 2010).

Krane (2010) explains that countries face entrenched criminal organizations that continually undermine the rule of law and profit from their endeavors. While these groups are difficult to infiltrate, the lack of police resources is the biggest barrier in prosecuting them. As a result, police agencies will use other tools at their disposal to enhance their enforcement efforts against these illegal groups. One tactic is to apply civil forfeiture legislation as a way of discouraging these offenders by removing profit and increasing costs (Krane, 2010).
A review of the extant organized crime literature yielded a variety of public and police concerns. The first is the steady growth and influence that these organized crime groups have achieved, particularly after 2008. The rate of growth, influence, and degree of organization varies among different gangs. In 2010, the Vancouver Police Department released a report on the structure, size and influence of gangs that are known to police in the Vancouver area. In that report, the Vancouver Police Department (2010) lists three different classes of gangs in their area based on their sophistication and organization.

The first classification identified is the street-level/entry-level youth gang (Vancouver Police Department, 2010). Members of these gangs are usually aged 15 to 22 years; and they generally have little internal organization, sophistication, or hierarchy. These gangs are usually associated with a specific community within Vancouver and invite only people from this area to join them as members. Because of their relatively fragile internal structure, gang membership is fluid. Members often leave one gang to join gangs that are more sophisticated; based on the promise of more wealth and power. These entry-level gangs are involved in a variety of crimes, such as low-level drug dealing, property crime, and extortion.

These low-level gangs are often affiliated with a large criminal group that controls more lucrative local criminal enterprises, such as drug trafficking. For example, some of these youth will engage in a “dial-a-dope” operation, where they deliver narcotics for dealers. As the low-level gang member, assumes all the risk, if this employee is apprehended by law enforcement, the more sophisticated criminal group is insulated from criminal prosecution. The low-level offenders will often participate in these operations
because they are paid well and protected from rival drug dealers by the larger organization.

The second classification of gangs identified is the organized/mid-tier gang (Vancouver Police Department, 2010). These gang members are often seen driving luxury vehicles and wearing fashionable clothing. Similar to street-level gangs, mid-tier gangs often work for more organized, larger criminal organizations to obtain protection and accumulate wealth. Members of these gangs often have immediate access to firearms and use them to protect their “turf” and their business enterprise (e.g., the drug or the sex trade). Names of the more notable mid-tier gangs in the Vancouver area are the Independent Soldiers, the Red Scorpions, and the United Nations gang.

The third, and final, classification of gangs is the organized/high-level gang (Vancouver Police Department, 2010). These groups are typically well established and have the highest level of sophistication, structure, power, and wealth. Members of these groups have accumulated enough money to start legitimate enterprises or launder the profits from illicit activities. These groups are often well insulated from criminal prosecution as they contract with the lower-level criminal groups to perform most of their illegal transactions. These groups often appear legitimate to the public, making them difficult to prosecute. Some of these groups include outlaw motorcycle gangs and Asian crime syndicates.

Researchers have discovered that the rate of growth of these groups is directly related to the illegal drug trade. According to a report published by Public Safety Canada (2006), 80% of the illegal criminal groups in Canada participate in, and gain wealth from the drug trade. As accumulating wealth through the drug trade is such a high priority for
these groups, it is important for law enforcement personnel to focus more of their efforts on the source of their revenue.

The amount of violence that these groups perpetrate in communities is another important topic in the literature. A Government of Canada report on organized crime concluded that police have a difficult time stopping violence that stems from the illegal drug market. Sheptycki and colleagues (2010) suggests that law enforcement must focus their efforts on “brief interventions of limited scope” to suppress violence by reconfiguring the drug market and promoting mediation. This means that police must focus their attention on smaller operations as opposed to investing time and resources on a bigger investigation that may yield no fruit. Although this may be an interesting proposition, small solutions like these cannot completely curb the violence associated with the drug trade (Sheptycki et al., 2010).

People in the drug trade commonly use firearms. Criminal Intelligence Service Canada (2010) paints the following picture about how these groups use firearms:

Many organized crime groups do not regularly use firearm-related violence but instead use it periodically to deter real or perceived rivals, for intra-group discipline, and to intimidate. The illicit drug market stimulates demand for illicit firearms as it is highly competitive, extremely profitable and fertile ground for violent disagreements between and within criminal organizations. The United States remain the primary foreign supplier of smuggled firearms in Canada with a strong regional link between the firearm’s source in [United States] border states and the provincial destination. Domestically sourced firearms are mainly obtained from residential and, to a lesser extent, commercial thefts. Some groups are
involved in smuggling and trafficking but it is generally not a primary activity. The Internet is increasingly appealing to criminals as an alternate means of obtaining illicit firearms and avoiding law enforcement. (p. 27)

The Ministry of Public Safety (2018) in British Columbia reported that there was a 34% jump in homicides in 2017 compared to 2016 in the province. In total, 2017 saw 118 homicides in the province compared with just 88 homicides in 2016. Beattie, David, and Roy (2018) state that the homicide rate in 2017 is the highest it has been since 2009 and has been a major contributor to the higher national average. The level of gang related homicides is very high in the Okanagan. The gang homicide rate accounts for 40% of the total homicides in the Okanangan. Statistics Canada (2019) Kelowna also showed a high crime severity index rate of 100.7 in 2018 which is above Vancouver’s rate of 84.3 and above the national rate of 75.0. Table 1 provides an overview of the homicides in British Columbia that police reported were gang related while table 2 lists the 2018 crime severity index by major municipality.
Table 1

*Gang Related Homicides in British Columbia*

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Gang Related Homicides</th>
<th>% of Murders</th>
<th>Gang Murder Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>6</td>
<td>6.82</td>
<td>0.15</td>
</tr>
<tr>
<td>2000</td>
<td>19</td>
<td>13.16</td>
<td>0.25</td>
</tr>
<tr>
<td>2001</td>
<td>11</td>
<td>13.25</td>
<td>0.27</td>
</tr>
<tr>
<td>2002</td>
<td>9</td>
<td>7.83</td>
<td>0.22</td>
</tr>
<tr>
<td>2003</td>
<td>17</td>
<td>21.25</td>
<td>0.41</td>
</tr>
<tr>
<td>2004</td>
<td>16</td>
<td>15.53</td>
<td>0.39</td>
</tr>
<tr>
<td>2005</td>
<td>17</td>
<td>19.54</td>
<td>0.41</td>
</tr>
<tr>
<td>2006</td>
<td>15</td>
<td>14.71</td>
<td>0.35</td>
</tr>
<tr>
<td>2007</td>
<td>23</td>
<td>29.87</td>
<td>0.54</td>
</tr>
<tr>
<td>2008</td>
<td>34</td>
<td>29.82</td>
<td>0.78</td>
</tr>
<tr>
<td>2009</td>
<td>36</td>
<td>32.73</td>
<td>0.82</td>
</tr>
<tr>
<td>2010</td>
<td>23</td>
<td>28.40</td>
<td>0.52</td>
</tr>
<tr>
<td>2011</td>
<td>13</td>
<td>15.48</td>
<td>0.29</td>
</tr>
<tr>
<td>2012</td>
<td>18</td>
<td>25.35</td>
<td>0.40</td>
</tr>
<tr>
<td>2013</td>
<td>27</td>
<td>37.50</td>
<td>0.59</td>
</tr>
<tr>
<td>2014</td>
<td>19</td>
<td>21.59</td>
<td>0.41</td>
</tr>
<tr>
<td>2015</td>
<td>19</td>
<td>19.59</td>
<td>0.40</td>
</tr>
<tr>
<td>2016</td>
<td>29</td>
<td>34.12</td>
<td>0.61</td>
</tr>
<tr>
<td>2017</td>
<td>44</td>
<td>37.30</td>
<td>0.91</td>
</tr>
</tbody>
</table>
## Table 2- Crime Severity index by municipality in 2018

<table>
<thead>
<tr>
<th>Census metropolitan area</th>
<th>Crime Severity Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>St. John's</td>
<td>75.0</td>
</tr>
<tr>
<td>Halifax</td>
<td>67.3</td>
</tr>
<tr>
<td>Moncton</td>
<td>99.7</td>
</tr>
<tr>
<td>Saint John</td>
<td>54.3</td>
</tr>
<tr>
<td>Saguenay</td>
<td>48.5</td>
</tr>
<tr>
<td>Québec</td>
<td>44.7</td>
</tr>
<tr>
<td>Sherbrooke</td>
<td>51.7</td>
</tr>
<tr>
<td>Trois-Rivières</td>
<td>54.5</td>
</tr>
<tr>
<td>Montréal</td>
<td>58.3</td>
</tr>
<tr>
<td>Gatineau</td>
<td>56.4</td>
</tr>
<tr>
<td>Ottawa</td>
<td>54.4</td>
</tr>
<tr>
<td>Kingston</td>
<td>67.3</td>
</tr>
<tr>
<td>Belleville</td>
<td>61.2</td>
</tr>
<tr>
<td>Peterborough</td>
<td>48.2</td>
</tr>
<tr>
<td>Toronto</td>
<td>53.6</td>
</tr>
<tr>
<td>Hamilton</td>
<td>57.4</td>
</tr>
<tr>
<td>St. Catharines–Niagara</td>
<td>69.0</td>
</tr>
<tr>
<td>Kitchener–Cambridge–Waterloo</td>
<td>73.8</td>
</tr>
<tr>
<td>Brantford</td>
<td>92.8</td>
</tr>
<tr>
<td>Guelph</td>
<td>66.9</td>
</tr>
<tr>
<td>London</td>
<td>76.3</td>
</tr>
<tr>
<td>City</td>
<td>Index</td>
</tr>
<tr>
<td>--------------</td>
<td>-------</td>
</tr>
<tr>
<td>Windsor</td>
<td>85.5</td>
</tr>
<tr>
<td>Barrie</td>
<td>50.4</td>
</tr>
<tr>
<td>Greater Sudbury</td>
<td>79.5</td>
</tr>
<tr>
<td>Thunder Bay</td>
<td>94.3</td>
</tr>
<tr>
<td>Winnipeg</td>
<td>119.4</td>
</tr>
<tr>
<td>Regina</td>
<td>126.6</td>
</tr>
<tr>
<td>Saskatoon</td>
<td>118.0</td>
</tr>
<tr>
<td>Lethbridge</td>
<td>137.0</td>
</tr>
<tr>
<td>Calgary</td>
<td>88.1</td>
</tr>
<tr>
<td>Edmonton</td>
<td>114.9</td>
</tr>
<tr>
<td>Kelowna</td>
<td>100.7</td>
</tr>
<tr>
<td>Abbotsford–Mission</td>
<td>90.1</td>
</tr>
<tr>
<td>Vancouver</td>
<td>84.3</td>
</tr>
<tr>
<td>Victoria</td>
<td>63.6</td>
</tr>
<tr>
<td><strong>Canada</strong></td>
<td><strong>75.0</strong></td>
</tr>
</tbody>
</table>

Gang killings in the province have increased from 6% of all homicides in 1999 to 37% in 2017, which is a six-fold increase in 18 years. This figure shows that gangs in the province are getting more violent. With respect to the Okanagan region, the crime severity index in Kelowna is the second highest in the province at 111.7 and for comparison, the national average is 72.9 in 2018. The highest level in the province is 114.2 in Victoria, while Surrey has a crime index of 105.9 and Vancouver has a 108.9, both of which are lower than Kelowna. This figure is troubling when considering the
police strength in those communities. The Kelowna RCMP detachment has 134 officers per 100,000 people that is well below the Canadian average of 188 officers per 100,000. For comparison, Vancouver has 196 officers per 100,000 people and Surrey has 142 officers per 100,000. This statistic shows that the city of Kelowna, the biggest city in the Okanagan, has a higher crime rate than other major centers in British Columbia and must manage that challenge with fewer officers than their municipal counterparts.

While some homicides are connected to organized crime, the number of overdose deaths can largely be attributed to the flow of illegal drugs that are made available by organized crime groups. The British Columbia Coroners Service (2019) stated that in 2018 there were 1380 overdose deaths in the province. The Okanagan had 120 overdose deaths, which is the third highest rate per 100,000 people in the province. In addition, out of the 1380 overdose deaths in the province, 78.4% of the drugs had fentanyl in them. Thus, the prevalence of illicit drugs has a significant negative impact on community health.

2.4 Social Response to the Drug Trade

The illegal drug industry is a highly profitable enterprise for various types of criminal groups. The proceeds from their illicit activities are used to purchase cars, boats, homes, and to support lavish lifestyles. In addition, people who sell illegal drugs use the proceeds to purchase other hard drugs, such as cocaine, fentanyl, heroin, and ecstasy. These pose additional health risks to the people who use them. These entrepreneurs also purchase firearms from the United States, which are often used in gang wars and to settle personal and gang related vendettas.
The traditional police response to the drug trade has been to conduct criminal investigations. Police in the province attempt to use every legal means of enforcing the federal and provincial laws they are sworn to uphold by conducting routine and undercover investigations (using whatever financial resources are available to them) of low-level street drug dealers and high-level targets. Although some of these investigations may be quick, others are very complex and require a considerable amount of time and resources.

If the police are successful in gathering enough evidence to charge a person with a drug offence, that person will eventually be brought before a court and they receive due process protections. This is expensive for the taxpayers who fund the court and policing system. According to Zhang (2008), the total cost of the criminal justice system per year in Canada to taxpayers is $15 billion, and that total includes police, courts, correctional facilities, legal aid, prosecution, and the Criminal Code (1985) review board. Easton, Furness, and Brantingham (2014) state that the cost of crime which includes police, courts, corrections, crime prevention time costs, stolen property, productivity, business and direct medical loss is estimated to be $85.2 billion. This is a much higher estimate than Zhang (2008) suggested, however it also includes indirect costs such as lost productivity and is a more recent figure that also accounts for inflation.

The financial loss to the public is not the only the cost of illegal drugs. The social burdens of addiction are another element that cannot be accurately measured, as there are no statistics that measure how much pain and suffering are endured by addicts and their families. Furthermore, Zhang (2008) states that $6.7 billion of productivity is lost because of drug addiction. Last, Zhang (2008) stated that over $1.2 billion of funding is given to
fund health care for illicit drug users, including lost wages, consumer spending, loss of tax revenue, and general productivity.

Besides prosecuting a person in the justice system, there are few viable options to sanction an individual or group involved in the illicit drug industry. However, the police and prosecutors can use the proceeds of crime legislation to seize property obtained through the drug trade in civil court; and potentially recover some of the costs associated with this illegal activity.

2.5 Proceeds of Crime Legislation

Civil forfeiture legislation gives courts the ability to seize assets from people profiting from criminal activities. There are two types of legislation that deal with the forfeiture of criminal assets to the government. The first is federal legislation, which is authorized in the proceeds of crime section in the Criminal Code (1985). The second type of legislation is provincial legislation allowing forfeiture of the proceeds of crime or other unlawful activity. Eight provinces have enacted provincial pieces of legislation that enables forfeiture.

Young (2017) explains that the use of a hybrid approach has been gaining popularity in recent years. This hybrid approach involves the use of civil proceedings to enhance criminal prosecutions that Young calls a “civil for criminal process”. This process is used by a government agency to achieve different goals. The application of the Civil Forfeiture Act (2005) in conjunction with the Criminal Code (1985) would fall under the civil for criminal process. Young (2017) argues that any process that falls under this definition may be subject to human rights or constitutional challenges.
2.6 Federal Legislation

The most widely used federal statute to seize assets from criminals and criminal organizations is the forfeiture of property section in the *Criminal Code* (1985). Murphy (2004) states that courts are granted lawful authority to seize property that is derived from the commission of designated offences defined in the *Criminal Code* (1985). Several other pieces of federal legislation can also be applied. For example, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (2000) enables the seizure of assets; however, they focus on domestic terrorist activities and money laundering in Canada.

Canadian Police have laid charges under the proceeds of crime provisions of the *Criminal Code* (1985) with mixed results. In criminal matters, the Crown must prove beyond a reasonable doubt that the assets belonging to the accused were purchased through profits obtained through crime, which is a difficult task for them because several defenses are used to challenge these charges. As a result, prosecutors are hesitant to proceed with these cases because of the low probability of success and the high workload that is involved. In practice, a marijuana grower who made millions of dollars in the drug industry may be convicted of the crime of growing marijuana and still be allowed to keep the profits gained before their criminal conviction.

2.7 Provincial Legislation

The province of British Columbia recognized, in part, that the federal proceeds of crime legislation was not having a significant impact on organized crime in the province. In 2005, the province enacted its first piece of legislation targeting the proceeds of crime,
which was called the Civil Forfeiture Act (2005). According to the British Columbia government:

Civil forfeiture lawsuits are said to be *in rem* proceedings. This means that the lawsuit is filed against the property itself, not the owner or the person in possession of the property. The court decides whether or not the property should be forfeited. A civil forfeiture lawsuit does not target any person and there is no ruling of “guilty” or “not guilty” as there would be in a criminal proceeding. Anyone who claims to have an interest in the property is given the opportunity to respond to the lawsuit, but there is no criminal penalty or sanction against them whether or not they choose to participate. (p. 5)

Gallant (2014) summarizes the benefits of provincial civil forfeiture legislation and how it can assist in combating crime. She explains that civil forfeiture may be one of the most significant crime control initiatives of the modern era. This is because it allows the province to remove wealth that is tainted by crime from a person and the procedure does not require any convictions for any underlying criminal offence. Gallant (2014) also acknowledges, however, that the coupling of this civil procedure with an allegation of criminality can produce some legal controversy. This is because an individual does not have to be charged with a criminal offence for them to lose their property through civil forfeiture.

Diplock, Plecas, and Garis (2013) also explain that the goal of British Columbia’s civil forfeiture legislation was to reduce some of the rewards of illegal drug distribution. The Civil Forfeiture Office (2018) states that from 2006 to 2017 there have been 4900
files referred from the police which has resulted in the forfeiture of $73 million to the provincial government and half of those proceeds have been reinvested in the province.

Not everyone agrees this is a proper method to deal with organized crime. Mulgrew (2013) argues that the Civil Forfeiture Act (2005) has turned into a government money grab that does not target organized crime members and only targets low level drug dealers who lack the resources to dispute these forfeiture actions in court.

Cassella (2007) also describes the hybrid approach that is discussed by Young (2017) and outlines a number of reasons why asset forfeiture should be part of the criminal case and how it is beneficial to the community. The reasons outlined in Casella’s (2007) commentary include: punish the wrongdoer, deter other wrongdoers, take away the tools of the trade and financial resources, disrupt the organization, get money back to the victims, protect the community, and recycle the money. For these reasons, law enforcement in the United States has included asset forfeiture in their investigations in order to combat organized crime. This has resulted in approximately $2 billion annually being forfeited to the government (Cassella, 2007). The significant difference between the federal and provincial legislation forfeiture provisions is the burden of proof that is required. Unlike its federal counterpart, the provincial legislation has a much lower threshold of proof because the claims are filed in civil courts and are not considered a criminal matter.

2.8 Issues with Forfeiture Legislation

According to From, Bolger, and Phillips (2016), The Canadian Constitution Foundation published a report grading the provinces with civil forfeiture legislation. The Canadian Constitution Foundation gave the province of British Columbia a grade of an
“F”. The group explained that British Columbia has one of the most aggressive civil forfeiture programs in the country because an investigation by the civil forfeiture office requires no prior criminal conviction for property to be seized. In addition, the civil forfeiture office has a ten-year window from when the alleged illegal activity occurred in order to make a claim against the property. The Canadian Constitution Foundation explained in its report that the province of British Columbia is using the Act to acquire valuable property without much regard for judicial discretion or thought about its role in deterring crime.

The United States has also enacted civil forfeiture laws to police organized crime. Rasmussen (2018) explains that the Cato Institute conducted a survey and found that 84% of respondents opposed the practice of seizing a person’s property or money that is suspected of being involved in a drug crime before they are convicted in court. Rasmussen (2018) describes one of the key shortcomings of civil forfeiture laws in the United States as the concept of policing for profit. He contends that police agencies will increase their efforts in certain investigations if there is a higher probability they will receive forfeited assets. This will result in the police focusing their attention on drug related crime and not focus on other offences that have no prospect of generating any financial support for the agency. Holcomb, Williams, Hicks, Kovandzic, and Bisaccia (2018) expand on the research around policing for profit in the United States. These scholars concluded that police investigate crimes that have a higher prospect of a financial reward.

The Harvard Law Review (2018) describes the constitutionality of civil forfeiture in the United States. Civil forfeitures in that country have continued to escalate and has
turned into an essential law enforcement tool. The police, the note contends, use civil forfeiture to profit from forfeitures at the expense of the citizen’s constitutional rights. The courts have not been willing to strike down civil forfeiture laws in the United States, however, they do explain that it significantly expands the scope of the government’s power and have implemented criteria for its limitation. The courts continue to monitor the legislation and new constitutional challenges may come forward in the future.

Gallant and King (2018) have a similar view and use the courts in Ireland and Canada as an example. These scholars explain that civil forfeiture laws present several due process concerns. More specifically, these scholars believe that civil forfeiture laws have the same general outcome as a criminal sentence, however, an accused person does not have the same protections as they would in criminal court. The presumption of innocence is essentially sidestepped because of the proceedings taking place in civil court. Similar to what the Harvard Law Review (2018) authors contend, the courts in Canada and Ireland have not acknowledged any serious constitutional concerns and have not imposed any major restraints on the civil forfeiture legislation.

Some organizations have further examined the controversy of civil forfeiture in the United States. The Institute of Justice (2018) states that civil forfeiture law in the United States is an abuse of power and should be abolished. The main premise behind their argument is that people can lose their property before they are ever convicted of a criminal offence. Furthermore, the burden of proof is not beyond a reasonable doubt as it is in criminal court. In 2016, the Institute of Justice launched a lawsuit challenging civil forfeiture laws in the United States. While laws are different in America than they are in
Canada this research, shows that civil forfeiture law does promote some level of controversy.

Dhillon (2018) reports that there is currently a case being heard by the British Columbia Supreme Court that involves the forfeiture of three Hells Angels clubhouses in Vancouver, Kelowna, and Nanaimo. The Hells Angels are arguing that the civil forfeiture legislation in British Columbia is unconstitutional. The British Columbia Civil Forfeiture Office, by contrast, is arguing that Hells Angels are a criminal organization and the seized property was part of their criminal enterprise. The case with the Hells Angels is just one of the many cases in British Columbia that have involved civil forfeiture. The law website Canadian Legal Information Institute (CanLII) shows 296 cases involving the British Columbia Director of Civil Forfeiture from 2007 to 2018. This figure is not a representation of all the court proceedings involving civil forfeiture; the number is an indicator of the different ruling the courts have made on the *Civil Forfeiture Act (2005)* in British Columbia.

Melcher (2018) explains why the forfeiture of the clubhouse is such an important step in dealing with the Hells Angels. The clubhouse is a powerful tool for biker gangs as it is a central hub to promote their criminal enterprises. According to Melcher (2018), if the state wants to be successful in prosecuting these high-level organized crime groups then you must use their own assets against them. In this case, the province is trying to seize control of the central operating building for the Hells Angels in order to disrupt their organizational hierarchy. This would be similar to closing the fire stations in a community and then judging how effective the fire department is in responding to calls for service.
2.9 Sentencing

The sentencing guidelines for people convicted of trafficking or producing marijuana in British Columbia is described in the federal *Controlled Drugs and Substances Act* (1996). The length and severity of the sentence will depend on the circumstances of the crime committed and previous court rulings. Plecas and colleagues (2009) described the types of punishments that drug producers and traffickers face when found guilty. Plecas and colleagues (2009) stated that only Crown prosecutors are authorized to initiate and conduct prosecutions under the *Criminal Code* or the *Controlled Drugs and Substances Act* (1996) as well as provincial legislation. Thus, in British Columbia, police are not allowed to charge; instead, they must forward their investigation to the provincial Crown counsels’ office, which decides whether to lay “an information” (press charges) against someone. The difference between British Columbia and other provinces is that police can lay their own charges against someone in other provinces, whereas in British Columbia it is up to the prosecutor to determine if charges are laid.

Plecas and colleagues (2008) cited statistics showing the charge approval and conviction rate of people accused of trafficking or producing marijuana in British Columbia. From 1997 to 2003, there were 13,329 charges for marijuana cultivation in British Columbia. Of those charges, 66% were eventually stayed, which left 4,587 still before the courts, and 4,064 of them resulted in guilty verdicts. The remaining 517 cases resulted in not guilty verdicts. Overall, only 16% of the people found guilty of producing marijuana received a custodial sentence. The remaining 86% received probation, conditional sentence orders, fines, and firearm bans. The convicted offenders who
received a custodial sentence got an average sentence of four months in a provincial correctional center (Plecas et al., 2009). It is plausible that with good time credits, few of these offenders would serve more than one-half of that custodial sentence behind bars.

New data suggests that this trend of sentencing has continued. According to the Ministry of Public Safety (2018), there were 10,114 marijuana offences that were investigated by police. This is in addition to the 2,603 cocaine and 1,847 heroin offences that were also investigated by police in 2017. Of those cases, 1116 individuals were convicted and 461 of these offenders sentenced to custody. The other offenders received a conditional sentence, probation or a fine. With such light sentences, it would be easy for a person thinking of producing marijuana to justify the risks, especially if there was a potential $3 million gross income to be earned by supervising a 1,000-plant marijuana grow operation.

2.10 Deterrence Theory

Deterrence, as a purpose and principle of sentencing a convicted offender to reduce crime is stated in section 718 of Criminal Code (1985). Deterrence targets the offender themselves (specific deterrence), as well as other persons more generally (general deterrence; Chalfin & McCrary, 2017). Deterrence is argued to create a reduction in crime by altering the behaviour of those engaged in, as well as those considering engaging in, criminal behaviour through the use, or threat of, punishment (Nagin, 2013). There are three fundamental concepts associated with deterrence theory: certainty, severity, and celerity (swiftness) (Chalfin & McCrary, 2017). Certainty refers to the likelihood that the criminal justice system apprehends, convicts, and punishes an individual for committing the offence. Severity suggests that the punishment must
outweigh the benefits (or gains achieved) of committing the offense. Celerity refers to the “swiftness” of the punishment occurring once the behaviour is detected. Nagin (2013) concluded that certainty is the most effective component of deterrence theory with regard to reducing criminal activity. “The conclusion that certainty, not severity, is the more effective deterrent is more precisely stated as certainty of apprehension and not the severity of the legal consequence ensuing from apprehension is the more effective deterrent” (Nagin, 2013, p. 202).

Deterrence theory uses a simple formula to determine whether a sentencing policy will be effective at deterring crime. Wright (2010) states that a rational offender will weigh the consequences of their criminal actions against the potential gain they could get by participating in a criminal activity. If the punishment and chance of being caught outweighs the benefits from the action, there will be a lower likelihood that they will participate in the crime. Wright (2010) explains that sentencing policy initiatives have been developed with the goal of deterring criminal activity. Deterrence-based strategies include introducing mandatory minimum sentencing or habitual offender rules designed to deter people from committing criminal activities by imposing substantial terms of incarceration thereby employing the principle of severity. However, Nagin (2013) reports that severity is not as effective a deterrent as certainty of apprehension. Therefore, a potential policy implication arising from the deterrence literature is that “crime prevention would be enhanced by shifting resources from imprisonment to policing” (Nagin, 2013, p. 202) thereby increasing the likelihood of apprehension. As reported by Chalfin and McCrary (2017), deterrence plays a pivotal role in the activities of law
enforcement as “it results in lower crime but also because, relative to incapacitation, it is cheap” (p. 5).

Wright (2010) explains that one problem with this theory is that it assumes people are rational beings who consider the consequences of their actions. This is seldom the case as not all people make rational decisions. One such example is a person under the influence of alcohol or drugs at the time of the offence. Due to their impairment, they may not be able to form judgements or conclusions as well as someone who is sober. Moreover, some individuals are not fully aware of the legal consequences of their actions. When it comes to engaging in a criminal enterprise as one’s occupation, however, it is highly likely that an individual has carefully considered the costs and benefits of their decision.

The literature review in relation to sentencing shows that people who are convicted of producing or trafficking drugs in British Columbia are seldom receiving harsh sentences that would deter their behaviour. This is because the chances of them being caught are low and if they are arrested the offender knows they will not receive a significant sentence if convicted (Ministry of Public Safety, 2018; Plecas et al., 2009). There is no discussion of deterrence in relation to the civil forfeiture legislation and its impact on potential offenders. It is unknown if a person is considering selling or producing drugs fears arrest and whether the possible criminal sanctions outweigh the profit potential. Furthermore, there is no research currently exists that describes whether drug dealers fear civil forfeiture and the potential loss of their illegal profits.
2.11 Summary

As part of this literature review, a number of areas of study were examined and the results of Canadian research were described. To develop a basic understanding of these themes, several supporting topics were explored. The commercial drug trade in the province of British Columbia, police tactics, and current legislation had to be understood before this research could be operationalized.

There is no shortage of research on the issue of the British Columbia drug trade. Scholars have written about the topic since 2000. Their research typically focused on the problems of the drug trade and how the criminal courts used community or custodial sanctions to manage these offenders. There is little research in British Columbia that discusses alternative ways of dealing with organized crime and the drug trade that fall outside the formal criminal justice system. One alternative is the implementation, adaptation, and execution of provincial proceeds of crime provisions in that province.
CHAPTER THREE

Methodology

The previous chapters provided an introduction framing the topic of this thesis, articulated the research questions driving this research, as well as providing a review of the extant literature surrounding the history and use of civil forfeiture. This chapter outlines the methodological strategy employed to answer the research question, which examines the information retrieved from semi-structured interviews of 30 respondents. The sampling framework and process undertaken to solicit interviewees and collect data are also described. Following is an overview of Attride-Stirling’s (2001) thematic network analysis, the analytic strategy employed in this research. Finally, a discussion of ethical considerations and research limitations is presented.

Qualitative research has been gaining popularity in criminal justice research but in order for the material to be meaningfully interpreted it must be analyzed methodically (Attride-Sterling, 2001). Attride-Sterling (2001) proposes that the thematic network analysis can be utilized to analyze the data collected in qualitative research. The Attride-Sterling (2001) approach has been highly regarded and highly cited which validates this approach.

3.1 Semi-Structured Interviews

The data used in this research is gathered through semi-structured interviews with the participants and the process is explained in more detail later in the following sections. The interviews consisted of a structured set of questions for each participant that focused on organized crime and the justice system’s responses to those acts. At times, the participant was asked a follow-up question based on the response they gave on a
structured question in order to gather another perspective. The data from this research was only gathered through these interviews.

Thirty semi-structured interviews were completed from January to May 2014. The five-month period was necessary in order to recruit the participants for this study and to work around their schedules. The interview questions (see Appendix A) were open-ended and this approach allowed the participants to provide the researcher with in-depth, detailed responses. The researcher analyzed the data collected from these interviews after transcribing the interviews.

3.2 Participant Selection

Qualitative researchers use a variety of non-probability sampling techniques such as purposive and snowball sampling to recruit individuals from specific populations who have the requisite expertise to address the research questions (Bachman & Schutt, 2017). These methods are used when random sampling, non-random sampling, or quota sampling (amongst others) are not appropriate or available. This research utilized a purposive sampling framework in order to identify prospective participants in networks not easily accessible to researchers such as police officers and criminal lawyers.

According to Bachman and Schutt (2017), guidelines for selecting these participants falls under three considerations: knowledgeable about the situation and have experience, willing to talk, and representative of the range of points of view.

Despite the strengths of the approach, there are several limitations associated with purposive sampling. Berg (2004) states that purposive sampling lacks wide generalizability, although researchers commonly use these methods when there is limited access to populations that are difficult to access. Oliver (2006) notes purposive sampling
can potentially introduce bias if researchers only select a certain type of person to participant in a study. However, if used correctly, purposive sampling can provide the researcher with participants who are experienced or knowledgeable about an issue. Newman and Robson (2012) explains that purposive sampling is used in situations where experts use their judgement to pick participants with a specific purpose in mind.

Another method often used in conjunction with purposive sampling is snowball sampling. Bachman and Schutt (2017) define this type of sampling as “a method of sampling in which sample elements are selected as they are identified by successive informants or interviewees” (p. 120). Berg (2004) explains that snowball sampling is a popular method to identify difficult to reach populations. Purposive and snowball sampling methods have been extensively used in prior studies of criminal justice issues. An example of this is a University of Saskatchewan research project examining mental health initiatives for Saskatchewan correctional center inmates. Wilkinson and Sanders (2012) explained that the purpose of the study was to acquire information on the needs of mentally disordered offenders in Saskatchewan facilities. These people are not easily accessible and, as a result, traditional research methods like random sampling would not be an appropriate way to identify potential participants. The Wilkinson and Sanders study required that researchers identify participants in the justice system and inmates in provincial correctional facilities who were willing to participate (purposive sampling). The study also relied on inmates and professionals in the criminal justice system to identify and encourage their fellow inmates and colleagues to participate (snowball sampling). Once these participants were identified, they participated in semi-structured interviews with the researchers.
The qualitative data gathered for this study of forfeiture focuses on individuals working in the criminal justice field in the Okanagan region of British Columbia. This area includes the cities of Penticton, Kelowna, Vernon and surrounding communities located in southeast British Columbia. The Okanagan region was selected as the researcher has familiarity and personal contacts within the area that could assist in facilitating the research process. In addition, the researcher had been employed in this region in his professional capacity as a police officer for many years. The purpose of the research was to focus on the situation in the Okanagan region, the results of which could potentially lead to other research that expands to other areas of the province and country.

The sampling process solicited interviews with people who work in the fields of policing and criminal law in the Okanagan region. These potential subjects were selected because the police use the provisions under the Civil Forfeiture Act (2005) as a tool in their investigations. Crown prosecutors and defence counsel are also familiar with the Act through their experiences in the court system. For example, lawyers use the provisions of the Civil Forfeiture Act (2005) to further their cases or defend their clients and their property. Consequently, all of these potential participants would have significant insight into issues surrounding civil forfeiture.

3.3 The Sampling Process

3.3.1 Police. The RCMP is a paramilitary organization structured around a hierarchical system based on rank. Sampling of the police involved collecting data from two categories based on rank: Non-commissioned officers (NCO) and commissioned officers (CO). Interviewing these two categories of police officers is important for this study because it gives the perspective from the both the front line (investigational units,
patrol officers) and commissioned officers (management and administration). It was also considered important for the study to interview officers holding different occupational roles. As a result, officers from every detachment in the Okanagan were interviewed as part of the study. The researcher also made a conscious effort to solicit participation from officers new to policing and those with more experience.

The NCO rank structure in the RCMP includes: constables (lowest rank), corporals, sergeants, and staff sergeants (highest NCO rank). The NCOs typically are the front-line officers who conduct investigations, gather evidence against suspects, execute search warrants, engage in patrol, seize drugs, and interact with the general public. They are the officers who typically respond to 911 calls, major crimes, vehicle collisions, and other day-to-day operational activities.

The CO rank structure, by contrast, is organized as follows: inspector (lowest CO rank), superintendent, chief superintendent, assistant commissioner, deputy commissioner, and commissioner (the head of the RCMP). These officers are typically in charge of detachments, specialized units, divisions, and hold specialized roles throughout the RCMP organization. They are the officers who must manage the NCOs who are working for them and report to the key detachment stakeholders (i.e., city council members, community leaders, government officials, elected government representatives, the media, and the public). Commissioned officers manage resources, determine policing priorities, and balance the budgets for the detachments. Commissioned officers do not typically become involved in criminal investigations as they perform administrative roles for the police force. However, they are usually experienced police officers who have carried out front-line policing roles in their careers and have risen through the
organization’s ranks. Because there are significantly fewer officers in the CO ranks, and in order to get as many participants from this group as possible, the researcher included retired officers in the sampling frame as long as they had been retired for less than five years.

With respect to the location of the sample of respondents participating in the study, the Okanagan region is part of the RCMP “E” Division (each province is given a division title; the title for British Columbia is “E” Division) southeast district which includes 28 detachments. The commanding officer of the district is a chief superintendent, and that individual oversees all RCMP operations in the area.

As an NCO member of the RCMP who has worked in a specialized section in Kelowna, the researcher has direct access to police officers who work in the Okanagan, which makes it easier to recruit fellow officers for this study than a non-RCMP employee. Being an officer with the RCMP also made the other officers more willing to participate in the study because they were helping a colleague. It may be more difficult for a civilian to access and communicate with operational officers and just as difficult for them to obtain their participation.

The researcher began the sampling process by using personal contacts involved in various areas of police work including regular general duty policing, traffic, drug, federal enforcement, and serious crime units. To identify and make contact with other officers not known to the researcher, police colleagues were asked for names and contact information for other potential respondents in Kelowna and other Okanagan detachments to solicit their participation. These officers were then contacted for participation in the
study. All officers contacted, whether known previously or not, agreed to participate, except one, who stated that he did not have enough time.

3.3.2 Lawyers. Lawyers are able to provide a distinctive perspective about how criminal legislation is enforced and prosecuted in the court system. The Law Society of British Columbia is responsible for regulating the practices of the legal profession in that province and enforcing discipline if members break its rules. In the criminal court system, there are two types of lawyers: crown prosecutors and defence counsel. It is important to get the perspectives of both these groups because each has a distinct perspective depending on which side of the case they represent. Their perceptions can assist in our understanding of this topic as they can assess whether proceeds of crime legislation is an effective crime reduction tool based on their experience. They also have first-hand experience with how the forfeiture legislation is implemented in the court system and how courts have been ruling on proceeds of crime matters that are brought before them. Each major city in the Okanagan has its own provincial prosecution office that deals with all matters except for drug offences; which are managed by one federal prosecution unit. In addition, there are lawyers from a number of different private firms who offer their services to defend persons accused of committing crimes.

The process to select a sample of lawyers was very similar to that of the police officers. As a police officer working in the Okanagan region for five years (at the time of the interviews), the researcher often submitted reports to Crown Prosecutors and those reports are disclosed to defense counsel. As a result, the researcher has developed a network of relationships with lawyers in the region. The researcher began by contacting Crown Prosecutors and defence lawyers who were known to him to seek their
participation. The researcher then requested additional potential contacts from each of them for possible participation in the study. Every lawyer whom the researcher asked consented to participate in the study.

Thirty interviews were done to complete the research portion of the study. Of the 30 participants, 19 were police officers and they included 12 NCOs (five constables, two corporals, three sergeants, and two staff sergeants) and eight COs (three inspectors, three superintendents, and one chief superintendent), and one retired commissioner of the RCMP who volunteered for the study. Of the 11 criminal lawyers who participated in the research, six were Crown Prosecutors and five were defence lawyers. The majority of participants were from the Kelowna area but at least one participant was interviewed from each municipality in the Okanagan.

3.4 Researcher Bias

The researcher is an RCMP officer who previously worked in the Kelowna General Investigation Section from 2012 to 2017 and whose mandate was to investigate serious criminal acts taking place in the city of Kelowna. In that role, the researcher participated in the investigation of murder, serious assaults, sexual assaults, human trafficking, extortion, and robbery investigations. The researcher has an in-depth understanding of how serious investigations are conducted and how these matters are processed by the courts. Part of the researcher’s duties involves interviewing prolific and violent offenders, gang members, and other people charged with serious offences. The researcher’s experience in these investigations, and interactions with these offenders, has contributed to a bias developed over his career.
The researcher has witnessed firsthand the effects that violent crime and the drug trade has on victims and their families. The researcher has often seen people convicted of very serious criminal offences given light sentences. During investigations of organized crime members, the researcher has seen these individuals become rich selling illicit drugs that have caused overdoses and deaths. On occasion, these suspects would be charged, only to be released from custody to commit the same criminal acts again and keep the profits. High-level gang members have told the researcher that going to jail is simply a “cost of doing business” and it is well worth the sacrifice in order to maintain their high standard of living. The researcher believes the *Civil Forfeiture Act (2005)* is legislation that could help reduce that profit motive for engaging in crime. The researcher believes, based on his observations, that people convicted of serious criminal offences are given inappropriately light sentences by the courts.

### 3.5 Interviewing Process

Following the initial contact with each participant, they were provided with a copy of the informed consent form and the interview guide at least 24 hours before the interview. The interview guide was provided so each participant had the opportunity to reflect on the questions prior to the interview, and in turn provide a more thoughtful response.

The interviews took place outside of the researcher’s work hours either in person or over the phone. If conducted in person, the interviews took place at neutral locations such as coffee shops, restaurants, and parks. In two instances, a neutral location was not available and with their permission, the interviews were completed at the participant’s
home. Over half of the interviews were conducted over the phone. However, before any of the interviews started, the participants reviewed and signed the consent form.

The interview guide included a series of open-ended questions designed to explore the respondent’s opinions about proceeds of crime legislation as well as how enforcement of that Act affects the drug trade in the Okanagan. All participants were asked the same basic set of questions; although follow-up questions were asked when they commented about something requiring further exploration or elaboration. The answers from each group were compared against each other to see what their opinions are and if they have different points of view. The interviews varied in length and detail, and ranged from 23 to 75 minutes. The average length of time for an interview was 40 minutes and all of the interviews were audio recorded and subsequently transcribed.

### 3.6 Ethical Considerations

There are a number of factors that were addressed to ensure that the information collected in this study was gathered in an ethical manner. As a police officer, the researcher regularly interacts with these respondents in his work roles. This situation presents some potential ethical issues. First, participants may or may not wish to participate in the study because of their professional relationship with the researcher. Participants’ responses might also be affected because they have a preconceived notion of the researcher’s opinion as they know he is a police officer, or they may be reluctant to offer views that are socially undesirable given their relationship with the researcher. As a result, their responses could be affected by their lack of anonymity.

The key goal in carrying out the interviews was to solicit honest answers to the questions that were posed in the interview guide. A first step in that process was requiring
all of the participants to review and sign a voluntary informed consent form (see Appendix B) that describes the potential ethical issues in this study. Where anonymity could not be guaranteed due to the sampling procedures, the informed consent form stated that their responses would be kept confidential at all times. The consent form advised the participants to be completely honest in answering the questions, to the best of their knowledge. The participants were told that their opinions are their own and will have no bearing on their work or personal or professional relationship (if they have one) with the researcher. As a result, the participants’ answers should not have been influenced by any professional relationship with the researcher.

The consent form informs potential participants that they do not need to take part in this study and could withdraw their consent at any time. They were also informed they did not have to answer specific questions. The participants also had the right to ask for their data to be removed at any time after the interview has been completed (although this did not occur). While compensating research participants often occurs, no participants in this research were compensated for their time to avoid any appearance of impropriety. Finally, respondents were told that the records of the interview will be destroyed five years after the thesis is defended and approved by the university. Until that time, the data collected from the interviews is being kept on a secure, password-protected computer stored at the researcher’s home.

As a police officer, the researcher could be perceived to be in a position of authority. This could be intimidating, especially if a potential respondent sees the researcher in uniform. To prevent the potential for intimidation, the researcher did not wear his uniform or any other item identifying him as a police officer while conducting
the interviews. This study was not funded by the RCMP and is not being done at the request of that organization. As a result, it would be misleading for the researcher to wear a police uniform while collecting data for this study.

Keeping the participant’s identities confidential was very important to the researcher. No one was allowed to receive a copy of the interviews, with the exception of the researcher’s project supervisor. The names of the participants were not recorded during the audio interview or by any other means. During the interviews, the participants were not asked about current duties in order to protect their identity. The researcher also declined to ask RCMP members about their current detachment as that disclosure may reveal their identity. The quotes from participants were reported in the thesis using generic reporting procedures and potentially identifying information within a quote was anonymized (e.g., participant “1”). Furthermore, the semi-structured interview questions were designed to protect the identity of the participant. The questions asked during the interviews did not address any specific organized crime group, investigation, or person.

3.7 The Interview Guide

Based on the research questions and a review of the extant literature, the researcher designed an interview guide that was comprised of 33 survey items designed to solicit information about a number of issues related to forfeiture. One issue identified in the literature review was research about drug sentencing in British Columbia. The researcher included several interview questions to solicit responses from participants on their opinions about sentences for people and organized crime members found guilty of drug offences. Information was also solicited about the profitability of the drug trade and whether the criminal justice system (court and police) has enough resources to deal with
these investigations and trials. The final element addressed by the interview questions was the participant’s knowledge of the *Civil Forfeiture Act* (2005) as well as their perceptions about the efficiency of the forfeiture legislation. Supplemental, or follow-up questions, were asked when clarification was required or new areas of investigation (not previously identified in the literature) became evident.

### 3.8 Analyzing the Data

The data analysis process used in this research was thematic network analysis, which was described by Attride-Stirling (2001). Attride-Stirling (2001) argued that qualitative methods are growing in both popularity and acceptance. However, if qualitative research is to yield meaningful and useful results, it is imperative that the material under scrutiny is analysed in a methodical manner. To achieve this goal, she proposes the use of thematic network analysis that uses a web-like map as a guide to illustrate certain themes and how they relate to the data that is collected. Attride-Stirling (2001) proposes a multi-step process to construct a thematic network analysis (see Figure 1). The three steps in the model to construct the themes are: the reduction or breakdown of the text, the exploration of the text, and the integration of the exploration.
**Analysis Stage A: Reduction or Breakdown of Text**

**Step 1. Code Material**
(a) Devise a coding framework
(b) Dissect text into text segments using the coding framework

**Step 2. Identify Themes**
(a) Abstract themes from coded text segments
(b) Refine themes

**Step 3. Construct Thematic Networks**
(a) Arrange themes
(b) Select Basic Themes
(c) Rearrange into Organizing Themes
(d) Deduce Global Theme(s)
(e) Illustrate as thematic network(s)
(f) Verify and refine the network(s)

**Analysis Stage B: Exploration of Text**

**Step 4. Describe and Explore Thematic Networks**
(a) Describe the network
(b) Explore the network

**Step 5. Summarize Thematic Networks**

**Analysis Stage C: Integration of Exploration**

**Step 6. Interpret Patterns**

*Figure 1.* Steps in analysis employing thematic networks (Attride-Stirling, 2001, p. 391).
The first step in Attride-Stirling’s (2001) thematic network analysis is to reduce the data by dissecting the transcribed materials into manageable and meaningful text segments with the use of a coding framework. The researcher has the option of basing the coding framework on a pre-established criterion like a specific word or topic on issues consistently arising in the data. Attride-Stirling (2001) states that this stage is rudimentary; nevertheless, it is crucial to go over the data with great attention to detail when analyzing the text from the interview transcripts.

Once the researcher has coded the material, the second step is to extract the themes from the coded segments. Having identified the initial codes, the researcher examines the codes, organizing them into themes specific enough to be discrete and broad enough to capture a set of ideas that are the basic themes. These themes summarize the text, capturing the collective and distinct ideas the respondents are conveying. This process requires the researcher to devote a great deal of time interpreting the text and identifying the various themes. Attride-Stirling (2001) categorizes this group as the basic or lowest-order theme. These themes are relatively simple in nature and on their own say very little about a text or a group of texts. When a number of basic themes are combined, they start to represent an organizing theme.

The third step involves organizing the themes constructed during step two into coherent groups, which are organizing themes. These middle order themes become the second level of the thematic network, categorizing the themes dependent on the identified basic themes and their interconnections in producing an organizing theme. Their role is to enhance the meaning of a broader theme that unites several organizing themes. The basic and organizing themes collectively contribute to a distinct global theme for the research.
Attride-Stirling (2001) suggests that:

The thematic network systemizes the extraction of lowest-order premises evident in the text (basic themes), categories of basic themes grouped together to summarize more abstract principals (organizing themes), and super-ordinate themes encapsulating the principal metaphors in the text as a whole (global themes). (p. 388)

Attride-Stirling (2001) states that global themes are super-ordinate themes that encompass the principal metaphor from the entire data. Global themes group sets of organizing themes that together present an argument or a position about a subject. They are macro themes designed to make sense of clusters of lower order themes.

The themes in the map show how the information is interconnected, similar to a web where all strands are interconnected, contributing to the overall understanding of the global theme. “These are then represented as web-like maps depicting the salient themes at each of the three levels, illustrating the relationship between them” (Attride-Stirling, 2001, p. 388; see Figure 2). The information presented in the web gives the researcher the ability to determine what the macro themes are in the research and what the participants are stating on a larger scale. The identification and understanding of the macro themes are important to the success of the research.
Figure 2. Example of a thematic map (Attride-Stirling, 2001, p. 388)
Thematic networks are presented graphically as web-like nets to remove any notion of hierarchy, giving fluidity to the themes and emphasizing their interconnectivity throughout the network. Importantly, however, the networks are only a tool in analysis, not the analysis itself. Once a thematic network has been constructed, it serves as an illustrative tool in the interpretation of the text, facilitating disclosure for the researcher, and understanding for the consumers of the research.

The next chapter outlines the data that was collected in the research using the thematic networks. The data is initially organized into basic themes where material is extracted from the interview transcripts and sorted into basic codes. The codes then form the foundation for the basic themes that are categorized in the research. The basic themes are then further organized into organizing themes and then finally into the final global theme. The global theme is the key outcome of the research and summarizes what the main conclusion is from analyzing the basic data from the interviews.
CHAPTER FOUR

Analysis and Findings

This chapter describes the analytic process as well as the results of the research gathered from the interviews. The research is organized using Attride-Stirling’s (2001) thematic network analytical process outlined in the previous chapter. This involved transcribing the interviews and then identifying codes that emerged from the analysis of the text. Once the codes were identified, they were organized into basic themes and then eventually organizing themes and the final global theme.

4.1 Coding and Analyzing the Interview Data

Attride-Stirling (2001) explains that the first step in the thematic analysis process is to reduce the data from the research by using a coding framework based on a combination of the questions developed from the literature review as well as recurrent topics and issues that emerged after analyzing the transcripts. The next step in the process was to review all of the transcribed interviews to get a basic understanding of the participants’ responses to the questions posed. This involved reading all of the transcripts, word-for-word. In most cases, the transcripts were reviewed multiple times to ensure extraction of the most relevant data. The researcher extracted codes from the data and documented them in a spreadsheet to help organize the information. Once all the material was reviewed, 432 codes emerged from the data. These codes served as the foundation of the basic themes of the thematic map. Once all of the codes were organized into groups, the categories were re-classified as basic themes. In total, 24 basic themes emerged from the 432 individual codes identified in the raw data from the interviews. What follows are the results of the analytical process. It is presented by providing the organizing themes, the
issues discussed (general codes), and the basic themes that came together to explain the
organizing themes.

4.2 Gang Adaptation

Figure 3 provides an overview of the data that was obtained through the interviews
with the participants. The data is organized by identifying the issues discussed from the
interviews and then categorizing the information into basic themes and then finally the
organizing theme. To help quantify the data, quotes from the participants were added to
assist with understanding the issues that were discussed and how they form into the basic
themes.
Figure 3. Organizing theme 1: Gang adaptation.
4.2.1 Gang sophistication. The first basic theme that was identified was “Gang Sophistication” and it entails the intelligence, strategy, and experience these gang leaders use to insulate their organization and profits from the police. It also discusses the counter-intelligence dynamics syndicate leaders employ to educate themselves about police practice, the law and how to avoid prosecution. The issues that emerged from analyzing the data include: technology, the intelligence level of these gang members, their level of personnel and financial resources, how they have no rules and the police must abide by certain rules, counter-intelligence, and their over-confidence in their abilities by being overt in the community.

4.2.1.1 Technology. The use of advanced technology by criminal organizations to protect themselves from a police investigation was a topic that was identified by the participants. Due to this factor the participants also believed it was important for law enforcement to utilize new technology to investigate these groups. However, it is difficult to utilize advanced technologies when these groups have already educated themselves about these devices and have purchased them to monitor police:

I think we combat organized crime to the best of our ability…But as we ourselves are trying to increase the technology to be able to deal with organized crime, conversely they increase their use of technology to monitor us (p. 4).

Organized crime groups are getting more sophisticated and often times they are using very similar equipment as the police in terms of tracking or surveillance (p. 13).

Traditional policing methods to a certain extent is effective, but one issues we always have working high level traffickers or organized crime groups is their ability to utilize technology quicker than we can (p. 22).
4.2.1.2 Gang intelligence. It would not seem to make much sense for an intelligent member of the community to go into the dangerous world of organized crime. However, as the participants explain, not only are gang members intelligent, but they rely on their intelligence to protect themselves from prosecution and protect their profits:

My opinion on organized crime is that they are smarter criminals so they are well organized and they have the money to back them, the organization and the business like skills to prosper in committing crime without being caught. (P 15)

From my perspective it’s a business, it’s where you’re actually doing this to not just build your day to day lifestyle, but actually building a….When it starts to look like a business, then its organized crime. (P. 18)

To come full circle is if organized crime is taking these short cuts very quickly and we are seeing this in the Okanagan…I remember when I was in Calgary we were investigating a huge mortgage fraud problem and they did a study on it and they said that the mortgage frauds in the Calgary area were bumping the market 3% a year. So if you and I were buying a house we are now paying 3% more thanks to organized crime. (P. 9)

The participants also explain that a counter measure to the sophistication level of a criminal organization is to change and adapt strategies:

I think that if you take a look at the arrows in the quiver, the police have a lot of tools at their disposal and ingenuity to use those. If you try and stick to the same blue print their going to know the blue print and avoid it, the secret to policing is to always switch things up. (P. 26)

It’s a necessary thing we need to do to ensure that we police adapt to organized crime, I think it’s tricky to deal with organized crime but if you can deal with it in different ways instead of traditionally then I think we can be successful. (P. 27)

While a majority of the participants believed that organized criminals were generally intelligent, some participants countered this argument by saying that not all of these groups are sophisticated:

What I would tend to think of it is a group of people intent on committing criminal acts. So it doesn’t have to be necessarily very sophisticated or formalized…and the

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1 The use of “P”, followed by a number, refers to the randomly assigned number given to the research participant associated with the quote.
group could be as small as two or three people...Traditionally the Hells Angels tend to be at the center of a lot of the higher end organized crime...But then they have taken a beating here over the last couple of years. But then they are not as strong or smart in this area as they are in others. (P. 1)

Well of course, I think organized crime is common everywhere including the Okanagan and at different levels. It could be a group of young kids stealing bikes and taking them to pawn shops and paying somebody or it could be right to the highest levels where you are dealing with the motorcycle gangs or less obvious you having money laundering, people doing white collar crime. (P. 22)

4.2.1.3 Resources. Like any legitimate business or organization, the participants explain that a gang’s success is linked to the amount of resources and personnel at their disposal. If an organized crime group has an excess of financial resources they can use this capital to expand their business and avoid police interference. Police activities are also constrained by budgets and the number of officers they can deploy to a particular investigation or enforcement activity:

I believe that the organized criminals outperform the police in their budgets...There are way too many resources on the side of organized crime and the police are under continuing and more difficult restraints. (P. 7)

From my perspective it’s a business, it’s where you actually doing this to not just build your day-to-day lifestyle, but actually building a business that is meant to grow and function and bring in other employees so. When it starts to look like a business then its organized crime. (P. 18)

Organized crime is constantly changing and the police cannot keep pace with organized crime and it keeps changing, you kill one weed and you get three more or two more so as soon as the investigation is completed. (P. 5)

4.2.1.4 No rules. The investigations into organized crime that police conduct are limited to the powers that the Criminal Code and the Canadian courts extend to them. Law enforcement agencies must adhere to those rules if they hope to have the evidence they collected be admissible in court. During the interviews, participants discussed how the limitations that are put on police, which are fundamentally sound in law, put the
police at a disadvantage when it comes to investigating gang members because these
criminal organizations have no legal rules to follow. It also creates a situation where gang
members live outside of the financial rules that are placed on everyone else in Canada,
such as paying taxes on income earned:

I believe that the organized criminals outperform the police in their budgets and
they don’t have any rules so they outperform their ability to be strategic because
they don’t require a level playing field and those kinds of rules to do their side of
the business that the police have. (P. 7)

This is why we have rules for everything, it’s an effort to create a level playing
field for everyone to operate in. If the government allows organized crime to take a
shortcut to financial success that is not a level playing field. (P. 9)

4.2.1.5 Counter Intelligence. Like any organization, sophisticated criminal
gangs look at ways of making their business more efficient and more profitable. One of
the biggest costs associated with their business is having employees arrested and losing
product to police investigations. The participants talked about how it is common for
police to gather intelligence to understand the people they are investigating better. This
approach is also used by organized crime in an effort to educate themselves about police
tactics and how to avoid detection and thwart investigations. By gaining intelligence
about the police units that investigate them, and the methods they use, organized criminal
gangs can keep more of their products by avoiding police traps:

On the other hand, a lot of these groups are starting to understand the way the
police operate in terms of conducting investigations into organized crime, and we
need to constantly develop new methods, untraditional methods of investigating
these organized crime groups. (P. 3)

I think we combat organized crime to the best of our ability and we definitely made
significant strides over the past four or five years over what we were doing. But as
we ourselves are trying to increase the technology to be able to deal with organized
crime, conversely they increase their use of technology to monitor us. (P. 4).
4.2.1.6 Overt. Most participants described the prevalence of gangs in the Okanagan. These organizations, or their members, are highly visible to the public and they flaunt their wealth and lifestyles. This, in turn, attracts other people in the community to join their organization or support their cause:

Organized crime as I described earlier on a variety of levels is common in the Okanagan, the Okanagan seems to attract a number of individuals, young individual sees it as an opportunity or environment that lends itself to them participating from a variety of different criminal activities. (P. 13)

I don’t think common is the right word, I think it’s extremely prevalent…Do we have open dealing on the streets in front of families, tourist that affect the financial tourism, that draws people to the area, yes I do believe that we have worked a number of undercover projects throughout the central Okanagan that has shown that it an issue here. (P. 10)

One participant did say that they do not see a sophisticated gang problem in the Okanagan and it has only been isolated to a few historic groups:

If you look at organized crime like gangs and that sort of thing, we don’t see a lot of it coming through, there is the Greeks thing in Vernon, an obvious situation like this so it’s hard for me to say, it just doesn’t come up very often the other situation where there is Hells Angels involved. (P. 23)

I think it’s probably a lot more common than I would have though…I think if I was just a member of the public I would not have thought it was common. When I moved to the Okanagan I heard that the Hells Angels were involved in everything, I don’t see the visible presence that I expected to see but I hear a lot about it I think it’s more prevalent than you think but not necessarily more visible. (P. 14)

4.2.1.7 Summary. The participants reported that the members of these organized crime groups have a level of sophistication that have developed in a number of areas that are crucial to the success of their illegal businesses. The participants described how organized crime groups use technology to not only enhance their illegal business, but to monitor and counter the police who are investigating them. This technology contributes to their level of intelligence as they have access to information they did not
have before. These groups recruit and train intelligent people so they can mask or legitimate their operations and not have police interfere with them or seize the profits they are making. With their access to profits, these organizations have the ability to deploy sizeable amounts of resources to expand their operations, gather intelligence, use counter-intelligence techniques, and pay their employees. Their resources and the knowledge of how to use them contribute to their overall sophistication. Furthermore, because they do not follow the rule of law this makes these groups more formidable because they have few constraints on their activities and are able to gather resources and deploy them quicker than the police. These traits, combined together, makes the basic theme of gang sophistication highly relevant in this analysis. In order to flaunt their success, these organizations maintain a visible presence in the community because they want to be seen as powerful.

4.2.2 Untouchable. The second theme that was discussed by the participants is how these gang members are untouchable by the criminal justice system. Respondents expressed frustration that law enforcement and criminal lawyers experience when it comes to how the Canadian criminal justice system deals with gang leaders. The participants talked about how difficult it is to investigate these individuals because they are very knowledgeable in the relevant areas of law, and when there is sufficient evidence to prosecute these members, it is very expensive and time consuming. The participants also explained that they usually arrest and prosecute lower end or mid-level gang members and that the leaders are insulated and seemingly immune from prosecution. These members are heavily resourced and when one member receives a jail sentence another person takes their place. It is compared by participants to “shoveling water”.
4.2.2.1 Leaders immune to prosecution. Organized crime groups have a corporate structure that shares some resemblance to legitimate enterprises. A majority of companies will have a chief executive officer CEO, followed by some level of upper management, middle management and then workers. The participants explained that sophisticated organized crime groups have a similar model; most notably, they will have a president that runs the organization. These leaders rarely put themselves in a position where they can incriminate themselves and the rest of the organization rarely provides any evidence to the police about these leaders. As a result, police typically lay criminal charges against only the workers of the organization:

More often than not part of the issues is that we end up charging and convicting producers who end up being crop sitters or are really middle people, rarely are we actually convicting the persons pulling the strings on the other end. (P. 9)

The criminals are not being dealt with by the courts that well especially when they deal with organized crime and they are dealing with the lower ends in the group therefore the bosses are getting away Scott free. (P. 15)

I support that if we are going to try and deter these grow shows that are run by organized crime are we getting the people who are actually planning the actual organized criminals behind it no we tend to get the little farmers they put in front and they end up going to jail. (P. 25)

4.2.2.2 Expensive to prosecute. Cases that involve organized crime groups are typically expensive to prosecute because of the complicated nature of the police investigations. The trials can be lengthy, involving expert witnesses, complicated judicial authorizations, and a great deal of court time. The participants talked about the difficulty of building these cases as well as how few of them actually make it to court:

Organized crime charges are either non-existent or withdrawn down the road…so the idea of organized crime charges and originally thought out in the 90s when they would be able to build these cases against the organized crime groups. This does not happen today. (P. 18)
The people of British Columbia are footing the bill to investigate these activities...the kids that are involved in taking drugs at an early age and have their lives ruined, the people who fall victim to organized crime to violence, the people of British Columbia are footing the bill for all these backlashes. (P. 6)

4.2.2.3 Knowledge of law. The advantage of having a sound understanding of the law is that one can develop a strategy to commit crime and reduce the likelihood of being caught:

My opinion on organized crime is that they are smarter criminals so they are well organized and they have the money to back them and the organization. They have the business skills to prosper and do crime without being caught. (P. 15)

4.2.2.4 Summary. The data collected in this basic theme discussed areas of frustration for the participants. Sophisticated organized crime groups use methods and tactics that make it difficult for police to investigate them and for prosecutors to be successful in court. In order for these gangs to be successful, they must have a stable hierarchy that is able to oversee the operations of the group. This is similar to a large corporation having a chief executive officer (CEO) who would oversee the operations of a company. A multibillion-dollar company would have a hard time staying competitive if they had to replace their CEO every few months; the same concept applies to organized crime groups. The participants explained that these groups often insulate their leaders in an effort to keep them from being charged (e.g., they will typically not transport drugs over the border or kill someone). These leaders will hire people to do these illegal jobs for them and this level of insulation helps make them untouchable. The participants go on to explain that if they have an opportunity to investigate a high-ranking gang member the investigations are typically expensive, lengthy, and very difficult to prosecute in court. The extensive cost of these investigations and trials contributes to how these leaders are almost immune to conviction and sentencing.
Gang members will use counter-measures against the police based on their advanced knowledge of the law and police tactics. This level of sophistication is another avenue that authorities need to consider when investigating gang leaders. Their knowledge of the law gives them the ability to avoid prosecution. Leaders who are knowledgeable about the law, insulated from prosecution, and require a large amount of police resources to investigate are extremely difficult to charge criminally.

4.2.3 Gangs are violent. The third basic theme that the participants addressed was that gangs are violent and, more specifically, violence is a necessity for these groups. Gangs use violence as a means of policing their own underground community. In most cases, a gang member will not call police because another rival gang member broke into their house and stole their drugs. They also use violence as a way to further their business and intimidate or eliminate competitors. The participants outline four elements that make up this basic theme: “together”, “internal policing”, “drug violence”, and “community safety”. These four topics explain the level of violence organized crime groups incorporate into their tactics or are a by-product of them.

4.2.3.1 Internal policing. Offenders involved in organized crime must be willing to either protect themselves or ensure the gang’s protection by targeting people who are a threat to them. As some of the participants explained, the business is competitive and to be successful you must use control to survive:

Well one thing it does serve to do is that it helps to keep criminality in check amongst their own division, if one individual decides to lack of a better word traffic in a territory owned by another organization, they will see that it is handled themselves. (P. 17)

So you see a lot of grow ops, grow rips, petty beatings, extortions, everything from street level nuisance crimes to murders are almost not exclusive…If you get rid of alcohol and the drug trade the only thing you got left is a couple of stupid crimes
here and there and you got greed, but the drug trade and alcohol account for 95 percent of our work. (P. 26)

4.2.3.2 Drug violence. The participants discussed how common violence is within these groups. Violence is a simply part of doing business, and in the world of gangs, it is a necessity for survival and success:

I believe in my experience that a lot of violent crimes are based on issues related to the drug trade which I believe is related to organized crime. (P. 3)

I think it would be stressful too especially in Vancouver in recent years with all the shootings and stuff I don’t think it’s something like a normal job where you can shut it off at the end of the night, you would probably always have to be switched on and geared up and thinking about it. (P. 11)

4.2.3.3 Community safety. The victims of gang violence are not exclusive to people in organized crime. The participants explained that the murders, drive-by shootings, and serious assaults committed by gangs are typically done in public places such as a busy restaurant, outside a popular hotel, or on a busy street during rush hour. As a result, innocent bystanders have become victims to these violent acts and the community is afraid and so puts pressure on the police and courts to deal with these violent groups. The participants explain that the presence of gangs reduces community safety:

My belief is that without organized crime of all types in the Okanagan the area would be much safer. (P. 13)

In a community where organized crime exists to a level like it does in the Okanagan there’s a level of violence that spills over to innocent people, there are drive by shootings, vendetta shootings, revenge activities that take place that ordinary people often get caught literally in the crossfires. (P. 7)

4.2.3.4 Summary. The presence of organized crime in a community can be a troubling reality for community members and the police. These groups have the potential to be violent towards each other and, because of that violence, can cause innocent people
to be caught in the crossfire. The participants explained that violence is a reality for these groups, not only to be competitive in their marketplace, but also to survive as an organization. Gangs must have an internal enforcement structure to deal with internal misconduct, mistakes and problem employees. This will often breed some loyalty to the group, and if it is known that a gang member violates the rules or trust of the gang, there could be consequences to that person. Moreover, violence will also extend to other groups who may present a danger for gang members or their business. This violence will extend into the community where gang members will use violence on their rivals to send a message to them. Without violence, gangs are unable to police themselves, protect their operations and defend their drug business.
4.2.4 Gang hierarchy. The fourth basic theme that the participants addressed was a hierarchy in the criminal organization that contributed to these groups being difficult to investigate and prosecute in criminal court. The participants described a number of issues that involved how a particular individual led these organizations and how their “workers” insulate the more important members from prosecution. The participants also talked about how the workers were usually drug addicted and had a difficult time earning money within these groups. This is in stark contrast to the executive members of organized crime groups who typically enjoy most of the profits earned in the drug trade.

4.2.4.1 Jail for workers. This issue discussed how gang members who are “lower on the totem pole” would often be the people who are susceptible to prosecution and jail on behalf of the organization. They are the ones in possession of the drugs or are caught selling the drugs for their bosses:

I think the people at the low end selling street level quantity but with extensive criminal records are getting a lot of jail time compared to the people at the top who might get arrested and charged once and have no criminal past because we have not been able to catch them. This if often due to a lack of resources to be able to conduct an investigation like that. (P. 28)

Most of the times when we are charging people in a group we are charging one single person who is usually lower in the food chain. It’s not the bosses it’s not affecting the group, how they run their business, their profits. (P. 15)

One participant disagreed with this and said that there are fair sentences in place for high-level gang members if the evidence exists:

I mean again they are fair, again if it’s a sophisticated thing and there is evidence that the fella is making a lot of money then he’s probably looking at fairly significant period of jail so forfeiture of any assets like losing his house, so I think again they all fall within a range. (P. 11)
4.2.4.2 Profit hierarchy. Participants also discussed how there was a disparity in terms of where the profits are allocated in the group, and how the leaders make the vast majority of the profits:

I think low level guys like dial a doper... I don’t think they are making a lot of profit, the mid-level guys who are brokering, transporters, I think they are making pretty good money, the high level guys who are dealing with high level drugs they are making a lot more money. (P. 27)

I think some people make quite a bit of money and its tax free you lead a good lifestyle. (P. 11)

4.2.4.3 Insulation. The participants talked about how the leaders of these groups make the most amount of money, with the least amount of risk because the lower-level worker members of the gang insulate them from detection and prosecution. This makes it difficult for police to open a relevant investigation and prosecute these gang members. Participants also explained that even if the Crown was to prosecute a high-level gang member successfully, the courts do not always treat them as such, and treat them as a low or mid-level player.

The people heavily involved have set themselves up in a way they are not out on the front line doing things to attract police attention. Although the police may know about them, see them, and be on their radar, to actually have something to... is an entirely different story. (P. 2)

I think the problem is near the top end, they are treating the really large players like they are middle players. So, I think the sentences are not successful deterrents to the epic players that are involved at the level where they have to use violence for enforcement. (P. 18)

4.2.4.4 Summary. The participants identified three different areas that not only form the foundation of the gang hierarchy but also how of this gang structure makes it difficult for law enforcement to investigate and prosecute them. The “workers” are typically very hands-on within the drug trade and are often well known to police. They
work for little money and are typically drug addicted. Their job may include producing, transporting, or selling the drugs. Because of more interactions with police, they will typically be charged more frequently. The participants explained that a majority of the profits made from the work done by these “workers” would be distributed to the higher-ranking gang members. The money always flows up the hierarchy of the organization.

These high-ranking members will never actually be in possession of the drugs so it is difficult for police to charge them. This insulates them from prosecution, as the workers are typically more at risk because they are in actual possession of the drugs. This protects the gang hierarchy and the organizational structure of the group, thereby ensuring the higher-ranking members of the group receive most of the profit, but are exposed to little risk.

4.2.5 Summary. The researcher developed the organizing theme of gang adaptation was developed by linking four basic themes that contribute to the organizing theme. Organized crime groups in the Okanagan are sophisticated in nature; a necessity for their success and survival. Organized crime groups that support a hierarchy with defined roles for its members contribute to the sophistication of the gang because they have a complex organizational structure. Like any legal business, these criminal organizations consist of owners, managers, supervisors, and workers, all with well-defined roles. These roles provide different levels of compensation for the individual based on their status in the organization. Without a proper organizational structure, the gang would not function efficiently and would be generally unorganized in nature, thereby reducing their effectiveness and probability, and increasing risk to the members.
The adaption of creating a sophisticated organized crime group is not limited to its hierarchy. In order for a gang to survive, it must wield influence in the region and must deal with competing groups or people. It must also develop mechanisms to deal with potential external and internal threats. The primary way they address these issues is through violence.

A second threat to gang survival is law enforcement. In order for the group to adapt to this threat, they must be “untouchable” and resilient to police practices. Sophisticated and intelligent organized crime gangs are knowledgeable about police investigational tactics. Having a good knowledge of police investigations allows them to deploy counter measures to reduce the police effectiveness.

4.3 Resources and Sentencing

Figure 4 provides an overview of the themes that emerged through the analysis of the interview’s transcripts. The data is organized by identifying the issues discussed from the interviews and then categorizing the information into basic themes and the finally the organizing theme. To help quantify the data quotes from the participants were added to assist with understanding the issues that were discussed and how they formed the basic themes.
Figure 4. Organizing theme 2: Resources and sentencing.
4.3.1 Weak sentences. The first basic theme that developed because of interviews was the weak sentences handed out to organized crime members by the courts. This basic theme produced the most amount of data and was described by most of the participants. The issues that arose from the basic theme include deterrence, light sentences, discretion of judges, and inappropriate sentences.

4.3.1.1 Deterrence. The participants discussed how the lack of effective sentencing for drug offenders provided little to no deterrence for these gang member, or organized crime groups:

The people who are producing a controlled substance, I don’t think they are given any time. A couple of times we had some precedent setting judges who would give growers a year in jail. I think at that time they were paying $1000 to $2000 dollar fine and they can peel it out of their back pocket before they walked out of court, because they consider it a cost of doing business. (P. 10)

Well, before the mandatory minimums came into effect they were a bit of a joke, honestly, particularly on the coast. Pretty much everyone would get a CSO (conditional sentence order), when a court imposes a CSO it can be a significant sentence as long as it is monitored with curfew, or house arrest. (P. 8)

4.3.1.2 Light sentences. This issue was widely discussed by the participants and most believed that the sentences for these offenders are too low considering the offences they committed. Both police officers and lawyers alike shared this opinion.

I have an example of a guy who was convicted and he was charged in Manitoba. Manitoba was seeking two years less a day sentence and he waived his charges out to Vancouver and when he walked in the court to Vancouver he got 6 months’ probation. (P. 19)

It’s a joke, we deal with a revolving door system. British Columbia is known to have the weakest system in the country and I cannot understand for the life of me why there is a serious disconnect with the reality of the community. Our judges, they have no understanding of what is happening on the street. (P. 12)

Often there were so many exceptions to the conditions upon which the person was placed it usually ended up being glorified probation and a bit of a joke. (P. 8)
Some of the participants, however, did not share this pessimistic view of the sentences provided by the British Columbia judges. Some felt that the sentences administered are appropriate:

When the proper information is put before the judge by a competent Crown that is aggressive enough to present it in a right way; the courts will deal with it in a reasonable manner. (P. 1)

I’ve seen some good samples on some of the major cases recently. The courts seem to recognize the effect organized crime has…I’m encouraged for the large cases at least they are doing a very good job. (P. 16)

4.3.1.3 Discretion of judges. The discretion that is given to judges in sentencing parameters is disconnected from what some of the participants believe is appropriate. The discretion that judges have is being used to foster a culture of sentencing that is inherently lenient. One option is to reduce the lenient sentences in favour of mandatory minimum sentences:

I don’t think that the courts always interpret the will of Parliament as it has always been intended. I think that some of the discretion certainly by the judiciary is important but I think there are some cases that the amount of discretion has to be taken out of their hands because they are just simply not, in my view, always representing the view of Parliament. (P. 1)

I think it’s a great thing because people at least at that point in time have some certainty around what they are dealing with, they should be, and mandatory minimums should be reflective of what we are dealing with as far as the crime. (P. 7)

There was a considerable amount of data from the interviews to suggest that judges’ discretion is not only important, but it should not be suspended with the implementation of mandatory minimums:

One thing I like about Canadian sentencing, and we are moving away from it, is certain flexibility from the courts to apply sentences based on the facts of the case and the situation before them. I like it because from time to time there is a need for judges to be more lenient based on the number of circumstances or factors that has
been presented. On the other hand, sometimes they need the opportunity to hammer guys a little bit harder. (P. 9)

Why I think it’s important to be able to have some wiggle room in terms of plea bargaining or some room for negotiations for prosecution and defence so that you can weed out those ones that should not be heard and hear those that should be heard. (P. 17)

I don’t believe in mandatory minimum jail sentences, part of that is that I believe the judges should be given the discretion of levying an appropriate sentence in any case given all the facts. (P. 3)

4.3.1.4 Inappropriate sentences. The sentences that are given to gang members are not appropriate given the harm that they cause to the community. The sentences in general do not fit the crime and, as a result, provide little deterrence to organized crime:

Their investment from a monetary perspective is very little and the fact that their sentencing is light most people are really not deterred because sentences in British Columbia are notoriously less than any other place in Canada and certainly way less strict then it is in the United States….What they are doing or not doing to contribute to society from a sheer profit perspective the profit margins are certainly compelling and the deterrent value of sentencing does not exist. (P. 7)

I can’t remember the last person convicted of trafficking that have spent any time in jail. Its typically probation with conditions and they don’t work at the end of the day the courts hand out so many conditions we don’t have time to monitor them properly to enforce them. (P. 12)

4.3.1.5 Summary. The sentences that British Columbia judges hand out to organized crime members convicted of serious violent or drug crimes are generally weak and provide little in the way of deterrence to anyone in a gang or potential gang members. A court-imposed sentence is often seen as a cost of doing business and is well worth risking a few months in jail in return for the financial rewards and a lavish lifestyle. Part of the reason why the sentences are low is the discretion given to judges. This discretion is generally seen as not being used properly by the judges and results in them giving
lenient sentences for serious offences. Participants say that the community perceives the light sentences as inappropriate in relation to the offences committed and are perceived to provide very little general deterrence for current or potential gang members.

**4.3.2 Court resources.** The second basic theme that emerged from analyzing the data is court resources and how that relates to how effective the judicial system is in hearing organized crime cases. The specific issues raised were how underfunded the courts are, the associated case law, and that trials were not always being conducted.

**4.3.2.1 Under Funded.** An underfunded court system has led to a lack of judicial personnel being able to hear trials and run the courthouse. A Crown prosecutor can only handle so many cases while a judge needs a certain amount of court time to hear these cases, a courtroom in which to conduct a trial, and sufficient time to write orders and decisions:

> In general, I don’t think the courts have enough resources, from crown to judges, to court room staff to sheriffs, I don’t think they are appropriately resourced, so no I don’t think the court system has adequate resources to deal with this. (P. 26)

> I think there are insufficient resources applied to the drug cases that are brought before the court. With the requirements now in terms of disclosure issues, there is not enough resources applied to the whole Crown side of the prosecution to make it sustainable. (P. 13)

> One participant believed that there is adequate time in the British Columbia court system to hear all of the trials. This is due in part to a change in law for impaired drivers where these cases are not always brought to criminal court anymore:

> Well they have enough time in the court system to hear everything ya I don’t see that being an issue, especially in British Columbia right now, they have removed a lot of cases with the impaired driving law, there is a lot of court time for everything right now. (P. 11)
4.3.2.2 Court deadlines. Court resources are finite, and the participants talk about how court deadlines have added to the procedures and policies to now take up more of the court’s time. As a result, they have less time to hear cases and there are more delays due to an increased workload:

I do not believe there are not enough resources, the reason being is Ashcroft [sic], so there is some reasonable delay application, not enough prosecutors, not enough court rooms and not enough judges. (P. 5)

I think the courts are bogged down. Certain case law creates a disclosure requirement that is quite cumbersome, but it is the fine balance that the courts have to walk the line between appropriate enforcement tools and the rights of the individual. (P. 9)

Case law is the body of law that comes from court decisions and these decisions must be followed by law enforcement and the courts. The participants do not disagree with the necessity for precedents being used in sentencing: they simply point out that it creates additional requirements for the police and prosecutor that adds to the delay of a court system that has a considerable backlog:

I’d rather have some frustrations with that process from time to time than living in a society with the rights of the individual are trampled on in favour of enforcement and legislative provisions being a bit draconian; it’s a slippery slope. (P. 9)

4.3.2.3 Trials not heard. Trials are not always heard because of a lack of court resources to hear them. This can cause frustration for victims of crime, the community, and investigators. The court needs available judges, clerks, and sheriffs to provide security. If one of those positions is not available a court needs to cancel that trial date:

I think that’s a large part of the reason why a lot of the sentences aren’t strict as they should be I think that lawyers feel so much pressure. Crown counsel and judges feel so much pressure because of the volume of cases they see and they have to get things dealt with quickly. In my opinion, too many deals are made that result in a plea bargain agreement. (P. 12)
Trials are taking longer and longer because in drug cases the litigation of the charter issues can take longer than the actual trial issues. It is difficult to get a judge that is available for five days at a time in provincial court. I don’t think there are enough judges, clerks, and court staff. (P. 8)

4.3.2.4 Summary. In order to provide the community with a judicial system that is fair and transparent the court requires proper funding to meet the needs of the community it serves. The lack of funding reduces the capacity of the court to adjudicate cases, even if the cases have a substantial amount of evidence against the suspect. The investigations into gangs are getting more complex and therefore, these trials require more of the courts time. If trials are not heard in an expedient manner, the principles around trial delay articulated by the Supreme Court of Canada in R. v. Askov (1990), and expanded and affirmed in the recent Supreme Court of Canada decision of R v. Jordan (2016) could result in these charges being stayed in court. The lack of sufficient resourcing of the courts reduces their effectiveness in dealing with criminal matters.

4.3.3 Complicated cases. The third basic theme that the participants identified is how complicated organized crime investigations are and how that affects police and the courts ability to investigate and hear these cases. The issues described are how complex the trials are, the cumbersome case law, and the subsequent expensive investigation necessary to achieve that burden of proof.

4.3.3.1 Complex trials. The participants discuss how trials are getting more complex. This can be due to a variety of reasons such as increase in data encryption, counter surveillance techniques, more awareness of police techniques (counter techniques), money laundering, and more advanced and secretive communication. As a result, these investigations require more police time and more court time. The other factor associated with this is that complex trials have become the norm for organized crime
investigations. The increased complexity requires an increased amount of disclosure for police to provide to the Crown prosecutors, and for them to review it:

I don’t think it’s a question of resourcing but a question of complexity and inefficiency…less charges before the courts and it is taking longer to get through. So if those metrics are true then there is a real problem with the legal system. (P. 18)

No, I don’t think our court system is designed to deal with the level of volume and complexity that a lot of these court cases bring…These cases are definitely affected by the fact that some of them are so complicated and so convoluted that they almost get lost in disclosure and issues of legal details due process. (P. 7)

4.3.3.2 Protection of civil rights through court decisions. Respondents described how previous court rulings on Charter issues have made it more difficult and expensive to conduct criminal investigations. This could include requiring warrants for practices that police did not need a warrant for in the past, or new legal guidelines that police need to follow which consume more resources. These are issues that the courts have found necessary, however, the new processes often create additional work for law enforcement, tie up more resources and are more expensive than in the past. If more resources are granted to account for these new procedures then it would mitigate the drain, however, the new tasks are often downloaded to overworked law enforcement personnel that reduces productivity:

We have come so far in the last twenty years in respect to courts making decisions with respect to disclosure, to modern investigative methods and I specifically refer to undercover operations and the large-scale drug operations running wire, it’s become so complicated, so expensive and so labor intensive to do our job. (P. 25)

I do not believe there are not enough resources, the reason being is Askov, so there is some reasonable delay application, not enough prosecutors, not enough court rooms and not enough judges. (P. 4)

4.3.3.3 Expensive investigations. With the increase in complexity of police investigations, the participants explain that these files require additional personnel and
financial resources to make them successful. This places additional pressure on police
budgets and these operations must be successful or else the police agency would have
wasted a considerable amount of resources they could have used elsewhere:

Again I will go back to what I said, I think they are doing the best job they can with
the resources they are given. It costs a lot of money to go after a big target…
Chasing and prosecuting bad guys is an enormously expensive financial
undertaking. As a result, it limits what the police can do given their budget. (P. 18)

I can tell you that proceeds of crime investigations are very difficult by proving
beyond a reasonable doubt that this money came from that criminal activity is very
difficult…As an organization, we do not have an appetite to maintain these
investigations, sometimes for years to get to a charge and then two more years to
get to prosecution. (P. 9)

4.3.3.4 Summary. The additional pressure that the courts have put on police
and prosecutors has significantly added to the cost of conducting a complicated
investigation on organized crime groups. These investigations are lengthy, and they may
require complicated police methods such as the use of undercover operators or judicial
authorizations. These investigations typically involve a substantial financial commitment.
These investigations and judicial procedures must follow the rules set out in case law in
order for it to be accepted by the courts. The presentation of a complex and expensive
investigation to the court creates a complex trial which may require a significant amount
of the court’s time. The lengthier and more complicated the trial, the more money it costs
the judicial system.

4.3.4 Police resources. The final basic theme discussed how investigations can be
put in jeopardy because of police shortages and how police resources are allocated. The
participants discussed how police resources were allocated to investigate organized crime
groups, the challenges associated with having a finite amount of resources and the
pressure to be successful with those resources.
4.3.4.1 Police shortages. The lack of resources is an issue that was raised by the participants when they described some of the difficulties of doing complex investigations. A proper investigation cannot be successful if there are insufficient people to work on the file. The Okanagan is home to some sophisticated organized crime groups who are intelligent and aware of how police conduct their investigations. As a result, labour-intensive techniques are used to successfully investigate and prosecute these groups:

I think the police are under resourced in the Okanagan. I think, first of all the front level guys on the street I don’t think there is enough bodies to kind of maintain business continuity in the city itself, they are always running shortages. (P. 27)

I think that traditional policing methods are effective but very labour intensive and cost a tremendous amount of money to do it. (P. 18)

Some of the investigation strategies are so labour intensive, if you are preparing affidavits and we just don’t have the resources, we are doing the best we can with what we have to offer but it’s simply not enough. (P. 25)

Some participants believe a multi-layered approach is an effective strategy and investigators do not always need elaborate techniques to be successful:

You definitely have to have that routine police contact, that day-to-day police stopping them…but then you need to take that and institute it into some of the less common practices involving wire taping, undercover operations, agent driven projects, those types of things. (P. 13)

We need a multipronged approach in one of the other questions…There is a covert unit for the Okanagan that’s responsible for dealing with high-level organized crime, but we need street level enforcement. Whatever you want to call it, a gang task force, but a uniform presence interrupting these guys on a day to day basis and we need to make their lives more uncomfortable. (P. 12)
4.3.4.2 Ineffective use of resources. The effective use of resources is a subjective matter, with different segments of the community having different policing priorities. Some members of the public believe that police should dedicate more resources to traffic enforcement or to fraud investigations, for example. Organized crime is only one area of policing and whether it should get more or fewer resources than other areas is at the discretion of the policing agency, and possibly city councils:

The reason why I think it is that the police resources in the Okanagan are stretched very thin there is so much demand on the police these days with all sorts of criminal issues and drug trafficking is just one of them. There are not enough resources applied to investigating these major drug traffickers and producers and without that there are only so much that the police can do to investigate and prosecute. (P. 13)

Organized crime is such a difficult area to police and most participants believed that additional dedicated gang enforcement is not only needed but also necessary for it to be successful:

I think traditional police investigative methods don’t really work. Street level trafficking, buy and bust, that sort of stuff works in the downtown core but to get to the mid to higher level the police need to be at least two steps ahead on the bad guy. It’s very labour intensive and almost always involves a wiretap or one party consent or some undercover project, and even then it is hugely time consuming, expensive and the cases take years and years to prosecute. (P. 8)

4.3.4.3 Summary. The participants spoke about the lack of resources (personnel, time, and money) to properly investigate gang members. These investigations require a group of dedicated police officers who are experienced in dealing with these organized groups. In order to properly investigate and prosecute these groups, police need sufficient resources and funding to execute search warrants, wiretaps, and conduct undercover operations. The participants also explained how it is difficult to get these resources because some managers, or police departments, do not think that targeting
gangs is high priority. As a result, resources get filtered into other areas of policing such as 911 responses, traffic, and community policing. Not only do dedicated investigation units have to adapt to police shortages, but they also have to deal with managers who allocate resources to other areas of policing considered less vital by some participants.

4.3.5 Summary. This organizing theme discussed the challenges the judicial system faces in regard to the allocation of resources and the subsequent sentencing of an offender. The participants described a system that continuously delivers weak sentences to gang members committing serious crimes. These investigations are typically complicated in nature and require a lot of money and police resources to conduct.

Police agencies are limited in what they can do based on their allotted budgets. Complicated cases can severely influence a department’s budget and its ability to investigate further offences. While these cases need to be investigated by police, the participants explained that the amount of resources (personnel and otherwise) put into these cases often result in a weak sentence for the gang member which is not appropriate to the seriousness of their offences. The police must conduct complete investigations and produce proper disclosure of the facts. It is often impossible for police to gather all of the facts that link the harm the offender has done in society. This is primarily a problem with lack of police resources. Investigators must do what they can and then move on to the next investigation. As a result, the judge may only have a summary of the harm that the offender has done in the community, and because the courts only have a limited amount of the information, they will often give sentences that does not reflect the true extent of the harm that has been committed. Deploying a vast amount of police resources on a case that results in a weak sentence does not justify the investment that the police have made.
to that investigation. If police resources are deployed to investigate violent gang crimes, those resources are not available for other initiatives that may be important to the community or to respond to other serious crimes.

The participants explained that police are not the only group that suffers from a lack of resources. Due to the complex nature of the cases involving organized crime, crown prosecutors are not immune to the lack of resources issue. The prosecution service must have adequate resources in order to manage the thousands of cases they must review and prosecute every year. As their workload increases, they are spending less time on each case. Furthermore, in terms of organized crime cases, they need to become knowledgeable in forensic accounting, technology, and money laundering in order to grasp the entire scope of the investigation. That leaves them with the difficult decision of prioritizing cases that have a higher likelihood of a successful outcome.

The courts must spend more resources in order to hear these complicated cases. This would include hearing evidence in regard to more advanced police techniques such as wiretaps, surveillance and executing warrants. These are often areas of contention during the trial and often take a considerable amount of the court’s time as judges must analyze and make a ruling on the evidence that is presented to them. Some of these trials are not heard due to delays, resulting in stayed charges. This is frustrating because these cases are very expensive to investigate and if charges are dropped police leaders might be reluctant to engage in similar investigations in the future due to a poor return on investments.

Long trials are also a drain on police resources, as the officers will typically need to prepare for the trial and attend court to provide evidence. This means that these officers
will not be available during that time to contribute to other investigations and to conduct
enforcement actions.

4.4 High Reward Low Risk

Figure 5 provides an overview of the issues that emerged after analysing the interviews with the participants. The data is organized by identifying the issues discussed from the interviews and then categorizing the information into basic themes and the finally the organizing theme. To help quantify the data quotes from the participants were added to assist with understanding the issues that were discussed and how they form into the basic themes.
Figure 5. Organizing theme 3: High reward low risk.
4.4.1 Drugs are profitable. Respondents identified the profitability of the drug trade in the Okanagan and the lucrative profits someone can earn in a short period of time. The issues discussed by the participants included how quickly the money can be earned, how profitable the drug trade is and how it keeps gang members to stay in this enterprise.

4.4.1.1 Quick money. The topic of quick money was an issue that the participants discussed that helped to attract potential recruits to the drug trade. The allure of luxury items was attractive, however, the fact that these items can be obtained quickly by doing a few drug deals helped entice potential gangsters to traffic drugs:

Speaking with offenders I see through the court system, their counsel, and their families why they got into trafficking and especially harder drugs in particular, it’s always a quick and easy profit. (P. 2)

I feel that the case for, partly for the reason that I described earlier, it’s got a number of young people who see it as a prime opportunity to get involved with the use of drugs and the trafficking and distribution of drugs and profiting from that activity. (P. 13)

4.4.1.2 Profitable business. This was an issue discussed at length by the participants. While not all of the participants believed that everyone who went into the drug trade became rich, they did believe that this could be a very profitable venture for some people. The drug trade is run like a business and organized crime members who operate their illicit business properly can potentially make large sums of money. The participants discuss the overall cost structure for drug traffickers and how their operational costs can be low and their profit margins are typically very high. It is a well-known fact in the Okanagan as these gang members typically drive the nicest vehicles and live in the nicest houses:
Wildly profitable, like the kind of wealth that the best houses in Kelowna buy, the best houses that Vancouver buy the best houses in Toronto buy. I don’t think there is a commodity on earth that has the type of profit margin that drugs do. (P. 18)

I believe it is very profitable mainly because, number one the costs for producing or trafficking is very low for people doing those things and it does not require a large investment and the profit margin seems very high for the product specifically for the production of those things the reward seems to be great. (P. 20)

I think it’s very profitable for people who traffic or produce drugs. You just have to look at the material possessions they have, the vehicles the apartments, the boats we see it all the time here and also the amount of cash seized with them. (P. 24)

**4.4.1.3 Profit increases motivation.** The possibility of making a huge amount of profit motivated people to join these groups and it also motivated the people in these groups to focus all of their time and ability to make as much money as they could. The participants also discussed that if the motivation to make profits could be removed or at least reduced, it would significantly affect the influence of these organized crime groups:

If you get to the profits, if you’re able to efficiently reach out, take advantage, and take custody of the profits that these people make, then the motivation is gone…because some people will say that it’s worth the time for the ability to have so much money in the bank. If you can reach out and take that profit away from them then all of a sudden it’s not worth it anymore. (P. 7)

That is the whole reason why do what they do. If you can affect the motivation and remove the motivation and their ability to make a profit, it will in essence act as a deterrent for the activity. (P. 13)

**4.4.1.4 Prohibition.** The purpose of this thesis is not to debate the merits or effects of drug prohibition, however, the participants did discuss that the nature of the illegal drug market creates the opportunity for organized crime groups to run illegal drug enterprises. This creates a black market and demand for the product:

I think that happens because there is a business and like any other business if a vacuum is created, if there’s a source and if there is a market then whoever can fill
that need or fill that market will make a profit. So once a group is taken out of business another group will step in and fill that vacuum. (P. 7) Anything that is illegal will be subject to some form of black market. Whether it’s trafficking cigarettes or anything like that drugs are no different at the end of the day. The fact that they are illegal creates a black market for it pumps up the price of it, also increases the risk of being involved in that trade with the financial reward. (P. 8)

4.4.1.5 Summary. The present criminalization of drugs creates a black market. People who are involved in the drug trade quickly learn that they can made a sizable profit in a short period by fulfilling consumer demand. This creates a strong motivation for them to get into the drug trade industry and to stay there as long as they can. For some people, it is easier and more financially rewarding to participate in the distribution and sale of drugs as opposed to getting legitimate employment in their community.

4.4.2 Cost of doing business. The second basic theme focuses on the risks that are present to the drug traffickers and the potential penalties involved. The respondents in this study were quick to point out that the current legislative sanctions provide little deterrence to gangsters and people who are considering trafficking drugs. They discussed how there is a high reward to trafficking drugs and how the potential to be put in jail is worth the risk and is not a deterrent. This is partially because the gang members are able to keep the money they have earned even if they are sentenced to jail.

4.4.2.1 High reward. This issue referred to the potential lucrative reward for gang members if they are successful in producing or trafficking drugs:

From what I see the variety of people who are in that position, there are traffickers that do it to profit and others that score whatever it is they are looking for. There are those that do it for profit in terms of the risk they undertake there is a high pay off potential for them. I would say for producing if they are willing to take that risk. (P. 23)
If you take a courier, for example, that goes to the Canada and the United States there is a reason why they are making a certain amount of money. They are carrying something that presents a risk to them, so it is profitable. (P. 9)

4.4.2.2 Jail is worth the risk. The participants identified the issue that gang members feel that the threat of being put in jail is worth the risk for them. This is partially because there is a perception on their part that sentencing is considered to be weaker in British Columbia.

When somebody goes to traffic or produce or distribute drugs, they don’t consider what they are looking at what the last person got for a sentence. The courts are all over the place with cultivation sentences and trafficking sentences, there are some minimums, but I think it’s still too low. If you look at the incentives the amount of money that can be made is just too great, people are willing to take the risk. (P. 5)

This respondent believed that not only is jail worth the risk, but because the initial monetary investment to start trafficking drugs is so little, it opens the door to even more people to participate in the drug trade:

Their investment from a monetary perspective is very little and the fact that their sentencing is light most people are really not deterred because sentences in British Columbia are notoriously less than any other place in. (P. 16)

4.4.2.3 Jail no deterrent. The participants explain that jail is not only the cost of doing business but because the sentences are generally so weak, they provide little deterrence to gang members:

They are just a cost of doing business and a small inconvenience of the group and a benefit if you can get it. (P. 5)

I realize there is an infrastructure cost to that but that is truly a consequence, it used to be a joke back in the day they knew they would get two or three months for growing dope, and that as just a cost of doing business. They would have a lawyer on retainer. (P. 24)

4.4.2.4 Keep money earned. The final issue discussed is that if a gang member has made money from the drug trade and is sentenced to jail, they typically keep
the money they earned. Therefore, when they are released there would be a significant amount of cash waiting for them in their bank account. This allows them to maintain their preferred lifestyle intact even after their release. As a result, they can continue with the same illegal actions:

In most cases sentences are quite light and the fact that these people have millions of dollars in the bank and they have so little to lose and so much to gain. Some people believe that the time is worth the crime and they can go to jail for a few years, get off with good behaviour and the money is sitting in the bank waiting for them. (P. 7)

4.4.2.5 Summary. The participants explained that if someone was to participate in the drug trafficking black market they get rewarded with a sizeable share of the profits. These profits can be obtained in a short amount of time which translates into a substantial reward for a minimal amount of work. The prospects of a criminal sanction do not deter these gang members from seeking out these rewards. The sentences handed down by British Columbia courts are seldom a deterrent for these people given the profits involved. As one participant noted, the punishment of a light jail sentence is a small price to pay for the gang member to earn potentially millions of dollars they retain after their release from custody. The participants perceived that the prospect of a jail sentence is a marginal deterrent as the offender gets to keep the money unless the Civil Forfeiture process takes place. As a result, a custodial placement is simply a cost of doing business for people in the drug trade.

4.4.3 Luxury lifestyle. The allure of a lavish lifestyle is an enticing reward that becomes a recruitment incentive for potential gang members into the drug trade. This lifestyle comes with the promise of expensive cars, large houses, exotic trips and a new group of associates. The respondents described what they called an “Okanagan Lifestyle”
which includes possessing expensive items, having a desirable lifestyle, how gang members can live in a vacation spot like Kelowna, and how these gang members are addicted to this type of lifestyle.

4.4.3.1 Okanagan lifestyle. The Okanagan is a tourist destination for people who want to enjoy the lake and what the area has to offer. It is not uncommon to see exotic cars, boats that cost as much as houses, and people spending freely. The participants talk about this lifestyle as well as how the drug trade has provided these gangsters with the ability to maintain that lifestyle:

I think like most places in Canada they do have an issue with the drug trade and places like the Okanagan does because it is a beautiful place to live and there’s lots of money out here. So the drug trade would have lots of business and a supply and demand of customers out here so anywhere you can make money will allow people to be in the drug trade. (P. 15)

It is a big enough population base that the sales are here and the demand for product and the consumer market is here, as compared to any other community of our size. I suspect we maybe a bit more desirable for organized crime groups just because of the same reason why other people like to live and work here is that it’s a desirable place to be (P. 16)

4.4.3.2 Expensive items. The participants explain that gang members like to purchase expensive items that draw attention to themselves. It serves as almost a recruiting mechanism when a male in his early 20’s drives a $100,000 luxury vehicle:

Also, it is where people like to spend, where people like to come to spend money and enjoy the fruits of their criminality so to speak. They live the high life, show off their Hummer and their hot boats and all of their ill-gotten gains from the profits of their crimes. (P. 7)

It is profitable, the demand is there for these traffickers and producers without question its profitable we see it every day we see it in the Okanagan with young traffickers without any education, yet they are driving the most expensive vehicles. (P. 13)
4.4.3.3 Desirable lifestyle. Some of the participants explain that the monetary status and Okanagan lifestyle attracts gang members to the area. To explain it in simple terms respondents asked: why be a gang member in Manitoba where they suffer from severe winters when you can enjoy the California-like weather in Kelowna with a significant amount of cash:

It just seems that the demographics are such that it attracts and draws people to the community. The warm weather attracts the lifestyle and gets drawn into the drug use and drug trafficking activities. (P. 13)

Just the fact that like any other group of people they enjoy what the less severe winters have to offer, but in the criminal organizations where you base yourself out of does not necessarily negatively impact your ability to do your business. Where, if you owned a like a Subway restaurant in Saskatoon, you would want to be there so you could deal with it. (P. 4)

4.4.3.4 Addicted to lifestyle. Gang members who are accustomed to a lavish lifestyle become accustomed to it, and most would not go back to having a legitimate job where they make a fraction of the money they make in the black market. They also would have a difficult time going back to a reduced social lifestyle:

From what I hear time and time again is that it is too lucrative for people to walk away from, so people can’t walk away from it, so it’s got to be pretty profitable (p. 2). If you look at these people with the fancy houses and fancy cars the wads of cash, that’s what’s drawing people to their lifestyle. I think less people would be drawn to that lifestyle if they could lose it all at any moment. (P. 29)

4.4.3.5 Summary. The Okanagan lifestyle is a slang term used to describe the ideal lifestyle of someone living in the area. This would typically include living in a large house on the lake, enjoying water sports with an expensive boat, driving an expensive car and eating at high-end restaurants, with little concern for the cost. This lifestyle is very expensive and only people with significant wealth can experience it. The status associated with the lifestyle is rewarding and very addictive. It provides access to exclusive social
functions with very select guest lists, making it all very attractive to young drug traffickers. Once gang members have experienced this desirable lifestyle it is very difficult to go back to a normal lifestyle based on legitimate employment.

4.4.4 Addiction. While the life of some gangsters may seem desirable, the participants were quick to point out that for every successful gangster there are significantly more who do not participate in an affluent lifestyle. The issues that were identified by the respondents refer to drug addiction and how this reduces a person’s profits, mental illness, and how some drug traffickers are indebted to gangs because they have used their own product.

4.4.4.1 Drug addiction. Participants discussed the topic of addiction at length. They described how the people who traffic illicit drugs are typically addicted themselves and rely on the proceeds of their sales to feed their personal addictions:

The fact that I can look out the back window and see drug deals on a nightly basis tells me that this is a problem. Not just in the downtown core but Leon Avenue with people wandering around and getting involved in drugs. (P. 1)

The people that I deal with are trafficking to support their own habits. Not trafficking in huge volumes, they’re selling a rock of crack here or there to sustain their own habits so the idea is to rehabilitate them and I think that is the right approach. (P. 23)

4.4.4.2 Reduce profits. The reality of addiction means that, from an economic standpoint, these drug addicted gang members typically spend most of their disposable income supporting their habit:

I believe it’s profitable for some but for the majority no. Why I say that is that a significant number of the producers and traffickers are addicted individuals themselves so that their management of their finances and their product themselves is poor and therefore they are always indebted or there always at a breakeven point. (P. 4)
I would think probably not profitable for the majority of the people in the business because it’s the low level and the mid-level guys who are out grinding it out on the street you know they are the ones getting arrested. (P. 11)

**4.4.4.3 Mental illness.** Not only do addicts have to deal with their respective drug problems but the participants also say that many also have to deal with mental illness as well. This behaviour is typically very public and open:

There are not enough resources to hear it in court but there is a lack of resources in following through. I am speaking of my clients generally who have addictions, and often addictions combined with mental illness of various sorts. (P. 23)

You can talk to any teenager and you know they’re smoking pot, just about all of them are and at parties you hear of ecstasy and cocaine. You walk downtown you see people commonly people referred to as crack heads walking down the streets. (P. 29)

**4.4.4.4 Indebted to gangs.** Because of these low to mid-level drug dealers being addicts themselves, sometimes with a mental illness, they can become indebted to their superiors who have given them the product to sell. The participants talked about how this can lead to situations from which the low to mid-level drug dealers can rarely escape:

So even if they aren’t addicted to the product necessarily that they are trafficking they are still using the money from that to pay for their own habits. A lot of them use up their product that they sell for their own use and that is when they start running into debt problems. (P. 4)

So the mid to high level drug traffickers who have lower drug traffickers deal the drugs on the street for them. They will make the money from the people who are on the street delivering to the users likely they would have a substance abuse problem and use the drugs rather than receive any money. (P. 3)

**4.4.4.5 Summary.** While there are monetary rewards with gang life, there is a significant negative side to the lifestyle. Drug traffickers can find themselves addicted to their own product and they can spend a significant portion of their income purchasing drugs for their own use. Mental illness, combined with addiction, can cause even more
problems for traffickers. The participants explained that if someone has a mental illness and an addiction it further affects their ability to successfully live and integrate into a community. After a certain amount of time, drug traffickers will end up getting into debt with their gangs or suppliers. This makes it more difficult for them to leave the lifestyle because they are indebted to the gang. The participants explain that addiction, combined with other factors, can contribute to gang members being unable to leave the group.

4.4.5 Centralized location. Like any business that produces their own product and has infrastructure to distribute it, the location of an illegal operation is important to reduce costs and to increase the distribution area. The issues described by the respondents addressed how the Okanagan is a hub for drug distribution throughout western Canada, Kelowna is a centralized distribution city, and the area has a high organized crime gang population.

4.4.5.1 Hub for western Canada. The Okanagan is a midway point between Calgary and Vancouver that makes it a convenient location for gang members to store their product and transport it throughout the region. It is also reasonably close to Vancouver which is the main trading port with China:

Kelowna came to be a center for organized crime as it relates to the drug trade because of its location, equal distance between Vancouver and Calgary. Also, it’s where people like to spend their time, where people like to come to spend money and enjoy the fruits of their criminality. (p. 7)

These participants recognize that drug importation from other countries, and the distribution of that product, is a major problem for law enforcement and needs to be acknowledged.

I think it’s partially the proximity to Vancouver, which has its own set of issues and being a port of entry for China, as well as the proximity to the economic boom in Alberta. (P. 9)
One thing about the Okanagan area, working larger more significant files it tends to be a trans-shipment point area. What I mean by that is that the drugs that are brought into the country are often go through this area, go through Vancouver, up north or back east. (P. 22)

4.4.5.2 Strategic location. The Okanagan is a strategic staging point for organized crime groups. These groups can operate in Kelowna while still being in close proximity to major urban centers such as Vancouver, Calgary, Edmonton and the Canada/United States border. The effective distribution network of drugs for these gangs is important to maintain high profits:

The proximity and the location of the Okanagan Valley to Alberta, Vancouver and the United States make Kelowna area a really good place to set up shop for criminals. (P. 19)

I think the Okanagan has some organized crime mainly centered in Kelowna, and Kamloops, the bigger centers up there however they are somewhat removed from the bigger centers like Vancouver or Calgary. I think the Okanagan gives a strategic geographical area for organized crime for smuggling purposes. (P. 27)

4.4.5.3 Gang population. Some of the participants discussed how Kelowna, while not as large as cities like Calgary or Vancouver, has a sizeable gang problem because it is a centralized hub for the distribution and production of drugs:

If you compare Kelowna in size to cities about the same size, or even larger, I would say that in my experience it has a much larger organized crime problem. (P. 9)

This participant points out that the Okanagan is a holiday destination and for organized crime members it is an ideal place to show off the fruits of their labour:

expensive vehicles, boats and clothing:

It’s a fun spot and it sort of reminds me of that place where bikers show up one weekend in California, that’s what Kelowna reminds me of. The big players will go out and party and have fun. It’s a great spot, its right in the middle of Calgary and Vancouver. It’s a common meeting location that affords them the ability to show off their toys and play in the lake. (P. 18)
4.4.5.4 **Summary.** The strategic location of the Okanagan is an important reason why there is a large gang population in the area. Kelowna offers a centralized point for drug traffickers to collect and distribute their product to different locations throughout Western Canada and the United States. Like any business, an organization will need a centralized point so their distribution networks can easily reach other populated centers. These centralized areas, such as Kelowna, require gang members to run the network and transport the product to different areas. This makes the area an ideal hub in Western Canada as it is approximately half way between Vancouver and Calgary, two major centers in Western Canada. Furthermore, Kelowna has an international airport with daily access to a number of major United States cities. As a result of the Okanagan being a strategic location for organized crime, the area has a significant gang population to operate the distribution network.

4.4.6 **Summary.** The organizing theme of “high reward low risk” focuses on the enormous profits a gang member has the potential to earn, and the low risk of incarceration associated with their involvement. The respondents explained that people who join organized crime groups have the ability to make a significant amount of money in short period of time that gives them the ability to live a lavish lifestyle. This is very enticing, particularly for young people, as these gang members often flaunt their wealth in the community. This includes driving luxury sports cars, living in nice homes and wearing expensive clothing. Organized crime members can make this money quickly and that motivates them to continue to engage in the black market drug trade.

The financial motivation for these individuals to engage in organized crime is enhanced by the fact that even if they were charged and convicted most are able to keep
the money they have earned. Consequently, a fine or small jail sentence is worth the risk for them to continue with their illegal activities. If convicted of a drug offence, the custodial sentence would be a small price to pay to be able to keep the profits they have earned as a gang member.

The participants also discussed the reality of addiction for many gang members as well as how gang members who sell drugs sometimes become addicted to their own product. While there are issues associated with drug addiction for any individual, drug traffickers may become indebted to the group and must continue to work in the drug trade to support their habit. This subsequently reduces their profits while at the same time increases the likelihood of becoming indebted to the gang, which further restricts their options for legitimate employment or lifestyle.

4.5 Asset Recovery

Figure 6 provides an overview of the issues that were identified after the interviews with the participants. The data is organized by identifying the issues discussed from the interviews and then categorizing the information into basic themes and the finally the organizing theme. To help place these issues in perspective quotes from the participants were added to increase our understanding of their issues.
Figure 6. Organizing theme 4: Asset recovery.
4.5.1 Recovered money to police. The first basic theme that was discussed refers to what the Civil Forfeiture Office (2018), and the provincial government, should do with the assets and money recovered from gang members. Re-investing the proceeds back into policing, having special supplementary budgets, relieving taxpayers’ burden, and public support for the initiatives were all identified by the respondents.

4.5.1.1 Re-invest in police. Policing is an expensive venture and their costs to operate put a considerable amount of pressure on city budgets and taxpayers in general. Some of the participants described how re-investing the money into their local police detachment to help develop either enforcement units or prevention initiatives to deal with gangs were desirable strategies:

Ideally, I think it should be reinvested into policing or crime prevention or other tools. We are understaffed and underfunded particularly on the provincial side, those monies can go right back to the provincial budget which is sorely underfunded in my opinion. (P. 24)

The money that is collected is returned back to the community association, the police that have to deal with managing these problems from drugs, prostitution, youth violence, gang violence, gang recruiting. (P. 18)

4.5.1.2 Relieve taxpayers. Policing is an expensive venture and the participants recognized that reality. Some of the participants believed that the money recovered from drug assets could be used in police budgets to provide some relief to the taxpayers:

At the end of the day very little money makes its way back to the province and none of it makes it back to the city…none of the money that was ever forfeited which was millions and millions of dollars ever made its way back to Surrey detachment. (P. 20)

Let’s say Kelowna detachment investigates somebody and they have houses, boats, cars and sell them off and then that money it goes back into Kelowna to create a bigger unit to create more investigation ability with equipment and personnel. But
then parts of that money can be used again by the government to do other aspects to support the court system and social services. (P. 10)

4.5.1.3 Public support. Some respondents suggested that having the police seize assets from a gang member would be supported by the public and reflect well on the criminal justice system:

I think it should be seized so it can go back into… I think if the citizens knew that a drug house was taken down and ultimately forfeited and the proceeds of that house went back into the policing costs and we would find more support from the public. (P. 21)

The public can actually see the net results of a house being forfeited… They should be able to account for it and they, kind of like the American system where you can actually pay for officer’s salaries through forfeited assets. I don’t understand why we cannot seize a vehicle like a van and be able to use it in policing. (P. 19)

4.5.1.4 Summary. The participants pointed out the profitability of how profitable the drug trade is for gang members and how quickly they can accumulate money. Policing is not a business, and it is not the main intent for law enforcement to make money for the government. The main reason to have law enforcement is to enforce the law and keep communities safe. At times this results in fines such as traffic tickets being issued, the revenue from which goes to the government. However, these funds do not cover the costs of policing. Some participants believe that the money recovered from illegal drug operations should go back into policing. These funds could supplement the police budgets because policing is an expensive service provided to the community. This re-investment of proceeds of the disposition of assets seized from organized crime can relieve some of the financial burden from the taxpayers who pay for the policing costs in their community. Respondents suggested that a majority of the public would support seizing assets from organized crime and using this revenue to augment policing budgets as a positive government policy. This must be considered in the context that this
legislation can be misused if policing priorities change based on the prospect of financial incentive.

4.5.2 Drug money to communities. The second basic theme that was discussed refers to how the proceeds seized should be returned to the specific community that was harmed by the drug trade. The issues discussed in this theme include rehabilitation, re-investing in the community, and proceeds of crime collection.

4.5.2.1 Rehabilitation of community members. One of the ways that the money seized from organized crime members can be returned to the community is by investing in the rehabilitation of the community members that were harmed by the drugs through initiatives such as treatment programs, education and health care:

Community programs, anti-drug awareness campaigns, if there is money going to victims of organized crime or drugs, rehabilitation or what, there are definitely uses within the communities that have been impacted (p. 12). I think that it’s only fair that these assets have been obtained through scourging the community. One way or another…those funds should somehow come back to the community. However, also recognizing the effect on the community. (P. 2)

4.5.2.2 Re-invest in community. Some of the participants talked about the harm caused to the community by the drug trade. If the government seizes assets, the money seized should go back into the community:

The government should have the ability to take those assets and either re-distribute them or sell them to help pay for the things in society itself. They may put the money towards health care, education, or things like that, to regain part of the cost. (P. 4)

I think it should go to the victim of crime, I think it should go to the police to fund more and better comprehensive investigations…there is so much ability to help people who are victims of the drug trade on the other end. People who are suffering from addictions, suffering from the spin off from organized crime and they can, you can fund treatment centers, places for teenagers who are homeless because of drug addiction, the ability to help them get jobs. (P. 7)
4.5.2.3 Proceed collection. The collection of the money from gangs is not only a form of enforcement, it is also a way to enhance the community:

I think it’s a great Act. I think that it’s going to be very well received and it gives the authorities another avenue to remove or give them tools to take profits away from individuals who have been involved with criminal activity. It also allows them to recoup to a degree some of the costs and put that into community programs. (P. 14)

This participant liked the idea of seizing assets and they believed that checks and balances need to be put into place in order to maintain its integrity:

I think there has to be some checks in place in making sure the money is seized through the proper proceeding and there is some onus to prove that the money was obtained through crime. (P. 21)

4.5.2.4 Summary. The participants described how the collection and distribution of gang money can be used to heal the damage gang activity has caused the community. As mentioned in the literature review the funds seized through the Civil Forfeiture Act are used to fund the Civil Forfeiture office, promote community programs and fund police initiatives. Similar to the previous basic theme, money seized under the Civil Forfeiture Act (2005) from organized crime can be distributed to community programs that can assist in the rehabilitation of drug addicts. These funds can also be used to invest in other programs in the community that will help it heal from the effects of the drug trade. They can also be used for other social programs to address issues such as homelessness, domestic violence shelters or others needed by the community. The proceeds collected are resources that may not have been available within normal provincial or civic budgets. As a result, civil forfeiture can provide an extra infusion of cash to help promote healthy and sustainable communities.
4.5.3 Taxes. The third basic theme is taxes, and how members of organized crime groups are affected by unreported income. The issues discussed by the participants are how members of gangs earn tax-free income, and that the profits are unjust income enrichments.

4.5.3.1 Tax free. People who are earning an income with legitimate employment pay income taxes on the money they earn. The taxes are used to support government spending such as healthcare services, social services, and education. By contrast, gang members who earn their living through the black market do not pay those taxes on drug sales because it is not a legal source of income:

I believe that a lot of people in the province have to work and make their money legitimately and pay taxes. I don’t believe that people can go out and make their money illegally and not pay taxes and be able to live a comfortable lifestyle and enjoy the rewards of their criminal activity. (P. 3)

Let’s say somebody who is a producer of marijuana can theoretically make a million dollars a year. They don’t pay any taxes, every other hard working individual pays taxes so why should they not be able to seize their assets. (P. 10)

4.5.3.2 Unjust enrichment. The money earned by these drug traffickers is illegal because the product they move is illegal. As a result, they do not pay income taxes and get to keep more of their profit that is unfair to the person who has legitimate employment and pays their taxes:

There is a long-standing principle in civil law that no one has the right to unjust enrichment at the expense of others. So you cannot go and make millions of dollars drug trafficking and saying that you are not hurting anyone and then claim that money is yours to keep. There is no law that supports unjust enrichment and civil forfeiture is the mechanism to unwind that unjust enrichment and return it back to the victims in the communities. (P. 19)

Its tax free, at the pot level if you want to tax it like alcohol then great but that is absolutely the only reason why there are huge profits with little risk. (P. 25)
4.5.3.3 Gang Tax. The participants discussed that the Civil Forfeiture Act (2005) is kind of a tax considering the money gang members make are from the black market and would presumably not be reported as income on tax filings. The participants believe that this causes some financial concern for organized crime groups and are doing what they can in court to have the act repealed as a result.

We know that the Hells Angels have hired the number one lawyer in British Columbia to tear down the Civil Forfeiture Act so I guess if you want to know whether or not you’re having an impact consider what your enemy is trying to do to get you stopped. If we were having no impact on it, you would not be spending the money to get rid of the Act. (P. 18)

Call it what you want but it’s kind of a tax and it’s a valuable tool that is motivation for these guys to do it. They do not want a legit job like you and I; they want to make big money quick and buy all the toys that come with it. (P. 25)

4.5.3.4 Summary. The participants discussed that the accumulation of wealth by distributing illegal goods and services is not only initially profitable, but made even more so because these gang members do not have to pay taxes on the revenue they earn. Keeping these profits from an illegal source is an unjust enrichment that is exacerbated by not reporting this income. The Civil Forfeiture Act (2005) is a piece of legislation that can be viewed as a tax against organized crime members.

4.5.4 Prevention. The participants discussed the basic theme of prevention at length and they were passionate about the subject. Enforcement and prosecution are important aspects of the criminal justice system. However, the respondents explained that prevention might be the most important element in the success of the system. The issues discussed include deterrence, the Civil Forfeiture Act (2005), and its role in deterrence, and lack of rehabilitation for convicted gang members.
4.5.4.1 Deterrence. The participants explain that the main goal for an organized crime member is to make a large sum of money. If the courts have the ability to take illegitimate money away from these offenders, then that is a big deterrent for these individuals:

I believe in part it is an effective deterrent against trafficking or producing a controlled substance. At the end of the day if you are growing marijuana and selling drugs, in the back of their mind the criminals know that the police can seize it under the Civil Forfeiture Act. (P. 15)

I think taking away the incentive to doing the crime, knowing that you are going to lose what you get when you get caught is a great incentive to target and I just believe that criminals should not benefit from harming society. I think it is successful and I have seen some of the figures on what are being seized, I seen where we haven’t seen repeat offenders or committing crime since so I think it works. (P. 16)

4.5.4.2 Civil Forfeiture Act deterrence. The participants talked specifically about how the Civil Forfeiture Act (2005) can be used as a tool to deter potential gang members from entering the trade:

I believe that it is one of the strongest deterrents for people who are involved in organized crime. If they know that if they are caught that all of their work that they put into earning this money unlawfully results in them losing their profit, I think that is a very strong deterrent; much stronger than going to jail…Let’s say they made 200,000 dollars from illegal activity, drugs, or whatever and they buy a 200,000 house and the house gets seized. Compared to if they had a normal job making 100,000 dollars a year they would have not only have kept the house but [also] had a job instead of going to jail and having the things seized. It’s a very good deterrent. (P. 22)

4.5.4.3 No rehabilitation. The respondents pointed out that the sanctions imposed by the courts are primarily oriented toward deterring others from committing future offences, and they do not address the individual’s rehabilitation. Court sanctions are just a cost of doing business for gang members and an acceptable part of the lifestyle:

I think the Canadian courts, especially, the British Columbia courts, are geared more towards leniency and rehabilitation versus deterrence. Although rehabilitation
works on some people, once you get to the organized crime level or the career criminal level, there is no rehabilitation and they just look at going to court and the fines or sentences imposed by the court as a cost of doing business. (P. 19)

No deterrent from the courts, the only thing they would see if that they would get a red zone for a period of time when it was busy but then there was somebody else who would take up the challenge. (P. 10)

4.5.4.4 **Summary.** The ability for a community to prevent crime from occurring is an important aspect of a successful criminal justice system. Preventing crime saves the community large amounts of resources because the police will not have to investigate the matter and the courts will not have the matter on their dockets. The participants explained that while prevention is important, it is difficult to obtain. The *Civil Forfeiture Act* (2005) provides a measure of deterrence because it gives the provincial government the ability to seize any profits illegally obtained by organized crime. The participants explained that custodial sentences are not seen as a deterrent. The participants recognize deterrence as important in order to prevent people from joining organized crime groups. The *Civil Forfeiture Act* (2005) provides that deterrence due to the threat of losing everything gained form the commission of the crime.
4.5.5 Summary. The organizing theme of asset recovery emerged from the analysis and illustrates how the forfeiture of property under the Civil Forfeiture Act (2005) can be used to recover lost assets accumulated from the illegal drug trade. The participants explained that gang members who produce or traffic drugs work in the black market and therefore do not pay taxes on the income they earn, thus leading to unjust financial enrichment. The Civil Forfeiture Act (2005) has the ability to address that injustice.

The participants explained that investigating organized crime groups is an expensive endeavour. Most of them believed that a majority of the public would support having assets attained through illegal drug sales seized and given back to police agencies. They also explained that drugs cause a significant amount of harm to communities, whether it is addiction, violence, added costs to healthcare, or other forms of social harm. Money seized under the Civil Forfeiture Act (2005) could also be used to assist with recovery programs such as offender rehabilitation, healthcare costs, education, victim services, or any other avenues deemed appropriate.

The recovery of assets from organized crime groups will ultimately hurt their operations as they are losing some of their profits. The participants explained that if offenders are aware, they can lose assets and profits earned from illegal activities, it might help to deter them from joining their groups or other criminal organizations. Furthermore, the money seized from the gangs could be used to repair the harm they did to the community and give police additional resources to continue their efforts to investigate organized crime. This would place a heavy tax on anyone who attempts to profit from the drug trade.
4.6 Policing Strategy

Figure 7 provides an overview of the data organized by identifying the issues that emerged from analyzing the interviews and then categorizing the information into basic themes and the finally the organizing theme. Quotes from the participants were added to assist with our understanding of the issues that were discussed and how they form into the basic themes.
Figure 7. Organizing theme 5: Policing strategy.
4.6.1 Targeted policing. The issues discussed in this basic theme are that police target gangs, use a combined approach to investigate these groups, get creative and use alternative approaches to these investigations, and that their main goal is to disrupt the operations of these groups. By using a combination of tactics, resources and specialized units can disrupt the operations of these groups.

4.6.1.1 Gangs targeted. The RCMP in the Okanagan realize that they have an issue with gangs and they utilize specialized units to monitor and investigate these groups. The participants stated that uniformed officers are not able to investigate these groups and, as a result, cannot make a meaningful impact on their operations:

I like the fact that we have set up task teams to deal with it directly. I haven’t dealt with the officers much in those teams so I am not familiar with how successful they have been and how far along they have come. At least putting a focus on, or trying to do something and target those groups in recent years is definitely a step in the right direction. (P. 2)

Some of the participants are quick to point out that targeted policing is not always effective:

I think traditional police investigative methods don’t really work…but to get to the mid to higher level the police need to be at least two steps ahead on the bad guy. It’s very labour intensive and almost always involves a wiretap or one party consent or some undercover project. Even then, it is hugely time consuming, expensive and the cases take years and years to prosecute. (P. 8)

4.6.1.2 Combined approach. Most participants believed that the most effective investigative method is to combine traditional policing with the provisions under the Civil Forfeiture Act (2005). This allows specialized units to investigate gang members for criminal offences while the Civil Forfeiture Office (2018) conducts a parallel investigation into the legitimacy of the assets these groups possess. If both methods are successful gang members would receive a custodial sentence and have their assets forfeited:
I think it should be used in conjunction with *Criminal Code* charges so you go after them with the [*Controlled Drugs and Substance Act*] and once that is done go after them civilly. What I would like to see is if a person is convicted of an offence the state has to go right into a forfeiture whether it’s Supreme Court or provincial court. Currently right now it’s the provincial court where the application has to be made there. (P. 7)

It’s another tool in the toolbox because of the way civil forfeiture relies on case referrals from the police. It’s not a standalone program that by itself has an impact; it has to work in concert with ongoing criminal investigations. The police do the work, they try to do criminal forfeiture, and in cases where it does not work they refer it to civil forfeiture, it works in concert with ongoing police investigations. (P. 19)

**4.6.1.3 Alternative approaches.** The participants described how police need to be creative when it comes to dealing with organized crime in the community. If police are unable to gather enough evidence to warrant a charge, then there may be other avenues to explore in order to disrupt gang operations. An alternative is seizing assets through the *Civil Forfeiture Act* (2005):

I think it’s a way of targeting individuals involved in organized crime outside of traditional enforcement methods. It’s almost like the Al Capone theory, because I think what at the end did they get him for, income tax evasion or something like that? It’s another way of targeting these people and going after what is really important to them - their assets. (P. 1)

I observed the police have much greater success when they think outside of the box and using some of the tools that are available under the *Criminal Code* to take different investigative steps. But, of course, that requires buckets of money and lots of police resources, it’s the sort of slow steady slog to get there and it often takes months or years to get to the target and to build the case so that the prosecution will be successful. (P. 8)

**4.6.1.4 Goal is disruption.** Police have had limited success in addressing organized crime groups in the Okanagan. Although the ideal would be to eliminate organized crime group, as some participants pointed out, disrupting their business is sometimes the goal for these investigators:
Well I know in my experience that traditional policing isn’t necessarily always the
goal, sometimes we are looking at disruption, or just to disrupt or re-focus their
efforts somewhere else. (P. 28)

It is a tool we can use to help put a dent in organized crime. It’s successful at taking
assets and money from these groups which is what they need to continue. (P. 3)

4.6.1.5 Summary. Targeted policing is a strategy police use in their efforts to combat organized crime groups. Gangs are targeted because police see them as a high
risk to the community. The participants pointed out that, in order to successfully target gangs, the police must use a combined approach to investigating them, not just criminal investigations as those have shown to be ineffective. This combined approach would include normal criminal investigations as well as the creation of an investigation using the Civil Forfeiture Act (2005). The latter is considered to be an alternative approach to disrupting gangs that has not been traditionally used. As some of the participants have discussed, police can be successful if they “think outside of the box.” One of the most famous strategies that police created to think outside the box is the creation of the “Mr. Big” undercover operation. This method was devised by police in an effort to solve homicides that could not be solved through conventional means. It basically involves the police conducting an undercover operation on a suspect where the police make the suspect believe the undercover police officer is a gang boss and, in the process, get this person to confess. Unfortunately, there is no guarantee that these methods will ultimately be successful and the courts have limited the scope of police activities that can be lawfully used during these operations.

4.6.2 Target assets. Targeting the assets of gangs is a theme that was widely discussed by the participants. They discussed that the approach must be innovative, that it
is simply another tool for the police, that they can attack the gang’s assets, and despite these advantages the Civil Forfeiture Act (2005) is rarely used.

4.6.2.1 Innovative. The participants discussed that the way to confront and disrupt organized crime groups is legislative tools such as the Civil Forfeiture Act (2005):

I think that theoretically, it is a positive piece of legislation and it can be effective in doing what the justice system is geared to do. (P. 27)

I have heard lots about it at British Columbia provincial chiefs. I have had several presentations on it, if it is made user friendly and simple for our users to employ then they understand how it works to make it easier to seize assets. (P. 24)

4.6.2.2 Another tool. The police have a variety of methods they can use to investigate gang members. Some of the participants did not believe that the Civil Forfeiture Act (2005) is a “silver bullet” for organized crime. Instead, they believe that it is another option for the police and the courts:

Still use it, enhance it make it better, easier, enhance its scope, we have our traditional policing methods and this is added to them. I think it’s another tool in our tool kit and I think we need to do better with it, we can do better with it. (P. 25)

It’s another tool in the toolbox because of the way civil forfeiture realizes on case referrals from the police it’s not a standalone program that by itself has an impact, it has to work in concert with ongoing criminal investigations…it works in concert with ongoing police investigations. (P. 18)

4.6.2.3 Attack profit. Going after the illegal profits that flows to organized crime is an effective way of disrupting the operations and profitability of those operations. The participants recognized this and believe it is more effective then criminal sanctions.

I mean if we are able to seize assets of drug dealers I think it will have a deterrent effect. Will it stop them completely from doing it? I don’t know, I doubt it but I think it will have an impact even if it sets them back and it doesn’t allow them to operate at the same level they did before, it will have a positive impact of some sort. (P. 16)
Certainly sending somebody to jail for a few years or a few months does have some impact but if they get out and still have the assets and the toys and everything that goes along with that when they went into jail. Probably has less of an impact as opposed to them coming out and not having access to that stuff anymore. (P. 1)

4.6.2.4 Civil forfeiture act not used. While the potential benefits of the Civil Forfeiture Act (2005) are known to the participants, some stated that the legislation is not being used as often as it could be. The participants are concerned that if law enforcement is not using it much it could take the effectiveness out of the statute:

I don’t know if it is because I don’t come across it very much. I hear about it occasionally from a theoretical point of view, I’ve seen articles in the paper about it, but I have never come across anyone who said hey they are trying to seize my house my motor bike or whatever under this Act. (P. 23)

I think it is an effective tool to be able to regain some of the proceeds that the drug trade has taken. But I think still just my experience is that they still don’t go after enough assets that are available. (P. 4)

4.6.2.5 Summary. The Civil Forfeiture Act (2005) is seen as an innovative way to combat gangs by targeting their assets. The participants went on to explain that while the legislation is innovative it is not a “silver bullet” and it is just another tool for the police and courts to use. This approach focuses on targeting assets and there are no provisions in the legislation to incarcerate anyone. The participants discussed that the effectiveness of the legislation is mitigated because it is not used as often as often as it could be. If it were used more often, it would disrupt a greater number of organized crime groups. The legislation provides a tool to attack the profits of organized crime groups and its use may deter some potential offenders.

4.6.3 Education. The concept of education can be discussed in a variety of different ways. Police, community and youth education were three areas that the participants brought up in their interviews. The issues discussed in this theme are a lack
of education about the Civil Forfeiture Act (2005), educating the youth to prevent them from becoming involved in a gang, and a lack of police experience using the Civil Forfeiture Act (2005).

4.6.3.1 Civil Forfeiture Act education. Some of the participants discussed how the effectiveness of the Civil Forfeiture Act (2005) is diminished because most of the police officers in the Okanagan do not know anything about it or how to incorporate forfeiture into their investigations.

Underutilized in the Okanagan right now I think most people do not have an understanding of it to use it properly. Probably something that locally our detachments need to do for training and informing our members of the process and how to go about it because it’s definitely something we should be doing. (P. 12)

Some of the participants believe that the public, and the gangs, do not know anything about it and as a result, it impedes its ability to deter crime:

I think it’s a deterrent, whether it’s effective I don’t know the statistics to how things have changed. When it was enacted certainly, if there was more public relations about it on TV or it was highly publicized. I think it would be more of a deterrent, I don’t know if the average organized criminal knows if it exists. (p. 5)

4.6.3.2 Youth. The ability for the community to deter people from committing crimes is essential when it comes to successfully combating organized crime. If fewer people get into gang life, the police will have to investigate fewer crimes. The participants perceived that educating youth about the gang lifestyle and how the Civil Forfeiture Act (2005) can take away prospective profits could have the desired effect.

Starting with a person’s education whether they are still with their parents and if they instill certain values in a person right up to in some cases a lack of economic opportunity that leads to crime. It’s a short cut to success ultimately, financial success, or at least perceived that way by those people entering that lifestyle. (P. 9)

I know some places in the lower mainland is doing this. Is educating people and kids that are at a young age about organized crime and what it looks like and what the realities are, I think education is effective, is good. (P. 21)
4.6.3.3 Experience. Another issue discussed was the lack of experience police officers have when it comes to civil forfeiture legislation. This lack of experience in using the legislation combined with a lack of knowledge about the scope and procedures of the legislation make investigations under the *Civil Forfeiture Act* (2005) almost non-existent for most officers:

I haven’t had much experience with it because I did not know too much about it. I’ve had my first one where we have been trying to apply to forfeit a house on a grow op on the criminal side of it so I am not as familiar as I should be on the civil side. (P. 14)

I haven’t seen it broadly used I think it could be used broader. I was speaking with a colleague about it and we are surprised that it is not used more as the standard. (P. 2)

4.6.3.4 Summary. Education includes the police who are investigating these gang members. There is a general consensus that police officers in the Okanagan do not have the proper training in the legislation to effectively use the provisions under the *Civil Forfeiture Act* (2005).

4.6.4 Traditional policing. The accepted standard of policing is typically a reactive style of enforcement that is resource-heavy and relies on large budgets to prosecute high-level gang members. Two issues raised by the participants are that traditional policing is ineffective and it is akin to “shoveling water”, where if you arrest one gang member another one will take their place. Some other issues were that some participants believed that traditional policing is effective; however, it is resource heavy.
4.6.4.1 Ineffective. It is important to note that some perceptions did differ from the sample participants. Some of the participants discussed how traditional policing is ineffective in dealing with organized crime.

I have to say in the traditional policing method eradicating organized crime in the Okanagan, I don’t believe it’s possible. History has shown that it not having the affect that people believe it should have. (P. 11)

Eradicate, probably not; reduce the level I think it’s definitely yes. I mean I think those traditional police methods, busting people involved in organized crime, and not deterring people there is no shortage of people who want to be involved. (P. 15)

4.6.4.2 Shoveling water. The participants used the phrase “shoveling water” to describe the level of ineffectiveness which traditional policing has against organized crime. This phrase is used to describe that when gang members are arrested someone else will immediately take their place, similar to if someone would start to shovel water in a lake. The process is seen as pointless:

It’s like a whack-a-mole game; you take a couple of street level dealers off the street and they are easily replaced. It cycles continually; it seems to be a never-ending process; traditional methods are useless. (P. 23)

I believe if we are successful in removing any particular organized crime group the gap is quickly filled by another group that is organized. If in fact we can wave a magic wand to remove organized crime the community would be much safer, no doubt. (P. 16)

4.6.4.3 Policing is effective. Not everyone who was interviewed believes that traditional policing is ineffective. Some respondents believed that not only does traditional policing play an important role but also the proper way to manage organized crime.

I think we have sent more to the courts in the past year…There has been a significant amount of damage done to their organization a number of their members being sent away to jail. That is because of the overwhelming evidence being presented in these files. (P. 12)
I would love to tell you if someone has come up with a magic bullet, but nothing beats good solid police work, informants, agents, wiretaps, surveillance, being able to connect the pieces, and understanding who to target and who not to target. That is what took down the clubhouse and a lot of the players in Kelowna and the Hells Angels. (P. 18)

**4.6.4.4 Resource heavy.** While some of the participants may disagree about the effectiveness of traditional policing, one issue they can agree on is that large-scale investigations into organized crime groups are very expensive:

I don’t think we have enough officers dedicated to it. The government does not give sufficient funds to investigate it cause their long-term investigations that are labour intensive and require large amounts of funds. (P. 29)

I don’t think that it’s ever possible to completely get rid of any one thing to be honest…using traditional methods even more unlikely, because the amount of work required to investigate organized crime is significant in order to get any sort of meaningful result. (P. 20)

**4.6.4.5 Summary.** Traditional policing is based on a reactive approach to investigate organized crime. This strategy was largely seen by the participants as an ineffective method of investigating and prosecuting organized crime groups. The ineffectiveness of traditional policing is likened to shoveling water. While traditional policing does have its place, and can be effective on a limited scale, the participants believed this single approach is not fully effective in removing gangs from the community. This is because the investigation process is typically complex and requires a vast amount of resources and personnel. In general, the participants view traditional policing as being mostly ineffective, resource heavy and does not have much effect on eradicating organized crime groups.

While the police attempt to do complete investigations, they are restricted by operating with finite resources. Police in the Okanagan are often bombarded with one large investigation after another and they seldom have enough personnel to work on
them. Bringing offenders to the court’s attention requires more resources than investigators can typically access. One strategy for investigators to manage this workload is to present less material to the courts than what is actually available. For example, if an individual robs a bank it is likely they may have committed other robberies. It would be a waste of limited resources to dedicate a six-month long investigation involving undercover operators in order to find evidence of other robberies. This is because there is a finite number of undercover investigators and new cases are continually added. As a result, the court must sentence the person based on the evidence that is presented. While more evidence could be obtained, the investigator must ration their time and prioritize cases in order to have the greatest impact on crime reduction.

4.6.5 Summary. The organizing theme of policing strategy emerged from descriptions of different methods police used to manage the gang problem in the Okanagan. The participants explained that police will use a strategy of targeted policing with organized crime groups. This strategy could involve a specialized unit targeting gangs and combining their efforts with other units or uniformed patrol. These units also make attempts to partner with outside agencies to make their efforts more successful. However, these officers typically use traditional policing methods in order to disrupt these groups. The traditional methods typically involve resource-heavy criminal investigations that may involve warrants, wiretaps, or other costly methods of investigation. The consensus of the respondents was that traditional policing was only marginally effective in responding to organized crime groups.

Another tool to target organized crime groups which was explored by these investigators is the Civil Forfeiture Act (2005). The Civil Forfeiture Act (2005) is seen as
being an innovative tool that could be used as part of the overall policing strategy in conjunction with traditional policing methods that targets gangs. The Civil Forfeiture Act (2005) is seen as a way to seize the profits of these groups and divert them to the government. While this legislation is innovative and could be part of an effective policing strategy, it was seldom used by the police.

The participants explain that the Civil Forfeiture Act (2005) is infrequently used because the officers lack the knowledge about the provisions of the legislation and how the legislation can be used to disrupt gangs. Without the proper training, this avenue is overlooked as part of their policing strategy. As a result, they do not possess the experience to be able to effectively use it in conjunction with traditional and targeted policing. The respondents also state that the Civil Forfeiture Act (2005) is not being used to deter youth as there is lack of awareness that profits earned from the sale of drugs can be forfeited to the provincial government. If this was communicated to youth it may deter them from joining gangs.

4.7 Civil Forfeiture Act

Figure 8 provides an overview of the data by identifying the issues that emerged from the analysis of the interviews and then categorizing that information into basic themes and the finally the organizing theme, Civil Forfeiture Act (2005). To help place these issues in context quotes from the participants were used to enhance our understanding of the issues that were discussed and how they form into the basic themes.
Figure 8. Organizing theme 6: Civil forfeiture act.
**4.7.1 Lower burden of proof.** Respondents reported that the *Civil Forfeiture Act* (2005) has a significantly lower burden of proof compared to its criminal court counterpart. This creates a shortcut for law enforcement to disrupt a criminal enterprise due to the legislation’s relatively simple procedures and civil law standard of proof.

**4.7.1.1 Balance of probabilities.** The criminal courts require a very high standard of proof to convict someone of a crime and potentially removing their freedom. This is a necessary requirement of the criminal courts; however, this burden of proof is not the same in civil law, upon which the *Civil Forfeiture Act* (2005) is based. The participants believe this enables the courts to seize the assets of gang members because the civil law standard of proof is on a balance of probabilities:

> If we are going to do a criminal investigation with the possibility of someone going to jail that should be a burden of proof that is beyond a reasonable doubt. When it comes to the seizure of an asset, I think a balance of probabilities is an appropriate burden of proof. (P. 9)

A participant also explains that because the standard of proof is lower it costs taxpayers less for this court proceeding to take place and successfully thwart gang operations:

> Right now, you have to go into civil court so there is a cost for that and a time delay in doing that. Typically, court is expensive and it takes a lot of time to do it yet to prove on a balance of probabilities the application should succeed. This is typical of the court due to the cost of the time involved. (P. 6)

**4.7.1.2 Shortcut.** Some participants view the *Civil Forfeiture Act* (2005) as a shortcut, a piece of legislation that bypasses the criminal courts in order to sanction gang members. The prosecution would not lay criminal charges, they would only invoke the admissibility of a gang member’s assets and if they could be seized.
Then the *Civil Forfeiture Act* came into effect and it became the shiny carrot, a short cut. Much lower standard of proof much easier to establish the police has been attracted to it. (P. 8)

This is why we have rules for everything. It’s an effort to create a level playing field for everyone to operate in. If the government allows organized crime to take a shortcut to financial success that is not a level playing field. So what you are going to be left with over the course of time is people abiding by the rules, trying to make it to a normal middle class lifestyle and they will not be able to. (P. 9)

### 4.7.1.3 Simplified process.

The appeal of this legislation, according to some participants is the simplicity of the process. Police would regularly conduct criminal investigations and, during that investigation, can follow the title of gang members’ assets to determine if they have been purchased legitimately. If the items were purchased with the proceeds of crime, then police would just need to forward this material to the Civil Forfeiture Office (2018) and they seize those assets:

They are simplifying the process from a civil to a criminal matter which is very smart and a balance of probabilities is very suitable for my books…I think most people take their money very seriously and most people can tell you very quickly where it came from. Even in complex business relationships these types of set ups usually have comptrollers and accounts and they can show you that this is their money. (P. 9)

I have heard lots about it at [British Columbia] provincial chiefs. I have had several presentations on it, if it is made user friendly and simple for our users to employ then they understand how it works to make it easier to seize assets. (P. 26)

### 4.7.1.4 Summary.

The *Civil Forfeiture Act* (2005) is seen by the participants as a simplified process to have the proceeds of crime forfeited from organized crime members. This process is seen as a shortcut as the standard of proof in civil courts is much lower than in criminal courts and the Civil Forfeiture Office (2018) does not have to prove that a crime has been committed. As a result, it takes less time in court and is not as onerous on the police or the Crown prosecutors. Because the process is easy to administer more assets and property can be seized from offenders.
4.7.2 Accountability. Like any piece of legislation that grants powers to police, forfeiture must have a level of accountability to ensure it is not abused. The issues that emerged in this theme are abuse, police corruption, and accountability.

4.7.2.1 Abuse. Some legislation has the ability to be abused by police and the participants recognized and discussed this reality:

We would have somewhat naive investigators that would be looking at civil forfeiture right from the very beginning of an investigation which is wrong way of going about it. Police officers should always be looking at getting a criminal charge whether its proceeds related, money laundering, or weapons trafficking. (P. 8)

A really good example of it was about three years ago there was a bunch of high end cars that were racing down highway 99 in Vancouver and they were basically just speeding. They used the Civil Forfeiture Act to forfeit the vehicles. I’m not sure if they got all the vehicles but they seized them. I spoke to some of the people at civil forfeiture on why they choose to do this and why they would not do that if they car was a 1978 Toyota. (P. 19)

One participant believed that the potential for abuse was so great that the statute should be repealed.

If that money were being used to fund the enforcement, it would look bad to the public. They would think that, basically, the police are paying their own paycheque, you always hear myths of traffic cops that have a quote of speeding tickets of each month, and at the end of the month they go out in full force to catch as many people as possible. I think the same negative chill that would go down the public’s back, it seems like a dangerous circle. (P. 16)

4.7.2.2 Police corruption. Some of the participants described the possibility of isolated abuse and widespread police corruption. The possibility of police seizing luxury vehicles or large sums of cash and using those resources in their day-to-day operations may encourage abuse of the spirit of the law. If that is the case, officers might prioritize investigations that will include assets subject to forfeiture in order to supplement their budgets:
If you allow the direct benefit to go back to law enforcement, it could be bad. I think it is a question that is coming up. That is a perfect recipe for corruption and it has happened in the [United States] as well. We use to have these discussions in proceeds of crime all of the time and none of us agree with that, we all realize the pit falls of if I go seize that nice car from the drug dealer and tomorrow I will be driving it, it’s baiting corruption. (P. 9)

4.7.2.3 Summary. This basic theme addressed the issue of the drawbacks of the *Civil Forfeiture Act* (2005) identified by the participants and how to make the police more accountable. In order for the legislation to be effective and gain support from the public there must be provisions in place to hold users accountable. Abuse can come in many forms; however, the participants said that police officers should not be able to initiate investigations based only on potential value of assets to be seized. This can also lead to corruption, especially if the assets go directly back to police. In this case, it could turn the police into an organization that bases investigations they undertake on their potential financial return. Police agencies are not businesses and should not base their operations on revenue collection.

4.7.3 Limitations. This theme describes the possible court challenges to the legislation’s effectiveness and, the lack of national legislation, and potential collateral damage.

4.7.3.1 Legislative challenges. This legislation has been challenged in the Supreme Court of Canada decision of *Chatterjee v. Ontario (Attorney General)* (2009). While the challenge was not successful and allowed Ontario’s *Civil Remedies Act* (2001) to remain in force, there is always the possibility of other challenges that could be brought to the court’s attention. Although it is unclear what those potential future challenges might be, the possibility was brought up by the participants:
I don’t think in and of its self-successful, but I think it certainly is part of the solution. I believe that as time goes by there is some uncertainty about whether the Civil Forfeiture Act will survive some constitutional challenges in the future and I think a lot of people are betting on both sides of the fence. I think if the Civil Forfeiture Act succeeds in surviving a constitutional challenge then I think it will an amazing tool to combat organized crime. (P. 7)

I think it’s both, I think it’s positive when you can take assets off a criminal but having said that I think it’s a negative and improperly applied. Prosecutors are heavily relying on it and I see a day in the not too distant future where it will be struck down in one way or another. I see challenges on it, the Hells Angels with respect to their clubhouse being seized in Nanaimo and I think you’re going to see more significant challenges. (P. 19)

4.7.3.2 Effectiveness. The effectiveness of the legislation is important to consider; if it is not useful to law enforcement, it will not get used. A majority of the participants believed that the legislation is generally effective in accomplishing its intended purpose.

I think it is very successful, in my opinion it is there for a certain reason. That part would be the seizing proceeds of crime and assets such as money, property, and vehicles from organized crime members. (P. 15)

I think that, theoretically, it is a positive piece of legislation and it can be effective in doing what the justice system is geared to do and the policing system is geared to do in terms of prosecuting crime. But from what I have seen is that there is concerns about how it currently is and how it is worded to ensure people have that ability engage in a just process. (P. 25)

4.7.3.3 National legislation. The Civil Forfeiture Act (2005) is provincial legislation and only enforceable in the province of British Columbia. While eight other provinces have similar legislation, the participants explained that a lack of national legislation allows gang members to hide assets in different jurisdictions:

I think again the rationale for having it makes so much sense. There should be consistency from one province to another province. I think other provinces should follow suit, there should be the same consequences for crime really in general. (P. 13)
People will actually move from province to province and there will be crime displacement if the act is not consistently applied. Whichever province does not do this and does not have Civil Forfeiture will end up being the hot bed for people who will want to launch their crime activity and hold their property. (P. 7)

4.7.3.4 Collateral damage. The participants warn that one limitation to the legislation is the accidental seizure of assets that were purchased legitimately, or which have competing claims from third parties claiming to have good title. This situation can occur if multiple parties claim to have title to the property; however, one of them used illegal proceeds to acquire that property. The Act has provisions to address this possibility, however, this cannot always be challenged if the innocent third party does not have the money to have this heard in court or they simply do not know that they can challenge these proceedings:

If you’re taking someone’s house, they have a family and that could get into where certain property or assets are owned legitimately or co-owned. So I don’t know there is always that potential of that affecting people maybe undeserving of it. (P. 26)

I guess the potential to maybe taking assets that belong in common to, I’m thinking the wife and the kids who are negatively affected by the not having a home. If there is proof that something is used I mean it should be used wisely. If a guy sets up a grow op but he’s only been doing it for a short time the wife didn’t know about it and he owned his house legitimately then I don’t think that’s fair. (P. 11)

4.7.3.5 Summary. The Civil Forfeiture Act (2005) has limitations as described by the participants and they come in different forms. The respondents explained that this legislation could be challenged and in the courts, the legislation could be amended. It does not appear that the participants knew that the legislation has been challenged in Chatterjee v. Ontario (Attorney General) (2009), however they may be referring to the potential of future challenges, based on different circumstances. Some legislation gets challenged multiple times. An example of this is the Immediate Road
Prohibition in British Columbia that is defined in the *Motor Vehicle Act* (1996). It was challenged in cases such as *Lemieux v The Superintendent of Motor Vehicles* (2018) and *Wilson v British Columbia (Superintendent of Motor Vehicles)* (2013). A successful challenge could reduce the effectiveness of the *Civil Forfeiture Act* (2005) if it was amended. The legislative challenges could be based on the possibility of the legislation being overly broad in its scope or reach. A participant explained that if, for example, police seized assets of one family member it could affect the other members of the family who were not involved with the illegal activities.

Another consideration is that this legislation is not enacted in all provinces. The *Civil Forfeiture Act* (2005) is only enforceable in British Columbia so if a gang member takes all of their property to another province, they cannot be subject to seizure. It is only enforceable in British Columbia because it is provincial legislation, and its jurisdiction is limited. Another challenge of the legislation is that there is no similar federal legislation, and that weakens its effectiveness for criminal organizations that operate in more than one province.

**4.7.4 Summary.** The organizing theme of *Civil Forfeiture Act* (2005) emerged from the analysis of the respondent interviews. The participants pointed out that one of the advantages of the legislation is that the legislation has a lower standard of proof because it falls under the jurisdiction of civil court. The lower standard of proof creates a process where the investigators only need to prove, on a balance of probabilities that the organized crime assets were gained through crime. This is a much lower standard of proof then the proceeds of crime sections under the *Criminal Code* (1985) that
investigators formerly used. While the lower standard of proof makes the process easier for police it presents some challenges as well.

One of the challenges associated with the Civil Forfeiture Act (2005) is that it may facilitate police misconduct. Due to the standard of proof being lower than in criminal court, it is easier for police to engage in the forfeiture process. If used correctly this process can be a positive tool for law enforcement. However, if misused it could lead to an abuse of process. One such scenario would be if police only target groups that have assets to seize and do not consider the nature of the crimes they are committing. This strategy could lead to the police only undertaking investigations where they see the potential to generate the most revenue, even if the people involved in the group are causing little harm in the community.

Another consideration is the prospect of future court challenges, whether the challenge is based on an abuse of process from the police or a challenge to the application or constitutionality of the legislation itself. For example, in 2018, The Hells angels challenged the Civil Forfeiture Act (2005) in the British Columbia Supreme Court. Although the users of the legislation have to be accountable and the courts need to fairly apply the legislation as it was intended. If this occurs, then it will show the public that the legislation is being used properly.
CHAPTER FIVE
Discussion

5.1 Removing Profits Reduces Gang Capability

Following the process set out by Attride Stirling’s (2001) thematic network analysis, the researcher developed the global theme by following the analysis of the basic themes leading to the organizing themes. This section describes how the global theme was formed, as well as the organizing themes’ relationship, individually, to the global theme. This section also describes how the organizing themes are linked with one another to form the global theme.

The first organizing theme discussed the adaptation of a gang that enables them to thrive in the Okanagan. The ability of an organized crime group to adapt makes these gangs more difficult to police and prosecute. Gangs that are organized and sophisticated are less likely to have their operations disrupted by the police. As a result, these operations grow over time. The adaptation of the group also insulates its leaders from criminal prosecution through a hierarchical system similar to a corporation. With strong leadership organized crime groups can continue to expand their operations and cause further harm to the community.

The adaptation of a gang to thwart police investigations is crucial to allow them to continue to profit from the sale and distribution of illegal drugs. If gangs are not able to successfully adapt to the investigational methods used by police, they would have a difficult time surviving. The ability for them to adapt comes from their experience with the legal system and their sophistication. Adaptability and the ability for them to survive is a key factor when it comes to the gang’s profitability. This adaptation is not
significantly different from how a legal business adapts to a changing environment. If a business is too slow to adapt to their external environment, then they may cease to be relevant and cease to exist. New legislation such as the *Civil Forfeiture Act* (2005) is intended to disrupt these organizations.

The second organizing theme discussed the finite resources of the justice system and the lenient criminal sentences that are imposed on convicted gang members. Organized crime groups are able to thrive because they are allowed to operate without much interference. The police spend an incredible amount of time and resources investigating these groups for offences under the *Criminal Code* (1985). If an investigation is successful and results in a criminal conviction the courts will often impose a lenient sentence that does not reflect the harm these groups perpetuate. As the police only have a finite amount of money to spend, they must be strategic in what investigations they decide to undertake. Furthermore, these investigations take up a great deal of their human capital, and as a result, police forces can only conduct so many investigations at a time. If a gang member is not subject to one of these investigations, they are essentially free to continue their illegal activities unopposed because the police are busy with other activities.

The court system also requires a considerable amount of time and resources to hear these complicated organized crime cases. The courts only have so much time to hear the cases Crown prosecutors bring to their attention. After a guilty verdict, they must administer a sentence that is appropriate given the current case law. The information presented by participants in this research suggests that the sentences are perceived as
typically being too lenient. As a result, gang members are able to easily absorb these sanctions and carry on with their illegal operations.

The ability for these gangs to continue with their illegal operations after their convictions suggest that *Criminal Code* (1985) sanctions on their own do not deter their recidivism. With the high cost of these investigations (to both the police and the courts) and the subsequent lenient sentences, it is difficult to understand why so many resources are invested into an outcome that yields such a weak return. This theme suggests that the criminal court system has not been successful in disrupting these organized crime groups and other legislative means must be explored in order to hold these groups more accountable.

The third organizing theme explored the relationship between the potential rewards for a person to join a gang versus the potential risks of a criminal conviction. The drug trade is a very profitable venture and the distribution and production of drugs allows gang members to live an extravagant lifestyle in a desirable location. The risk of conviction associated with being a member of an organized crime group in the Okanagan is almost non-existent. Moreover, if gang members are caught they would face lenient sentences and be able to keep proceeds from their illicit activities.

While the prospect of a criminal conviction may deter some, there is no shortage of people willing to join these groups in order to become rich. This organizing theme discusses the attractiveness of the potential profit as well as how the criminal justice system is ineffective in deterring people from joining an organized crime group. One reason is that asset forfeiture mechanisms are not being readily used by law enforcement to remove that reward and raise the risk level for gang members. If the risk outweighed
the potential reward, it would deter people thinking of joining a gang. This is explained by deterrence theory - presented in Chapter 2 - and the research from this study suggests that participants perceive there is very little deterrence from criminal convictions. This organizing theme explained the relationship to the global theme and how these measures can be used to reduce a gang’s activity in the community by simply increasing the risk and decreasing the reward of involvement in a gang.

The fourth organizing theme explored asset recovery and its relationship to organized crime investigations. Previous themes discussed the high cost of investigations as well as how taxing they are to policing budgets and the taxpayers. Assets recovered through the Civil Forfeiture Act (2005) could be used to supplement the budgets for those investigations and fund social programs that will help repair the harm caused by organized crime groups. These social programs are typically funded by the public and often have limited budgets. As gangs contribute to this problem, assets that are seized from them should be used to supplement these programs and repair the harm they have done to the community.

The fifth organizing theme discussed the current policing model of targeting gangs in the Okanagan. Police rely on strategies such as wiretaps, agents, confidential informants and other methods to investigate serious offences committed by organized crime groups. These targeted policing initiatives are often labour intensive and require a significant amount of time and resources. Typically, these initiatives only involve measures authorized under the Criminal Code (1985) and rarely involve other legislation.

One additional method of thwarting gang operations is to get their assets under the Civil Forfeiture Act (2005). This is an innovative approach as it departs from the
traditional investigation processes used by police to which gangs have adapted. However, this must be done within the confines of a normal criminal investigation regardless of the court sentencing outcome. Participants perceive that criminal investigations in combination with asset seizures under the Civil Forfeiture Act (2005) is a more effective way of targeting organized crime groups. This research shows participants perceive that the Civil Forfeiture Act (2005) is not being used as often as it could and one of the reasons for this is of a lack of education on the part of police. The average police officer does not know much about civil forfeiture seizures and does not know how to incorporate these actions into their investigations. As a result, the Civil Forfeiture Act (2005) is not being utilized as much as it should to reduce the profits of gangs and their capabilities. The research suggests that the police must use an effective strategy to investigate organized crime groups. The strategy should involve a combination of criminal investigations and asset seizures through the Civil Forfeiture Act (2005).

The final organizing theme described how the Civil Forfeiture Act (2005) enabled officers to effect the course of an investigation. The respondents discussed the structure of the Civil Forfeiture Act (2005) and its potential benefits. One such benefit is that the standard of proof is significantly lower as the matter is heard in civil rather than criminal courts. This lower standard of proof makes it easier for the police to remove the profits from organized crime groups, compared with the proceeds of crime provisions under the Criminal Code (1985) which have a much higher standard of proof. Furthermore, the Civil Forfeiture Act (2005) allows investigators to request asset seizures on a greater number of gang members over the same period.
While the potential benefits of forfeiture are substantial, some respondents expressed concern about potential outcomes, including misconduct. The investigators using the *Civil Forfeiture Act*(2005) must be held accountable and not be complacent with their investigations. Policing is not intended to generate revenue and investigations must not be based on the ability to seize as many assets as possible. Investigations must be done in conjunction with *Criminal Code*(1985) investigations and not be done independently. If the legislation is circumvented, it could result in it being repealed and police would lose a valuable tool. If used effectively the *Civil Forfeiture Act*(2005), can help achieve what is stated in the global theme, which is to reduce the profits of organized crime groups that would lead to them being less influential in the community.

The organizing themes produced by the research do not simply relate to the global theme. As Attride-Sterling (2001) points out, they must also relate to each other in a similar way as they relate to the global theme. The first organizing theme of gang adaptation relates to the other organizing themes in different ways. The adaptation of gangs is made possible because there is very little criminal penalty for the harm they cause to the community, as the organizing theme of resources and sentencing suggests. Gang members know that it is difficult for police to investigate them so they develop effective countermeasures to shield them from detection and to reduce their sentences if they are convicted. This could involve using encrypted communication to avoid detection or hiring someone to transport drugs so they will not be caught. This adaptation contributes to the weak sentences they receive because they also have the resources to defend themselves in court. Gangs adapt to their environment because they want to accumulate as much wealth as possible with the least amount of risk. Many organized
criminal groups are sophisticated enough to achieve that goal as they manage the internal and external forces in that pursuit. This is how gang adaptation relates to the organizing theme of high reward and low risk.

The organizing theme of gang adaptation relates to asset recovery in a distinctive way. While the ability of a gang to adapt to new challenges is strong, it may be difficult for them to thwart asset seizures by the courts. Organized criminal groups know that police have a limited budget and have a limited capability of disrupting their operations. If police can facilitate the seizure of the gang’s assets, it would constitute a significant disruption to their operations, and the gang may not be able to adapt to this type of external pressure. The theme of policing strategy is a countermeasure that police use against the gang’s ability to adapt. One strategy to which organized crime has adapted well is the traditional methods police have used under the Criminal Code. However, the respondents pointed out that traditional policing practices still need to be employed in a combined strategy that includes targeting gang assets. A combination of criminal investigations and asset forfeitures will be more effective and reduce the gang’s ability to adapt. This subsequent theme discussed how the Civil Forfeiture Act (2005) could specifically target a gang’s assets and make these gangs less profitable by disrupting their operations.

The second organizing theme of resources and sentencing related to the theme of high reward low risk in a very direct way. The themes relate to each other by explaining that the sentences the courts impose are often lenient and do not reduce the gang member’s ability to earn money. The low criminal risk associated with being a gang member reverts to the light sentences they would receive if they were ever convicted of a
criminal offence. If a conviction occurs, it usually results in a short custodial sentence that does not deter their future involvement in crime. Sophisticated gang members realize that police only have limited resources for investigations and those resources are spread too thin. As a result, the police can only investigate so many people and it takes a vast amount of resources to conduct a proper investigation into organized crime.

The investigations that police carry out, and the subsequent sentencing applied by the courts, are the traditional way of responding to organized crime members. The sentences imposed on these gang members usually does not involve asset seizures. Some respondents believe that the most effective approach would be to use the asset seizure provisions under the Civil Forfeiture Act (2005) in conjunction with criminal court sentencing. The research in the second organizing theme explains that asset seizures under the Criminal Code (1985) are not a common occurrence. Furthermore, police officers are seldom knowledgeable on the subject and Crown prosecutors do not typically pursue asset in criminal proceedings. If asset seizures were more common, the funds could be used to enhance police resources and develop additional programs to help the community recover from gang activity. The organizing theme of asset recovery relates to resource and sentencing by explaining that asset recovery can be used to enhance the sentencing provisions by the court and the resources to police.

The outcome of police investigations, and the subsequent sentencing, was identified in the theme of policing strategy. Because of specific traditional police strategies, some organized crime groups are prosecuted and sentenced. While the research revealed that traditional policing is an important part of a proper police strategy, it is not the only solution. In order to obtain meaningful sanctions, especially in the face of limited
budgets, police must embrace a combined strategy of traditional policing along with asset seizures from organized crime groups. This approach targets these groups on a criminal level and their illegally obtained assets are vulnerable to seizure. This was illustrated in the organizing theme labelled the *Civil Forfeiture Act* (2005). This theme discussed how the seizure of assets is an appropriate crime control strategy if the accountability mechanisms are upheld. The *Civil Forfeiture Act* (2005) can directly punish an organized crime member and can be more effective in disrupting their operations.

The third organizing theme of high reward low risk relates to the recognition that asset recovery can increase risk and decrease rewards to these organizations. Asset recovery is not a commonly used approach in 2014 with police investigations and this allows criminal organizations to thrive. Using the funds generated from the seizure of their assets against them by police threatens their wealth, and increases the likelihood that police will investigate them because they have more resources. Their own assets could also be used to educate the public about gang life and help people who are addicted from their products thus disrupting their recruitment efforts. If asset recovery provisions are used more often, it will add more risk to a gang member’s decision to be a part of that group and it will reduce their monetary rewards.

The organizing theme of asset recovery has a strong association to the policing strategy theme. The organizing theme of policing strategy discussed the combined policing approach of asset seizures and criminal investigations against organized crime groups. The theme of asset recovery states that the proceeds of crime which are seized because of the process, can be given back to the police and the community. As a result, those seized assets can then be recycled back into the organizing theme of policing
strategy. Both themes, if used in conjunction, can feed and build into each other, making them more effective the more they are used. The research shows that asset recovery under the proceeds of crime provisions of the Criminal Code (1985) is too slow and too difficult to prove to be highly effective. The Civil Forfeiture Act (2005) provides a vehicle for asset recovery that is easier to use and more effective. As a result, more assets can be seized and used to supplement police budgets and community programs.

The final two organizing themes are policing strategy and the Civil Forfeiture Act (2005). The relationship between the two consists of how the Civil Forfeiture Act (2005) can be used in an effective policing strategy. In order for a combined approach to be successful, the research shows that criminal investigations involving organized crime groups must be done in conjunction with the Civil Forfeiture Act (2005). This statute is not a silver bullet as one participant describes it, but rather an important tool that can be used by police in the Okanagan. One theme discusses the strategy police need to utilize and the other theme discusses the mechanism that can be used in that strategy.

5.2 Summary

This chapter presented the findings that emerged from the analysis of the transcribed interviews conducted with police officers and lawyers in 2014. In the analysis 24 basic themes were identified which in turn were consolidated into six organizing themes and in that process the global theme of “removing profits reduces gang capability” emerged. These findings have implications for future research and the application of forfeiture into police practices. These issues are described in the next chapter.
CHAPTER SIX

Conclusion

The research presented in this thesis offers a detailed perspective about how the Civil Forfeiture Act (2005) can be used to disrupt criminal organizations by seizing their assets. In order to understand this relationship, the perceptions of police officers, prosecutors and defence attorneys were solicited. Analysis of their interview revealed that removing the ability for criminal organizations and gangs to profit from these enterprises can reduce their capabilities. The research question of this thesis asks whether the Civil Forfeiture Act (2005) has been effective in combating organized crime and the illegal drug trade in the Okanagan. This question is supplemented with the question of whether respondents believe the Civil Forfeiture Act (2005) is an effective piece of legislation, can it be expanded, and are there any potential downfalls in its application? The researcher employed Attride-Stirling’s (2001) thematic network analysis to answer the research questions posed in chapter one. The creation of the thematic map described by Attride-Stirling (2001) began with the identification of 432 codes that translated into 108 issues discussed. The researcher examined these issues and identified 24 basic themes that formed the foundation of the thematic map.

In exploring the primary question, the findings showed the relationships between gang sophistication, profit, and deterrence. In short, participants explained that the success of a criminal organization is dependent on its ability to enrich its members and because a low risk of arrest or receiving a criminal sanction exists, that reinforces their attachment and commitment to these organizations. The results of the analysis also indicated that sophisticated organized crime groups have an ability to adapt to police
techniques to avoid detection. Nagin (2013) explained that severity is not as effective a deterrent as certainty of apprehension. As a result, a policy implication from the literature focuses on how crime prevention can be optimized by shifting resources from imprisonment to policing. This shift in resources will increase the likelihood of apprehension that would in turn increase the level of deterrence. In the absence of proper resources as explained by the respondents, organized crime groups will continue to thrive because there are not enough resources to increase the likelihood of apprehension as explained by Nagin (2013).

The respondents revealed that the *Civil Forfeiture Act (2005)* provides an additional tool police can use in conjunction with criminal investigations to deter criminal offenders. The analysis reveals the legislation was used in the Okanagan. However, it is not used to its full potential, limiting the effectiveness of forfeiture activities. This limited use was attributed to the lack of knowledge by investigators. The global theme of the research is that if the justice system can significantly reduce the profits of an organized criminal enterprise then the group’s capacity is thwarted or disrupted. The findings suggest that if the legislation was used more frequently to seize assets from the proceeds of crime, that the profits from the illegal sale of drugs could be reduced. If there was an increase use of the *Civil Forfeiture Act (2005)*, the perception of the certainty of losing all the gains would increase, thereby creating a stronger deterrent effect. The severity of a loss is an important consideration as this completely undermines the benefits of participating in a criminal enterprise. However, without the certainty of losing their profits, it is not likely to have the intended deterrent on those who consider committing these offences.
Cassella (2018) outlines a number of different factors on why forfeiture is so important to the disruption of organized crime groups and how it can be used as an effective tool. These factors include the deterrence of the wrongdoer, punishing the offender, taking away the financial resources and disrupting the organization. The respondents revealed that the Civil Forfeiture Act (2005) has the capacity to achieve these elements. The removal of financial benefits from a criminal organization will reduce its capacity to expand and prosper. As the research explained, by taking away a criminal’s assets you are punishing the offender while deterring others from committing the same offence as they have seen what has happened to their colleague. This approach takes away the financial resources collectively from the group and in turn disrupts the organization.

Civil forfeiture legislation in British Columbia has been in place since 2005 and the respondents suggested that the current legislation is an adequate mechanism to reduce the extent of criminal enterprises in the province. Analysis of the transcripts, however, reveals that one potential problem with the legislation is the lack of accountability in place for the police. Moreover, some of the participants believe that the legislation can be used to turn policing into an activity that is based on investigating groups that have a higher amount of assets they can seize, rather than their potential threat to public safety. This potential abuse of process could lead to a loss of police legitimacy and the ultimate repeal of the legislation; and this is happening in several jurisdictions in the United States. It is important to note that there is nothing in the legislation that directly precludes this from happening, to protect the integrity of the legislation it must be used responsibly.
The research produced findings similar to prior research identified in the literature review. From, Bolger, and Phillips (2016) examine federal civil forfeiture legislation in Canada and describe how it can be used to deter crime and compensate victims of crime. They present a macro view of the federal legislation, although they do not discuss if provincial civil forfeiture legislation can also be effective in disrupting organized crime. Plecas and colleagues (2009) described the vast wealth accumulated by organized crime groups through the illegal drug trade and highlighted the lenient sanctions on those who were convicted. Public Safety Canada (2006) stated that 80% of the illegal criminal groups in Canada participate and gain wealth in the drug trade. The findings of this thesis validate the findings of previous research as the analyses clearly shows that organized crime groups in the Okanagan can generate significant wealth in the illicit drug trade. The participants in the current study agreed with Plecas and colleagues (2009) that gang members are given lenient custody sentences, and this did not deter them from committing additional crimes. This outcome can be attributed to the sentences being inadequate to deter gang members. As Wright (2010) explains about deterrence theory, the likelihood of getting caught committing a criminal act, and the subsequent punishment, must outweigh the potential benefits of committing the offence. The respondents in this study explain that the benefits of participating in the illicit drug trade outweigh the current sentences the criminal courts are imposing. As a result, youth are still joining gangs in order to make money and are not overly concerned about getting caught and punished.

Gallant (2014) summarizes the benefits of provincial civil forfeiture legislation and how it can be used to combat organized crime. She explained that asset forfeiture may be
one of the most significant crime control initiatives in the modern policing era, as it enables the justice system to seize the illegal profits from organized crime groups. The findings presented in this thesis suggest the removal of the profits from the gang’s activities will also reduce their influence in the community. The targeting of the proceeds of crime, in conjunction with criminal proceedings, are much more effective than employing either one of the two processes independent of each other.

The global theme that emerged from the analysis of the transcripts focused on how organized crime groups are a business, and like any other business, if they are not profitable they are not successful. The most effective way of targeting these groups and disrupting their profitability is by removing their assets through civil forfeiture legislation in collaboration with traditional criminal investigations. The findings presented in this thesis have several implications for future research and crime control policy and they are highlighted in the following section.

6.1 Future Research

The findings of this research can supplement future research regarding the Civil Forfeiture Act (2005) and its effectiveness. The application of civil forfeiture in Canada is relatively new crime control strategy and its impact on organized crime, communities, and police effectiveness has not been widely researched. Organized crime groups have an extraordinary ability to adapt to different methods of enforcement and prosecution. Researchers in the future could examine how these illegal groups are adapting to the legislation and if they are able to thwart these efforts. Additional research could also be conducted on whether the legislation has contributed to any long term or sustainable gang deterrence in the province.
The current study reports the results of the professional experiences of criminal lawyers and police officers in the Okanagan. Future research could expand these efforts in different jurisdictions throughout Canada. This strategy would determine the strengths and limitations of these interventions outside of British Columbia. Researchers could also examine the outcomes of asset forfeiture on different criminal enterprises (e.g., such as the entry-level and more sophisticated groups; Vancouver Police Department, 2010). Subsequent studies could also involve soliciting the perceptions of current or former gang members about their perceptions of the efficacy of asset forfeiture practices and the factors that might deter them from engaging in criminal enterprises. Although this research focuses on the criminal justice participants who investigate, prosecute and defend these matters in court, future research using this data could separate the police and lawyer to get their individual professional perceptions to determine if they are similar or different.

6.2 Policy Implications

The legislative framework for asset forfeiture in British Columbia is already in place and can be utilized by law enforcement. While the legislation can be effective, the results of this study show it is not well understood by the police and their practices do not typically include this approach in the course of their investigations. The easiest and most effective solution to increase the awareness of the Civil Forfeiture Act (2005) legislation is to provide training to investigators in order to familiarize them with the Civil Forfeiture Act (2005). As of February, 2019 there is no formal training provided to British Columbia police officers in this area of law in British Columbia.
Another important area policy-makers should explore is the outcome of files referred to the Civil Forfeiture Office (2018). The success of the legislation revolves around deterrence and it cannot be achieved without a consistent approach. For deterrence to work and curb the drug trade the punishment given to organized crime members must be swift, certain, and severe. The findings presented in this thesis suggest that police require more training in this area and this approach is inconsistently applied by different law enforcement agencies. As a result, there is a gap in certainty that the Civil Forfeiture Act (2005) is going to be applied effectively. If gang members are certain that their property will be taken and they are caught, then it is less likely that they will engage in the illegal behaviour. The final element is that the punishment needs to be severe. The participants explain that the sentences handed out by the criminal courts are typically light, this is consistent with the research presented in chapter two (Plecas et al., 2009).

The potential for a gang member to make a large quantity of money and receive a light sentence does not fit into the deterrence theory model. With the proper implementation of the Civil Forfeiture Act (2005), an organized crime member could face the prospect of a criminal conviction in addition to having their illegally obtained property forfeited. According to the findings reported above, the combination of criminal sanctions and forfeiture under the Civil Forfeiture Act (2005) is the most effective model of punishment for organized crime members and it fits more effectively into deterrence theory. However, this cannot be implemented until the RCMP in the Okanagan make a more concentrated effort to incorporate the Civil Forfeiture Act (2005) into their policing model.
The final aspect that needs to be addressed is the need for public awareness around this legislation and the potential loss of someone’s property if it is obtained through the proceeds of crime. Any educational efforts should explain that if people engage in criminal activity for profit, they will lose their property and these court actions are easy to initiate and have a high degree of success. This approach can also serve in educating organizing crime members that the *Civil Forfeiture Act* (2005) exists and there is a certainty that their assets will get seized immediately and they will also face the prospect of a criminal conviction which could result in a severe jail term. The global theme in this thesis discusses how to reduce the capabilities of gangs. This is done by removing their profits through the *Civil Forfeiture Act* (2005) and deterring offenders from entering this lifestyle.

An important aspect that any police organization needs to consider if implementing a strategy that relies on civil forfeiture is the potential of abuse. The data collected from this study discusses how investigational priorities can be directed by the amount of assets that can be seized from a particular group while potentially ignoring other potential investigations that may not yield any financial value. Asset seizure should not be the primary motivation to investigation a certain group. This strategy should be used in conjunction with normal investigational practices and strategies. If investigational decisions are based on the value of assets that could be seized it may result in the powers being removed from the police and the province.

**6.3 Limitations of Study**

The study is limited to the Okanagan region of British Columbia and only examines the British Columbia legislation and how it effects organized crime in the Okanagan.
Since the interviews were conducted in 2014, some legislative changes have come into effect. For example, on October 17, 2018 marijuana was legalized in Canada; however, it still is illegal in most of the United States. Due to the legalization of marijuana, it is unclear if this will affect the black market cannabis industry, including exports to America. It will also be difficult to determine the prevalence of the black-market industry due to its illicit nature. As a result, researchers will continue to use different methodologies to estimate the size of the industry. It may, for example, be fruitful to examine changes in the “street price” of marijuana and any price decreases might reflect a shrinking black-market. According to a survey completed by Statistics Canada (2019) of marijuana users in the third quarter of 2019, only 53% of people obtain their marijuana from legal sources. This statistic supports that the black market industry for marijuana is still active.

6.4 Implications for Theoretical Development

Current research in the area of deterrence theory suggests that the most effective way of deterring someone from committing a criminal offence is to ensure that the potential offender knows there is a certainty they will be arrested and punished. The *Civil Forfeiture Act* (2005) provides the mechanism to increase deterrence. The global theme identified in the research was that forfeiture can deter potential offenders. Since most organized crime members participate in a business, their main motivation is the accumulation of profits. If a gang member knows there is a high degree of probability that their illegally obtained money will be forfeited then they will be less likely to engage in offences such as drug trafficking, fraud, and money laundering.
Organized crime is a business and it is important that police, government policy-makers and the public understand this. The disturbing outcomes of organized crime, with respect to violence and public harm are well known and these criminal enterprises are influential because they are well capitalized and profitable. The traditional criminal sanctions imposed by the courts are not effective because they do not address the fundamental cause of why these gangs exist in British Columbia. Moreover, the certainty of arrest using traditional approaches is low, the processing of cases in the courts is lengthy, and the sanctions are not severe, all of which works against deterring potential wrongdoers.

6.5 Concluding Statement

The researcher interviewed police officers and criminal trial lawyers in the Okanagan to determine if the Civil Forfeiture Act (2005) is an effective piece of legislation that enables the police to deter organized crime. It is evident from the analyses that the participants perceive the Civil Forfeiture Act (2005) is an effective piece of legislation to remove profits from organized crime, but it can be an effective deterrent because it can be applied immediately and the sanctions are severe. It is plausible that the Civil Forfeiture Act (2005) is the most effective when it is delivered in conjunction with criminal sentences. Individuals engaged in organized crime are less likely to maintain their illicit activities if their assets are seized.

The Civil Forfeiture Act (2005) has demonstrated that it can be effective if it is being used correctly and in conjunction with traditional criminal investigations. The research shows that this is not the case and police forces need to dedicate more resources to training their officers on how to utilize the legislation effectively. If the Civil
Forfeiture Act (2005) is utilized more by police and the prosecution service, it can reduce the capability of organized crime groups in the Okanagan by removing their profits, crippling their business and deterring youth considering careers in organized crime.
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APPENDICES

Appendix A: Interview Questions

The following is a list of questions that will be asked during the interview. Your participation is voluntary; you can withdraw your consent to participate at any time for any reason without penalty. During the interview, the researcher may ask you follow up questions that are not included on this document. You can choose to decline answering a specific question. The interview will be audio recorded to ensure data accuracy.

1. Are you a lawyer, non-commissioned officer or commissioned officer?
2. What is your definition of organized crime?
3. During the course of your work duties have you investigated, prosecuted or represented a person who is involved with organized crime?
4. During the course of your work duties have you investigated, prosecuted or represented a person who is charged with producing or trafficking a controlled substance?
5. Tell me about your opinion on organized crime and how common or uncommon it is in the Okanagan?
6. Do you believe that the Okanagan community has a problem with the drug trade? Why or why not?
7. If no organized crime groups existed in the Okanagan, would the community be safer?
8. Is it possible for traditional policing methods to eradicate organized crime from the Okanagan? Why or why not?
9. Tell me your opinion on how you view the sentences that people who are convicted of trafficking a controlled substance are given by the British Columbia courts?
10. Tell me your opinion on how you view the sentences that people who are convicted of producing a controlled substance are given by the British Columbia courts?
11. In general, do you feel that people who are convicted of drug offences are getting a proper sentence by the courts? Why?
12. Do you believe that the court system has enough resources to hear all the drug cases that are brought before them? Why?
13. What is your opinion on mandatory minimum jail sentences for people who are convicted of trafficking or producing drugs?
14. Do you believe that the drug trade is profitable for people who traffic or produce controlled substances? Why?
15. What is your opinion on how police are doing to combat organized crime in the Okanagan?
16. What is your opinion on how the criminal courts are dealing with organized crime in the Okanagan?
17. What is your opinion on the Civil Forfeiture Act?
18. If someone is convicted of a drug offence and has made money from proceeds of crime, do you believe that the government of British Columbia should be able to seize the assets that have been obtained illegally?
Appendix A: Interview Questions (Continued)

19. If you agree why do you believe that the government should be able to do this? If not, why should the government not be able to do this?
20. Where should the money go that was obtained through the Civil Forfeitures Act?
21. In general, do you believe that the money obtained through the Civil Forfeitures Act should go back into enforcement, community programs or both? Why?
22. Is the Civil Forfeiture Act a successful tool in combating the illegal drug trade in the Okanagan? Why or why not?
23. What is your opinion on whether or not other provinces should enact similar legislation?
24. What do you believe is a more effective sentence against people who produce or traffic illegal drugs, criminal court sentences, or forfeiture of assets through the Civil Forfeiture Act? Why?
25. In your opinion how successful is the Civil Forfeiture Act?
26. What type of criminal offence is the Civil Forfeiture Act most typically used on?
27. Is there another piece of provincial legislation that is effective in combating organized crime and the illegal drug trade in the Okanagan?
28. What are some other ways police can effectively deal with organized crime?
29. Why do you believe that the Civil Forfeiture Act is a positive or negative piece of legislation?
30. Is the Civil Forfeiture Act an effective deterrent against producing or trafficking a controlled substance? Why or why not?
31. Should the government of British Columbia continue using the Civil Forfeiture Act or do you believe that it should be repealed in favor of traditional policing methods (criminal charges).
32. Should the government of British Columbia expand the scope of the Civil Forfeiture Act?
33. What are the drawbacks of using the Civil Forfeiture Act in British Columbia?
Appendix B: Consent Form

PARTICIPANT CONSENT FORM

Project Title: Money and Drugs: The Study of Proceeds of Crime and Forfeiture Legislation
Researcher: Greg Willcocks, Faculty of Arts, Graduate Student, Police Studies Department, University of Regina. 306-585-4862. You can reach me via e-mail at willcog@uregina.ca
Supervisor: Dr. Nicholas Jones, Faculty of Arts, Justice Studies, nick.jones@uregina.ca

Purpose and Objective of the Research:
The research is being conducted as part of a thesis study that is being supervised by Dr. Kenneth Brown. The study is examining whether the seizure of criminal assets through the “Civil Forfeiture Act” is an effective way to suppress organized crime in the Okanagan. The study will cast light on perceptions of the effectiveness of the legislation.

 Procedures:
You are being asked to participate in a semi-structured interview, which will provide structure and consistency but allow for flexibility in individual interviews as well. You are being asked to participate in one interview session, which could take up to approximately one hour.
You have been informed that, as a participant in this research, you are only required to be interviewed. This consent form applies for the sole purpose of the interview process, and as such you are not required to complete any tasks outside of participating in an interview. There will be no penalties for declining or withdrawing your participation at any time, even after the interview has been completed. You will not receive any payment for participation in this process. If you participate in the interview and at a later date you change your mind about participating, you have the right to ask for your data to be destroyed. Please contact the researcher and ask for this to be done.

Funded by: This study is not being funded by any organization or individual contributor. All of the financial costs are being covered by the researcher.

Potential Risks:
- The researcher is a police officer with the Kelowna RCMP and may have worked with you in the past or may have testified in a trial that you were involved in. If you participate in this study, please answer the questions honestly and to the best of your knowledge. Do
Appendix B: Consent Form (Continued)

not edit your answers because you know the researcher personally or because they are a police officer. The data collected by your responses, regardless of what answers you provide, is important to the success of this study.

- There are no known or anticipated risks to you by participating in this research or [E.G., EMOTIONAL, SOCIAL, PSYCHOLOGICAL, PHYSICAL, ECONOMIC, ETC.]
- The study focuses on general questions about organized crime, the drug trade and the Civil Forfeitures Act. I will not ask you any questions about specific investigations that you have participated in or presented to the court.
- The study deals with questions about organized crime and legislation. There is nothing in this study that would require you to participate in any debriefing process. The topic is not sensitive.
- Your identity will be kept confidential and will not be disclosed to anyone.

Potential Benefits:

- The data collected in this research could be beneficial to the government of British Columbia, police agencies and the general public. The data collected in this study will examine whether the “Civil Forfeiture Act” in British Columbia is an effective piece of legislation.

Confidentiality:

- Your identity will be kept completely confidential. The data collected will be stored on a password protected computer and will not be disclosed to any person or organization. The researcher only has access to the computer and is the only person who knows the password. Your name will not be used in the study and your statement will not be given out. A direct quote may be used from your interview. If a direct quote is used you will be identified as “police officer “A” or lawyer “A”. Furthermore, your current duties, rank, or place of work will not be disclosed or mentioned in the study.
- The data collected will be destroyed three years after the study has been completed.
- The researcher will protect your identity and is only interested in your views and opinions. It may be possible for people to make informed guesses about your identity.

Right to Withdraw:

- Your participation is voluntary and you can answer only those questions that you are comfortable with. You may withdraw from the research project for any reason, at any time without explanation or penalty of any sort.
- Whether you choose to participate or not will have no effect on your personal or professional relationship with me.
- Should you wish to withdraw; any data that you have provided will be immediately destroyed and will not be used in this study.
- Your right to withdraw data from the study will apply until April 30, 2015 (results have been disseminated; data has been pooled, etc.). After this date, it is possible that some form of research dissemination will have already occurred and it may not be possible to withdraw your data.
Appendix B: Consent Form (Continued)

Follow up:
- To obtain results from the study or to withdraw, please contact me at gregwillcocks@yahoo.ca. If you wish to have a copy of the study one will be given to you at no charge.

Questions or Concerns:
- Contact the researcher using the information at the top of page 1;
- This project has been approved on ethical grounds by the University of Regina Research Ethics Board on January 15, 2014. Any questions regarding your rights as a participant may be addressed to the committee at (585-4775 or research.ethics@uregina.ca).

Your signature below indicates that you have read and understand the description provided; I have had an opportunity to ask questions and my/our questions have been answered. I consent to participate in the research project. A copy of this Consent Form has been given to me for my records.

Name of Participant          Signature          Date

_____________________________          __________________________

Researcher’s Signature          Date

A copy of this consent will be left with you, and a copy will be taken by the researcher.