State accountability for police sexual misconduct: analyzing the role of civil society and the media in Val-d'Or

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ABSTRACT/RÉSUMÉ

This thesis centres on the importance of thinking of state accountability outside the traditional boundaries of the law by focusing on the example of police sexual violence. Cognizant of the potential conflict of interest of the state and gaps in state law, this project emphasizes social accountability for police sexual violence, a conception of accountability allowing for interaction between civil society or the media and state-led accountability mechanisms. Given the numerous angles to analyze this broad topic, the thesis examines one case study: the 'Val-d'Or crisis'. The Val-d'Or crisis was revealed to the public in October 2015 by journalists from Radio-Canada who broadcast a news story alleging police misconduct against Indigenous women in Val-d'Or, Québec. Assaults, sexual assaults, and starlight tours were all part of the narrative provided by Radio-Canada. The primary data used throughout the thesis are the literature on state mechanisms in Val-d'Or, the news story itself, and responses and perceptions of civil society and the media collected through semi-structured qualitative interviews. An initial research question (i.e., How did civil society and the media perceive and respond to state accountability mechanisms for police sexual misconduct in Val-d'Or?), as well as several research objectives, guide this endeavour. These goals are: (1) to develop a state accountability framework for police sexual misconduct, (2) to analyze the limitations of current state accountability mechanisms for police sexual misconduct, and (3) to apply the theoretical framework to the Val-d'Or crisis.

By interviewing members of civil society and the media who had not experienced police sexual violence, had been involved with the Val-d'Or crisis in 2015 or onwards, and had endorsed at least one of the following roles: disclosing the abuse, assisting victims, or making demands on the governments of Québec or Canada regarding the Val-d'Or crisis, the case study examines various discourses and incorporates them within a new theoretical framework providing a rich understanding of the role of the state in contributing to police sexual violence and its impunity. Indeed, the thesis builds a theoretical framework relying on foreseeability and an extensive type of wilful blindness to rethink accountability for state wrongdoings. It then applies this framework to several state accountability mechanisms deployed in Val-d'Or, including liability regimes, criminal investigations, media coverage, and public commissions of inquiry.

The thesis concludes that all mechanisms in Val-d'Or exhibited significant limitations. However, this thesis also underlines that reconceptualizing state accountability by relying on foreseeability and an anthropological conception of wilful blindness would likely yield promising results. Indeed, the thesis often points to manifestations of the foreseeability and wilful blindness standards when showing the limitations of state accountability mechanisms for police sexual violence in Val-d'Or. Finally, the project also contends that social accountability is not automatically the best way to secure state accountability. This is especially true when public participation or the mandate of the state accountability mechanism is framed narrowly by the state, when the state fails to ensure good public receptivity, and inclusion, or when the mechanism creates harm.

Cette thèse s'est penchée sur la question délicate de la responsabilité de l'État en matière de violences sexuelles commises par la police. Conscient du conflit d'intérêts potentiel de l'État et des lacunes au sein du droit, ce projet s'est principalement concentré sur la théorie de responsabilité sociale (« social accountability ») en matière de violences sexuelles policières. Cette conception de la responsabilité englobe les interactions entre la société civile ou les médias et les mécanismes de responsabilité dirigés par l'État. La thèse a examiné une étude de cas, connue sous le nom de « crise de Val-d'Or », pour circonscrire ce vaste sujet. La crise de Val-d'Or a été révélée au public en octobre 2015 par des journalistes de Radio-Canada qui ont diffusé un reportage faisant état d'inconduites policières à l'encontre de femmes autochtones à Val-d'Or. Voies de fait, agressions sexuelles et cures géographiques faisaient partie du récit fourni par Radio-Canada. Les données sur lesquelles se base cette thèse sont principalement : la documentation concernant les réponses étatiques à Val-d'Or, le reportage lui-même et des entrevues qualitatives semi-dirigées faisant état des perceptions et réponses de la société civile et des médias. Une question de recherche initiale (c-à-d., Comment la société civile et les médias ont-ils perçu et répondu aux mécanismes de responsabilisation de l'État en cas d'inconduites sexuelles commises par la police à Val-d'Or)) et plusieurs objectifs de recherche orientent ce projet de recherche. Ces objectifs sont les suivants (1) développer un cadre de responsabilisation de l'État pour les inconduites sexuelles commises par la police, (2) analyser les limites des

mécanismes actuels de responsabilisation de l'État en cas d'inconduites sexuelles de la police, et (3) appliquer le nouveau cadre théorique à la crise de Val-d'Or.

En interrogeant des membres de la société civile et des médias qui n'avaient pas subi de violences sexuelles policières, qui s'étaient intéressés à ce sujet en 2015 ou plus tard, et qui avaient endossé au moins l'un des rôles suivants : divulguer les abus, aider les victimes ou faire des demandes aux gouvernements du Québec ou du Canada concernant la crise de Val-d'Or, l'étude de cas examine divers discours et les intègre à un nouveau cadre théorique qui permet de mieux comprendre le rôle de l'État dans la contribution aux violences sexuelles policières et à leur impunité. En effet, la thèse construit un cadre théorique qui s'appuie sur la prévisibilité et un type étendu d'aveuglement volontaire pour repenser la responsabilité des actes répréhensibles de l'État. Elle applique ensuite ce cadre à plusieurs mécanismes de responsabilité de l'État déployés à Val-d'Or, notamment les régimes de responsabilité, les enquêtes criminelles, la couverture médiatique et les commissions d'enquêtes publiques.

La thèse conclut que tous les mécanismes utilisés à Val-d'Or étaient substantiellement limités. Par contre, ce projet souligne également que la reconceptualisation de la responsabilité de l'État en s'appuyant sur la prévisibilité et une conception anthropologique de l'aveuglement volontaire donnerait des résultats prometteurs. Effectivement, la thèse fait référence à de nombreuses manifestations des normes de prévisibilité et d'aveuglement volontaire lorsqu'elle montre les limites des mécanismes de responsabilité de l'État pour les violences sexuelles commises par la police à Val-d'Or. Enfin, la thèse indique que la responsabilité sociale n'est pas automatiquement le meilleur moyen de garantir la responsabilité de l'État. Cela est particulièrement vrai lorsque la participation du public ou le mandat du mécanisme de responsabilité de l'État est défini de manière étroite par l'État, lorsque l'État n'évalue pas la réceptivité du public, ne fait pas preuve d'inclusivité ou lorsque le mécanisme employé crée un préjudice.

LIST OF ABBREVIATIONS

BEI – *Bureau des enquêtes indépendantes*

CAF – Canadian Armed Forces

CAVACs – Crime Victims Assistance Centres

CBSC – Canadian Broadcast Standards Council

CCQ – *Civil Code of Québec*

CDPDJ – *Commission des droits de la personne et des droits de la jeunesse*

Charter – Canadian Charter of Rights and Freedoms

CLPA – *Crown Liability and Proceedings Act*

CRAP – *Coalition contre la répression et les abus policiers*

DPCP – *Directeur des poursuites criminelles et pénales*

FPJQ – *Fédération professionnelle des journalistes du Québec*

FPMQ – *Fédération des policiers et policières municipaux du Québec*

GRIMPA – *Groupe de recherche et d'interventions psychosociales en milieu autochtone*

HRW – Human Rights Watch

JSP – Journalistic Standards and Practices

LDL – *Ligue des droits et libertés*

MMIWG – National Inquiry into Missing and Murdered Indigenous Women and Girls

SIU – Special Investigations Unit (Ontario)

SM – *Surêté municipale*

SPAQ – Native Para-Judicial Services of Québec

SPVM – *Service de police de la Ville de Montréal*

SQ – *Surêté du Québec*

Viens Inquiry or Inquiry – Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress

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FOREWORD/AVANT-PROPOS/NITAM IKITOWIN

This thesis develops a theoretical framework to think of state wrongdoings through a case study of allegations of police sexual violence disclosed in 2015. It does so exclusively in English, which may come as a surprise given the geographical situation of the events analyzed: Val-d'Or. Val-d'Or is a town in Western Québec, a primarily French-speaking province. Val-d'Or and its surroundings are also home (and were before the arrival of settlers) to Indigenous communities. In an attempt to reach out to Indigenous communities and French-speaking inhabitants of the Val-d'Or region, we wrote a foreword explaining the author's reasons for looking at Val-d'Or. The following pages are written in a very different style than the remaining portions of the thesis and should not be conceived of as part of the academic literature. This foreword describes how the author relates to the thesis and introduces the project in a more personal way. Recognizing the disproportionate effect of the Val-d'Or events on Indigenous women and their communities, the first foreword is written in Anicinapemowin (Pikogan). The French and English versions follow.

MANEO PIPON ACA NI MIKITAN OO MASINAIKAN. ACA WECKATC, IPWAMACI KA MATCI KIKINOAMASOWAN KA ICPIKAK KIKINOAMAKEWIN, NI TACI MAMITONENTANAPAN ENAKAMIKAKIPAN KA MIKOTAMAN OO MASINAIKANIKAK. KAWIN ENAK OCIPIIKATESINON OO ACITC MOCAK KI MIKOTCIKATE IPWAMACI OKACIKAK : PEPAKAN INAKONAKANIWIWAK AWIAKOK ACITC PEPAKAN ICI PIMATISIWAK.. NANTAM AWIAKOK PAKAN INAKONAKANIWI APITC WIN KOTAKIAK AWIAKOK, ANIC PECIKWAN ENAKONIKANIWAK, KAKINA AWIAK TAPICKOTC INENIMAKANIWI. 2015 KITCI AKITASON, ACA NICO PIPON NI TACI KIKINOAMASONAPAN Université Laval KITCI KIKINOAMATI MIKIWAMIKAK, MISIWE Kobek AKI KI KOCKOTAKANIWAN EKI NAKWAK Radio-Canada MASINATESITCIKANIKAK EKI MIKOTCIKATEK EKA KWAIAK EKI INAKAMIKISIWATC TAKONIWEWINIK WETI Val d'Or OTENA, IKWEWAK EKI MATCI TOTAWAWATCIN MEKWATC E MIKIMOWATC. EKI KITCI KOCKOTAKANIWAK APITC KA MIKOTCIKATEK NOTAKWATCIKANIKAK, ENENTAMAN SA NIN, NAKWAN EKA TAPICKOTC KAKINA AWIAK KICIKAPAMAKANIWITC INAKONIKEWINIKAK. INASAK EKI WITAMAKEWATC KA ICISEWATC IKWEWAK, 2015 KITCI AKITASON, MANE KEKON PANIMA OKI CAPOCKANAWA, MOCAK ENAKONIKANIWAK Kobek AKI KI ICI SAKAKWEWAK. NIWI WITAMAKE INIKIK EPITENTAMAN KA MIKOTAMANIN INI NICIN KEKONAN KA OCIPIAMANIN ICPIMIK : EKA KA KACKI ANAMENIMAKANIWITC AWIAK ACITC KITCI OKIMA INIKIK KECKITOTC KITCI MIKITAK SOKATISIWIN. KA MIKOTCIKATEK II EKA KWAIAK KA INAKAMIKISIWATC TAKONIWEWINIK WETI Val d'Or, NICIN KEKONAN ICI APAKISIN. KITCI OKIMAN OTANOKITAWAWAN TAKONIWEWINIK KITCI SOKIKAPAWITC, ACITC KA NAKWAK

NOTAKWATCIKANIKAK KI WAPATAIKEMAKAN E SANAKAK KITCI ANAMENIMAKANIWIWATC EKI PANAAKEWATC.

MI WETCI KI MATCI KIKINOAMASOWAN TIPAKONIKEWINI KIKONOAMASOWIN KITCI KI OCIPIAMAN MASINAIKAN KITCI OKIMA KACKAK KITCI ANAMENTAKOSIWATC KEWINAWA EKI MATCAKAMIKISIWATC TAKONIWEWINIK EKI SOKAPINANAWATCIN ACITC EKI MATCI TOTAWAWATCIN IKWEWAK. MI TAC Val d'Or OTENAKAK NIKI ICI NANATAWAPATCIKE KITCI MIKAMANIN TIPATCIMOWINAN. AIANOTC AWIAKOK ACITC KA MIKITAMOWATC TIPATCIMOWIN KI APATISIWAK KITCI KI OCIPIAMAN OOWE NANATAWAPATCIKE MASINAIKAN WINAWA MEKA OKI WAPATANAWA ACITC OKI NOTANAWA KA INAKAMIKANIK Val d'Or OTENAKAK 2015 KITCI AKITASON. MISA TEPWE, MOCAK NIKI NANATAWAPAMAK AWIAKOK KITCI WITOKAWICIWATC, NIKI OCITONAN KE KAKWETWEAN KEKONAN, NIKI NAKICKAWAK IKI AWIAKOK ACITC NIKI MAWATONANAN INWEWINAN. MI PANIMA KA TOTAMAN KITCI NISITOTAMAN MAIA WEKONEN KA ICISEK EKI WAPATAIKEWATC AWIAKOK ACITC KA MIKITAMOWATC TIPATCIMOWINAN WEKONEN MAIA KA INAKAMIKAK IIMA Val d'Or OTENAKAK ACITC WEKONEN KEKI NOSONEIKATEK KITCI KICIKAPATCIKATEK KITCI KI MIKITCIKATEK. WEKONEN KA TIPATCIMOWATC AWIAKOK ACITC KA MIKITAMOWATC TIPATCIMOWINAN WITAMAKEMAKAN WEKONEN KA ICISEK KITCI MIKITCITAMOWATC KITCI OKIMA ANOTAKANAK WEKONEN KA ICISEK Val d'Or OTENA, KITCI MAMAWI TIPAKONAKANIKANIWAK, KITCI NANATA KIKENTCIKATEK KA INAKAMIKISIWATC MAIA KA PANAAKEWATC, KITCI MIKOTCIKATEK TIPATCIMOWIN MASINAIKIANIKAK KONI NOTAKWATCIKANIKAK ACITC KITCI ONASAKANIWIWATC KE TESAPIWATC AWIAKOK KE MIKITAMOWATC KA NANATA KIKENTCIKATEK ATI KA ICI PANAAKANIWAK. KAWIN PECIK ETA KA MANENTAKOSITC IKWE MIKOMAKANIWISI KA ICISETC OO MASINAIKANIKAK, OSAM MEKA KATA MANEPAN MIKIMOWIN. KAWIN PAPACINE TAC KI NISITOTCIKATEK OO MASINAIKANIKAK, ATI MAIA ENENTAMOWATC IKWEWAK KONI MI KA INENTCIKEWATC, KAWIN WIN II.

OO MASINAIKAN TIPATCIMOMAKAN KA INAKAMIKAK Val-d'Or OTENA EKI ANAMENIMAKANIWIWATC KITCI OKIMA ANOTAKANAK ACITC KA TIPAKONIKANIWAK II OTCI KA INENTCIKEWATC AWIAKOK. KI KICIKAPATCIKATEWAN PEPAKAN INWEWINAN KA NOTCIKATEKIN ACITC KAKWE NISITOTCIKATE WEKONEN MAIA WETCI KI MATCAKAMIKAK Vald'Or OTENAKAK. WATAN, MAMITONENTAKWAN EKI ICISEK INENTCIKATE APITC AWIAKOK EKA TAPICKOTC INENIMAKANIWIWATC ACITC EKA TIPAKONAKANIWIWATC KA PANAAKEWATC KITCI OKIMA OTAKONIKEWINIMAN. KANA TIPISE KITCI OKIMA MACKAWIKAPAWISI KITCI KI TIPAKONATCIN OTANONAKANAN WETCI EKA KEKON INAKAMIKAK? KONI KAWIN OWAPATASIN EKA E MINWACIKIN OTINAKONIKEWINAN?

ICKWEAK KEKON NIWI MIKOTAN, TETAKO KI SOKITEEWAK IKWEWAK KI TIPATCIMOWATC KA INENTCIKEWATC EKI MANENTAKOSIWATC. KAWIN KEKWAN OO MASINAIKAN INAPATASINON KITCI MINOPITCIKATEK KA INAKAMIKAK Val d'Or OTENAKAK KONI EKA MINAWATC KITCI KICIWAITINANIWAK. PEKIC WIN, KETCINATC ENENTAMAN, TETAKO NI PAKOSENIMONAN KITCI KI KIKEWATC AWIAKOK KA MICWAKANIAKANIWIWATC ACITC KITCI PAKINAKEWATC TEPWEWINIKAK.

Cette thèse est le fruit de plusieurs années de recherche. Elle émane également d'un constat observé bien avant le début de mon parcours doctoral. Ce dernier n'a rien de novateur et a été exprimé maintes fois avant aujourd'hui : le droit affecte les individus différemment en fonction de leurs identités et circonstances personnelles. Certaines personnes sont plus susceptibles de vivre des injustices que d'autres, malgré la règle voulant que le droit s'applique à tous, et ce, de la même façon. En 2015, alors que j'entamais la deuxième année de mon baccalauréat en droit à l'Université Laval, un reportage de Radio-Canada sur des allégations d'inconduites sexuelles commises par des policiers contre des femmes autochtones à Val-d'Or a secoué le Québec. Le fait que ce reportage ait créé un choc si grand dans la population est, à mon avis, un exemple de notre incapacité à penser le droit comme vecteur d'injustice. Pourtant, les femmes qui ont partagé leur histoire en 2015 se butaient contre de nombreux obstacles, plusieurs de ceux-ci étant le produit du système légal en vigueur au Québec. Il est important d'ajouter ici que mon intérêt en recherche a toujours gravité autour de deux sujets connexes au constat mentionné ci-haut : l'impunité et le monopole de la violence détenu par l'État. Les inconduites décrites à Val-d'Or s'inscrivaient dans ces deux thèmes. La police est l'une des manifestations du pouvoir de l'État, et les propos rapportés dans ce reportage laissaient transparaitre des craintes d'impunité.

Ce contexte m'a donc mené à entreprendre des études doctorales en droit portant sur la responsabilité de l'État face à la violence sexuelle perpétrée par des membres des forces policières. Val-d'Or est devenu le centre de cette recherche en y figurant comme étude de cas. La thèse qui résulte de cette recherche a été développée en collaboration avec certains membres de la société civile et des médias qui ont été impliqués dans les évènements de Val-d'Or depuis 2015. En effet, une partie de mon expérience doctorale a consisté à recruter des participants, élaborer une série de questions, diriger des entrevues avec ces participants et analyser les résultats. Ce

processus fut nécessaire, puisque le projet doctoral visait à comprendre comment la société civile et les médias ont contribué et répondu aux mécanismes de responsabilité étatique qui furent mis en place à Val-d'Or. Les propos récoltés au cours des entrevues avec des membres de la société civile et des médias portaient sur les différents mécanismes ayant pour but d'asseoir la responsabilité de l'État à Val-d'Or, notamment une action collective, des enquêtes criminelles, de la couverture médiatique et une commission publique d'enquête. Il faut toutefois noter que la thèse ne se penche pas sur l'expérience individuelle des victimes, ce qui constitue, je l'admets, une limite considérable. En aucun cas, les résultats présentés au cours des prochaines pages ne devraient être compris comme une représentation de l'opinion ou de l'expérience individuelle des victimes.

Cette thèse documente donc les évènements de Val-d'Or en y étudiant la responsabilité de l'État via une perspective qui est d'abord et avant tout socio-juridique. Pour ce faire, elle présente certains postulats sur la responsabilité de l'État et répond aux questions qui en découlent lorsqu'ils sont appliqués à ce que l'on a appelé la crise de Val-d'Or. Lorsqu'un système mène à des injustices ou à l'impunité des agents de l'État, il est impératif de s'interroger sur les causes profondes de ces phénomènes. L'État maintient-il un statu quo parce qu'il ne considère pas la possibilité que ses mécanismes légaux soient insuffisants? Ou est-ce plutôt parce qu'il ne parvient pas à voir comment son système est une source de préjudice?

En conclusion de cet avant-propos, je tiens à mentionner un sentiment souvent exprimé au cours des entrevues et qui ne trouva pas place dans le corps du texte : la nécessité de souligner le courage des femmes ayant dénoncé des abus. Cela étant dit cette thèse ne permet pas de rectifier les abus ni d'amenuiser les tensions sociales à Val-d'Or. Soyez assurés, par contre, que cette thèse est écrite en souhaitant ardemment que tous les individus ayant été touchés par ces évènements puissent trouver justice et guérison.

This thesis is the result of several years of research. It also stems from an observation made long before the beginning of my doctoral studies. The latter is not novel and has been expressed many times before: the law impacts individuals differently depending on their identities and circumstances. Some people are more likely to experience injustice than others, despite the rule of

law and its contention that the law applies to everyone equally. In 2015, as I entered the second year of my first law degree at Laval University, a Radio-Canada news story on allegations of sexual misconduct by police officers against Indigenous women in Val-d'Or shook the province of Quebec. The fact that this news story shocked the population is, in my opinion, an example of our inability to think of the law as a vehicle for injustice. The women who shared their stories in 2015 faced many obstacles, many of which were the product of Québec's legal system. My research interests have always gravitated around two topics related to the above finding: impunity and the state's monopoly on violence. The allegations described in Val-d'Or interact with these two themes. The police are one of the manifestations of state power, and the comments reported by journalists revealed a deep fear of impunity.

This context led me to undertake doctoral studies in law on state accountability for sexual violence perpetrated by members of the police. Val-d'Or became the case study at the core of this project. The research was undertaken in collaboration with certain members of civil society and the media who have been involved in the events in Val-d'Or since 2015. Indeed, part of my doctoral experience involved recruiting participants, developing a set of questions, conducting interviews with these participants, and analyzing the outcomes. This process was necessary because the doctoral project aimed to understand how civil society and the media perceived and responded to the state accountability mechanisms that were put in place in Val-d'Or. The interviews with members of civil society and the media dealt with the various mechanisms used to secure state accountability in Val-d'Or, including a class action, criminal investigations, media coverage, and a public commission of inquiry. It should be noted, however, that the thesis does not examine the individual experiences of the victims, which is admittedly a significant limitation.

This thesis examines state accountability through a perspective that is, first and foremost, socio-legal. To do so, it presents certain postulates on state responsibility and state accountability and answers the questions that arise from them when applied to what has been called the Val-d'Or crisis. When a system continues to lead to injustice or impunity for state agents, it is imperative to investigate the root causes of these phenomena. Does the state maintain the status quo because it cannot conceive of its legal mechanisms as insufficient? Or is it because the state fails to see how its system is a source of harm?

In concluding this foreword, I would like to mention a comment often expressed during the interviews that did not find a place in the body of the text: the need to highlight the courage of women who have denounced abuse. That being said, this thesis does not rectify the abuses or reduce the social tensions in Val-d'Or. Rest assured, however, that it is written with the fervent wish that all individuals affected by these events may find justice and peace.

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ACKNOWLEDGMENTS

Writing doctoral work is a journey with ups and downs. While I typed each word in this thesis, this project is a collective endeavour. Countless individuals stood beside me in the last few years – offering support, mentorship, illuminating discussions, and friendship. They cheered me on when things were going well and lifted me up when I could not see the end of this equally rewarding and frustrating adventure. To all of you – thanks for letting me bounce ideas and for sharing valuable advice, cups of coffee, and the (occasional) drink. Listing everyone who assisted me in this endeavour or influenced the person I am today is unrealistic, but I cannot conclude this thesis without at least attempting the impossible. I must recognize the contribution of some people who directly influenced this project:

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INTRODUCTION

Every day, police officers patrol our streets and respond to emergency calls to prevent crime and accidents, protect lives and properties, provide guidance, and assist citizens in various situations: fires, overflowing taps, medical crises, and so on.[1] In conducting these duties, police officers sometimes commit misconduct by acting outside the scope of their authority or in ways antithetical to their role of protection, law enforcement, assistance to victims, and maintenance of social order.[2] When police officers misuse their power, the ways in which we can hold the state accountable for such wrongdoings cause both theoretical and practical problems. One of them is that the state acts as both party and adjudicator. A question thus rapidly emerges when members of the police act beyond their lawful authority and use the authority deriving from their position in society to commit misconduct. This query can be summarized as follows: 'How can we exercise state accountability when the state takes part in the abuse?' While this question was not the focus guiding the project, it informed the thesis and the reflection underlying it by helping us articulate a research question and research objectives.

The issue underlined by the complication of state accountability for law enforcement wrongs arises in a vast array of circumstances, ranging from police brutality to unjustified police targeting, to name only a few examples. This thesis centers its inquiry on one of the contexts

[1] See, e.g., John Burchill, "A Horse Gallops Down a Street... Policing and the Resilience of the Common Law" (2018) 41:1 MLJ 161; *Haynes v Harwood*, [1935] 1 KB 146. For an international perspective on police duties and role, see United Nations, ed, *Human rights standards and practice for the police: expanded pocket book on human rights for the police*, Professional training series no. 5/Add.3 (New York: United Nations, 2004) at 2, 5 and 6; Commissioner for Human Rights, *Opinion of the Commissioner for Human Rights Concerning Independent and Effective Determination of Complaints against the Police* (Commissioner for Human Rights, 2009) at 4.

[2] Neil Robertson, "Policing: Fundamental principles in a Canadian context" (2012) 55:3 Canadian Public Administration 343–363 at 350–351; Quirine Eijkman, "A Socio-Legal Perspective on Human Rights and Policing" (2007) 25 Neth Q Hum Rts 5–20 at 9–10.

pointing to misuse of state power: police misconduct tied to sexual violence.[3] Police sexual misconduct stands as a challenging phenomenon to scrutinize through a state accountability lens. This results partly from the fact that mechanisms employed to secure *ex post facto* accountability are often based on the individual responsibility of the officer. As the state does not explicitly direct its police forces to commit sexual misconduct (which is rather rooted in structural or institutional causes, such as police culture and colonialism), the connection between the state and the act of a police officer may appear distant at first. However, reports of sexual misconduct by police across provinces and police forces[4] call for an analysis that accounts for the state's role in tolerating, allowing, and failing to prevent or respond to sexual misconduct by police.[5] This can be done through the assessment of accountability mechanisms. For the purposes of this project, we will concentrate on after-the-fact state accountability mechanisms. While critics will raise the objection that *ex post facto* accountability does not allow us to change the nature of policing, we argue that we must simultaneously look at reforming the police and improving the ways in which we can hold the state accountable (and preclude immunity). This thesis emphasizes *ex post facto*

[3] We will refer to police sexual misconduct and police sexual violence interchangeably throughout all chapters.
[4] See, e.g., *Broken Lives, Broken Dreams: The Devastating Effects of Sexual Harassment On Women in the RCMP*, by Michel Bastarache (Ottawa: Merlo-Davidson Settlement, 2020); Manitoba Clean Environment Commission, *Regional Cumulative Effects Assessment: Community Meeting Fox Lake Cree Nation Transcripts of Proceedings* (2018) at 22, 70–71, 74, 82–83, 148 and 153; Willow Fiddler, "Pikangikum First Nation expel OPP from community over sexual assault allegations, SIU investigating", *The Star* (22 March 2021), online: <Pikangikum First Nation expel OPP from community over sexual assault allegations, SIU investigating>; *Those Who Take Us Away*, by Human Rights Watch (Human Rights Watch, 2013); *Rivers v Waterloo Regional Police Services Board*, 2018 ONSC 4307; *Rapport de l'observatrice indépendante : Évaluation de l'intégrité et de l'impartialité des enquêtes du SPVM sur des allégations d'actes criminels visant des policiers de la SQ à l'encontre de femmes autochtones de Val-d'Or et d'ailleurs. Phase 1*, by Fannie Lafontaine (2016); *Rapport de l'observatrice civile indépendante: Évaluation de l'intégrité et de l'impartialité des enquêtes du SPVM relatives à des allégations de nature criminelle formulées par une personne autochtone au Québec à l'encontre d'un policier. Phase 2*, by Fannie Lafontaine (2020); *Reclaiming Power and Peace, vol 2., a supplementary report of the : The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls: Kepec - Quebec*, by National Inquiry into Missing and Murdered Indigenous Women and Girls (National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019) at 97, 100 and 101. This is not an exhaustive list.
[5] *Cf* Sylvia Rich, "Police Violence as Organizational Crime" (2021) Can j law soc 135.

accountability.[6] This approach admittedly focuses on a narrow aspect of the problem. Still, since police misconduct has happened throughout the years and is, unfortunately, bound to happen in the future – we must ensure our approaches to address this phenomenon recognize that police sexual misconduct is rooted in state policies and infrastructures. This thesis proposes a theoretical framework that revisits causation, responsibility, and accountability in cases of police sexual misconduct, notably by adapting standards well-known to the law like foreseeability and wilful blindness (see Chapter I for further detail, as wilful blindness is framed in a more expansive way than its classic definition in Canadian law).

Prior to laying out further details on the research question guiding this endeavour and the precise content of this thesis, we must describe police sexual misconduct to better frame this project within the Canadian context. Police sexual misconduct encompasses various behaviours comprising criminal acts – fitting within the narrower definition of police crime (e.g., sexual assault and sexual exploitation by police) – and non-criminal acts infringing professional or moral norms.[7] Canada witnessed several allegations of police sexual misconduct before the courts and in

[6] Nevertheless, we draw attention to the fact that ex-post facto accountability analyses should be done in supplement to reforms of policing.

[7] See, e.g., Robyn Maynard, "Law Enforcement Violence Against Black Women" in *Policing Black Lives: State Violence in Canada from Slavery to the Present* (Black Point (Nova Scotia): Fernwood Publishing, 2017); Angela J Ritchie, "Police Sexual Violence" in *Invisible No More: Police Violence Against Black Women and Women of Color* (Boston: Beacon Press, 2017); Timothy M Maher, "Police Sexual Misconduct: Officers' Perceptions of its Extent and Causality" (2003) 28:2 Crim Justice Rev 355–379 at 356-358–360; Allen D Sapp, "Sexual Misconduct By Police Officers" in Thomas Barker & David L Carter, eds, *Police Deviance*, 3rd ed (Cincinnati, OH: Anderson Publishing Co., 1994); Tom Barker, *Agressors in Blue: Exposing Police Sexual Misconduct* (Cham, Switzerland: Palgrave Macmillan, 2020); Commissioner for Human Rights, *supra* note 1 at 7; Ray Kuszelewski & Dianne L Martin, "The Perils of Poverty: Prostitutes' Rights, Police Misconduct, and Poverty Law," (1997) 35 Osgoode Hall LJ 835–863 at 847; Dianne Martin, "5. Accountability Mechanisms: Legal Sites of Executive-Police Relations – Core Principles in a Canadian Context" in Margaret E Beare & Tonita Murray, eds, *Police and Government Relations* (Toronto: University of Toronto Press, 2007) at 263; Peter B Kraska & Victor E Kappeler, "To serve and pursue: Exploring police sexual violence against women" (1995) 12:1 Justice Quarterly 85–111. *Cf* Brenda Cossman, "#MeToo, Sex Wars 2.0 and the Power of Law" in Javaid Rehman, Ayesha Shahid & Steve Foster, eds, *The Asian Yearbook of Human Rights and Humanitarian Law* (Brill | Nijhoff, 2019) 18 at 34–36.

the media. In some cases, a collective narrative of abuse emerged, including sexual violence against Indigenous communities and sexual harassment in the workplace.[8] For this research, police sexual misconduct is understood not only as an officer's misconduct but also as a public concern.[9] Ensuring that the state is held accountable for the acts of its agents and its inaction in preventing and handling police sexual misconduct helps look at the phenomenon beyond the officer's individual responsibility and recognizes the state's role in creating the conditions leading to police abuse and impunity.[10] The argument on state accountability and the tension between state and individual responsibility in cases of police sexual misconduct will be addressed in more detail in the first Chapter. The latter tension serves as the theoretical background for the whole project and introduces numerous propositions, including the revisited accountability standards of foreseeability and wilful blindness mentioned above.

Sexual misconduct by police requires in-depth analysis and it affords an avenue to illustrate the complexity of state accountability and affects many provinces and territories. This thesis applies the lens of state accountability to sexual misconduct by police by scrutinizing one of the cases reported in Canada. More precisely, it emphasizes the case study of police sexual misconduct in Val-d'Or, Québec (hereinafter the "Val-d'Or crisis" or "Val-d'Or events") so that the theoretical

[8] See, e.g., Sandrine Ampleman-Tremblay, "Comprendre l'inconduite sexuelle policière: une perspective canadienne" (2022) 34:1 CJWL 1 reporting on different cases of police sexual misconduct in Canada.

[9] On police misconduct being structural and thus more than the action of rogue individuals, see, e.g., Kuszelewski & Martin, *supra* note 7 at 847–848; Ritchie, *supra* note 7; Maynard, *supra* note 7. *Cf* Thomas Barker, "An Empirical Study of Police Deviance Other than Corruption" in Thomas Barker & David L Carter, eds, *Police Deviance*, 3rd ed (Cincinnati, OH: Anderson Publishing Co., 1994) at 128.

[10] Ludger Jansen, "A Plural Subject Approach to the Responsibilities of Groups and Institutions: The Responsibilities of Groups and Institutions" (2014) 38:1 Midwest Studies In Philosophy 91–102 at 99–101; Shane Darcy, *Collective Responsibility and Accountability under International Law* (Brill | Nijhoff, 2007) at xvii–xix; Lafontaine (2016), *supra* note 4 at 9 and 67. On the role of the state in the creation of abuse, see, e.g., Louis Blouin, "Excuses et crise d'Octobre : le gouvernement Trudeau silencieux", *Radio-Canada* (27 September 2020), online: <https://ici.radio-canada.ca/nouvelle/1736707/excuses-crise-octobre-trudeau-jocelyne-robert-marc-lalonde?fbclid=IwAR0NApYRGZz0cyqiainGjsa0s5Um2rZAhWGZjvEIr6ybesqFlAVb1zL21gM>. Finally, on the Val-d'Or crisis, see Rich, *supra* note 5.

framework can be grounded and recontextualized in practice. The case study of the Val-d'Or crisis and the methodology chosen to examine these events will be described later in this introduction (see sections 1 and 2).

The complex challenges at the core of this project require a mix of methodological approaches. As the literature on police sexual violence and state accountability in Canada is scarce, we combined doctrinal research to socio-legal approaches, and more precisely, qualitative interviews (see section 2 for more information on the methodology). The case study of Val-d'Or enabled the collection of extensive data on a specific situation that could then be tied to the general literature. More specifically, interviews of individuals associated with the Val-d'Or events allowed us to gather information that is not yet public, to access a more multifaceted understanding of state accountability, and bring new interpretations to the literature on state accountability.

This interview-focused methodology also originates from the more refined version of our research question on state accountability. Comprehending how to assert state accountability in the context of police sexual misconduct in Val-d'Or directed us to a narrower scope of inquiry than our initial query on the exercise of state accountability: 'How did civil society and the media perceive and respond to state accountability mechanisms for police sexual misconduct in Val-d'Or?' This research question was crucial to access knowledge on state accountability for law enforcement wrongs. In these cases, gaining information directly from the state might be difficult or perceived as biased, given the state's role in the abuse and adjudication processes. This being said, we focused on mechanisms in which the state played some role, either by leading it or answering to outside pressure. Grassroots actions operating without any interaction with the state

are thus excluded from this research. Further studies on the influence of pluralistic normativity could add another dimension to our understanding of state accountability.

The research question was meant to assess the legitimacy and effectiveness of state-based mechanisms as well as civil society and media's responses to mechanisms they perceived as lacking either. As we started to conduct preliminary research and interviews, our question was quickly complemented by a set of objectives, which helped contextualize the research by engaging with the literature and participants' discourses. Our research goals were: (1) to develop a theoretical framework explaining state accountability for police sexual misconduct, (2) to analyze the limitations of current state accountability mechanisms for police sexual misconduct, and (3) to apply the theoretical framework to the Val-d'Or crisis. The research question and objectives were inherently intertwined. By gathering perceptions and responses of civil society and the media, we could supplement the literature on the limitations of accountability mechanisms and state accountability for police sexual misconduct. We then used the data to propose novel theoretical conceptions applicable to Val-d'Or.

The investigation of perceptions and responses to state accountability required by our research question allowed us to dig deeper than black letter law. It also circumvented part of the conflict of interests arising when the state is a party to the misconduct. By including civil society and the media's voices, we offered alternatives to the predominance of state narratives. Nevertheless, recognizing the value of understanding state law, Chapter I exposes a framework of social accountability that ties bottom-up and top-down accountability mechanisms together by analyzing them through a lens of complementarity. Chapter II then discusses avenues in state law,

or more specifically, liability regimes in private and public law. This Chapter argues that Canadian state law includes several limitations that prevent state accountability, including the predominant focus on individual responsibility in Canadian accountability mechanisms, the overemphasis on individualized remedies, and internal limitations circumscribing the successes of litigation in cases combining sexual violence or police misconduct. Taken together, these restrictions lead to the impossibility of tackling systemic components of police sexual misconduct through existing legal processes. Chapters I and II lay the groundwork for state accountability for police sexual misconduct in Canada and introduce the next phase of the thesis: detailing perceptions of state accountability and extra-legal mechanisms that have been used in Val-d'Or in lieu of or to complement existing legal tools. These chapters significantly contribute to the research objectives of developing a theoretical framework dealing with state accountability for police sexual misconduct and outlining the current system's limitations. The following chapters, drawing primarily on interviews, continue to highlight limitations while applying the theoretical framework to Val-d'Or.

Chapters III to V review different mechanisms implemented in Val-d'Or. Chapter III examines the role of actors within criminal investigations for police sexual misconduct in Val-d'Or and contends that state accountability for police sexual crimes requires an investigative mechanism for police crime that fosters public trust. It also suggests that since the Val-d'Or crisis, state-based mechanisms have presented substantial limitations in matters of transparency, independence, and impartiality, which impeded trust and, consequently, state accountability for police sexual misconduct. To reach these conclusions, Chapter III collects and scrutinizes the

interaction of civil society with the state. It also documents a dialogue between the state, civil society (including academia), and the media. This statement is equally true for Chapters IV and V.

Chapter IV analyzes media coverage as a distinct and bottom-up form of state accountability. It brings forward several contentions, namely that journalists can trigger state accountability, that this form of accountability might not unveil the whole story, and that media-induced accountability might not fully support the community once the reporting process is over. After having demonstrated the role of the media in triggering state action in Val-d'Or, this Chapter shows that journalists concentrated on a 'crisis' narrative, which had the effect of excluding other stories of abuse and presenting Val-d'Or as an anomaly rather than a product of history and state action. The Chapter also points out to significant harms that resulted from the news story, including insults and intimidation. The thesis calls for caution and reliance on multiple means of redress to mitigate mediatic coverage fallout. On the one hand, it recognizes that without journalism, the Val-d'Or crisis might not have been revealed in 2015 and, thus, most mechanisms documented in the thesis would not have existed. On the other hand, it underlines that such accountability comes with a price – one that boils down to potential (re)victimization.

Chapter V moves on to another mechanism resulting from the mediatic coverage in Val-d'Or and public pressure: the *Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress* ("Viens Inquiry" or "Inquiry"). This Chapter presents the Viens Inquiry as aligned with the theoretical models of state accountability embraced in Chapter I, as inquiries allow for communication between the public and the state. Nevertheless, the Chapter also pinpoints several problems with how the Viens

Inquiry operated, notably the inequality of representation, the formality of the procedures, the state-imposed framework, the repetitions of inquiries, and the lack of consideration of sexual violence, police misconduct, Indigenous women, and non-Indigenous police forces in the Final Report. The Chapter ends with a note on the research function of the Viens Inquiry, which fueled the literature, participants' actions, and the calls to action. The thesis focuses on state liability, criminal investigations, media coverage, and commissions of inquiry because of their implementation in Val-d'Or and because they could become suitable state accountability mechanisms for police sexual misconduct if they adapted themselves to respond to this research.

Chapters I and II show the need for an expansion of our general understanding of state systemic wrongs in law. Chapter III continues this demonstration while incorporating examples taken from interviews and concentrating not only on state law but also on the specific mechanisms deployed in Val-d'Or. Chapters IV and V pursue Chapter III's focus on civil society and the media's discourses. These chapters demonstrate how police sexual misconduct poses accountability challenges even outside traditional liability regimes such as torts, extracontractual liability, human rights litigation, and criminal liability. Read together, these chapters call for a reform of our comprehension of state wrongs and the abolition of barriers to accountability. As of today, well-rounded accountability requires avoiding the silos of law. By developing a state accountability theoretical framework rooted in interdisciplinarity, receptiveness to civil society and awareness of limitations within the law, we can break free from these legal boundaries. We hope that the arguments, interviews, and documentation put forward in this thesis shed light on the role of the state in creating police sexual misconduct. If this premise is accepted, as accounted for in Chapter I, the route to accountability will be easier in the future.

The thesis contributes to different fields in the literature. By developing a theoretical framework to think of state accountability for police sexual misconduct, the project combines social sciences and legal notions, thereby showing the value of interdisciplinarity literature for advancing the law. For instance, looking at the law through a social anthropology lens allows for reframing state wrongs and offering novel concepts to remedy long-standing legal challenges. The example of wilful blindness displays how the law can benefit from broadening the meaning of legal definitions to respond to social needs. The thesis helps connect social anthropology and, most precisely, the work of Judith Bovensiepen on wilful blindness to normative solutions.[11] Without the input from social sciences, the law was too rigid to secure state accountability for police sexual violence. Each chapter of this thesis demonstrates this statement by indicating limitations in existing mechanisms and explaining how a wilful blindness standard would circumvent them. Interdisciplinarity allows for pushing legal boundaries and redefining state accountability. Wilful blindness is only one example; similar conclusions can be reached when looking at Robert K. Merton's sociological account of "unanticipated consequences of purposive social action" and our concept of unintended consequences.[12] Unintended consequences emerge as an essential concept to attribute responsibility for police sexual misconduct to the state. Chapter I unpacks the examples of wilful blindness and unintended consequences. These specific contributions will thus become more apparent once the reader gets familiar with the theoretical framework outlined in the first Chapter and its application throughout the thesis.

[11] Judith Bovensiepen, "On the banality of wilful blindness: Ignorance and affect in extractive encounters" (2020) 40:4 Critique of Anthropology 490–507. See also Judith Bovensiepen & Mathijs Pelkmans, "Dynamics of wilful blindness: An introduction" (2020) 40:4 Critique of Anthropology 387–402; Catherine Allerton, "Invisible children? Non-recognition, humanitarian blindness and other forms of ignorance in Sabah, Malaysia" (2020) 40:4 Critique of Anthropology 455–470.

[12] Robert K Merton, "The Unanticipated Consequences of Purposive Social Action" (1936) 1:6 American Sociological Review 894.

The value of interdisciplinarity is not purely theoretical. It is true that exclusive reliance on legal sources could not have led to our theoretical framework.[13] Nevertheless, the inputs of the thesis can also be useful in legal practice. This project presents a new conceptualization of state wrongs meant for a legal audience. Should prosecutors and other legal actors engage with broader conceptions of responsibility and accountability, this research might find practical applications and help secure accountability for state wrongs within the law. Given that current mechanisms exhibit inherent limitations (see, e.g., Chapters II to V), rethinking accountability for state wrongs in law might be the only way to secure satisfactory results in the future. Val-d'Or compelling showed the substantial restrictions present in our system when it comes to obtaining state accountability for state wrongs like police sexual violence. If the legislator were to revise causality for systemic wrongs based on our (or similar) arguments, we could witness drastic changes in the legal system as we know it. These changes could reinforce legal accountability for state abuse and, more broadly, allow society to recognize its participation in state wrongs. This thesis can assist legal practitioners in thinking of accountability differently. While the entire theoretical framework will likely not be incorporated into prosecutorial directives, it can start a dialogue on state wrongs, their adjudication, and how to remedy them.

The thesis also aims to reach civil society and the media so that they can grapple with the consequences of their involvement with accountability mechanisms. The use of interviews to document discourses of actors within the legal system in cases of sexual violence has already led

[13] For instance, compare our framework to *R v Briscoe*, 2010 SCC 13, [2010] 1 SCR 411; *Sansregret v The Queen*, [1985] 1 SCR 570; Rich, *supra* note 5.

to published research like Elaine Craig's *Putting Trials on Trial*.[14] We were inspired by Craig's approach, which gives voice to people interacting with the law, and builds a socio-legal methodology literature in Canadian scholarship. In her book, Craig analyses case law, transcripts of trials, public statements, websites of law firms, and transcripts of interviews with actors of the justice system to demonstrate the problems inherent not only to the law but also to legal practice in cases of sexual assaults. *Putting Trials on Trial* forces its readers to examine sexual assault beyond criminal provisions and considers the law 'as experienced'. It merges law and social attitudes. Projects based on lived experience help highlight issues within the legal practice and propose legal reforms tailored to our system and aligned with societal concerns.

Similarly, this thesis draws on the voices of media and civil society to indicate concerns within the law and its practice. Interviews and documentation on police sexual violence assisted us in documenting state accountability mechanisms' limitations and legitimacy, including bottom-up accountability initiatives. As some chapters will demonstrate, civil society and the media are vectors of accountability, but they can also cause further victimization (see, e.g., Chapter IV). While we do not look at the legal practice of lawyers like Craig, analyzing the implication of civil society and the media is essential, as it is a form of 'practice' for state accountability. By examining this practice, this thesis reflects on how to mitigate adverse outcomes of civil society and the media's participation in accountability mechanisms and maximize the positive effects of bottom-up accountability measures for police sexual violence.

[14] Elaine Craig, *Putting Trials on Trial: Sexual Assault and the Failure of the Legal Profession* (Montréal & Kingston; London; Chicago: McGill-Queen's University Press, 2018). Craig comments on her methogology at pp. 17-23.

Consequently, the thesis can be placed into a large corpus of texts examining the state, its accountability, and civil society across disciplines, including – as mentioned above – law, social anthropology, and sociology.[15] However, it primarily addresses a gap in the *legal* scholarship on police sexual violence. Policing, sexual violence, and state blame have all been unpacked separately in the literature.[16] Police sexual violence, on its end, received scant attention from legal academics. This is especially true in Canada, where documentation is very scarce.[17] The few papers

[15] See, e.g., Michael Mann, "The autonomous power of the state: its origins, mechanisms and results" (1984) 25:2 Arch eur sociol 185–213; Michael Mann, "Infrastructural Power Revisited" (2008) 43:3–4 St Comp Int Dev 355; Michael Mann, *The Sources of Social Power* (Cambridge: Cambridge University Press, 1986); Michael Mann, "The sources of social power revisited: a response to criticism" in John A Hall & Ralph Schroeder, eds, *An Anatomy of Power* (Cambridge: Cambridge University Press, 2006) 343; Claire Dupuy & Julie Pollard, "A Dethroned King? The Limits of State Infrastructural Power in France" (2014) 92:2 Public Admin 359–374; Elissa Berwick & Fotini Christia, "State Capacity Redux: Integrating Classical and Experimental Contributions to an Enduring Debate" (2018) 21:1 Annu Rev Polit Sci 71; Hillel Soifer, "State Infrastructural Power: Approaches to Conceptualization and Measurement" (2008) 43:3–4 St Comp Int Dev 231; Hillel Soifer & Matthias vom Hau, "Unpacking the Strength of the State: The Utility of State Infrastructural Power" (2008) 43:3–4 St Comp Int Dev 219–230. In criminal law, see, e.g., Rich, *supra* note 5; Marie Manikis, "Recognising State Blame in Sentencing: A Communicative and Relational Framework" (2022) 81:2 Cambridge Law Journal 294.

[16] We cannot enumerate all the literature published in these vast fields. Let us point to a few sources that informed our reflection on each topic: Craig, *supra* note 14 (sexual violence); Angela Campbell, "A Specialized Sexual Offences Court for Quebec" (2020) 2:1 Can JL & Justice 179 (sexual violence); John Gardner, "The Wrongness of Rape" in *Offences and Defences: Selected Essays in the Philosophy of Criminal Law* (Oxford: Oxford University Press, 2007) (sexual violence); Cossman, *supra* note 7 (sexual violence); *Rebâtir la confiance*, by Elizabeth Corte & Julie Desrosiers (Comité d'experts sur l'accompagnement des victimes d'agressions sexuelles et de violence conjugale, 2020) (sexual violence); Manikis, *supra* note 15 (state blame); Alice Ristroph, "Responsibility for the Criminal Law" in RA Duff & Stuart Green, eds, *Philosophical Foundations of Criminal Law* (Oxford: Oxford University Press, 2011) 107 DOI: 10.1093/acprof:oso/9780199559152.003.0006 (state blame); François Tanguay-Renaud, "Criminalizing the State" (2013) 7:2 Criminal Law, Philosophy 255–284 (state blame); Alice Ristroph, "Criminal law as public ordering" (2020) 70:supplement 1 University of Toronto Law Journal 64–83 (state blame); Kent Roach, *Canadian Policing: Why and How It Must Change* (Toronto: Irwin Law, 2022) (policing); *Les interpellations policières à la lumière des identités racisées des personnes interpellées: Analyse des données du Service de Police de la Ville de Montréal (SPVM) et élaboration d'indicateurs de suivi en matière de profilage racial*, by Victor Armony, Mariam Hassaoui & Massimiliano Mulone (2019) (policing); Alice Ristroph, "The Constitution of Police Violence" (2017) 64 UCLA L Rev 1182 (policing).

[17] The literature dealing with this issue comes mainly from the United States and outside the legal sphere, see e.g., Ritchie, *supra* note 7; Andrea J Ritchie, "Law Enforcement Violence Against Women of Color" in *Incite! Women of Color Against Violence, Color of Violence: The INCITE! Anthology* (Cambridge, Mass.: South End Press, 2006); Maher, *supra* note 7; Timothy M Maher, "Cops on the Make: Police Officers Using Their Job, Power, and Authority to Pursue Their Personal Sexual Interests" (2007) 7 JIJIS 32; Philip Matthew Stinson et al, "Police Sexual Misconduct" (2015) 26:7 Criminal Justice Policy Review 665; Philip Matthew Stinson et al, "Police Sexual Misconduct: Arrested Officers and Their Victims" (2015) 10:2 Victims & Offenders 117; Barker, *supra* note 7; Kraska & Kappeler, "To serve and pursue", *supra* note 7; Susan Brownmiller, "Power: Institution and Authority" in *Against our Will: Men, Women and Rape* (New York: Simon and Schuster, 1975). There are some examples in the legal literature: see, e.g., Katherine A Heil, "The Fuzz(y) Lines of Consent: Police Sexual Misconduct with Detainees" (2019) 70:4 South Carolina Law Review 94.

published solely deal with the individual responsibility of police officers (with a specific emphasis on strip searches).[18] This thesis fills this gap by examining how the state produces conditions where police sexual violence can happen with impunity and proposing ways to improve state accountability in the future. To the best of our knowledge, this research is the only attempt in Canada to encapsulate police sexual violence within a comprehensive framework of state accountability.[19] While some authors contend that sexual violence is connected to colonialism (see Chapter I), this research gives examples throughout today's legal practices of how police sexual violence, impunity, and the state are connected. Some examples are rooted in colonialism; others are related to a disconnect between social narratives and the law. The thesis thus provides a theoretical framework of state wrongs, including but not limited to colonialism.

Now that the theme, research question, content, and contribution to the literature have been sketched, the remaining pages of this introduction will serve a triple purpose: (1) presenting the case study, (2) fleshing out the methodological choices taken to bring the case study to life, and (3) exposing political and ethical dilemmas we were confronted with throughout the project. The following sections allow for a better comprehension of the thesis as the chapters often cite the methodology or specific facts taken from the case study timeline. Sections 1 and 2 provide an in-

[18] See, e.g., Lafontaine (2016), *supra* note 4; Lafontaine (2020), *supra* note 4; Human Rights Watch, *supra* note 4; Manitoba Clean Environment Commission, *supra* note 4; Sandrine Ampleman-Tremblay, *Prosecuting and Sentencing Police Sexual Assaults: A Canadian Perspective* (LLM Thesis, University of Toronto, 2018) [unpublished]; Ampleman-Tremblay, *supra* note 8; Maynard, *supra* note 7; Kuszelewski & Martin, *supra* note 7; Manitoba Clean Environment Commission, *supra* note 4 at 22, 70–71, 74, 82–83, 148 and 153; National Inquiry into Missing and Murdered Indigenous Women and Girls, *supra* note 4 at 97 and 100–101. On strip-searches, see Michelle Psutka & Elizabeth Sheehy, "Strip-Searching of Women in Canada: Wrongs and Rights" (2016) 94 Can Bar Rev 241; Danardo Jones & Elizabeth Sheehy, "R v Desjourdy: A Narrative of White Innocence and Racialized Danger" 99 Can Bar Rev 611; David M Tanovich, "Gendered and Racialized Violence, Strip Searches, Sexual Assault and Abuse of Prosecutorial Power" (2011) 79 Criminal Reports (6th) 132.

[19] On sexual violence as colonialism, see, e.g., Sarah Deer, "Toward an Indigenous Jurisprudence of Rape" (2004) 14 Kan LJ & Pub Pol'y 121.

depth account of the Val-d'Or events and the methodology. They both offer context for the whole thesis. Sections 2 and 3 also outline limitations originating from our methodology, political issues, and ethical concerns.

1. Case Study: The Val-d'Or Crisis

As the previous paragraphs already made clear, this thesis investigates the perceptions and responses of civil society and the media to what has now been labeled the Val-d'Or crisis. The Val-d'Or crisis appeared as a relevant case study to examine society's insights on state-led accountability mechanisms as well as bottom-up state accountability processes. This stems from one primary finding: upon reading about the Val-d'Or crisis and its timeline (see below), we realized that non-state actors had *a priori* played a significant role in bringing the allegations into the public realm, prompting state reaction, and participating in a range of accountability mechanisms. Val-d'Or offered an avenue to assess the success and legitimacy of a wide variety of *ex post facto* accountability mechanisms – some state-centered, others not. The fact that we drafted this thesis in Montréal is yet another reason for reflecting upon the social crisis of Val-d'Or, which profoundly marked Québec's recent history. This case study emerged as a perfect occasion to answer our research question ('How did civil society and the media perceive and respond to state accountability mechanisms for police sexual misconduct?') and pursue our research objectives of developing a state accountability framework for police sexual violence cognizant of current limitations within the law. Since most chapters examine bottom-up and top-down state accountability mechanisms in Val-d'Or and constantly rely on the fact pattern of the crisis, it is imperative to provide further information about these events. The following paragraphs give an overview of the crucial moments of the crisis. By starting the timeline in 2015, we do not wish to

detract from the historical colonial context, which allowed for the crisis. Indeed, according to our participants, Val-d'Or is a town marked by social tension and racism (for further detail, see Chapters III to V). Outlining recent events will, however, assist readers in grasping the thesis' arguments. Of note, chapters delving into a specific mechanism (e.g., Chapter III on criminal investigations) will refer to this fact pattern and expand on the details pertinent to that mechanism.

On October 22nd, 2015, Radio-Canada, a national television network, broadcast an episode from their investigative show *Enquête*. The episode, entitled "*Abus de la SQ : les femmes brisent le silence*" (in English, "SQ Abuse, Women Break the Silence"), set the stage in the region of Abitibi-Témiscamingue where a team of investigative journalists was following up on the disappearance of Sindy Ruperthouse, a 44-year-old Indigenous woman.[20] The episode took a different turn when Indigenous women of Val-d'Or, who were interviewed in relation to Ms. Ruperthouse's situation, started disclosing misconduct by police. Sexual assaults (notably in a police station); sexual services in exchange for money, alcohol, or cocaine; assaults; and starlight tours – a euphemism referring to the act of transporting an intoxicated person and "dumping"[21] them outside cities so they must walk their way back home –[22] all took part in a troubling and now infamous narrative.

The investigative journalists filmed the episode in May 2015, after which the Director of the Val-d'Or Native Centre, Édith Cloutier, informed the authorities of the allegations. The then

[20] *Abus de la SQ : les femmes brisent le silence* (Radio-Canada, 2015). The spelling of Ms. Ruperthouse first name is 'Cindy' in some documents. SQ stands for *Sûreté du Québec*.
[21] Trycia Bazinet, "Tracing understanding of sovereignty and settler-colonial violence in the Quebec's Viens Commission (2016–2019)" (2022) Settler Colonial Studies 1–20 at 3.
[22] See, e.g., Lafontaine (2016), *supra* note 4 at 15; Rich, *supra* note 5 at 136.

Minister of Public Security, Lise Thériault, received a copy of this letter and relied, before October 2015, on the investigation by the *Direction des normes professionnelles* of the *Sûreté du Québec* ("SQ"), an internal mechanism to deal with the allegations.[23] In parallel, SQ representatives eventually met with the Director of the Val-d'Or Native Centre.[24] After the interviews with journalists, alleged victims filed complaints in Rouyn-Noranda, a neighbouring town, to avoid reporting police misconduct in Val-d'Or.[25] The public shock wave appeared in October 2015, once the episode was broadcast. Chapter IV examines in depth the role taken by investigative journalists and, more generally, the media in the disclosure of the abuse and contribution to state accountability.

On October 23rd, 2015, the *Service de police de la Ville de Montréal* (SPVM) was entrusted with criminal investigations of police misconduct in Val-d'Or.[26] This transfer to the SPVM was requested by the SQ's Director General and happened less than 24 hours after the episode of *Enquête* first aired.[27] Eight police officers were suspended as a result of Indigenous leaders' requests that officers suspected of misconduct be suspended.[28] A broad operational deployment of police officers and researchers affiliated with the SPVM began shortly after the episode aired.[29] The SPVM recruited its team on a voluntary basis. A group of eight police investigators, four

[23] *Final Report*, by Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress (Québec Government, 2019) at 11–12.
[24] See, e.g., *Témoignage devant l'honorable Jacques Viens, 8 juin 2017, vol. 4*, by Edith Cloutier (Val-d'Or: Commission d'enquête sur les relations entre les autochtones et certains services publics, 2017) at 123–125.
[25] *Ibid* at 124.
[26] "Point de presse de Mme Lise Thériault, vice-première ministre et ministre de la Sécurité publique", (23 October 2015), online: <http://m.assnat.qc.ca/fr/actualites-salle-presse/conferences-points-presse/ConferencePointPresse-25471.html>.
[27] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 12–13.
[28] *Ibid* at 13.
[29] The researchers published the results of their social inquiry: Julie Rosa, Valérie Courville & Michelle Côté, *Enquête de recherche à Val-d'Or et ses environs* (Service de police de la ville de Montréal, 2016).

backup investigators, two police detectives ("*lieutenants-détectives*"), and two consultation officers ("*Les Survivantes*")[30] participated in the "Val-d'Or Project".[31] This group was augmented by the SPVM Aboriginal Liaison Officer and two Indigenous police officers, one from the Abenaki Police Force and one from the Eeyou Eenou Police Force. One of these officers took part in phase II of the investigation (discussed below), whereas the other officer could not join for personal reasons and was not replaced upon a decision of the Ministry of Public Security.[32] On November 2nd, 2015, training on Indigenous realities was provided to police officers in the SPVM team by anthropologists working in collaboration with Native Québec Women and *Projets autochtones du Québec*, two Indigenous civil society organizations.[33]

On November 4th, 2015, the government appointed Fannie Lafontaine, a Professor of Law at Laval University, as an Independent Civilian Observer to assess the impartiality and integrity of the investigations conducted by the SPVM.[34] This decision was part of several measures taken following a meeting between the government and Indigenous leaders that the government had first declined.[35] These measures also included the funding of social initiatives, a tripartite platform to study police practices in Québec, the addition of cameras in patrol cars, and the involvement of social workers in the SQ Vallée-de-l'Or police station deserving Val-d'Or.[36] No independent

[30] *Les Survivantes* is a program aimed at providing education on sexual exploitation to relevant actors. It is affiliated with the SPVM: Lafontaine (2016), *supra* note 4 at 28.
[31] *Témoignage devant l'honorable Jacques Viens, 4 juin 2018, vol. 106*, by Yannick Parent-Samuel & Pascal Côté (Val-d'Or: Commission d'enquête sur les relations entre les Autochtones et certains services publics : écoute, réconciliation et progrès, 2018) at 77.
[32] *Ibid* at 77–78 and 99–100; Lafontaine (2020), *supra* note 4 at 50–51.
[33] Parent-Samuel & Côté, *supra* note 31 at 104.
[34] See, e.g., Lafontaine (2016), *supra* note 4 at 13.
[35] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 14.
[36] Cabinet du premier ministre, "Aboriginal women victims of violence - A Meeting with the Assembly of First Nations of Quebec and Labrador: The premier of Quebec Philippe Couillard Announces measures to improve the living conditions of Aboriginal women", (4 November 2015), online: *Cision* <https://www.newswire.ca/news-releases/aboriginal-women-victims-of-violence---a-meeting-with-the-assembly-of-first-nations-of-quebec-and-

inquiry was launched at that time despite demands of Indigenous leaders and a December 2015 resolution by the Val-d'Or City Council.[37]

The first phase of the criminal investigations led to 38 complaint files, 15 of them involving acts of a sexual nature. Of the 31 alleged victims, 28 were Indigenous, and 24 were women.[38] No criminal charges were laid against any of Val-d'Or's police officers, and the first report of the Independent Civilian Observer, submitted in November 2016, concluded the investigations were insufficient to address the causes underlying the systematic victimization of Indigenous women by police officers.[39]

On March 30th, 2016, a second episode of *Enquête* ("*Le silence est brisé*"; in English "The Silence is Broken") aired and documented the situation of police violence against Indigenous peoples across the province.[40] Following this second news story, a phone line for complaints

labrador-the-premier-of-quebec-philippe-couillard-announces-measures-to-improve-the-living-conditions-of-aboriginal-540138211.html>.

[37] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 14; Radio-Canada, "Une commission d'enquête sur la crise à Val-d'Or est demandée malgré la tenue d'une enquête fédérale", *Radio-Canada* (9 December 2015), online: <https://ici.radio-canada.ca/nouvelle/754399/commission-enquete-val-dor-demandee>. The resolution led to municipal action in the form of the Val-d'Or declaration, see Le Grand Conseil de la Nation Crie et al, *Val-d'Or Declaration* (2015) available at <https://ville.valdor.qc.ca/uploads/1_La%20ville/Démocratie/Declaration%20ValdOr/Documents/DeclarationVD.pdf>.

[38] Lafontaine (2016), *supra* note 4 at 4–5 and 52–53. The Director of Criminal and Penal Prosecutions disclosed that it analyzed 14 files involving sexual misconduct. Directeur des poursuites criminelles et pénales, *Déclaration du Directeur des poursuites criminelles et pénales: Conférence de presse concernant les décisions du DPCP relativement aux allégations d'abus à l'égard de plaignantes et plaignants autochtones impliquant principalement des policiers de la Sûreté du Québec* (2016) at 10. The second phase expanded the investigation to other regions and was not focused on Val-d'Or, see Lafontaine (2020), *supra* note 4.

[39] Of note, the Director of Criminal and Penal Prosecution laid charges against two police officers for alleged criminal conduct in Schefferville. Directeur des poursuites criminelles et pénales, *supra* note 38 at 11 and 12; Lafontaine (2016), *supra* note 4 at 9 and 67. For a broader context on Indigenous people and criminal law, see Kent Roach, *Canadian Justice, Indigenous Injustice: The Gerald Stanley and Colteen Boushie Case* (Montréal & Kingston; London; Chicago: McGill-Queen's University Press, 2019).

[40] *Le silence est brisé* (Radio-Canada, 2016).

administered by the Native ParaJudicial Services of Québec (SPAQ) was implemented. The mandates of the SPVM and the Civilian Observer were also extended to the whole province.[41] The SPAQ phone line was a second reporting mechanism complementing the existing SPVM phone line in place since October 2015.[42] These phone lines were not the only outreach to the community; video capsules in various languages (i.e., French, English, Atikamekw, and Cree) on the mandate of the SPVM were distributed to communities.[43]

The second portion of the criminal investigations, known as phase II, started with the second episode of *Enquête*. This investigation stage counted 61 files with a lesser proportion of sexual violence (i.e., 18/61 *contra* 15/38).[44] This can be explained by the fact that, in June 2016, the *Bureau des enquêtes indépendantes* ("BEI"), an independent investigations unit investigating serious injuries, firearm-related injuries, and death resulting from police interventions, started its operations.[45] This unit's jurisdiction was expanded in October 2016 and September 2018, when it took over allegations of sexual offences committed on duty and all complaints filed by Indigenous persons.[46] This means that, as of October 2016, the SPVM and Independent Civilian Observer only investigated sexual offences if committed off-duty. As of September 2018, the BEI was competent to investigate all allegations of police criminal misconduct involving an Indigenous victim, which

[41] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 15.
[42] Parent-Samuel & Côté, *supra* note 31 at 88.
[43] *Ibid* at 142.
[44] Lafontaine (2020), *supra* note 4 at 9–10.
[45] *Police Act, CQLR, c. P-13.1*, s 289.1. It was introduced by *An Act to amend the Police Act as concerns independent investigations*, QS 2013, c 6, s 3. The history of the BEI's creation will be discussed in further detail in Chapter III.
[46] note 26.

ended the SPVM and Independent Civilian Observer's work.[47] Chapter III discusses in more length criminal investigations and the actors involved in this process.

Criminal investigations are only one of the state responses that can occur when events such as the allegations in Val-d'Or reach the authorities. Val-d'Or illustrated that the state might deploy an array of mechanisms. For instance, the administrative order establishing the Viens Inquiry in December 2016 referred specifically to violence against Indigenous women in Val-d'Or, showing the clear connection between the Val-d'Or crisis and this specific state response.[48] The Inquiry's activity, however, delved more generally into discrimination in some public services, namely the police, correctional service, the justice system, health and social services, and youth protection. This Inquiry was entrusted with an investigative, fact-finding, analytical role that led it to hear witnesses across Québec, and eventually provide the government, as well as Indigenous authorities, with recommendations to prevent discriminatory practices in public services.[49] While the Inquiry was meant to cover the last 15 years and sit in Val-d'Or, hearings outside of that town happened and were allowed by the government order.[50] The Viens Inquiry submitted its Final Report in September 2019 and its calls to action have been monitored since then (see Chapter V).

Another public inquiry tackled the issue of police misconduct and relations between police and Indigenous peoples: the National Inquiry into Missing and Murdered Indigenous Women and

[47] Ministère de la Sécurité publique, "Criminal Allegations Against Police: New Process for Handling Complaints by Members of the First Nations and Inuits", (9 August 2018), online: *Cision* <https://www.newswire.ca/news-releases/criminal-allegations-against-police-new-process-for-handling-complaints-by-members-of-the-first-nations-and-inuits-690497061.html>. Lafontaine (2020), *supra* note 4 at 2, 9 and 46.
[48] *Décret 1095-2016, 21 décembre 2016*, (2017) 149:2 GOQ II, 24.
[49] *Ibid*. See also Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 21–22.
[50] *Décret 1095-2016, 21 décembre 2016, supra* note 48.

Girls (MMIWG). MMIWG scrutinized violence, including sexual violence, against Indigenous women, its systemic causes, and the policies and practices to prevent such violence.[51] In August 2016, this Inquiry was granted investigative powers in Québec due to an administrative order and published, in 2019, a volume on this province, which covered police violence.[52] Chapter V will unpack the topic of public inquiries, albeit it remains focused on the Viens Inquiry because of difficulties in recruiting participants who had knowledge of MMIWG and a decision to emphasize mechanism exhibiting substantial connections with the Val-d'Or crisis, as explained in section 3 of this introduction.

Finally, in December 2021, another attempt at state accountability was launched through a class action against the Attorney General of Québec. The plaintiffs asked the court to rule that group members are entitled to compensation for their injuries and violations of their rights under the *Canadian Charter of Rights and Freedoms* and the *Charter of Human Rights and Freedoms*.[53] The lower court decision on this file was rendered in June 2022. The tribunal was concerned that members of the class action might fear retaliation and would experience a lack of access to justice should they be forced to identify themselves to participate in the class action. The lower court ruled that the action could be authorized without further identification of group members. It is important to note that that this decision was not on the merits of the class action and only concerned the authorization.[54] In September 2022, the Quebec Court of Appeal granted leave to appeal the June

[51] Government of Canada, "Terms of reference for the National Inquiry into Missing and Murdered Indigenous Women and Girls", online: <https://www.rcaanc-cirnac.gc.ca/eng/1470141425998/1534527073231#chp2>.
[52] *Décret 711-2016, 9 août 2016*, 2016 148:35 GOQ II, 4921; National Inquiry into Missing and Murdered Indigenous Women and Girls, *supra* note 4.
[53] *Centre d'amitié autochtone de Val-d'Or c Procureur général du Québec (demande introductive d'instance)*, 2021 Superior Court; *Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK)*, 1982 c 11; *Charter of Human Rights and Freedoms*, CQLR c C-12.
[54] *Centre d'amitié autochtone de Val-d'Or c Procureur général du Québec*, 2022 QCCS 2089.

2022 decision to the Attorney General. At the time of writing, the appellate Court's reasons were still pending.[55] Chapter II, covering state law liability and its limitations to achieve state accountability for police sexual misconduct, will discuss class actions and other liability regimes in private and public law more comprehensively.

2. Methodology

Now that the Val-d'Or crisis timeline has been outlined, this section will account for the methodological choices made when designing this research project. This will allow us to explain how we conducted our case study and provide further guidance on the limitations of this thesis. This project combines different research methodologies. Its first chapters conduct doctrinal research to document the state of the law on the issue of state accountability for police sexual misconduct and theories of state power and social accountability. This type of research requires examining the case law, the relevant legislation as well as secondary sources, such as the work of commentators.[56] In our case, doctrinal research on police sexual misconduct calls for interpreting statutory provisions, bills, a variety of case-law in criminal law, human rights, and civil litigation, as well as the work of experts on Canadian law and policing. As for the theories of state power and social accountability laid out in Chapter I, the research relies mainly on secondary sources from legal scholars and social scientists in sociology, social anthropology, and political science. As exposed above, this project is not purely doctrinal and contains a strong socio-legal empirical component. Most of the thesis' chapters are based on semi-structured interviews and can be

[55] *Procureur général du Québec c Centre d'amitié autochtone de Val-d'Or*, 2022 QCCA 1203.
[56] Terry Hutchinson & Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research" (2012) 17:1 Deakin Law Review 83; Terry Hutchinson, "Doctrinal research: researching the jury" in *Research Methods in Law*, 2nd ed (London: Routledge, 2017) at 13–21; Terry Hutchinson, "The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law" (2015) 3 Erasmus Law Review 130 at 131–132.

included within qualitative legal research.[57] Qualitative research has been chosen since it can foster an understanding of social phenomena (including the legitimacy of state-based mechanisms), social interactions, and normativity through analyses of individual experiences.[58] Given that it contains specific processes and considerations that are not necessarily familiar to legal scholarship, the following paragraphs will describe the methodology used for the empirical chapters with much precision. We believe it is necessary to unfold the methodology exhaustively to contribute to better research practices in legal scholarship.[59]

2.1 Interviews

Answering our research question ('How did civil society and the media perceive and respond to state accountability mechanism in Val-d'Or?') meant stepping outside legal documentation and collecting data from individuals who had either participated in top-down accountability mechanisms or who were involved in bottom-up accountability processes interacting with the state (e.g., media, class action conducted in collaboration with the community) throughout the Val-d'Or crisis.[60] We investigated these two types of state accountability mechanisms as, once combined, they offer a broader picture of state accountability than legal literature traditionally offers. Bottom-up accountability processes are especially relevant in cases

[57] This may answer one of the most robust critiques against doctrinal research, namely that it lacks context and social understanding of the law's meaning and effects. See, e.g., Hutchinson, *supra* note 56 at 23–25.
[58] Monique Hennink, Inge Hutter & Ajay Bailey, *Qualitative Research Methods*, 2nd ed (Los Angeles; London; New Delhi; Singapore; Washington DC; Melbourne: Sage, 2020) at 10, 11 and 17. For further details on qualitative legal research and its methods, see Lisa Webley, "Qualitative Approaches to Empirical Legal Research" in Peter Cane & Herbert M Kritzer, eds, *The Oxford Handbook of Empirical Legal Research* (Oxford: Oxford University Press, 2010); P Ishawara Bath, "Qualitative Legal Research: A Methodological Discourse" in *Idea and Methods of Legal Research* (New Delhi: Oxford University Press, 2019).
[59] We pleaded in favour of better methodological practices in legal scholarship on other occasions, see Sandrine Ampleman-Tremblay & Camille Nadeau, "Justice Côté in 2019: Great Dissenter, Voice of the Court, or Both?" (2021) 44(2) Manitoba Law Journal 1 at 19.
[60] See Chapter II.

of state wrongs as they can propose alternatives to state responses. We must remind readers here that one of the challenges of accountability for state wrongs is that the state is both party and adjudicator. Compiling these narratives was done through a series of semi-structured interviews with media and civil society members. This data collection method was selected primarily to gain insight into each participant's insights on state accountability mechanisms and their responses to these mechanisms when implemented in Val-d'Or. Since participants had different expertise (e.g., human rights advocacy, journalism, legal practice, academic research), we reached a rich understanding of state accountability mechanisms in Val-d'Or, encompassing several dimensions. The interviews were divided into three blocks: (1) a presentation of the participant and their implication in the Val-d'Or crisis, (2) perceptions, responses to, and interactions with state-based mechanisms implemented in Val-d'Or, and (3) perspectives on accountability for police sexual misconduct, with a specific focus on civil society or media-induced forms of state accountability. All participants had space to add comments or raise new issues at the end of the interview. There was also flexibility to follow back on matters discussed by participants in their answers, which were outside of the original framing of the research.[61] We must also note that some participants possessed specialized knowledge, which called for adding queries to the initial questionnaire.

As discussed above, the content varies slightly from one interview to another due to differences in expertise and flexibility within the interview process. The fact that participants could decline to comment on any question can also explain the lack of data on some issues. The following

[61] For instance, we had conversations on the increasing role of civil justice in sexual assault files, and we went over a few famous cases like the one of Gilbert Rozon, and the role of John A. Macdonald in solidifying colonialist practices. While the trial of Mr. Rozon and the role of John A. Macdonald were not explicitly included in our question list because these issues were brought up in the interviews, we collected material on these questions by asking participants to expand on their answers.

paragraphs will detail the technicalities of the interview, including the timeline and the recruitment processes. Before delving into these aspects of the methodology, we must stress that we interviewed a limited number of participants. We are thus answering our research question by combining their expertise. The results would have been different if we had a different sample. This thesis expresses a dialogue between participants and the research team where each party contributed to the outcome by putting their voices into the project.

2.2. Recruitment and Selection Criteria

Recruitment officially began on June 7th, 2021, and spread over several months ending on March 4th, 2022. Data analysis started in early 2022, once we received a few transcriptions of the interviews, and continued until the end of the drafting process in June 2023. Recruitment was conducted according to a set of selection criteria. These criteria aimed to narrow the population to find participants best suited to provide insights about the research question. This question called for four inclusion criteria and one exclusion criterion. Participants were eligible if they

(1) were or had been a member of Val-d'Or's civil society (i.e., individuals who were not part of the government, legislative assembly, judiciary, or the police and who were seeking to advance citizens' interests or will) or the media;

(2) had been active in 2015 or onwards;

(3) had engaged with the issue of police sexual misconduct in their work;

(4) had endorsed at least one of the following roles: disclosing the abuse, assisting victims, or making demands on the governments of Québec or Canada regarding the Val-d'Or crisis; and

(5) had not experienced police sexual misconduct.

The first criterion requires us to unpack the concept of civil society. For this methodology, the notion of civil society was defined broadly to include the arenas outside the state, the market, and the family.[62] Civil society can be understood as the collective and voluntary action of groups of citizens engaging "in [the] public sphere to express their interests, passions, and ideas, exchange information, achieve mutual goals, make demands on the state, and hold state officials accountable" [our emphasis]. We retain an extensive description of civil society to include as many potential participants as possible, including persons affiliated with academia or the media. Val-d'Or is a small town, and people with the requisite knowledge and the will to share their perceptions and responses to state accountability mechanisms implemented in Val-d'Or were limited. A wide definition allowed us to increase the potential sample and to gather different expertise ranging from litigation, theoretical and practical insights on international law and criminal law, advocacy, history, assistance to victims, as well as journalism. This excluded state actors, such as prosecutors, commissioners, and police officers, as well as individuals holding positions related to political governance, such as members of Parliament and legislatures.

The second criterion referred more specifically to the Val-d'Or case study. Indeed, allegations were reported in the media in 2015, hence the choice to use this date as a benchmark. The third and fourth criteria intended to restrict the sample to participants with knowledge of both

[62] Helmut K Anheier, "Measuring Civil Society: Why and How" in *Civil society: measurement, evaluation, policy* (London: Earthscan Publications, 2004) 13 at 7–9; Charles Kojo VanDyck, *Concept and Definition of Civil Society Sustainability* (Center for Strategic & International Studies, 2017); Chris Hann, "Introduction Political society and civil anthropology" in Chris Hann & Elizabeth Dunn, eds, *Civil Society* (Abington, OX: Taylor & Francis Ltd, 1996) at 5; World Health Organization, "Civil Society", online: <https://www.who.int/social_determinants/themes/civilsociety/en/>; Jude Howell, "Introduction" in Jude Howell & Diane Mulligan, eds, *Gender and Civil Society* (London; New York: Routledge, 2005) at 1–8; Larry Diamond, "Rethinking Civil Society: Toward Democratic Consolidation" (1994) 5:3 Journal of Democracy 4 at 5–7; Iris Marion Young, "Civil Society and Its Limits" in *Inclusion and Democracy* (Oxford: Oxford University Press, 2002) at 155–159.

police sexual misconduct and state accountability. Of note, the focus on media and civil society members extended our participants pool beyond the inhabitants of Val-d'Or, especially in the case of journalists. The events of Val-d'Or were covered by many journalists, including but not limited to some based in Montréal, Québec City, and Toronto, in addition to Val-d'Or (see Appendix I).

As for the exclusion criteria, the study did not include individual victims of police sexual misconduct, as persons who experienced police abuse have reported being afraid of retaliation if speaking out or participating in research.[63] We must note that the principal researcher being a legal scholar, our personal limitations in terms of the psychological consequences of sexual misconduct were a determining factor in excluding direct victims. The aim of avoiding revictimization and creating further harm shaped every step of the study design. Nevertheless, this choice excluded their voices, a concern that section 3 on reflexivity will unpack more clearly. Two other limits on recruitment must be communicated at this stage. The research could not target potential participants because of their Indigenous identity, which extended to Indigenous leaders, nor focus on the impact of these identities on perceptions and responses at the data analysis step. These requirements originated from ethical concerns raised by the Research Ethics Board 1 (REB-1)[64] and time constraints imposed by the doctoral degree. Subsection 2.4 and section 3 will describe these time restrictions and ethical issues. Research including Indigenous peoples and Indigenous

[63] See, e.g., Human Rights Watch, *supra* note 4 at 59; note 20; Christopher Curtis, "Indigenous women have 'unfinished business' years after Val d'Or police abuse scandal", *ricochet* (7 October 2020), online: <https://ricochet.media/en/3316/indigenous-women-have-unfinished-business-years-after-val-dor-police-abuse-scandal>; Maynard, *supra* note 7 at 126; Ritchie, *supra* note 7 at 110. This concern was also reported in the case, see, e.g., *R v Von Seefried*, 2016 ONCJ 791 at 32–33; *R v Nyznik*, 2017 ONSC 4392 at paras 83, 93, 155 and 192. For further details on safety concerns when researching gender-based violence issues, see Mary Ellsberg & Lori Heise, *Researching violence against women: a practical guide for researchers and activists* (Geneva, Switzerland : Washington, DC: World Health Organization ; Program for Appropriate Technology in Health (PATH), 2005) c 2.

[64] This unit operates within the Office of the Vice-Principal, Research, and Innovation, at McGill University.

leaders is thus left for another day when greater ties are made with Indigenous communities (and only if they believe this would be appropriate).

Once we settled on the selection criteria, two sampling methods were used to recruit participants. From the onset, a preliminary documentary analysis identified potential interviewees. The documentary analysis was focused on three sources: (1) the media (i.e., either from the episodes on police misconduct broadcast by Radio-Canada in 2015 and 2016, or from newspaper articles), (2) the first report of the Independent Civilian Observer (more precisely its Appendix D entitled "Organizations and Individuals Consulted" or "*Liste des organisations et des personnes consultées*" in the original French version), and (3) the lists of participants and witnesses to the Viens Inquiry.[65] We purposively sampled a group of participants from these sources that *a priori* met our criteria.[66] We contacted 30 organizations and individual participants. We received 16 answers, including 4 declining the invitation (one met the exclusion criterion). Of the 12 remaining potential participants, only 5 reached the final stage since others dropped out before the interview or failed to reply when setting a date.

We then invited participants recruited through this first method to share the study with acquaintances who might fit the selection criteria. Referrals by participants, also known as

[65]Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress, "List of witnesses", online: <https://www.cerp.gouv.qc.ca/index.php?id=65&L=1>; Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress, "Full and Limited Participants list", online: <https://www.cerp.gouv.qc.ca/index.php?id=46&L=1>.

[66] Hennink, Hutter & Bailey, *supra* note 58 at 330. These authors describe purposive sampling as a "[n]on-probability based sampling used in qualitative research, involving purposefully selecting participants with specific characteristics to provide data richness and sample diversity."

snowball or chain referral sampling,[67] brought one additional participant from civil society to our sample. While this may appear as a very low success rate, some of the individuals referred by participants had already been contacted in the first recruitment phase. Before conducting the study, we believed that snowball sampling could lead to interviews of participants less visible throughout the crisis.[68] Our study confirmed that the member of civil society recruited through this method would have been difficult, if not impossible, to contact otherwise.

Our final sample included six participants representing three different groups: the media (2), civil society (2), and experts (3).[69] The media group boiled down to journalists; the civil society group comprised human rights advocates or citizens involved in Val-d'Or local life; and the experts' cluster included members of academia and individuals with very technical knowledge of the law. All participants offered perspectives on state accountability mechanisms and accounted for their responses throughout the Val-d'Or crisis. They were chosen notably for their collaboration (including providing advice) or participation in one of the state accountability mechanisms analyzed in this thesis. More precisely, three participants were involved with the media in some capacity, two with the BEI, one with the SPVM, and one with the Director of Criminal and Penal Prosecutions (DPCP).[70] Five interviewees partook in discussions on the Viens Inquiry either because they testified at the Inquiry or commented on the role of this mechanism from the outside. Finally, half of the participants had generally strong connections with the

[67] For further details, see Charlie Parker, Sam Scott & Alistair Geddes, "Snowball Sampling" in Paul Atkinson et al, eds, *Sage Research Methods Foundations* (London: SAGE Publications Ltd., 2020); Patrick Biernacki & Dan Waldorf, "Snowball Sampling: Problems and Techniques of Chain Referral Sampling" (1981) 10:2 Sociological Method Research 141.
[68] On the ability of snowball sampling to reach out to less visible groups, see Biernacki & Waldorf, *supra* note 67 at 141. See also Parker, Scott & Geddes, *supra* note 67.
[69] One participant belonged to two different groups.
[70] 'DPCP' is the French acronym for *Directeur des poursuites criminelles et pénales.*

community. In contrast, the other half visited Val-d'Or or worked with the community more temporarily (e.g., exclusively for the Val-d'Or crisis).

Six participants is a small sample for interview-based methodologies. Qualitative research constantly struggles with adequate sample size, and some studies advance that small size samples do not permit to expand conclusions or reach validity.[71] While more cases might bring more nuance and an in-depth understanding of all dimensions of a given research,[72] part of the literature sees value in small samples. Exploratory research (i.e., studies aimed at finding theories or conceptual frameworks) usually calls for small samples.[73] While this thesis proposes normative solutions, it is exploratory in the sense that one of its objectives is to build a new theoretical framework to think of state accountability for police sexual violence. A smaller size allowed us to immerse ourselves in participants' discourses and suggest new interpretations of state accountability based on existing theories. We did so without burdening too many individuals within the population or using significant resources, both downsides of larger samples.[74] Other factors indicated that a small sample was enough. We can think notably of our limited resources, the need for extended

[71] See, e.g., Sarah Elsie Baker & Edwards Rosalind, eds, *How many qualitative interviews is enough: Expert voices and early career reflections on sampling and cases in qualitative research* (National Centre for Research Methods, 2012); Mira Crouch & Heather McKenzie, "The logic of small samples in interview-based qualitative research" (2006) 45:4 Social Science Information 483–499; Diane S Young & Erin A Casey, "An Examination of the Sufficiency of Small Qualitative Samples" (2018) Social Work Research, online: <https://academic.oup.com/swr/advance-article/doi/10.1093/swr/svy026/5113229>; Monique M Hennink, Bonnie N Kaiser & Vincent C Marconi, "Code Saturation Versus Meaning Saturation: How Many Interviews Are Enough?" (2017) 27:4 Qual Health Res 591–608.
[72] Hennink et al., cited by Young and Casey, affirmed that with more interviews came the refinement of codes and the possibility of encountering all dimensions of the said code: Hennink, Kaiser & Marconi, "Code Saturation Versus Meaning Saturation", *supra* note 71; Young & Casey, *supra* note 71 at 3–4 and 12.
[73] Crouch & McKenzie, *supra* note 71 at 491–495; Kirsti Malterud, Volkert Dirk Siersma & Ann Dorrit Guassora, "Sample Size in Qualitative Interview Studies: Guided by Information Power" (2016) 26:13 Qual Health Res 1753–1760 at 1755. Hennink et al. do not refer to conceptual frameworks but claim that the development of theories requires larger samples: Hennink, Kaiser & Marconi, "Code Saturation Versus Meaning Saturation", *supra* note 71 at 606.
[74] See, e.g., Hennink, Kaiser & Marconi, "Code Saturation Versus Meaning Saturation", *supra* note 71 at 593; Young & Casey, *supra* note 71 at 3 and 11. See also Malterud, Siersma & Guassora, "Sample Size in Qualitative Interview Studies", *supra* note 73.

engagement with each discourse, restrictions from ethical considerations, and difficulty accessing the population due to the sensitivity of the topics implied by the research and the size of Val-d'Or.[75] Although part of the literature encourages broad consultation with the population, we must remember that larger samples are not necessarily synonyms for better studies.[76] Our six interviews gave us access to varied perceptions of state accountability mechanisms in the particular context of Val-d'Or and exhibited rich accounts of participants' experiences. They are also directly linked to our theoretical framework on state accountability for police sexual violence. This is not to say that research with larger samples to test our framework's validity across case studies would not be helpful.[77]

2.3. Data Collection and Data Analysis

Once we finalized our recruitment strategies and justified our sample size, we reached the data collection stage. Interviews were conducted online via Zoom. The interviews lasted, on average, 50:31 minutes. All interviews were audio-recorded on a separate electronic device. A research assistant contributed to the transcription of audio files verbatim. A second person revised all transcripts to ensure conformity with the audio file (if the principal investigator typed verbatim, the research assistant reviewed it, and vice-versa). The only segments of the interview that two different people did not revise were the two first questions, which often contained identifier data such as the profession and the participant's background. Audio recordings were edited by the principal investigator, who removed the two first questions before sending them to the research

[75] See, e.g., Elsie Baker & Edwards Rosalind, *supra* note 71 at 8-10 (Adler & Adler), 26 (Doucet), and 27 (Flick). See also Malterud, Siersma & Guassora, "Sample Size in Qualitative Interview Studies", *supra* note 73.
[76] See, e.g., Elsie Baker & Edwards Rosalind, *supra* note 71 at 39 (Jensen). *Cf. Ibid* at 18-19 (Bryman).
[77] On cross comparisons pointing to larger samples, see Malterud, Siersma & Guassora, "Sample Size in Qualitative Interview Studies", *supra* note 73 at 1754–1759.

assistant through encrypted emails containing password-protected files.[78] This measure was meant to preserve each participant's anonymity.

Data collection did not end the research process and, in some way, was only the beginning of the empirical process. Making sense of the data was the more rewarding yet most challenging part, especially when recognizing the influence of our positionality in research (an issue that will be analyzed in the following section).[79] We conducted data analysis with the assistance of the software NVivo. NVivo allowed for inserting documents, adding codes, and running queries, such as finding the number of times a word was used or identifying excerpts corresponding to a combination of codes. We were inspired by Alan Bryman's coding procedure, which implied a first reading of the material accompanied by notetaking of critical excerpts. This notetaking led to the creation of codes. Bryman then suggested reading for a second time while coding the material.[80] We added a step to this coding process: the inductive codes complemented an initial set of deductive codes that stemmed from the literature on state accountability. The second reading focusing on coding thus included these two types of code previously organized into a coding tree.

2.4. Anonymity and Ethics Approval

Each time an excerpt is quoted to support an argument, it is identified by an alphanumeric code (i.e., A1, A2, B1, B2, C1, and C2). Excerpts are quoted in English independently of the language of the interview. We did not specify whether the interview was translated or quoted in

[78] The first questions were (1) how would you describe your role in civil society?, and (2) how would you describe your relationship with Val-d'Or's community?.
[79] See an introduction to positionality here: Andrew Gary Darwin Holmes, "Researcher Positionality - A Consideration of Its Influence and Place in Qualitative Research - A New Researcher Guide" (2020) 8:4 Shanlax International Journal of Education 1.
[80] Alan Bryman, *Social Research Methods*, 4th ed (Oxford: Oxford University Press, 2012) at 595–597.

its original version to protect the identity of the participants. Participants are always referred to in neutral gender, again, to remove as much identifiable data as possible. This means that the thesis contains no gendered (and intersectional) or linguistic analyses. As we discarded linguistic analyses, we removed from the verbatim any element that was unrelated to the substance of the message, including but not limited to laughter, background noises, and stammering. While gendered or linguistic approaches could have been relevant, the risk of identifying participants – notably given the size of Val-d'Or and the relatively small community of people involved with the crisis – was too high. Ensuring that the data could not be traced back to an individual was an essential component of this research to maintain confidence between the research team and participants, but also to collect more information from participants who often declared they would not have spoken freely if their participation had not been anonymous.

The methodology described above experienced a few amendments between its initial iteration and data collection. We first requested an ethics approval certificate from the REB-1.[81] From the onset, one of the ethical concerns raised by the REB-1 was that the case study included in-person interviews. Since the ethics approval was requested in the Winter 2021 semester, in-person activities and research were still restricted due to the Covid-19 pandemic. Therefore, a resumption approval from the Faculty of Law at McGill University was required and had to be submitted along with the ethics application. This approval was obtained in February 2021. Participants were offered in-person or remote participation. All participants opted for the latter. Once we responded to the REB-1 concerns, the study was approved for its ethical acceptability on April 27th, 2021 (REB File #: 21-03-059). More precisely, this meant excluding victims from our

[81] This unit operates within the Office of the Vice-Principal, Research, and Innovation, at McGill University.

sample and making a few amendments to our recruitment material pertaining primarily to this exclusion criterion and the impossibility of directly recruiting Indigenous participants. On July 15th, 2021, the REB-1 approved an amendment to include members of the media and academia in the selection criteria.

On March 21st, 2022, we submitted a form to the REB-1 under the unexpected issue clause,[82] along with a second amendment. Both processes stemmed from the interview with one participant who significantly touched on Indigenous culture, history, and lifestyle in their answers. Since we had no community engagement plan to conduct this research and were requested to refrain from purposively recruiting Indigenous participants, we integrated a few changes to include this participant's voice better. The REB approved our request on June 3rd, 2022. This amendment boiled down as follows: disseminating the results with the participant and highlighting how we integrated material touching on Indigenous culture or history; leaving space for additional comments or themes should the results suggest any; and writing a foreword or an executive summary in the language of the community so that it can be shared with the participant and their community. The foreword of the thesis written in Anicinapemowin (Pikogan), French, and English fulfils this purpose.

Now that the methodology has been fleshed out, we will briefly review some elements of this project that bounds us to reflect on ethical dilemmas in socio-legal research. We will devote the third and last section of this introduction to these matters.

[82] *Tri-Council Policy Statement Ethical Conduct for Research Involving Humans, TCPS2 2018*, art 6.15.

3. Reflexivity

Contrary to doctrinal legal research, in socio-legal empirical studies, results depend on data collection, and in our case, we relied on human participants. Engaging with participants and analyzing these discussions is an exciting part of socio-legal research. Conversations that had no specific connection to the research question at first glance sometimes emerged as a critical piece of the puzzle or shed light on something we had not even begun to envision. With great surprises came disappointment, such as limitations that prevented us from engaging with some topics or building on the data collected. One example taken from the current research is the role of victims in triggering state accountability. Several participants stressed that victims were the key players regarding state accountability in Val-d'Or as they were the ones who decided to put their stories into the public realm.[83] These insights not only constituted examples of victims' courage but also displayed how an individual can mobilize media and state actors to respond to a police sexual violence. However, given the exclusion criterion of this thesis (i.e., the exclusion of individuals having experienced police sexual violence) added to the selection criteria because of an ethical concern highlighted by the REB-1, the exploration of this issue remained at an embryonic status. Most importantly for this section on ethical concerns, as we did not interview victims of police sexual misconduct in Val-d'Or, and since we could not confirm some data first-hand with them, we refrained from unpacking the argument that victims as individuals can be triggers of state accountability. This choice was made to avoid speaking of the role of victims, mainly Indigenous women, without making space for them to shape the research. Unfortunately, it silenced their

[83] See, A1, p. 31; B2 at pp. 25-26; C1 at pp. 34-35. See also *Témoignage devant l'honorable Jacques Viens, 14 décembre 2018, vol. 174*, by Viviane Michel & Rainbow Miller (Val-d'Or: Commission d'enquête sur les relations entre les Autochtones et certains services publics : écoute, réconciliation et progrès, 2018) at 70-71 (Michel) and 130 (Viens); *Témoignage devant l'honorable Jacques Viens, 5 juin 2017, vol. 1*, by Viviane Michel (Val-d'Or: Commission d'enquête sur les relations entre les Autochtones et certains services publics : écoute, réconciliation et progrès, 2017) at 50.

voices completely. While discouragement from this situation or the many unanswered open-ended questions raised by this project is natural, this phenomenon is also one of the benefits of socio-legal research: nurturing other research ideas.

Along with victims' voices, we should note that some elements could not be developed within this research. The interviews were silent on many matters since the questions list did not cover all topics. Silences were thus important to consider as they could point to aspects not assessed and not necessarily because of irrelevance. For instance, the quantity of data on the MMIWG was meager. We should note that this mechanism was initially not included in the interview guide. Throughout the recruitment process, we tried to recruit individuals who would have been able to speak on this instrument of state accountability. However, we failed to secure interviews to fill the gap in our knowledge. This translated into the thesis, which makes almost no references to MMIWG except for brief comments in Chapter V. This choice is justified by the few data on MMIWG, the breadth of data on the Viens Inquiry, and, most importantly, the status of the Viens Inquiry. This latter is the only commission of inquiry stemming from the Val-d'Or events. MMIWG was not a direct response to the Val-d'Or crisis like other mechanisms studied in the interview-based component of the thesis (i.e., Chapters III to V). This being said, further research on the effect of MMIWG would be welcomed.

We could not conclude this section on reflectivity without unpacking the relationship of this thesis with Indigenous communities. Research on events or subjects of interest to Indigenous communities is often conducted from a settler perspective. Although we think state accountability for police sexual violence is essential to document, we must stress that we are not writing on behalf

of Indigenous communities or any Indigenous person. We wrote this thesis according to our position, which is one of a Western-educated graduate law student. We already specified the research did not interview victims of police sexual violence in Val-d'Or, mostly Indigenous women. We are not summarizing Indigenous peoples' experiences in Val-d'Or (victims or not) or engaging with Indigenous communities' priorities and needs.[84] Consequently, although our thesis was meant to include perspectives from civil society and the media, it may reproduce settler's discourses, as it was not guided or written on behalf of Indigenous communities.

Cognizant of our position of privilege, we needed to address the question of Indigenous research with respect and caution. Conducting research with Indigenous communities requires developing a research agreement that genuinely serves the needs of the people involved. Meaningful engagement must take the form of a partnership in which the community shapes and orients the research. Consequently, meaningful engagement means collaborating with the community before the consent stage.[85] In other words, self-determination expands to research. As researchers, only going to Indigenous communities to extract data without engaging the community or the individuals with the research structure is a use of power and a repetition of colonial practices.[86] After having discussed with the REB-1 and experts who had conducted empirical work and Indigenous research, we concluded that it was not feasible – given the three to

[84] Indigenous Research Protocols speak to the need for research to be aligned with communities' priorities: see, e.g., RCAAQ, *Research Framework by and for Urban Indigenous People in Quebec* (Regroupement des centres d'amitié autochtones du Québec, 2021) at 16.
[85] Nathalie Piquemal, "FOUR PRINCIPLES TO GUIDE RESEARCH WITH ABORIGINALS" (2000) Policy Options 3 at 2. On the need to involve Indigenous peoples at all stages of the research, also RCAAQ, *supra* note 84 at 15; Assemblée des Premières Nations du Québec et du Labrador, *Protocole de recherche des Premières Nations du Québec et du Labrador* (Wendake, 2014) at 16–18.
[86] See, e.g., Piquemal, *supra* note 85; Ashley Hayward et al, "A New Era of Indigenous Research: Community-based Indigenous Research Ethics Protocols in Canada" (2021) 16:4 Journal of Empirical Research on Human Research Ethics 403.

four years allotted for the doctoral program – to conduct research that respectfully included Indigenous communities and examined their legal orders and traditions. Indeed, the doctorate's time constraints hardly fit with the flexibility required by Indigenous research protocols.[87] In addition to these time constraints, our lack of connection with the community in Val-d'Or led to strict ethics requirements precluding us from engaging with Indigenous communities and participants.

The lack of engagement with Indigenous communities is the most important limitation of this academic endeavour. The ethical imperative not to purposively recruit Indigenous participants and use their perspectives as a clear lens of analysis inevitably impacted this research. As a result, the thesis is aware of critical perspectives but is limited in its engagement with them.[88] Policing has racial components and cannot be understood entirely without considering the way relationships between some communities, society, and the state structure our lives.[89] The identity of the victims in Val-d'Or was not arbitrary and affected accountability processes. It also explains the context in which allegations at the origin of the crisis happened. While the thesis tried to recognize these issues, particularly in Chapters III to V, this was done with little input from Indigenous communities and relied mainly on the literature, testimony to the Viens Inquiry, and one participant's insights. Our research could rightly be critiqued for failing to recognize sufficiently

[87] See, e.g., RCAAQ, *supra* note 84 at 16.

[88] We could have chosen, as others did before us, to conduct Indigenous legal research despite our non-Indigenous position, see, e.g., Michele Moffat, "Exploring Positionality in an Aboriginal Research Paradigm: A Unique Perspective" (2016) 5:1 IJTIE 750. (The discourse on positionality and its impact on research exposed in this paper remain relevant despite the author's confusion regarding the enactment of the *Indian Act*, R.S.C., 1985, c. I-5.) On our end, we did not believe we were habilitated for such work, which explains the orientation. However, it is imperative to acknowledge that our work is set in a case study from which we cannot omit indigenous communities or their socio-legal contexts.

[89] See e.g., Jones & Sheehy, *supra* note 18; Maynard, *supra* note 7; Roach, *supra* note 16 c 2. See also *R v Le*, 2019 SCC 34 at paras 69–106.

racialized and gendered violence in Val-d'Or.[90] Future research is required to complement the findings of this thesis and add Indigenous and intersectional perspectives. We must remind here that our choice to grant anonymity and remove all identifying data further prevented intersectional discussions based on participants' experiences, including gendered and racialized analyses.

This reflection on the connection between our project and Indigenous peoples followed us through every step of the process and brought another concern to our mind: the choice of language.[91] Many mechanisms in Val-d'Or were bilingual, meaning people could express themselves in English or French. Mechanisms did not usually systematically offer translation for people who did not speak these two languages or who preferred to use their mother tongue to communicate with the authorities. This issue of language can be brought forward in this thesis as well. First, we only offered to conduct interviews in French or English, which may have precluded some nuances or demonstrated a lack of openness to Indigenous languages spoken in Val-d'Or. While we did not, as mentioned above, focus specifically on Indigenous perspectives, this option might have been helpful for some or at least shown greater respect for Indigenous culture. Second, writing in English in a mainly francophone province on a phenomenon touching individuals speaking French, Indigenous languages, or English is bound to raise issues of accessibility. We tried to remedy this issue by adding a foreword written in Anicinapemowin (Pikogan), French, and English. However, the choice of language can have a negative impact on the dissemination of

[90] *Cf* with Bazinet, *supra* note 21 at 4–5.. The latter is a critique of the Viens Inquiry.
[91] On the importance of recognizing Indigenous languages in accountability processes, see Michel & Miller, *supra* note 83 at 69-70 (Michel). See also *Témoignage devant l'honorable Jacques Viens, 16 novembre 2017, vol. 36*, by Richard Kistabish (Val-d'Or: Commission d'enquête sur les relations entre les Autochtones et certains services publics : écoute, réconciliation et progrès, 2017); Cree Women of Eeyou Istchee Association, *Statement presented to the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress* (Commission d'enquête sur les relations entre les Autochtones et certains services publics, 2017) at 3.

knowledge and appropriation of the data by some participants or, more broadly, people in Val-d'Or and the province of Québec.

As the two previous sections have shown, a methodology grounded in interviews with human participants raised several ethical concerns. The topic was delicate and weaved into colonial practices, discrimination against Indigenous peoples, and sexual violence. A researcher who decides to tackle issues like the one stemming from this research must be aware of the challenges and be ready to face criticism for their decisions, including but not limited to the framing of the research question, the ethical limitations, the selection criteria, and the language of the study.

Conclusion

Now that the research has been outlined through its research question, its research objectives, the fact pattern of the case study, its political and ethical limitations, as well as the methodological choices that were taken throughout research design, recruitment, data collection, and data analysis, we can delve into the crux of the matter: analyzing and starting to provide an answer to our research question and research objectives. Each chapter does so in a precise way. Chapter I proposes a theoretical state accountability framework for police sexual misconduct. Chapter II highlights the limitations of state accountability mechanisms, which justify the pressing need to use an alternative theoretical framework to think of state accountability. Chapters III to V bring us closer to understanding how civil society and the media have responded and perceived state accountability mechanisms for police sexual misconduct and continue to identify limitations. Chapters III to V also apply the theoretical framework to the Val-d'Or crisis, thus, advancing our

third research objective. Finally, we should retain something essential from this introduction: this thesis can only build on the data collected. Silences must be examined. Some pertinent avenues have been omitted, including most notoriously intersectional analyses, victim/survivor-centred approaches, and Indigenous perspectives. This thesis is thus only a first step into fully understanding the Val-d'Or crisis and state accountability mechanisms for police sexual violence.

CHAPTER I – REIMAGINING STATE ACCOUNTABILITY FOR SYSTEMIC WRONGS: THE EXAMPLE OF SEXUAL VIOLENCE BY POLICE

State accountability is at the core of this thesis. However, state accountability has several meanings that may shift depending on contexts, disciplines, or the literature consulted and often remains ill-defined. To offer a compelling answer to the research question about civil society and media's perceptions and responses to state accountability mechanisms and reach our research objectives (i.e., developing a state accountability framework for police sexual violence, analyzing current limitations in the law, and apply our framework to Val-d'Or), outlining our conception of state accountability and accounting for our assumption that the state should be held accountable for police sexual misconduct and impunity for law enforcement wrongs is necessary.

This Chapter suggests a state accountability framework adapted to police sexual misconduct. For this purpose, the state should be conceived of as a set of infrastructures, institutions, and networks that can implement state decisions and carry out state projects, notably through interactions and negotiations with civil society groups. These decisions may cause unintended effects, which emerge as a central piece in the study of police sexual misconduct. The theoretical underpinnings presented in this Chapter contend that the media, civil society, and state mechanisms can all participate in securing accountability for unintended effects of state action. The success of these mechanisms will be pondered in subsequent chapters through a case study of police sexual violence in Val-d'Or. Finally, this Chapter proposes that triggering multiple means of redress, through both state law mechanisms and community mobilization, is the best way to obtain remedy.

The following Chapter is divided into four sections. The first section defines the 'state' by relying on the theory of state power formulated by Michael Mann. This author's notion of infrastructural power, with a few adaptations regarding intent and connections within the institutional framework, explains why the state can be held responsible for police sexual misconduct and its impunity. The second section reinforces the theoretical foundations of state responsibility by adding Robert K. Merton's insights on unintended consequences of purposive social action to Mann's work. Combining these two frameworks lead us to argue that a state policy may produce unintended effects, including but not limited to police sexual misconduct. Understanding and merging the arguments of Mann and Merton is the first step in recognizing the grounds for holding the state responsible for police sexual misconduct. State responsibility is a crucial component of state accountability, which also serves justificatory and remedial functions (see section 3).

Nevertheless, connecting the perspectives of Mann and Merton requires rethinking the concept of causation in the case of collective harm. The second section thus relies on causation for systemic issues and Mari Matsuda's analysis. The latter traces the causal link between state action and unintended consequences. Matsuda's analysis is key to attributing responsibility to the state, especially once complemented by two standards: foreseeability and a form of wilful blindness. While wilful blindness is recognized as a form of *mens rea* in Canadian law, we examine it through the lens of social anthropology to expand its application and adapt it to police sexual misconduct and impunity. Sections three and four define state accountability and outline specific forms of accountability required to deal with police sexual misconduct and its impunity. Indeed, section three suggests that the theory of social accountability is well-equipped to study these phenomena

as it considers the media and civil society's contribution to state accountability. We argue that a combination of social accountability mechanisms, which include state law accountability mechanisms as well as media and civil society pressure is the most effective means of securing accountability given the systemic nature of the wrongdoing and the contribution of the state to police sexual violence. Finally, the fourth and last section shows how individual and state accountability theoretically differ and how the former cannot address all the challenges brought by police sexual misconduct. It does so by pointing to the limitations of criminal law theory, which remains highly individualized despite some receptivity to reflect on systemic causes of criminality, mostly through sentencing.

1. State, Power, and Infrastructures

State accountability for police sexual misconduct can be better understood by unpacking one of its components: the connection between the state and this specific type of misconduct. To investigate how civil society and the media perceive and respond to state accountability mechanisms, we must define the concept of state accountability and explain why the state should be held accountable for police sexual misconduct. This thesis thus adopts a theory of the state and builds on it to explain accountability for police sexual misconduct. Accounting for state accountability requires thought as to why the state is *responsible* for such violence. As demonstrated in section 3, responsibility is inherent to accountability.

The theory chosen to root responsibility within state action is Michael Mann's. This author defines the state mainly by focusing on its territoriality and centrality or, in other words, its "socio-

spatial" and "organizational structure".[92] In a simplified abstraction, the state is a centralized mode of social organization which operates within delimited boundaries.[93] In addition to centralization and territoriality, Mann describes the state through its power, which can either be despotic or infrastructural.[94] Despotic power lies in the power of the state's elites to impose their will without negotiation with civil society.[95] On the contrary, infrastructural power consists of "the capacity of the state to actually penetrate civil society, and to implement logistically political decisions throughout the realm."[96] Hillel Soifer and Mathias vom Hau summarize infrastructural power by arguing that it refers to the "institutional capability to exercise control and implement policy choices within the territory [that the state] claims to govern."[97] As for Claire Dupuy and Julie Pollard, they emphasize the 'relational' nature of infrastructural power.[98] We conceptualize this as a negotiation between civil society and the state when the latter attempts to exercise power through the former. This negotiation relates to the research question that aims to understand the perceptions and responses of civil society and the media toward state accountability mechanisms. In our framework, negotiation can be direct responses or comments on the legitimacy and success of state accountability mechanisms documented in our interviews. Consequently, infrastructural power

[92] Mann, "The autonomous power of the state", *supra* note 15 at 187–188 and 198–201; Mann, *supra* note 15 at 355 and 358.
[93] See, e.g., Mann, "The autonomous power of the state", *supra* note 15 at 187–188 and 198–201. See also Michael Mann & Thomas Angeletti, "Les pouvoirs de l'État : entretien avec Michael Mann The powers of the state : an interview with Michael Mann" (2015) 29 Tracés: revue de sciences humaines 183.
[94] Mann, "The autonomous power of the state", *supra* note 15; Mann, *supra* note 15; Mann & Angeletti, *supra* note 93.
[95] Mann, *supra* note 15 at 356; Mann, "The autonomous power of the state", *supra* note 15 at 189–191. Mann summarizes this type of power as follows "*despotic power* of the state elite, the range of actions which the elite is empowered to undertake without routine, institutionalised negotiation with civil society groups."
[96] Mann, "The autonomous power of the state", *supra* note 15 at 189–191.
[97] Soifer & vom Hau, "Unpacking the Strength of the State", *supra* note 15 at 220. See also Soifer, "State Infrastructural Power", *supra* note 15.
[98] Dupuy & Pollard, "A DETHRONED KING?", *supra* note 15 at 360. The authors add that the power "rest upon the organizational intermingling of the state and non-social actor", which we take as evidence of the importance of negotiation between the state and civil society.

boils down to three items: infrastructures, civil society,[99] and state policies or projects. These three components will be discussed throughout this Chapter. They will allow for the tying of Mann's perspective on state power to state responsibility (and then accountability) for police sexual misconduct and its impunity.

This thesis focuses on infrastructural rather than despotic power since the latter excludes negotiation with civil society. Since the theoretical framework of social accountability (described in section 3) is contingent upon the participation of non-state actors, we rely on a vision of infrastructural power that focuses on the reception of state power by civil society. This allows for adequately describing state power and responses from non-state actors in the occurrence of police sexual misconduct. For example, Chapter III analyzes, among other things, responses and perceptions of criminal investigations throughout the Val-d'Or crisis through participants' discourses and the literature. This Chapter argues that the institution put in place by the state still face resistance because of internal issues such as lack of transparency, impartiality, and independence. Chapter IV examines how the media became a predominant accountability mechanism and forced state action, notably because of perceived past inaction to the allegations. Chapter V expresses concerns with state mechanisms imposing formal negotiation processes upon civil society by exposing how our participants and the literature conceive commissions of inquiry as a means to misdirect the focus from the initial events. Grounding our reflection in Mann's

[99] Mann's broad conception of civil society (i.e., "power groupings whose base lies outside the state") shares similarities with ours (discussed in the introduction of the thesis), especially since distinguishing civil society from the state and recognizing the power of civil society groups and its role in structuring society. Mann, "The autonomous power of the state", *supra* note 15 at 188.

framework enriches our understanding of the state's role in causing and tolerating police sexual violence and its impunity.[100]

By analyzing the state's infrastructural power, it is possible to unveil the infrastructures, institutions, and networks required to implement state decisions. Breaking down state power into various capacities compellingly shows the breadth of infrastructures, institutions, and networks that may be required to implement a state project. According to Elissa Berwick and Fotini Christia, state capacities are divided into three main categories: extraction, coordination, and compliance.[101] Extraction is the capacity to get the resources needed to carry out a state project; coordination is related to the organization of collective action; finally, compliance refers to "the ability of state leaders to secure compliance with their goals."[102] Any one of these state capacities commands a complex set of infrastructures, institutions, and networks, including bureaucratic agencies, economic institutions, legislative frameworks, the police forces, roads, and communication networks.[103] These infrastructures, institutions, and networks, as well as any subparts within their respective structures, can be sites of police sexual misconduct (e.g., police stations, roads) or can fail to prevent or respond to this phenomenon (e.g., police leadership, the judiciary, Parliament, prosecutorial services, the law). Dupuy and Pollard put emphasis on two different capacities, the number of resources dedicated to implementing state policies and the use of these resources according to the state's knowledge of non-state groups.[104] We believe this conceptualization of the state's capacities recognize our vision that civil society's reception of state power significantly

[100] Soifer & vom Hau, "Unpacking the Strength of the State", *supra* note 15 at 220–221.
[101] Berwick & Christia, "State Capacity Redux", *supra* note 15.
[102] *Ibid* at 79.
[103] Berwick & Christia, "State Capacity Redux", *supra* note 15. See also Mann, *supra* note 15 at 358.
[104] Dupuy & Pollard, "A DETHRONED KING?", *supra* note 15.

shapes the notion of infrastructural power and, consequently, that the responses of civil society and the media are relevant to understand state accountability.

While this thesis strongly builds on the idea of state power "shaped by the organizational networks", reliance on state intent can be problematic when capturing the type of wrongdoing behind police sexual violence.[105] Police sexual misconduct is not (generally) a state project and, for the most part, cannot be understood as an intended consequence of state action. We can argue the same about impunity for such behaviours. Consequently, under Mann's understanding of state (intentional) power, it is hard to see why we should hold the state responsible, and thus accountable, for police sexual misconduct. The state has not intentionally put in place a system where police sexual misconduct can be carried out without sanction. However, police officers are state agents; different fields of state law regulate sexual misconduct (e.g., disciplinary law, criminal law, tort, and human rights),[106] the prevention and regulation of police sexual misconduct can involve several institutions within the state (e.g., Parliament, the police, the prosecution, the carceral system, police ethics commissions, police oversight bodies, and public inquiries), and police violence is intimately tied with colonialism.[107] Many of the infrastructures, institutions, and networks mentioned above are included within state power as described by Mann and contribute to state action meant to pursue the protection of human rights, the promotion of the rule of law, the maintenance of social order, crime prevention, and other state goals.

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[105] Soifer, "State Infrastructural Power", *supra* note 15 at 239–241. On the fact that state's projects can produce different outcomes than the ones stated, see Deborah J Yashar, *Contesting citizenship in latin america : The rise of indigenous movements and the postliberal challenge* (Cambridge ; New York: Cambridge University Press, 2005) at 5–8.

[106] Chapter II will analyze various of these state law subfields.

[107] We are not contesting that colonialism is intentional and that colonial strategies might include sexual violence: Deer, *supra* note 19. However, we believe that this argument must be complemented to provide an exhaustive account of police sexual violence, excluding in non-colonial settings. We will unpack this argument in section 2.

Despite these elements displaying strong connections between police sexual misconduct and the state, this type of misconduct might fall through the cracks when relying on a theory of state intent. Soifer argued that Mann's approach does not include unintended effects.[108] This is hardly surprising given that unintended effects are often excluded from studies on power, which primarily equates power with the realization of intent or one's goal.[109] We argue that there are ways to hold a state responsible for the unintended effects of its action with the precondition of outlining a clear conception of causality. Consequently, the next section will revisit causation to integrate unintended consequences in Mann's theory. Before delving into causation, we must dedicate a few words to impunity. Why focus on this aspect and not exclusively the misconduct itself? We contend that impunity is an integral part of the state's wrong. Alice Ristroph, in a paper on criminal procedure in the United States, appositely pointed out that it is the acquittals for police killings that led to Black Lives Matter.[110] That movement was a response to impunity. We must look not only at police violence, but also at how the system fails to condemn it and thus become complicit in harm. Relational infrastructural power must be looked at through policies causing misconduct, maintaining a status quo, and permitting impunity.

[108] Soifer, discussing Mann, argues that "Infrastructural power, as Mann defined it, is the ability of the state to implement its policies—which suggests that it must be limited to the realm of intentional effects […] While unintended consequences highlight its limitations, the degree that the state can produce its intended effects is the center of Mann's concept." Soifer, "State Infrastructural Power", *supra* note 15 at 239. *Cf* Dupuy & Pollard, "A DETHRONED KING?", *supra* note 15 at 365.

[109] See, e.g., D M White, "Power and Intention" (1971) 65:3 Am Polit Sci Rev 749–759; Dennis H Wrong, "Some Problems in Defining Social Power" (1968) 73:6 American Journal of Sociology 673; Anthony De Crespigny, "Power and its Forms" (1968) 16:2 Political Studies 192; P H Partridge, "Some Notes on the Concept of Power" (1963) 11:2 Political Studies 107; Mann, *supra* note 15 at 5–7. Partridge includes unintended effects but in a narrower sense (i.e., influence unintendedly leading B to imitate A's conduct)

[110] Ristroph, *supra* note 16 at 1189; Black Lives Matter, "About", online: <https://blacklivesmatter.com/about/>. See also Mari J Matsuda, "Minority Critique of Critical Legal Studies: Looking to the Bottom" (1987) 22 Harvard Civil Rights-Civil Liberties Law Review 323 at 390–391.

2. Unintended Consequences of State Action, Causation, and Standards for Responsibility

In Canada, there is currently no state policy explicitly stating that police officers should engage in sexual misconduct as a means of exercising state power. State intention, rogue officers, or 'bad apples' cannot fully explain police sexual misconduct.[111] We do not dismiss that sexual violence can be used as an instrument of state repression, including as a colonialist tool.[112] We rather argue that allegations of sexual misconduct, like the ones that were disclosed in Val-d'Or, cannot be traced back to one state policy or decision. It results from combined effects – some intended, others not – of countless implemented policies, laws, and other state actions across Canada and Quebec.[113] Therefore, the study of this phenomenon calls for a perspective on the state which can deal with unintended consequences of state action. The decision to create a police force and the mandates given to it by state authorities can create consequences beyond those initially intended (e.g., prevention of crime, and preservation of the peace).[114] In contrast, the decision to design law enforcement policies in a certain way (e.g., requiring that alleged victims go through

[111] See, e.g., Bastarache, *supra* note 4; *Report of the Commission of inquiry into Police Conduct: Te Kōmihana TiroTiro Whanonga Pirihimana, vol. 1*, by Margaret Bazley (Wellington, New Zealand: Commission of Inquiry into Police Conduct, 2007) at 295. On the bad apple theory, see Anneke Osse, *Understanding policing: a resource for human rights activists* (Amsterdam: Amnesty International Nederland, 2006) at 204–205; note 40 at 12:07-12:22. The insight of John Gardner as police killing being the result of a failure of the system to protect everyone against crime can be adapted here: John Gardner, "Criminals in Uniform" in RA Duff et al, eds, *The Constitution of the Criminal Law* (Oxford: Oxford University Press, 2013).On systemic aspects of police sexual misconduct, see also Dara E Purvis & Melissa Blanco, "Police Sexual Violence: Police Brutality, #MeToo, and Masculinities" (2020) 108 California Law Review 1487 at 1511 et seq. *Cf R v Fisher*, 2018 BCPC 210 at para 127.

[112] See, e.g., Deer, *supra* note 19; Rich, *supra* note 5 at 149–150.

[113] We unfold this argument in more length, including by providing an example of state action that has led to creating a social context that rendered police sexual misconduct possible in Val-d'Or, in Chapter III. For a similar argument, see Gwen Brodsky, Shelagh Day & Frances Kelly, "The Authority of Human Rights Tribunals to Grant Systemic Remedies" (2017) 6:1 Can J Hum Rts 1 at 4. On the need to focus on consequences rather than intention in the study of state crimes, see Raymond Michalowski, "In search of 'state and crime' in state crime studies" in *State Crime in the Global Age*, 1st ed (Willan, 2010) 18 at especially at 21-22. Alice Ristroph similarly argues that constitutional doctrine in the United States is not intentionally legitimizing police bias: Ristroph, *supra* note 16 at 1218.

[114] See, e.g., *Police Services Act*, RSO 1990 c P15, s 42; *Police Act, CQLR, c. P-13.1*, *supra* note 45, s 48; *Royal Canadian Mounted Police Act*, RSC, 1985, c R-10, s 18. See also Burchill, *supra* note 1. See also the use of starlight tours to manage public drunkenness, Rich, *supra* note 5 at 147–149.

their police interview unaccompanied) based on legal technicalities (e.g., avoiding witness compellability) may not have been intended to intimidate victims or deter complaints. Witness compellability in Canadian evidence law and its effect on accountability for police sexual misconduct are analyzed more thoroughly in Chapter III. It is only one example of how state activity can cause impunity, albeit not pursuing this goal with this specific action.

Merton states that "with the complex interaction which constitutes society, action ramifies, its consequences are not restricted to the specific area in which they were originally intended to center, they occur in *interrelated fields explicitly ignored at the time of action*."[115] We agree with this insight and argue that the various causes of police sexual misconduct and the lack of accountability for this phenomenon are primarily unintended consequences of different actions taken by the state when seeking to organize its law enforcement agencies, its justice system, and society in general. We also side with Dupuy and Pollard, who posit that "the combination of [intended and unintended] effects characterizes state infrastructural power."[116] However, contrary to intended effects, unintended consequences can be challenging to assess, given the necessity to prove causality between state action and the said consequence.[117] We thus believe these effects require further unpacking. The following paragraphs will reconcile the notions of causation and unintended consequences.

[115] Merton, *supra* note 12 at 903. [Emphasis added.]
[116] Dupuy & Pollard, "A DETHRONED KING?", *supra* note 15 at 365.
[117] Merton, *supra* note 12 at 897. See also White, *supra* note 109 at 755; Partridge, *supra* note 109 at 114.

The need to revisit causation stems from its highly individualized nature that is hardly suited to recognizing systemic misconduct.[118] Causation in Canadian law is, at best, limited when dealing with collective harm. As stated by Kent Roach in a paper on residential schools, causation in civil and criminal law is individualized and prevents addressing collective forms of responsibility for harm. Causation also requires a clear chain of action-reaction, thus, dismissing the multiple effects that can stem from one action.[119] This renders Canadian law ill-equipped to redress collective harms.[120] Similarly, the Aboriginal Justice Inquiry of Manitoba expressed in eloquent terms that the mass incarceration of Indigenous peoples results from state decisions and not exclusively from individuals, hereby showing how the law is unable to address multi-faceted causation in matters of systemic issues:

> Cultural oppression, social inequality, the loss of self-government and systemic discrimination, which are the legacy of the Canadian government's treatment of Aboriginal people, are intertwined and interdependent factors, and in very few cases is it possible to draw a simple and direct correlation between any of them and the events which lead an individual Aboriginal person to commit a crime or to become incarcerated.
>
> […]
>
> The Canadian justice system is, at its heart, a system of individual responsibility, where sanctions are levelled at specific individuals for specific actions which can be demonstrated, in a court of law, to have taken place, but it is also clear that there are social roots to criminal behaviour. It is extremely difficult not to conclude that there exists a significant relationship between social inequality and criminal behaviour.[121]

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[118] See, e.g., the need to depart from liability models focusing on the person or entity producing the harms in case of structural injustice in which many people participate to an outcome: Iris Marion Young, "The Social Connection Model" in *Responsibility for Justice* (Oxford: Oxford University Press, 2011) DOI: 10.1093/acprof:oso/9780195392388.001.0001.

[119] Kent Roach, "Blaming the victim: Canadian law, causation, and residential schools" (2014) 64:4 University of Toronto Law Journal 566 at 577. For further details on the individualized nature of Canadian law, see Chapter II.

[120] See, e.g., *Ibid* at 595. See Chapter II for a discussion on the application of Canadian law in cases of police sexual misconduct.

[121] *Report of the Aboriginal Justice Inquiry of Manitoba: the Justice System and Aboriginal People, vol. 1*, by Associate Chief Justice AC Hamilton & Associate Chief Justice CM Sinclair (Winnipeg: Public Inquiry into the Administration of Justice and Aboriginal People, 1991) at 86 and 90. See also *R v Gladue*, 1 SCR 688 at paras 58–69; *R v Ipeelee*, 2012 SCC 13, 1 SCR 433 at paras 56–79, 81 and 82 (pay attention to 73, 81 and 82 in particular). On the accountability of the state for overincarceration of Indigenous peoples, see Sonia Lawrence & Debra Parkes, "R v.

In the absence of sufficient evidence with probative value, we can use reverse engineering to apply this logic in the context of police sexual violence. It is difficult to draw a simple correlation between state action and police sexual misconduct. We could argue that the blame for police sexual violence only lies with the offender. However, if we take a step back, police sexual misconduct could be embedded within "the [nature] of the Canadian government",[122] which has allowed for abuse and discrimination against Indigenous peoples by the state,[123] has harboured police forces that have been dominantly masculine (and hostile to women and LGBTQ+ members),[124] has designed training for police officers that according to some participants consulted for this study is lacking in anthropological approach or psychological testing,[125] has allowed – at least in Québec

Turtle: Substantive Equality Touches Down in Treaty 5 Territory" (2020) 66 C.R. (7th) 430; *R v Turtle*, 2020 ONCJ 429; Efrat Arbel, "Rethinking the 'Crisis' of Indigenous Mass Imprisonment" (2019) 34:3 Can j law soc 437. Rooting the accountability in the state may mean 'reversing the gaze' and turning away from individual responsibility. Reversing the gaze, however, may lead to a hemorrhage of blame as accounted for by Benjamin Berger in another context: Benjamin L Berger, "Mental Disorder and the Instability of Blame in Criminal Law" in François Tanguay-Renaud & James Stribopoulos, eds, *Rethinking Criminal Law Theory: New Canadian Perspectives in the Philosophy of Domestic, Transnational, and International Criminal Law* (Hart Publishing, 2012).

[122] We replaced 'legacy' as the latter implies the current situation is different. We argue that, as of now, the practices of the Canadian state still participate in the issues raised in this paragraph. For a compelling analysis of this issue, see Vicki Chartrand, "Unsettled Times: Indigenous Incarceration and the Links between Colonialism and the Penitentiary in Canada" (2019) 61:3 Canadian Journal of Criminology and Criminal Justice 67.

[123] Countless documents could be cited in support of this statement. On mass incarceration, see, e.g., *R v Gladue*, *supra* note 121; *R v Ipeelee*, *supra* note 121; Arbel, *supra* note 121; Lawrence & Parkes, *supra* note 121; *R. v. Turtle*, *supra* note 121; Hamilton & Sinclair, *supra* note 121 c 4; Chartrand, *supra* note 122. With regards to the police and discrimination of Indigenous women, more specifically, see, e.g., Mylène Jaccoud, Marie-Claude Barbeau-Leduc & Myriam Spielvogel, *Violence à l'endroit des femmes autochtones* (Commission d'enquête sur les relations entre les Autochtones et certains services publics); Pamela Palmater, "Shining Light on the Dark Places: Addressing Police Racism and Sexualized Violence against Indigenous Women and Girls in the National Inquiry" (2016) 28:2 Canadian Journal of Women and the Law 253.

[124] See, e.g., Margaret E Beare, "Women and Policing: The Few Among the Many" in Margaret E Beare, ed, *Honouring Social Justice: Honouring Dianne Martin* (Toronto: University of Toronto Press, 2008); Government of Canada, "LGBT Purge Class Action Final Settlement Agreement", online: *National Defence* <https://www.canada.ca/en/department-national-defence/corporate/reports-publications/proactive-disclosure/supplementary-budget-b-2019-2020/supp-est-b-items/voted-appropriations/lgbt-purge.html>.

[125] A2, at 9-11 and 26-30; B2, at p. 26. *Cf* C1, at p. 36 (this participant argues that one-on-one training will not succeed in changing the situation, a shift in mentality is rather needed). As for participant A1, they link the Val-d'Or crisis directly to the duty of the state to properly train police officers, see p. 20. On the formation of Québec's police officers, see also, Lafontaine (2016), *supra* note 4 at 42–43; Lafontaine (2020), *supra* note 4 at 115–123; *Mémoire présenté par Amnistie internationale Canada francophone*, by Amnistie internationale (Commission d'enquête sur les relations entre les Autochtones et certains services publics : écoute, réconciliation et progrès, 2017) at 14 and 27.

– for the absence of an enforceable duty to report misconduct committed by colleagues,[126] has permitted officers to be reassigned or retire upon committing misconduct,[127] and has enacted legal frameworks which yield few results in cases involving both sexual violence issues and police misconduct.[128] These examples can be added to many other decisions that made or are still making the police and the law what it is today without necessarily consciously hoping that these choices would cause, facilitate, or fail to prevent police sexual misconduct.

Mann's infrastructural power offers one explanation for grounding responsibility for police sexual violence in the state: the effects of state projects as carried out in the institutional network. However, this theory was not designed for police misconduct and relies on intent. It is not perfectly aligned with our conception of police sexual violence. One way to anchor more deeply police sexual misconduct in the state is thus to add to Manns' conceptualization not only Merton's insight on unintended consequences but also Mari Matsuda's take on causality. As Matsuda suggests, the structure of the law with regard to liability and causation is the result of policy choices and does

[126] *Police Act, CQLR, c. P-13.1*, *supra* note 45, s 260; Lafontaine (2020), *supra* note 4 at 153–154; *Mémoire de Femmes Autochtones du Québec (FAQ)*, by Québec Native Women Inc (Commission d'enquête sur les relations entre les Autochtones et certains services publics : écoute, réconciliation et progrès, 2018) at 29–30; Ampleman-Tremblay, *supra* note 8 at 15. *Cf* Marc Alain, "Une mesure de la propension des policiers québécois à dénoncer des comportements dérogatoires, éléments de culture policière et cultures organisationnelles" (2004) 28 Déviance et Société 3 at 8–9, 15 and 22–23; *Témoignage devant l'honorable Jacques Viens, 24 novembre 2017, vol. 42*, by Marc Alain (Val-d'Or: Commission d'enquête sur les relations entre les autochtones et certains services publics, 2017) at 63–139; *Report of the Independent External Comprehensive Review of the Department of National Defence and the Canadian Armed Forces*, by Louise Arbour (Montréal, 2022) at 149–157.

[127] Some authors in the United States of America documented this practice (Cara E Rabe-Hemp & Jeremy Braithwaite, "An Exploration of Recidivism and the Officer Shuffle in Police Sexual Violence" (2013) 16:2 Police Quarterly 127–147 at; Cara E Trombadore, "Police Office Sexual Misconduct: An Urgent Call to Action in a Context Disproportionately Threatening Women of Color" (2016) 32 Harvard Journal on Racial & Ethnic Justice 153 at 167.) Officer shuffle has been reported in at least two cases of police misconduct in Canada: *Sulz v Attorney General et al*, 2006 BCSC 99 at paras 41–51; *Hayes v City of Saint John*, 2018 NBCA 51. We shall also note that t the Royal Canadian Mounted Police has pushed harassers to resignation or retirement: *Review of four cases of civil litigation against the RCMP on Workplace Harassment: Report to the Minister of Public Safety and Emergency Preparedness*, by Sheila Fraser (Ottawa: Public Safety Canada, 2017) at para 49; Bastarache, *supra* note 4 at 82–86.

[128] See Chapter II.

not restrict causation *per se*.[129] It only restricts legal causality as understood in our system, not causality from a theoretical or moral perspective. Matsuda proposes to reform our legal understanding with the following shift, which better represents causality: founding causation in prevention. The person in the best position to prevent harm should be held responsible and, eventually, accountable. This being said, "[t]he presence of another potentially accountable person should not let everyone else who could have prevented the harm off the hook. Every effect has multiple causes, and in a responsible society we should identify as the responsible causes all those that could have made a difference."[130] Matsuda, just like Roach and the Aboriginal Justice Inquiry of Manitoba, put forward a conception of causality that acknowledges the numerous potential causes of harm and accepts that causality cannot simply be traced with a direct line to an individual or an act.

This extensive perspective on causality is well adapted to the study of systemic misconduct and will thus be used to attribute responsibility for police sexual misconduct and its impunity. As indicated earlier, assigning responsibility is a crucial step of accountability. Let us take causation as depicted by Matsuda and ask, "Who is in the best position to prevent police sexual misconduct and impunity for such behaviours?" The answer is hardly police officers who committed the misconduct.[131] Studies on police sexual misconduct should thus not exclusively prioritize the individual. They should shift their gaze to the role of the state. The state is the best entity to prevent,

[129] Mari Matsuda, "On Causation" (2000) 100:8 Columbia Law Review 2195 at 2202. *Cf* Kent Roach, "The disappointing remedy? Damages as a remedy for violations of human rights" (2019) 69:1 University of Toronto Law Journal 33 at 47–48 reminds us that causation has a less important role in public law than it does in torts.
[130] Matsuda, *supra* note 129 at 2211 (citation omitted).
[131] This statement does not mean that individual accountability is not essential from a justice perspective but that when looking at police sexual misconduct as a systemic phenomenon, focusing exclusively on the responsibility of one officer might not be enough to address the roots and manifestations of the problem. This does not either mean they are 'off the hook' as explained by Matsuda.

or at least attempt to prevent, police sexual misconduct notably by educating the population on sexual violence and legal mechanisms, providing better training to actors within the justice system, implementing anti-sexual harassment and anti-sexual misconduct policies within its police forces, regulating police sexual conduct, avoiding engaging in harmful practices such as officer retirement or transfer to another department to circumvent punishment, operating changes within institutional culture, and ensuring the transparency of both the police and investigations on the police.[132] It can also prevent impunity by providing citizens with effective litigation mechanisms (see Chapter II), criminal investigations (see Chapter III), or public commissions of inquiry (see Chapter IV), which allow them to seek and obtain different types of redress (e.g., damages, criminal conviction, and apologies). The state can also act in a way that tackles the full spectrum of police sexual violence instead of isolated cases. A holistic comprehension is necessary to root out this phenomenon and its impunity.

Now that we explained why we attribute responsibility to the state, we will introduce two elements traditionally recognized in law: foreseeability and a form of wilful blindness. Suppose the state is not aware of the unintended consequences of its policies. Can we hold it responsible and expect justification and remedies only because it is well-placed to prevent police sexual misconduct and impunity? We argue that, morally, it should. However, a legal answer to the question above lies partly in foreseeability. Relying on this concept means the state can be held responsible (and then accountable) when it had "had reason to foresee harm, and [it] failed to take reasonable steps to prevent harm".[133] Following the foreseeability test that we are using here, an

[132] See, e.g., Bastarache, *supra* note 4; Heil, *supra* note 17; Ritchie, *supra* note 7; Trombadore, *supra* note 127; Purvis & Blanco, "Police Sexual Violence", *supra* note 111; Terry Skolnik, "Racial Profiling and the Perils of Ancillary Police Powers" (2021) 99 Can Bar Rev 429 at 448.
[133] Matsuda, *supra* note 129 at 2214.

entity will be responsible when it "could […] have reasonably known" or when it acted "unreasonably".[134] In a study on police brutality, Alice Ristroph adopts this standard by arguing that while American constitutional doctrine did not intend to legitimize police bias, we should focus on 'foresight', especially when knowing who the people entering in contact with the police are.[135] If the state can foresee that state policy will disproportionately harm some groups (as in Ristroph's example of police powers and Black men) and fails to prevent abuse: this should be a ground for responsibility and, eventually, accountability.

We will now untangle the application of the foreseeability standard for unintended consequences. While unintended consequences can appear in multiple sites, we will focus on two levels of analysis: (1) the police and (2) the state's interconnected institutions. When studying the police or the state from a wider perspective, we can conclude that state action leads to unintended consequences that are factors explaining tolerance, failure to prevent, failure to respond to, or normalization of police sexual misconduct. First, literature on the police points to many factors potentially fostering police sexual misconduct and impunity: there may be a power imbalance caused by police's control of the facts in legal proceedings as well as their legal protection and knowledge;[136] a lack of transparency in police-on-police investigations;[137] a code of secrecy

[134] Matsuda notes that this approach is familiar to common law and equates this approach with the notions of notice and breach. *Ibid*.
[135] Ristroph, *supra* note 16 at 1218–1219.
[136] Police officers' functions and knowledge in legal proceedings can lead to power imbalances and fear of reporting because of one's party privileged position. Some authors also argued that the role of police officers within the justice system and the legal protections offered by the *Charter* put police officers in an advantageous position in criminal proceedings. See Martin, *supra* note 7; Kate Puddister & Danielle McNabb, "When the Police Break the Law: The Investigation, Prosecution and Sentencing of Ontario Police Officers" (2021) Can j law soc 1 at 18; Roach, *supra* note 16 at 29, 51 and 73.
[137] Lack of transparency and legitimacy are recurring issues in police-on-police investigations and police governance. See, e.g, *Who Polices the Police?: The Role of Independent Agencies in Criminal Investigations of State Agents*, by Open Society Justice Initiative, Ian Scott & Masha Lisitsyna, DOI.org (Datacite) (Open Society Foundations, 2021) at 61–65; Puddister & McNabb, "When the Police Break the Law", *supra* note 136 at 3. This concern was also brought forward in the context of the investigations of the *Service de police de la ville de Montréal* against *Sûreté du Québec*

between police officers (often labelled "the blue wall of silence");[138] an institutional culture of masculinity;[139] harassment, bullying and discrimination especially against women and minorities;[140] and the targeting of vulnerable populations, notably through profiling and

officers who allegedly committed several forms of misconduct and during the first years of operation of the *Bureau des enquêtes indépendantes* (BEI). See, e.g., Lafontaine (2016), *supra* note 4; Lafontaine (2020), *supra* note 4 at 104-111 (on the BEI). For further information on transparency, see Chapter III.

[138] According to studies (primarily undertaken in the United States), the code of secrecy between police officers can be strong enough to prevent an officer from reporting a colleague's misconduct. See, e.g., Maher, *supra* note 7 at 357 and 369; Trombadore, *supra* note 127 at 164; Ampleman-Tremblay, *supra* note 8 at 35–40. See also Open Society Justice Initiative, Scott & Lisitsyna, *supra* note 137 at 42–43.

[139] The literature reports not only a lack of opportunities for policewomen but also harassment and other forms of discriminatory treatment based on sex, including in the assigned tasks. See, e.g., Beare, *supra* note 124; Sophie Brière et al, "Le parcours des policières au Québec : des stratégies individuelles à l'approche organisationnelle" (2019) 32:1 Recherches féministes 171; Anastasia Prokos & Irene Padavic, "'There Oughtta Be a Law Against Bitches': Masculinity Lessons in Police Academy Training" (2002) 9:4 Gender, Work & Organization 439. In a piece on the military, Lawford-Smith argues that "there can be a general culture of behaving in certain ways, or undertaking certain actions in the pursuit of certain ends, that isn't written anywhere and no one talks about, yet many or most employees contribute to. (Institutional racism or misogyny in the police might work like this.)": Holly Lawford-Smith, "Governmental Culpability" in *Not In Their Name: Are Citizens Culpable For Their States' Actions?* (Oxford University Press, 2019) 139 at 161, see also 162 and 163.

[140] See, e.g., Bastarache, *supra* note 4 at II, 56–58 and 105. Fraser, *supra* note 127 at 18; *Davidson v Canada (Attorney General)*, 2015 ONSC 8008; *Rivers v. Waterloo Regional Police Services Board*, *supra* note 4; *Rivers v Waterloo Regional Police Services Board*, 2019 ONCA 267; Bastarache, *supra* note 4 at II, 56–58 and 105.

judicialization of homelessness.[141] These outcomes are rooted in state action or, more precisely, how the state has structured the police and the justice system.[142]

The second angle under which we can apply the logic of unintended consequences is within the various institutions of the state connected to policing, notably the justice system and the law. For instance, the barriers to justice imposed by state law (see Chapter II for further details),[143] the effects of gender inequalities (including in sexual violence policing),[144] and the role of colonialism

[141] See, e.g., Ritchie, *supra* note 7; Andrea J Ritchie & Delores Jones-Brown, "Policing Race, Gender, and Sex: A Review of Law Enforcement Policies" (2017) 27:1 Women & Criminal Justice 21–50; Maynard, *supra* note 7; Francis Dupuis-Déri, "La violence des policiers contre des femmes" *COBP Collectif opposé à la brutalité policière* (2009), online: <https ://cobp.resist.ca/documentation/la-violence-despoliciers-contre-des-femmes>; Roach, *supra* note 16 at 25–50. While studies in the United States often reported victimization of intoxicated women, mentally disabled women, and other vulnerable communities, intoxication and mental issues were only reported in a minority of cases by Puddister and McNabb. Of note, their study expanded to all types of criminal offences and did not focus exclusively on police sexual misconduct: Puddister & McNabb, "When the Police Break the Law", *supra* note 136 at 9–10. On police sexual misconduct and the profiles of victims, see Ampleman-Tremblay, *supra* note 8. On profiling by the police, namely in Montreal, see: Armony, Hassaoui & Mulone, *supra* note 16; Anne-Marie Livingstone, Marie Meudec & Rhita Harim, "Le profilage racial à Montréal, effets des politiques et des pratiques organisationnelles" (2020) 31:2 Nouvelles pratiques sociales 126. On the targeting of homelessness and populations using alcohol and drugs by the police in Québec, including Val-d'Or, see e.g., *Règlement concernant les nuisances, la paix, le bon ordre et les endroits publics*, 2003-40, s 3.3, 4.3 a), b), c) and d), 5.3.3 and 5.3.6; Marie-Eve Sylvestre, "Policing the homeless in Montreal: is this really what the population wants?" (2010) 20:4 Policing & Society 432; Céline Bellot & Marie-Ève Sylvestre, "La judiciarisation de l'itinérance à Montréal : les dérives sécuritaires de la gestion pénale de la pauvreté" (2017) 47 Revue générale de droit 11; *La judiciarisation de l'itinérance à Val d'Or*, by Céline Bellot & Marie-Eve Sylvestre (2016); Marie-Eve Sylvestre, "Disorder and Public Spaces in Montreal: Repression (And Resistance) Through Law, Politics, and Police" (2010) 31:6 Urban Geography 803; Élise Solomon, "Quand les problèmes sociaux se retrouvent dans la cour de la police" (2019) 37:2 Revue droits et libertés, online: <https://liguedesdroits.ca/problemes-sociaux-se-retrouvent-cour-de-police/>. On how the police culture can foster replicate discriminatory attitudes, see *Témoignage devant l'honorable Jacques Viens, 23 novembre 2017, vol. 41*, by Jean O'Bomsawin (Val-d'Or: Commission d'enquête sur les relations entre les Autochtones et certains services publics : écoute, réconciliation et progrès, 2017) at 19 and 67.

[142] See, e.g., Jones & Sheehy, *supra* note 18 providing a compelling example of how structural aspects of the criminal justice system, especially when combined, may lead to disproportionate effects against some individuals, including justification of sexual violence by police officers.

[143] Ampleman-Tremblay, *supra* note 8.

[144] Gender inequalities have notably been at the foundations of sexual assault law and responses to sexual responses. Consequently, the literature on sexual violence often integrate a gender lens within its analysis, see e.g., Craig, *supra* note 14; Erin Collins, "The Criminalization of Title IX" (2016) 13:2 Ohio State Journal of Criminal Law 365; Nikki Godden-Rasul, "Repairing the harms of rape of women through restorative justice" in Estelle Zinsstag & Marie Keenan, eds, *Restorative responses to sexual violence: Legal, social and therapeutic dimensions* Routledge frontiers of criminal justice 44 (New York: Routledge, 2017); Tracey Lindberg, Priscilla Campeau & Maria Campbell, "Indigenous Women and Sexual Assault in Canada" in Elizabeth Sheehy, ed, *Sexual Assault in Canada: Law, Legal Practice and Women's Activism* (Ottawa: University of Ottawa Press, 2012); Tanovich, *supra* note 18; Estelle Zinsstag, "Sexual Violence Against Women in Armed Conflicts and Restorative Justice: An Exploratory Analysis" in Martha Albertson Fineman & Estelle Zinsstag, eds, *Feminist Perspectives on Transitional Justice: From International*

in shaping the relations between the state and Indigenous peoples contribute to the tolerance as well as the failure to prevent or respond to police sexual misconduct.[145] Policies of assimilation have left major traumas in Indigenous communities and have led to physical, psychological, and sexual violence, as well as other human rights violations.[146] In the context of police sexual misconduct, Indigenous women have been especially vulnerable. Data on Val-d'Or, our case study, show the importance of looking at the victimization of Indigenous women. Out of the 31 alleged victims of all police misconduct cases reported, 28 were Indigenous, and 24 were women.[147] When looking exclusively at police sexual misconduct reported in Val-d'Or, 87.5% of victims were Indigenous, vastly exceeding the percentage of Indigenous inhabitants in Val-d'Or.[148] However, this victimization goes beyond the context of the case study and is reflected in police sexual misconduct across Canada.[149]

The example of colonialism does not sit well within the unintended consequences framework. As we argued above, police sexual violence is (generally) not intentional. Colonialism, however, is. To highlight all causes of police sexual violence, we must consider the other unintended consequences enumerated above (e.g., legal barriers, power imbalance, and police

and Criminal to Alternative Forms of Justice On Transitional Justice 13 (Cambridge; Antwerp; Portland: intersentia, 2013). There are many sources on the law, gender, and sexual violence. This list does not intend to present an exhaustive repertory of these sources but only a sample of different trends within the literature.

[145] See, e.g., Palmater, "Shining Light on the Dark Places", *supra* note 123; Human Rights Watch, *supra* note 4.

[146] See, e.g., *Reclaiming Power and Peace: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, by National Inquiry into Missing and Murdered Indigenous Women and Girls, 1A (2019); Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23.

[147] Lafontaine (2016), *supra* note 4 at 4–5 and 52–53. These are data regarding the first phase of the investigations, which was focused on Val-d'Or. Out of the 38 complaint files analyzed, 15 were of a sexual nature. The Director of Criminal and Penal Prosecutions disclosed that they analyzed 14 files involving sexual misconduct. Directeur des poursuites criminelles et pénales, *supra* note 38 at 10. The second phase expanded the investigation to other regions and was not focused on Val-d'Or, see Lafontaine (2020), *supra* note 4.

[148] Further details on this calculus can be found in our introduction, presenting the methodology. The data are taken from Lafontaine (2016), *supra* note 4 at Appendix F.

[149] See, e.g., Palmater, "Shining Light on the Dark Places", *supra* note 123; Human Rights Watch, *supra* note 4.

culture). Not only does looking at all causes help to have a broader portrait, but it can also help to expand or framework to police sexual violence that is not targeting Indigenous peoples. We can think here of police sexual violence against police officers, which is one of the more frequent forms of police sexual violence, according to the literature.[150] Moreover, should our framework be adopted, it could encompass colonialism and its connection to sexual violence since it is a link the state might deny in court proceedings.[151] If the state rejects the impact of colonialism on sexual violence, we can use our new responsibility standards to address the issue through foreseeability of abuse or wilful blindness to the violence created by our system (see further comments on wilful blindness below).

Relying on previous paragraphs, we propose to draw a connection between interconnected state institutions and the foreseeability of police sexual misconduct. Given the literature cited above, we could claim that the state possesses some evidence allowing one to foresee that policing will lead to abuse, including sexual violence. It is also arguable that the state failed to act reasonably upon receiving information detailing police sexual misconduct within different police agencies. Not only can we rely on the sources cited above, but we can also point to specific cases. In 1988, Sheila Copps critiqued the government's response to sexual harassment allegations within the RCMP and requested an independent assessment of the situation before the House of Commons.[152] Since then, several reports have been written on the culture of discrimination, sexual harassment, and bullying in the RCMP, as well as on abuses committed by RCMP officers.[153] For

[150] See, e.g., Bastarache, *supra* note 4; *Rivers v. Waterloo Regional Police Services Board*, *supra* note 4; Ampleman-Tremblay, *supra* note 8.
[151] See, e.g., Rich, *supra* note 5 at 149–151.
[152] *House of Commons Debates*, 33rd Parl, 2nd Sess, vol 14 at 17551.
[153] See, e.g., *Public Interest Investigation Into RCMP Workplace Harassment*, by Commission for Public Complaints Against the Royal Canadian Mounted Police (2013); *Report into Workplace Harassment in the RCMP*, by Civilian

instance, in 2020, former Justice Michel Bastarache authored a report on sexual harassment within the RCMP and concluded that this police force was plagued with a homophobic, racist, and sexist systemic culture.[154] The RCMP is not the only police force critiqued for its actions. Provincial police forces have also been the object of reports and allegations. In Québec, in 1999, an Inquiry reported that the SQ did not deal with professional and sexual harassment like other misconduct and critiqued their approach that treated harassment as if it did not meet the fault standard in disciplinary proceedings.[155] In 2015, allegations of misconduct, including sexual misconduct, by police officers against Indigenous women in Val-d'Or were revealed to the public. Since then, in Ontario, a police organization has been brought before courts, namely for its misogynistic culture.[156] These are not exhaustive examples. A large swath of documents is available and numerous persons have put forward the issue of police sexual misconduct in Canada.[157] While our examples of sites of misconduct, and specific cases of abuse suggest that the state should and has been able to foresee harm, two questions remain: once the state becomes aware of the effects of

Review and Complaints Commission for the RCMP (2017). For a report authored by a civil society organization, see Human Rights Watch, *supra* note 4.

[154] See Bastarache, *supra* note 4 at II, 56–58 and 105.

[155] *Rapport de la Commission d'enquête chargée de faire enquête sur la Sûreté du Québec. Sommaire et recommandations / Commission d'enquête chargée de faire enquête sur la Sûreté du Québec*, by Lawrence Poitras (Québec, Québec: Publications du Québec, 1999) at 34.

[156] See, e.g., Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23; Lafontaine (2016), *supra* note 4; Lafontaine (2020), *supra* note 4; *Rivers v. Waterloo Regional Police Services Board*, *supra* note 140. See also the media and civil coverage of police sexual misconduct by provincial police organizations, e.g., St John's Status of Women Council, *Sexual assault at the hands of Royal Newfoundland Constabulary on-duty police officers* (2021); Sarah Smellie, "Seven N.L. police officers accused of sexually assaulting women, force investigating", *CTV News* (21 July 2021), online: <https://atlantic.ctvnews.ca/seven-n-l-police-officers-accused-of-sexually-assaulting-women-force-investigating-1.5517608>; Josh Pringle, "Ottawa police receive 33 complaints about sexual violence, sexual harassment and discrimination in the workplace", *CTV News* (21 January 2021), online: <https://ottawa.ctvnews.ca/ottawa-police-receive-33-complaints-about-sexual-violence-sexual-harassment-and-discrimination-in-the-workplace-1.5276712>; Judy Trinh, "14 women report sexual assault, harassment by male Ottawa police officers in past 3 years", *CBC News* (26 May 2021), online: <https://www.cbc.ca/news/canada/ottawa/sexual-assault-harassment-ottawa-police-1.5584398> at 33.

[157] The case study being on the crisis of Val-d'Or, the foreseeability test regarding these events will be further detailed in Chapter II, in which we will argue that some pieces of evidence point to knowledge of the misconduct by some officers, perhaps including senior officers.

its policies, should it be held to the standard of foreseeability, or should we apply a different standard? And, at which stage were we in Val-d'Or? This second question is tied to one of our research objectives. By applying the state accountability framework developed in this Chapter to Val-d'Or in the following paragraphs and subsequent chapters, we will provide an answer.

Considering the amount of documentation on the Val-d'Or crisis[158] and the evidence that impunity for police sexual misconduct results from a culture that tolerates and fails to address it, when does the failure to act become grounds for accountability? Throughout this thesis, we will demonstrate, through analyses of the literature and our interviews, that the state is no longer in a position to claim ignorance of the effects of its policies and actions. Relying on this contention, we propose a second standard that can be applied to state accountability for police sexual misconduct. Indeed, a detailed case study of the Val-d'Or crisis allows us to put forward not only foreseeability but a form of wilful blindness, rendering accountability claims more robust in the future. More specifically, we rely on the idea that a modified wilful blindness concept "can substitute for actual knowledge" in Canadian criminal law[159] while critiquing the narrow application of the current wilful blindness standard.

However, we must expand on knowledge in more detail to apply wilful blindness to police sexual misconduct. If several consequences are unintended, as we suggested, it might take time to understand the causality between state action and police sexual misconduct. The time required to establish this connection will be even more important if we require actual knowledge of the specific policy and its relation to a precise consequence. The difficulty of proving knowledge of

[158] See, e.g., Chapters III to V, which draw from both documentation on the crisis and interviews.
[159] *R. v. Briscoe*, *supra* note 13 at para 21; *Sansregret v. The Queen*, *supra* note 13 at 584.

systemic wrongs (at least before gathering long-term data on how the system works) can result in significant delays before finding grounds to assert state accountability. If causation cannot establish systemic wrongs, neither does the knowledge standard. We thus think we should, as the criminal law does, equate knowledge to wilful blindness.

In Canadian law, wilful blindness "imputes knowledge to an accused whose suspicion is aroused to the point where he or she sees the need for further inquiries, but deliberately chooses not to make those inquiries."[160] This standard, too, is very restrictive when applied to state accountability. Consequently, we will infuse the doctrine of wilful blindness with some insights from social anthropology to adapt it to systemic wrongs. Wilful blindness here, contrary to Canadian law, applies not only to criminal wrongs but also to state wrongs that do not reach the criminal threshold. This is essential in the case of police sexual violence, which is a spectrum including criminal and non-criminal acts, all constituting abuses of power.[161] Authors have similarly argued that sexual wrongs (or non-ethical sexuality) are not only those reaching criminal thresholds.[162] The focus on criminal wrongs falls short of considering the large array of conduct we can label police sexual misconduct. The reliance on a criminal categorization also shows considerable limitations when expanding wilful blindness to police sexual violence, as demonstrated by Sylvia Rich, who attempted to classify police violence in Val-d'Or as an organizational crime.[163] These drawbacks of criminal law are laid out in Chapter II, discussing the shortcomings of state law. For now, we wish to highlight that applying the Canadian law of

[160] *R. v. Briscoe*, *supra* note 13 at para 21. See also *Sansregret v. The Queen*, *supra* note 13 at 584–586.
[161] See, e.g., Ritchie, *supra* note 7 at 111–113. See also Ampleman-Tremblay, *supra* note 8. On harassment as being inherently included in the police sexual misconduct spectrum, see Sapp, *supra* note 7.
[162] See, e.g., Gardner, *supra* note 16; Cossman, *supra* note 7.
[163] Rich, *supra* note 5.

organizational crime to sexual offences is especially challenging, as it requires evidence that the crime benefited, at least in part, the organization.[164]

To adapt wilful blindness to a broader range of wrongs, we must depart from criminal theory which operates based on the existence of a criminal act and a positive decision to remain ignorant.[165] Social anthropology envisions wilful blindness more expansively by stretching beyond criminal offences. For instance, Bovensiepen and Pelkmans suggest a definition for wilful blindness that is wider than what the law envisions: "Wilful blindness must […] be understood as inhabiting a spectrum where deliberate unawareness is at one end of the spectrum, and normalised blindness or unconscious disregard on the other."[166] These authors specifically give the example of institutional racism in the police as a form of wilful blindness when using the concept in its anthropological rather than legal sense.[167] Racism within the police is presented in social anthropology as not only a matter of not inquiring but also an institutionalization of some practices not conceived as part of the problem.[168] Since the legal definition only accepts the 'deliberate unawareness' end of the spectrum,[169] we must examine more thoroughly the institutionalization or normalization of wilful blindness as conceptualized in social anthropology.

The spectrum is large enough to encompass privileged groups' ignorance of the other,[170] or, in our case, the ignorance of subsets of the population who experienced disproportionate effects

[164] *Ibid* at 13–16.
[165] Kent Roach, "The Fault Element, or Mens Rea" in *Criminal Law* (Toronto: Irwin Law, 2018) at 213–216.
[166] Bovensiepen & Pelkmans, "Dynamics of wilful blindness", *supra* note 11 at 388.
[167] *Ibid.*
[168] *Ibid.*
[169] See, e.g., *R. v. Briscoe, supra* note 13 at para 24.
[170] Allerton, "Invisible children?", *supra* note 11 at 457.

of state policies.[171] Bovensiepen suggests three forms of wilful blindness: "The first refers to a process of detachment by which aspects of reality become or remain 'invisible'; the second refers to producing ignorance in others as a means of obfuscation; and the third refers to a side-lining or marginalization of uncomfortable knowledge through a process of reasoning, routines and collective solidarity."[172] In the context of the thesis, wilful blindness does not take the form of manufactured ignorance hinted at by Bovensiepen.[173] We rather retain – and adapt – two of the definitions cited above: detachment leading to the invisibility of some aspects of reality[174] and the side-lining of uncomfortable knowledge.

We believe invisibility and side-lining can be two sides of the same coin – perhaps we fail to discuss issues because we are not at ease with unpacking their meaning. This uneasiness might come from a form of detachment, as it is easier to understand and relate to what or who is closer or helpful to us.[175] In our case, the state can be detached (1) from victims of police sexual violence and (2) from the interaction between various parts of its legal framework and society, which render ignorance of reality possible. This second detachment might be rooted in legal processes that normalize blindness by side-lining uncomfortable knowledge like the roots of police sexual violence. For instance, in *R v R.D.S.*, a case in which a young black man was held in a chokehold by the police, Justice Sparks used her experience as a black woman in Nova Scotia to raise the issue of racism in policing at trial. Constance Backhouse, who powerfully critiques the *R.D.S.* case, argues that appellate judges refocused the case on the strict use of police powers and excluded

[171] On different forms of ignorance, see Nancy Tuana, "The Speculum of Ignorance: The Women's Health Movement and Epistemologies of Ignorance" (2006) 21:3 Hypathia 1. On the ignorance of whole groups, see 13.
[172] Bovensiepen, "On the banality of wilful blindness", *supra* note 11 at 502.
[173] Not because irrelevant but rather because we made no inquiry with regard to manufactured ignorance and cannot either confirm or deny this form of wilful blindness was at play in Val-d'Or.
[174] Allerton, "Invisible children?", *supra* note 11 at 462.
[175] See Bovensiepen, "On the banality of wilful blindness", *supra* note 11 at 496 on epistemic disconnect.

racism in Canadian police forces from the decision.[176] This does not mean that people necessarily intentionally decided to perpetrate harm by silencing racism – rather, their circumstances, different from the accused, might have prevented them from seeing this case as one raising disparity in the treatment of Black Canadians or have normalized the disparity. The law then facilitated this wilful blindness by categorizing this problem as one of police powers. Racism was not included in the case because legal processes did not allow the insertion of such societal issues in this isolated criminal trial. If intent to harm was the threshold, hardly any entity could be held accountable in this situation. However, failing to see racism was a symptom of a systemic wrong that cannot be tackled unless we understand wilful blindness as including (1) the normalization of looking at legal matters only through our personal perspectives, and (2) law's incapacity to conceive of societal issues beyond its strict categorization.[177]

Wilful blindness can thus rest in our normalization of legal processes and the law's incapacity to conceptualize harm produced by our system, including the structural roots of police sexual violence. Otherwise, wilful blindness is of no help, especially in systemic wrongs where society may not be ready to acknowledge its participation in the problem or the issue itself. Social anthropology helps us move beyond traditional conceptions of legal responsibility and expand

[176] Constance Backhouse, *Reckoning with Racism: Police, Judges and the RDS Case* (Vancouver: UBC Press, 2022) at 160–162; *R v S (RD)*, [1997] 3 SCR 484.

[177] This is not the first claim on the blindness of the state. James C. Scott, in 1998, argued that over-simplification of social organizations by the state could lead the latter to be cognizant only of parts of social organization it observes and side-line other components of reality. If the state does not wish to observe how the social organization – in this case, policing – is connected to sexual violence, then it will not see it. Why does the state fail to observe it? Perhaps because sexual violence by police is not the object of state attention when it comes to policing. Just as in Scott's example in which the state dismissed some uses of trees because of the focus on lumber wood, the way we envision policing precludes us from seeing the part sexual violence can play in law enforcement. Additionally, the way the law is structured might not offer avenues to handle sexual violence by police as this was not part of the state objective when enacting our legal framework (for more information on litigation and police sexual violence, see Chapter II): James C Scott, *Seeing Like a State: How Certain Schemes to Improve Human Conditions Have Failed* (New Haven and London: Yale University Press, 1998). *Cf* Matsuda, *supra* note 110 at 391.

accountability strategies to more state wrongs. For example, wilful blindness allows to connect state responsibility to police sexual violence. In *R c Simard*, a case in which an off-duty police officer was charged with sexual and drug-related offences, the court spends a few paragraphs on the role of the police in preventing drug use and traffic and writes, "All those involved in the judicial system are aware of the plague of drugs and of the measures taken by the police to curb this problem. However, while very expensive projects are being set up, the accused, one of their own, allows himself to offer to use drugs to acquaintances when these same people know his status."[178] The court fails to make similar observations with regard to the numerous charges of sexual assault where victims referred to the accused's status as a police officer. It does not note that sexual violence is an equally important objective of policing.[179] The court could not see the connection between sexual violence and the police. In our framework, we could hypothesize that either a detachment from the experience of the victims or the legal processes rendered the side-lining of the connection of sexual violence to policing easier. Following Bovensiepens' lead, we must stress that these types of wilful blindness are not "part of a strategic master-plan", but rather banal as produced by processes and routines, including the application of the law.[180]

This definition of wilful blindness relates to police misconduct, lack of sanction, and overall impunity resulting from gaps in accountability. Melissa Saganash, Director of Cree-Quebec Relations, suggested a form of wilful blindness by the SQ in Val-d'Or:

> The failure by SQ officers to report misconduct by their colleagues over a period of years can only lead to a suspicion of it a law of [silence] or omerta among police officers that prevented effective internal discipline and sanction. These events indicate a lack of internal accountability within the SQ and suggest boldful blindness, if not tacit acceptance of the

[178] *R c Simard*, 2014 QCCQ 3268 at para 39.
[179] *R c Simard*, *supra* note 178; Ampleman-Tremblay, *supra* note 8 at 49–50.
[180] Bovensiepen, "On the banality of wilful blindness", *supra* note 11 at 491 and 502–503.

> misconduct by local SQ in Val-d'Or at the time. The result was a culture of impunity, which police officers inclined to abuse indigenous persons felt free to do so.[181]

Similarly to Saganash's claim, the thesis will expand on elements pointing to the wilful blindness of the state in Val-d'Or. Our contention on impunity and improper accountability mechanisms goes, however, beyond internal discipline and extends to state mechanisms more broadly. Chapter V, for example, will frame the public commission of inquiry in Val-d'Or as a process leading to the invisibility of police sexual violence. Wilful blindness will thus be relevant to understanding our arguments throughout this thesis. While our case study cannot be generalized to all jurisdictions, we believe standards of foreseeability or wilful blindness could be expanded in other cases of systemic wrongs to facilitate claims for state accountability.

The previous sections outlined the underlying meaning of the notion of 'state' by arguing that it can be understood through its infrastructural power. They also dealt with unintended consequences of state action, excluded from Mann's theory of state power, and redefined causation for collective harms. Including unintended consequences allows for conceptualizing police sexual misconduct as rooted in a plurality of factors that might not be specifically intended (e.g., discriminatory culture reported in some police forces). While we argued for holding the state accountable for actions it can prevent, it might be problematic in law. We thus put forward two standards for our state accountability framework: foreseeability and a form of wilful blindness inspired by social anthropology.

[181] *Témoignage devant l'honorable Jacques Viens, 14 décembre 2018, vol.174*, by Abel Bosum et al (Val-d'Or: Commission d'enquête sur les relations entre les autochtones et certains services publics, 2018) at 30-31 (Saganash). For a counter-example and the confusion around the duty to report in the Canadian Armed Forces, see Arbour, *supra* note 126 at 149–157.

So far, we have discussed the state profusely, but police sexual misconduct certainly includes an individual component.[182] We nevertheless contend that individuals operate within a system that may shape their interactions and the consequences of misconduct. This system is embedded in state institutions, such as the legal system and the police. We argue that police sexual misconduct cannot be dissociated from state action dealing with criminal justice, law enforcement, and – in the Val-d'Or case, as well as others – Indigenous affairs and colonialism, to name only a few. Hence, the state should be held responsible and then accountable for police sexual misconduct. However, the meaning of the phrase "holding the state accountable" and its distinction from responsibility has yet to be fleshed out in detail. The following section will be devoted to this issue and how civil society can secure state accountability.

3. Responsibility, Justification, and Response Through Grassroots Action Interacting with the State

Now that the concept of 'state' is delineated, the role of power within this social organization is outlined, and the attribution of the responsibility for police sexual misconduct to the state is accounted for, we turn to accountability. As put by Andreas Schelder, accountability is a means to control this power, for instance, by preventing abuses such as police sexual misconduct.[183] While relevant, this definition requires further unpacking. In its simplest form, the concept of accountability can be defined as: "the fact of being *responsible* for what you do and able to *give a satisfactory reason* for it, or the degree to which this happens".[184] Reliance on this

[182] We will discuss in section 4, the ways the conception of state power brought forward in this chapter allows for an understanding of police sexual misconduct that is different from the paradigm of individual responsibility.
[183]Andreas Schedler, "Conceptualizing Accountability" in Andreas Schedler, Larry Diamond & Marc F Plattner, eds, *The Self-Restraining State: Power and Accountability in New Democracies* (London: Lynne Rienner, 1999) at 13, 18 and 19.
[184] Cambridge Dictionary, "accountability", online at https://dictionary.cambridge.org/dictionary/english/accountability. [Emphasis added.] See also Osse, *supra* note 111 at 185.

description leads to the conclusion that accountability is a two-fold concept, including a justificatory and a responsibility component.[185] In our context, requiring accountability would thus be the equivalent of asking for the infrastructure, institutions, and networks used to justify their actions or omissions (e.g., policies) causing police sexual misconduct or fostering impunity as well as asserting responsibility for them. We shall also note that this thesis' take on accountability is descriptive since the focus is not on the state conduct itself but on the *ex-post facto* processes allowing dealing with power wielders' conduct.[186] The subsequent chapters will thus investigate different *ex-post facto* mechanisms deployed in police sexual misconduct cases (Chapter II) or, more specifically, in Val-d'Or (Chapters III to V). This two-fold descriptive perspective of accountability remains incomplete. Many authors add a third component: a responsive element. The latter refers to redressing the harm caused or responding to an excess of power.[187]

Countless conceptualizations exist. Andreas Schelder, Derick W. Brinkerhoff, and Anna Wetterberg, to name a few, summarize accountability through answerability and enforcement.[188] By contrast, Robert O. Grant and Ruth W. Keohane describe accountability as a combination of standards, sanctions, and information.[189] Both definitions imply the possibility of sanctioning or

[185] See, e.g., Alistair Price, "State liability and accountability" (2015) Acta Juridica 313 at 315 et seq; Lisa Yarwood, *State Accountability under International Law: Holding states accountable for breach of jus cogens norms* (New York: Routledge, 2011) at 12.

[186] For further details on descriptive and normative conceptions of accountability, see Mark Bovens, Thomas Schillemans & Paul 'T Hart, "Does Public Accountability Work? An Assessment Tool" (2008) 86:1 Public Administration 225 at 227.

[187] In positive law, this often takes the form of damages upon a finding of liability. Price, *supra* note 185 at 315; Osse, *supra* note 111 at 185. On the difference between accountability and responsibility, see Yarwood, *supra* note 185 at 13–14. The role of liability in police sexual misconduct cases will be further discussed in the next chapter of this thesis.

[188] Derick W Brinkerhoff & Anna Wetterberg, "Gauging the Effects of Social Accountability on Services, Governance, and Citizen Empowerment" (2016) 76:2 Public Admin Rev 274 at 275; Schedler, *supra* note 183 at 14–17 and 21. Schedler also uses a three-fold definition, including information, reasoning, and punishment.

[189] Ruth W Grant & Robert O Keohane, "Accountability and Abuses of Power in World Politics" (2005) 99:1 Am Polit Sci Rev 29. See also Robert O Keohane, "The Concept of Accountability in World Politics and the Use of Force" (2003) 24 Mich J Int'l L 1121; Jennifer Rubenstein, "Accountability in an Unequal World" (2007) 69:3 The Journal

at least responding to the power wielder's conduct.[190] Although these commentators break down accountability in different components than the ones put forward in this thesis (i.e., justification, responsibility, and response), the difference is more aesthetic than substantive. Let us take the conceptualization of Grant and Keohane as an example. They explain that to be accountable, a power wielder needs to be sanctioned according to pre-established standards and that such an exercise requires information to be available.[191] In a legal framework, one will usually be held liable according to pre-established standards attached to consequences.[192] If the state is responsible for something under the law, it can be held liable and eventually accountable.[193] Information, on its end, allows adjudicating the power wielder's responsibility more accurately, triggering accountability mechanisms, and guiding in determining a proper sanction.[194] While the quality and quantity of information available will influence the outcomes of the accountability process, we argue that it is not a stage *per se* within this said process but rather a condition of success.[195]

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of Politics 616. See also Anuradha Joshi & Peter P Houtzager, "Widgets or Watchdogs?: Conceptual explorations in social accountability" (2012) 14:2 Public Management Review 145–162 at 147. The latter piece divides accountability into two concepts: answerability and enforcement. Here too the difference is cosmetic more than substantive.

[190] On the potential consequences and their role in an accountability definition, see also Bovens, Schillemans & Hart, "DOES PUBLIC ACCOUNTABILITY WORK?", *supra* note 186 at 226; Mark Bovens, "Analysing and Assessing Public Accountability. A Conceptual Framework" (2006) European Governance Papers (EUROGOV) C-06-01 at 9–11.

[191] Grant & Keohane, *supra* note 189. See also Keohane, *supra* note 189; Rubenstein, *supra* note 189.

[192] For further details on accountability standards, see, e.g., Rubenstein, *supra* note 189 at 618.

[193] On a succinct terminological discussion on accountability, liability, and responsibility, see Renée SB Kool, "(Crime) Victims' Compensation: The Emergence of Convergence" (2014) 10:3 ULR 14 at 16–23. We nevertheless disagree with a conceptualization of accountability as purely procedural.

[194] A power wielder is defined as "the actor whose actions the accountability mechanism is meant to constrain", see Rubenstein, *supra* note 189 at 616; Grant & Keohane, *supra* note 189. The use of the term 'power wielder' is especially germane in this theoretical framework which analyzes the state through the relations of power it inhabits.

[195] See Rubenstein, *supra* note 189 at 12–13. Similarly to the unavailability of information, the powerlessness of accountability holders can also create a deficit in accountability. However, powerlessness does not impede accountability from a theoretical perspective: Rubenstein, *supra* note 189. To use Bovens' words, we conceived of information as an 'instrumental' rather than a 'constitutive' component of accountability: Bovens, *supra* note 190 at 8. See also the following sources on transparency (visibility of information) as a means of accountability for public wrongs on criminal wrongs: Ben Brucato, "The New Transparency: Police Violence in the Context of Ubiquitous Surveillance" (2015) 3:3 MaC 39–55; Philippe Robert, "Les statistiques criminelles et la recherche" (1977) 1:1 Déviance et Société 3.

For these reasons, the term 'state accountability' throughout this thesis refers to the procedure leading the state to justify its actions (including its role in creating unintended consequences), acknowledging or assigning responsibility (as explained in previous sections), and offering a form of response, including redress. Two aspects of the responsiveness dimension of accountability require clarification. First, sanctions do not need to be punitive.[196] Second, the existence of an accountability mechanism does not mean the latter will grant redress. For instance, in common law, public wrongs are not always redressed. Remedies are at the courts' discretion, and judges may refuse to grant a remedy despite ruling that a decision is unlawful or human rights have been violated. This can be done for the public interest, good administration, or because the remedy asked is disproportionate or inadequate. Consequently, while the decision of a court of law is a type of remedy, it might not offer redress.[197] Legal innovation has attempted to circumvent approaches thinking of redress purely in terms of judicial remedies.[198]

We contend that responses can take various forms and are not limited to court-granted remedies. It may include not only traditional punitive sanctions, compensation, and all types of public remedies but also various forms of redress, such as instituting a national day for victims, constructing monuments for public recognition, building health clinics and other institutions to support victims, implementing mandatory human rights or sexual violence prevention training for

[196] See, e.g., Yarwood, *supra* note 185 at 11–13; Bovens, *supra* note 190 at 11; Matsuda, *supra* note 129 n 33. Yarwood rightly points us to the transitional justice literature for further details. For a theoretical perspective on non-punitive sanctions, see Hans Kelsen, *Pure Theory of Law*, 2nd (revised and enlarged) ed (Clark, New Jersey: The Lawbook Exchange, Ltd., 2009) at 24–30. See also, Schedler, *supra* note 183 at 17–18. On collective sanctions, see Lawford-Smith, *supra* note 139 at 144.

[197] See, e.g., Jason NE Varuhas, "Against Unification" in Hanna Wilberg & Mark Elliott, eds, *The scope and intensity of substantive review: traversing Taggart's rainbow* Hart studies in comparative public law volume 8 (Oxford ; Portland, Oregon: Hart Publishing, 2015) 91 at 101–102, 107–108 and 116; J Beatson, "The Discretionary Nature of Public Law Remedies" (1991) 1 NZ Recent L Rev 81 at 88–89; Roach, *supra* note 129 at 52–53.

[198] On conceptual and political problems arising from a conception of reparations only stemming from remedies granted by people in a position of power, see Matsuda, *supra* note 110 at 388–397.

state agents, as well as translating legal proceedings in the language of the victims.[199] These collective remedies have been requested in the Val-d'Or crisis, notably by the Native Friendship Centre that stated, in reaction to the SQ's Director's testimony at the Viens Inquiry, their disappointment with the SQ's response to the Val-d'Or events. The Centre expressed no hope for better relations without an apology and the public acknowledgment of wrongdoings and human rights violations against Indigenous peoples.[200]

Remedies should also aim to achieve two goals: redress individual injustice and prevent future violations.[201] Throughout this thesis, we will focus on the capacity of courts (Chapter II) and *ad hoc* mechanisms in Val-d'Or (Chapters III to V) to address the systemic aspect of police sexual misconduct and impunity. We are here excluding remedies related to the criminalization of the state in domestic law.[202] These chapters all advocate for a multiplicity of means of redress, as each mechanism in isolation exhibits substantial limitations in securing state accountability in Val-d'Or. We thus partly disagree with Professor Roach, who argues that the multiplication of accountability mechanisms impedes accountability. While it is true that there are many

[199] These examples are taken from the Sepur Zarco case in Guatemala, see, e.g., Elisabeth Madeleine Patterson, "Reconciling Indigenous peoples with the judicial process: An examination of the recent genocide and sexual slavery trials in Guatemala and their integration of Mayan culture and customs" (2018) 29:2 rqdi 225 at 244; Claudia Martin & Susana SáCouto, "Access to Justice for Victims of Conflict-related Sexual Violence" (2020) 18:2 Journal of International Criminal Justice 243 at 260–262.

[200] Edith Cloutier, "Réaction du Centre d'amitié autochtone de Val-d'Or au témoignage de Martin Prud'homme, directeur général de la Sûreté du Québec, à la Commission Viens.", (2018), online: *Val-d'Or Frienship Native Centre* <https://www.caavd.ca/actualite/reaction-du-centre-damitie-autochtone-de-val-dor-au-temoignage-de-martin-prudhomme-directeur-general-de-la-surete-du-quebec-a-la-commission-viens>.

[201] See, e.g., Kent Roach, *Remedies for Human Rights Violations: A Two-Track Approach to Supra-National and National Law* (Cambridge: Cambridge University Press, 2021); Roach, *supra* note 129; Brodsky, Day & Kelly, *supra* note 113 at 33–34.

[202] While there are insightful discussions on the topic of state criminalization in domestic law, we decide to exclude criminalization of the state, which would address only a narrow portion of police misconduct. Not all police sexual misconduct can be understood as state wrongdoings requiring criminal punishment. For further details on state criminalization, see Tanguay-Renaud, *supra* note 16. However, we agree that state criminalization is highly symbolic and pursues different objectives than compensation, reparation, inquiries, etc.: *Ibid* at 281.

accountability mechanisms to deal with police misconduct (see, e.g., Chapter II), we believe the problem does necessarily rest in the number of options but rather in the absence of one option genuinely developed to address unintended consequences of state action and, more specifically, police sexual misconduct and its impunity.[203] Multiplication of accountability mechanisms may nevertheless pose challenges to access to justice without a unique portal through which victims can access all options easily.[204]

This conception of accountability can be pursued in various ways. For instance, accountability mechanisms can operate from the top down or the bottom up. Top-down accountability follows a hierarchical structure, whereas bottom-up accountability allows grassroots action to hold power-wielders accountable for their actions.[205] This thesis uses both forms of accountability by relying on social accountability, which suggests that bottom-up accountability mechanisms complement top-down accountability.[206] Social accountability implies that grassroots action can hold the state accountable when the formal system is not operating correctly or offers inadequate responses.[207] This can be done through civic engagement, participation, and promotion of human rights.[208] More precisely, social accountability can be defined as follows:

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[203] Roach, *supra* note 16 at 51–73. See Chapter II for further detail.
[204] Lafontaine argues that a unique portal is aligned with the Viens Inquiry's call for better assistance: Lafontaine (2020), *supra* note 4 at 159.
[205] See, e.g., Edith Brown Weiss, "Bottom Up Accountability" (2007) 37 Environmental Policy and Law 259. See also, e.g., Yarwood, *supra* note 185 at 18–20; Rubenstein, *supra* note 189 at 620; Brinkerhoff & Wetterberg, *supra* note 188 at 275; Schedler, *supra* note 183 at 23–25; Bovens, *supra* note 190 at 20–21.
[206] Carmen Malena, Reiner Forster & Janmejay Singh, "Social Accountability: An Introduction to the Concept and Emerging Practice" (2004) Social Development Papers: Participation and Civic Engagement (The World Bank, Paper No. 76) at 3–4.
[207] Joshi & Houtzager, "Widgets or Watchdogs?", *supra* note 189 at 154. Joshi & Houtzager argue that social accountability is too focused on the state. While we agree that their argument has value, the fact that this study is centred on police misconduct requires focusing on state actors.
[208] Malena, Forster & Singh, *supra* note 206 at 4.

> … the broad range of actions and mechanisms (beyond voting) that citizens, communities, civil society organizations (CSOs) and independent media can use to hold public officials and servants accountable. Traditionally, these have included a variety of citizen or civil society-led actions such as public demonstrations, protests, advocacy campaigns, investigative journalism and public interest lawsuits. […] They also include efforts to enhance citizen knowledge and use of conventional mechanisms of accountability (for example, through public education about legal rights and available services) and/or efforts to improve the effectiveness of "internal" accountability mechanisms, for example, through citizen involvement in public commissions and hearings, citizen advisory boards and oversight committees.[209]

When put in these words, social accountability applies to various actions and contexts. Some commentators have critiqued the broad scope of this model when the latter includes every type of grassroots action and have argued that it may suffer from vagueness.[210] Agreeing with the need to retain a scope that is not too large, the selection criteria of this study narrow down the aims of social accountability examined: making demands on the state, assisting victims, and reporting abuses,[211] which can be summarized under the social accountability concepts of empowerment, governance, and service delivery.[212] The inclusion and exclusion criteria also focus on a relatively circumscribed set of actors despite the broad meaning given to the civil society[213] by concentrating on individuals involved in the Val-d'Or crisis and excluding victims of police sexual misconduct. Combining these aims and actors limits the range of our social accountability framework and the type of grassroots actions scrutinized.

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[209] *Ibid* at 3–4. See also Brinkerhoff & Wetterberg, *supra* note 188; Malena, Forster & Singh, *supra* note 206 at 7.
[210] Joshi & Houtzager, "Widgets or Watchdogs?", *supra* note 189 at 151. Bovens also highlights the lack of sanctioning capacity of actors within social accountability mechanisms, see Bovens, *supra* note 190 at 17–18.
[211] These aims relate to traditional social accountability goals. See Malena, Forster & Singh, *supra* note 206 at 8–10. *Cf* Joshi & Houtzager, "Widgets or Watchdogs?", *supra* note 189 at 157–158. The latter piece divides social accountability into five actions: requesting information, monitoring, making demands, invoking formal mechanisms, and organizing public demonstrations.
[212] See, e.g., Brinkerhoff & Wetterberg, *supra* note 188 at 275.
[213] I.e., individuals not part of a government, legislative assembly, judiciary, or police force seeking to advance citizens' interests or wills.

To examine social accountability as described above, circumscribing the scope of the study is not enough. We could think of social accountability as grassroots actions, state and community collaborations, or state-led mechanisms in which citizens engage. For this project, we will focus on the two last. This allows us to depict many social accountability mechanisms in Val-d'Or since both pressures from the community and traditional mechanisms have been part of social accountability strategies canalized in different mechanisms interacting with the state. We decided to focus on responses in which the state took part because of our data, but also since the state infrastructure may contribute to the success of social accountability initiatives. An institutional and legislative framework supporting civic engagement can contribute to social accountability. This is the case, for example, when the state puts in place an ombudsperson to deal with abuse of rights.[214] Given the connections between the state and the community implied by social accountability, subsequent chapters study top-down and bottom-up accountability mechanisms in which the state took part in various degrees. The theoretical underpinnings presented earlier illustrate these links. Not only do we focus on social accountability mechanisms that interact with the state, but our interpretation of infrastructural power also includes a relational component.

Chapter II will argue that state accountability cannot currently be fully secured by state law because of a disconnect between the state and police sexual misconduct, as the former mainly conceives of the latter as an individual problem. This inadequacy is why social accountability, and thus action by civil society and the media,[215] must complement and challenge measures existing

[214] Brinkerhoff & Wetterberg, *supra* note 188 at 276. See also Bovens, Schillemans & Hart, "DOES PUBLIC ACCOUNTABILITY WORK?", *supra* note 186 at 239.
[215] Civil society here can be conceived of as an accountability holder (i.e., the state owes a general duty to society not to let the system produce or tolerate police sexual misconduct) or as a surrogate for victims by pushing the state to justify and take responsibility for police sexual misconduct. See, e.g., Rubenstein, *supra* note 189 at 623 et seq.

within state law. Civil society and the media here can be conceived of as accountability holders (i.e., the state owes a general duty to society not to let the system produce, tolerate or fail to prevent and respond to police sexual misconduct) or as surrogates for victims, by pushing the state to justify and take responsibility for police sexual misconduct.[216] By pressuring the state, civil society and the media can act as checks and balances for accountability mechanisms and influence the state's conceptions of responsibility, wrongdoings, and its role in creating police sexual violence. Chapter II will indicate the limitations and problems within state law's conceptualization that call for such outside pressure. The following chapters will present the result of data collection and argue that civil society and the media have, at times, acted as accountability triggers (see, e.g., Chapter IV) and, at other times, have expressed their disapproval of how the state fulfiled its duties (see, e.g., Chapters III and V). Chapter IV will also argue that the connections between the state, civil society, and the media explained in this Chapter may lead to the reproduction of limitations. Blindness within state-based can be found in bottom-up mechanisms as well. This does not mean that civil society or the media are complicit, but rather that as part of one system of power exchange, they can share certain assumptions and be wilfully blind to similar issues.

Now that the conceptual understandings behind the concepts of 'state' and 'accountability' have been clarified, one question remains to be dealt with before concluding this Chapter on state accountability. This query is: 'Can individually-focused accountability mechanisms be included within a state accountability framework?' The following subsection will suggest that given the perspectives accounted for in previous paragraphs, we should exclude individual accountability mechanisms when attempting to secure state accountability for police sexual misconduct.

[216] *Ibid.*

4. The Exclusion of Individual Responsibility Mechanisms from the State Accountability Framework

The argument that the state is a combination of interconnected infrastructures, institutions, and networks producing unintended consequences while implementing policies supposes that the state is an entity bigger than the individuals and organs composing it.[217] Individuals and organs may vary with time,[218] and the unintended consequences may manifest long after the people who put the state policy in place are gone. The focus should thus be on the exercise of power throughout the "socio-spatial and its organizational structure", or as we put it 'the state system'.[219] Mann rejecting system theories would probably disagree with this interpretation of his work,[220] but this perspective on the state is necessary to grasp the implications of police sexual misconduct. Similarly, Ristroph partially discards the individual responsibility of police officers for the death of Black men and instead roots the problem in a shared judicial and public responsibility.[221] Grounding police sexual misconduct in one site within the state is not enough to address the causes of this phenomenon, which can be found in various operations within the exercise of infrastructural power. By this, we do not mean that individuals and organs are irrelevant but rather that they act within a broader system of institutions through which infrastructural power may be exercised and

[217] See, e.g., Yarwood, *supra* note 185 at 28–32. Some argue, in relation to state crime, that without individual accountability, it may be hard to sanction such crimes in a strictly juridical sense, Michalowski, *supra* note 113.
[218] See John Bouvier, *Bouvier's Law Dictionary*, student ed, William Edwards Baldwin, ed (Cleveland: Banks-Baldwin Law Publishing Company, 1934) at 1128.; Quentin Skinner, "On the Person of the State" in John L Brooke, Julia C Strauss & Greg Anderson, eds, *State Formations*, 1st ed (Cambridge University Press, 2018) 25 at e.g., 38-39 and 43.
[219] Mann, "The autonomous power of the state", *supra* note 15 at 187–188 and 198–201; Mann, *supra* note 15 at 355 and 358. ocusing on the 'collective system' rather than the 'individual' can also address the accountability deficit created by complex governance networks in our societies. Indeed, institutions are getting so big and interconnected that pinpointing responsibility for their action to a single person is not representative of these institutions. See, e.g., Bovens, Schillemans & Hart, "DOES PUBLIC ACCOUNTABILITY WORK?", *supra* note 186 at 229. See also Bovens, *supra* note 190 at 18–19.
[220] *Cf* Mann, *supra* note 15 at 1–2; Mann, *supra* note 15 at 343–344.
[221] Ristroph, *supra* note 16 at 1238–1239.

produce effects over a long period. In order to secure state accountability, one must thus succeed in causing changes that will affect, simultaneously, if possible, the various unintended consequences of infrastructural power that lead to police sexual misconduct and impunity.

Conceiving of the state as more than the sum of its agents and organs may be problematic. Unintended consequences of the exercise of infrastructural power in the state are hardly legal persons that can be brought before a court. This being said, Lisa Yarwood, using the notion of a systemic framework, argues that if international law grants obligations and duties to states despite their abstract form, states can also be held accountable for their actions without needing to attribute responsibility to individuals or organs.[222] While our focus does not extend to international law, a similar argument can be made in domestic law: if the state, understood as a system, holds obligations and duties – such as those imposed by the rule of law and constitutions –, then it may be held accountable for its actions and the effects they produce, albeit unintentionally. Consequently, we agree with Yarwood that, as an abstract entity, the state can be held accountable. To reach this conclusion, we rely on collective forms of accountability instead of looking at the responsibility of individual state agents.[223]

Emphasizing collective forms of accountability means excluding mechanisms focusing on individual responsibility. As we previously argued in this Chapter, our reliance on state accountability flows from the attribution of responsibility for police sexual violence to the state and not to police officers. There are several reasons for not including individual responsibility in our framework. For example, we could argue that individual-based mechanisms such as criminal

[222] Yarwood, *supra* note 185 at 28–32.
[223] For further details on collective forms of accountability, see, e.g, Darcy, *supra* note 10.

and professional law have already been widely used in police sexual misconduct cases.[224] We could also critique the outcomes of these cases by pointing out that police sexual misconduct has not stopped and that there are often barriers to justice when prosecuting or entering a lawsuit against a police officer.[225] While these reasons are relevant to ponder, the problem is more profound.

While the roles of the individual police officer and the state in contributing to police sexual violence need to be addressed, we posit that pursuing one or the other in accountability mechanisms depends on how one conceives of the issue.[226] A theoretical underpinning guides the choice of mechanism. Hannah Arendt's *Eichmann in Jerusalem*, albeit written in the very different context of Adolf Eichmann's trial for the crimes he committed under the Third Reich, sheds light on the dichotomy between individual responsibility under criminal law and state (or collective) accountability. Arendt outlines the discrepancies between what some were expecting from Eichmann's prosecution (e.g., a trial of antisemitism, a trial putting forward the sufferings of millions, and a trial exhibiting the complicity of the World) versus what the criminal trial was meant to achieve (i.e., adjudicate on the criminal responsibility of Eichmann using pre-established

[224] See, e.g., *Commissaire à la déontologie policière c Rossignol*, 2008 CanLII 41347; *Commissaire à la déontologie policière c L'Heureux*, 2002 CanLII 49284; *Commissaire à la déontologie policière c Lemay*, 2021 QCCDP 4; *R v Desjourdy*, 2013 ONCJ 170; *Orser v Ontario Provincial Police*, 2018 ONCPC 7; *In the matter Ontario Regulation 123/98 made under the Police Services Act, RSO 1990, CP 15 and amendments thereto; and in the matter of Sergeant Steven Desjourdy, #1255 and the Ottawa Police Service*, 2014; *R c Simard*, *supra* note 178; *R c Simard*, 2014 QCCQ 7652; *R c Simard*, 2016 QCCA 880; *R v Nyznik*, *supra* note 63; *R v Khan*, 2015 ONSC 7187; *R v Khan*, 2017 ONCA 114; *R v Snelgrove*, 2018 NLCA 59; *R v Snelgrove*, 2019 SCC 16, [2019] 2 SCR 98; *R v Ramsay*, 1999 SKQB 173; *R v Ramsay*, 2000 SKQB 198; *R v Ramsay*, 2001 SKCA 8; *R v Von Seefried*, *supra* note 63; *R v Von Seefried*, 2017 ONSC 4406; *R v Von Seefried*, [2017] OJ No 1094; *R v Von Seefried*, [2018] OJ No 2062; *R c Neashish*, 2015 QCCQ 12654; *R c Neashish*, 2016 QCCQ 10775; *Neashish c R*, 2016 QCCA 1915; *R c Hébert-Ledoux*, 2020 QCCQ 976; *R c Hébert-Ledoux*, 2020 QCCQ 5626; *R v Teed*, 2020 ABCA 335. We do not pretend that this is an exhaustive list, but it shows the breadth of legal actions against police officers for their individual responsibility.

[225] See, e.g., Martin, *supra* note 7; Ampleman-Tremblay, *supra* note 8.

[226] *Cf* Young, *supra* note 118 at 112–114. This author argues that government is one entity that may be responsible for structural injustice but that they share responsibility with other people who participated. Therefore, accountability for structural injustice should not focus exclusively on the state.

legal standards and specific legal charges). These divergences are shown notably through Arendt's numerous comments on the judges' attempts to move away from the prosecutor's will to depict the 'general picture' of life in Nazi Germany and remain centered on Eichmann's crimes. These two perspectives or goals for Eichmann's trial show how the lines between expectations and reality were crossed.

From a legal standpoint, the trial of Eichmann was not meant to rule on the systemic criminality of the Third Reich.[227] Individual responsibility mechanisms are limited in terms of considerations outside the individual's contribution to crime,[228] which renders them a less than optimal choice for state accountability studies.[229] This remains true despite the potential political consequences of such legal proceedings. The teachings from Arendt can be transposed to police sexual misconduct. Prosecuting rogue officers will not rule on the contribution of every interconnected element of the system and their role in producing unintended consequences. Consequently, such prosecutions cannot affect the entirety of said system. This does not mean that they cannot provide a form of justice to victims,[230] but rather that they are not suited to handle systemic harm.[231] As demonstrated by Arendt's work, individual responsibility can be intertwined with state responsibility when seeking accountability for wrongs that can be attributed to a state

[227] On the concept of systemic criminality, see Mark A Drumbl, "Accountability for System Criminality" (2010) 8 Santa Clara J Int'l L 373; Andre Nollkaemper, "Systemic Effects of International Responsibility for International Crimes" (2010) 8 Santa Clara J Int'l L 313.
[228] We must note there are exceptions, notably in sentencing, where judges can look at outside factors, including the state's role In Canada, see *R. v. Turtle*, *supra* note 121; *R v Gladue*, *supra* note 121; *R v Ipeelee*, *supra* note 121; *R v Anderson*, 2021 NSCA 62; *R v Morris*, 2021 ONCA 680. This does not mean, however, that the trial delves into state criminality.
[229] Hannah Arendt, "Eichmann à Jérusalem : Rapport sur la banalité du mal" in *Les Origines du totalitarisme, Eichmann à Jérusalem* (Quarto Gallimard, 2002) 1015 at 1021–1037 and 1135. *Cf Ibid* at 1274–1275, 1285–1287 and 1298–1306.
[230] *Cf* Arendt, *supra* note 229 at 1281–1282.
[231] We mean by this that despite not being meant to secure state accountability, we cannot deny that the trial of Eichmann had political effects.

but also to some of its agents. This poses specific challenges in terms of accountability. Since accountability is tied with responsibility, what should we do when individual and state responsibilities are involved? While the next paragraphs will present options in criminal law to address these responsibilities, we will argue that criminal law is too focused on the individual and, thus, insufficient to address state accountability.

Sentencing increasingly recognizes that both responsibilities might be connected to criminality.[232] Bringing this argument a step forward, Marie Manikis argues that the state may create or otherwise participate in individual criminality, instigate harm in various ways, and, thus, proposes a typology of harm to integrate this perspective into sentencing.[233] Type 1 or Type 2 of Manikis' blame categorization – systemic criminogenic policies creating or maintaining inequalities and intentional or known criminalization of targeted groups through state practices and policies – are perhaps the classifications that could fit police sexual misconduct the most aptly. The author states that Type 1 occurs when the state "promote[s] various forms of inequalities that are known to perpetuate criminogenic conditions".[234] This typology should be tweaked to recognize that state policies create not only criminogenic conditions but also elements favouring the impunity of the people benefiting from state policies. Criminogenic theories have often been used to recognize that social and economic injustice can lead individuals rendered vulnerable by such inequalities to commit a crime.[235] Police officers are usually not such persons. While the state has criminogenic effects in the case of police sexual misconduct, it is not because of the vulnerability of police officers to policies harming them or leaving them in positions of social or

[232] Manikis, *supra* note 15.
[233] *Ibid* at 308–313.
[234] *Ibid* at 308.
[235] On the latter, see, e.g., Victor Tadros, "Poverty and Criminal Responsibility" (2009) 43:3 J Value Inquiry 391.

economic hardship. Instead, we argue that (1) state systemic inequalities render some people more vulnerable to police abuse and (2) state policies maintain a status quo, thus perpetuating public wrongs. This is not exactly encompassed by Type 1. Another aspect of Manikis' blame typology that clashes with our theoretical underpinning is the reliance on intention or knowledge rather than the lesser requirement of foreseeability or modified wilful blindness. This does not mean that the typology is not relevant. For example, in the Type 2 discussion (i.e., state criminalization policies intentionally affecting or known to affect marginalized groups), Manikis gives the example of stop and frisks that enable law enforcement's illegitimate targeting of specific groups.[236] Close contacts with law enforcement are occasions through which police sexual misconduct may happen. However, in Type 2, the person frisked is also an offender if the case goes through sentencing. The analysis of this latest stage does not allow us to examine state harm to law-abiding citizens. Again, reliance on intent or knowledge is at odds with our state accountability framework.

Finally, we must consider Type 4 of Manikis' typology, which concentrates on state agents' abuse of human rights. One example is the police officer who infringes human rights in a criminal investigation through unlawful detention.[237] We can conceive of police misconduct through this prism. In another paper, we argued that police sexual misconduct at times happens because the victim obeys the police and fails to leave. We categorized this behaviour as a form of psychological detention contrary to s. 9 of the *Canadian Charter of Rights and Freedoms*.[238] This type of blame, however, will be communicated and analyzed in criminal courts only if charges are laid against a

[236] Manikis, *supra* note 15 at 310–311.
[237] *Ibid* at 316. The analysis of this type of state blame is concise and would benefit from further unpacking, especially when the state commits abuse, but there are no criminal proceedings. How do we address blame, then?
[238] Ampleman-Tremblay, *supra* note 8 at 20–21.

police officer (or against the victim). If there are no criminal charges, there is a chance that such wrongs will not be brought before courts by law-abiding citizens.[239]

Apart from the limitations stemming from the nature of police sexual misconduct expressed above, there are a few problems with this otherwise very imaginative conception of state harm: (1) Manikis suggests communicating state blame through sentencing, and communication alone does not satisfy the redress requirement of accountability in all cases;[240] (2) the model remains theoretical (the author herself recognizes courts often fail to look at state contributory harm), and (3) supposing that Canadian courts adopt Manikis' framework, implementation would be at the last stage of the criminal process. This third concern is three-fold: the criminal process is highly individualized,[241] requires an actual criminal offence, and, in many cases, will stop before the sentencing stage. We agree that sentencing could allow for recognizing the state's role in participating in social harm and acknowledging the criminogenic effect of state policies. This being said, we should not forget that sentencing revolves predominantly around the offence committed, and does not address the systemic conditions that foster the misconduct. Consequently, sentencing will not be treated as an effective tool of state accountability throughout this thesis.

While some would argue that decisions like *R v Gladue* or *R v Morris* that consider the effects of colonialism or anti-Black racism on offenders when assessing their blameworthiness can be considered systemic solutions,[242] as a remedy based on sentencing they arrive too late in the

[239] *Ontario v Fleming*, 2019 SCC 45 at para 84.
[240] On similar arguments, see Danardo Jones, "Morris: A Modest Step Forward and a Call to Action" (2022) 75:CR (7th) 29.
[241] *Cf* Manikis, *supra* note 15 at 319.
[242] See, e.g., *R v Gladue*, *supra* note 121; *R v Ipeelee*, *supra* note 121; *R v Morris*, *supra* note 228; *R v Anderson*, *supra* note 228.

process by requiring the perpetration of a criminal offence.[243] What happens to law-abiding citizens if no charges are laid against the police? They remain uncaptured by Manikis' blame typology and *Gladue*'s (or related decisions') remedial ethos. How can we reconcile the framework with the unlikely possibility that criminal proceedings against a police officer will be successful in cases of sexual violence?[244] How can we address the full range of the police sexual misconduct spectrum, which includes behaviours below the criminal threshold? Focusing only on the latest phase of the criminal trial does not suffice to address state harm.

Manikis is one of many people who sees the connection between the individual and state responsibility for a crime. Andre Nollkaemper's perspective is not as convincing. This author posits that individual responsibility mechanisms can achieve state accountability by removing the conditions for the commission of some misconduct.[245] We doubt that removing one rogue officer is an effective solution in the current context. Police sexual misconduct is generally not ordered by a person in a position of power nor a state-intended project, but, as argued in another section, unintended consequences of social organization and policy implementation.[246] This statement is better understood through Lawford-Smith's analysis of individual and collective blame in the military context. This author posits: "The army is to blame for what it commands and what soldiers do to further its plans; the individual sadist is to blame for her sadism (at least assuming that the

[243] For the failure to fully acknowledge state blame and propose remedies in sentencing decisions, see, e.g., Jones, *supra* note 240.
[244] See, e.g., Puddister & McNabb, "When the Police Break the Law", *supra* note 136 at 18–19.
[245] Nollkaemper, *supra* note 227.
[246] This approach can be compared and contrasted to Colleen Sheppard's 'meso perspective'. She writes that meso-contextualism requires us to consider the "institutional dimensions of inequality are to be found in the norms, practices, rules, and culture of a particular workplace, profession, educational institution, organization, community." This requires emphasizing institutions rather than individuals. Here, we focus on the institutional dimensions of police sexual misconduct rather than individual causes and responsibility for such behaviours. See, Colleen Sheppard, "Context of Inequality: Identifying and Remedying Discrimination" in *Inclusive Equality : The Relational Dimensions of Systemic Discrimination in Canada* (Montreal: McGill-Queen's University Press, 2010) at 70.

institutional culture of the army does not normally permit or encourage it)."[247] State authorities in Canada never demanded that the police engage in police sexual misconduct. Police sexual misconduct is not an act required to further the state's plan for the police, perhaps with the exception of colonialism.[248] However, police sexual misconduct is not only the result of 'individual sadism' or 'individual deviance' (although it might contribute to explaining some cases). We argue that institutional cultures and frameworks are leading to police sexual misconduct and impunity. When policies allow for developing and maintaining such a culture (at least when the state can foresee it or is wilfully blind to this result), the state, just as the army in Lawford-Smith's example, should not be exempted from accountability. Because of the influence of this institutional culture, removing a rogue officer may be a solution under an individual lens. Nonetheless, it does not prevent future cases or recognize the state's role.[249] While Manikis shows that, through sentencing, we could address state contributory harm, we contend that state responsibility is inherent to police sexual misconduct and that the latter deserves an effective state accountability mechanism rather than a separate analysis in an existing individual mechanism. The fact that police officers can target law-abiding citizens also calls for a framework departing from sentencing. Given this breadth of limitations, and while we recognize the value of Manikis' work, we must look at mechanisms that can address state accountability more directly than sentencing.

The absence of mechanisms designed to capture the nuances of state accountability in cases of police sexual misconduct is one of the reasons why responding to police sexual misconduct as

[247] Lawford-Smith, *supra* note 139 at 154 and 161 et seq.
[248] Deer, *supra* note 19.
[249] See, e.g., Bastarache, *supra* note 4; Bazley, *supra* note 111 at 295. On the bad apple theory, see also Osse, *supra* note 111 at 204–205; note 40 at 12:07-12:22. *Cf R v Fisher*, *supra* note 111 at para 127; Peter Rowe, "Military Misconduct during International Armed Operations: 'Bad Apples' or Systemic Failure?" (2008) 13:2 Journal of Conflict and Security Law 165.

a collective phenomenon is so challenging. Nevertheless, the thesis will focus on mechanisms that we think are more suitable than sentencing to address state accountability for police sexual misconduct because of their theoretical capacity to isolate state responsibility and ask the state for justification and redress. We are using the concept of 'theoretical capacity' as many of the mechanisms analyzed require adaptations prior to meaningfully engaging with state accountability. We thus propose to investigate and reform civil liability, class actions, and organizational liability (Chapter II); the institutional design of criminal investigations and criminal justice entities (Chapter III); mediatic coverage (Chapter IV); and public commissions of inquiry (Chapter V).

Conclusion

By relying on authors like Michael Mann, Robert K. Merton, and Mari Matsuda, this Chapter has put forward a theoretical framework combining the implementation of state decisions and the unintended consequences that may stem from them. Police sexual misconduct and its impunity are such unintended consequences. In the absence of intentionality, state accountability is grounded in a revised form of wilful blindness or foreseeability. Nevertheless, accountability is polysemous, and granularity is needed when one requires the state to be held accountable for police sexual misconduct.

For this thesis, accountability is divided into three components: justification, responsibility, and responsiveness to harms or excesses of power. We embrace a descriptive approach

emphasizing accountability processes rather than state conduct. Thus, it leads to an *ex post facto*[250] analysis of accountability mechanisms found in state law or, as put forward by social accountability, in the actions of civil society. Both state law and civil society initiatives can be examined through the tripartite conception of accountability. However, they flesh out different takes on redress and responsibility. The state accountability perspective unpacked in this Chapter intertwines numerous theoretical underpinnings of accountability before concluding that purely individual responsibility mechanisms should be excluded from this study on state accountability. Relying on the theoretical insights in this Chapter, Chapter II will assess the law's contribution to state accountability and critique its overemphasis on the individual. Subsequent Chapters will continue unfolding the need for multiple means of redress by examining the mechanisms implemented in Val-d'Or, including social accountability mechanisms such as media coverage. Chapters III to V will lean on insights gathered through qualitative interviews of civil society and the media.

[250] See Roach, *supra* note 16 at 51–73 for a critique of *ex-post facto* accountability for police misconduct. The author argues that this type of accountability does not lead to a change in behaviours. Roach is, however, not addressing state accountability *per se*.

CHAPTER II – STATE ACCOUNTABILITY DEFICITS FOR POLICE SEXUAL MISCONDUCT: INQUIRING INTO THE COHERENCE OF LIABILITY REGIMES

The previous Chapter defined state accountability. This concept refers to a collective form of accountability intended to address the consequences of state action, such as laws and policies, including their unintended effects, on the basis of foreseeability and wilful blindness as elements of wrongdoings. By combining this conception with the theory of social accountability, Chapter I showed how the state might participate in accountability processes, notably through top-down mechanisms. Applying these theoretical underpinnings to the context of police sexual misconduct implies examining how the state may contribute, through existing legal tools, to securing state accountability for such events. However, 'top-down mechanism' is a broad term that deserves further unpacking. While there are avenues to address police sexual misconduct in labour law, and while police officers have reported being sexually harassed or sexually assaulted by fellow police officers,[251] this thesis focuses on mechanisms available to all (or most) victims, including civilians. Consequently, the investigation must lie outside of labour law and delve into litigation against the state in private law (both in civil law and common law traditions) and public law. This evaluation concludes that although numerous top-down state accountability mechanisms are available in Canadian law, they are not suited for the study of state accountability for police sexual misconduct and may lead to impunity when applied in a vacuum. This Chapter on state liability regimes will also deal with two research objectives: analyzing limitations of the law and applying the theoretical framework of foreseeability and wilful blindness to Val-d'Or, or, at least, to liability regimes that can be used in such cases.

[251] See, e.g., Ampleman-Tremblay, *supra* note 8 at 28–30.

The critiques against Canadian liability regimes can be dissected into a few sub-critiques: (1) the predominant emphasis on individual responsibility,[252] (2) the focus on individualized remedies,[253] (3) the internal limitations circumscribing the successes of litigation in cases combining sexual violence and police misconduct (e.g., the reliance on the benefit of the employer, the ambiguous status of off-duty misconduct, proceedings against the Crown, the proximity requirement in negligence law, or the theoretical nature of some mechanisms), which all lead to (4) the impossibility of comprehensively tackling systemic components of police sexual misconduct through existing legal processes.[254] Of note, the analysis does not extend to economic considerations but focuses on the remedies and objects of state law mechanisms.[255]

Our examination of state law mechanisms is divided into four sections, each assessing how specific state-based mechanisms engage with state accountability. The first section argues that vicarious liability in civil and common law offers a narrow perspective of state accountability. The second one critiques direct liability under the *Civil Code of Québec*, the doctrine of Crown immunity in the common law, and the *Canadian Charter of Rights and Freedom*s mainly due to its lack of receptivity to sexual violence data and their individualized nature. The third section unpacks the use of collective actions to suggest that while this legal vehicle could recognize the

[252] In other words, the individualized take on causation in Canadian civil law and criminal law proceedings, see, e.g., Roach, "Blaming the victim", *supra* note 119. See also Matsuda, *supra* note 129.
[253] We do not mean that individual remedies should not be granted to victims. Instead, we argue that they need to be adapted to our conception of state accountability.
[254] This does not mean these mechanisms cannot secure justice from an individual responsibility standpoint.
[255] For discussions including economic considerations, see, e.g., David S Cohen, "Regulating Regulators: The Legal Environment of the State" (1990) 40:2 The University of Toronto Law Journal 213; Richard A Posner, "Excessive Sanctions for Governmental Misconduct in Criminal Cases" (1982) 57 Washington Law Review 13. Cohen argues notably that tort law is ineffective in securing state accountability since it can shift the costs of accidents to taxpayers and put undue economic weight on the state for the acts of rogue servant (see, e.g., p. 231 and 268-270). In contrast, Posner argues that some sanctions, such as the exclusion of evidence, are ineffective and over deterrent in cases of state misconduct.

collective nature of police sexual misconduct, it is not available to all victims and reproduces the frailties of arguments it relies upon (e.g., negligence, and vicarious liability). Finally, the fourth section scrutinizes a mostly theoretical mechanism: criminal organizational responsibility. It concludes that its application to sexual violence by police is improbable, given the law's unwillingness to engage with the state contributory harm in such cases. This analysis of Canadian law asserts that other social accountability processes are a priori required to complement traditional state accountability mechanisms.[256] In other words, this Chapter examines state law mechanisms and contends that – as they are currently applied – they are too limited and individualized (or, for some, too theoretical) to address state accountability for police sexual misconduct. As we made clear from previous paragraphs, this Chapter outlines limitations in state law. These critiques do not mean there is no hope for the future, as reforms or novel interpretations are possible, especially if civil society and the media act as checks and balances.

Our interest in limitations has a clear rationale, which is reflected in our research goals. We believe that by exposing restrictions in the law and gaps between different regimes, we will contribute to showing that the state can, when observing the application of state law, foresee that its mechanisms will lead to impunity for police sexual misconduct. This research builds on previous doctrinal critiques of state law to put forward evidence of this foreseeability and argue that the state should take reasonable action to mitigate these risks. For instance, some mechanisms bar litigation (see, e.g., subsection 2.1 and section 3), hence precluding any analysis of the state's participation in police sexual violence and remedies for such harm. This Chapter documents these

[256] The effectiveness of accountability mechanisms in Val-d'Or initiated by the community and the influence of the media and civil society will be discussed in subsequent chapters.

problems and other obstacles embedded in the legal framework and argues that they constitute evidence that the state must act and reduce impunity risks.

We also argue that the way legal processes work normalizes a form of wilful blindness. Chapter I discussed forms of blindness by relying *inter alia* on James C. Scott's insights. This author purports that the systematization of social organizations blurs the state's vision.[257] Because of the state's need to systemize the law, the latter loses grip on the detail of its applications and interactions with humans. Following this framework, we propose that the state is blind to how, despite the multiplicity of mechanisms, chances of success are slim when trying to assert state accountability for police sexual violence through liability regimes. By developing such regimes in a silo and most likely with other objectives in mind than remedying police sexual violence, the state loses contact with the gaps created by the regimes and the need for remedies. This is especially true given that the various sources of state law (e.g., provincial law, federal law) developed as independent regimes. Each section will show the deficits in accountability created by the current legal framework. The disconnect between police culture and sexual violence, when treated by courts, will also be presented as a manifestation of wilful blindness.

1. Indirect Liability of the State: The Narrow Version of State Accountability

The instruments examined in this section are intended to secure the indirect liability of the state through civil litigation. From the onset, we suggest that the state does not contribute *indirectly* to police sexual misconduct but *directly*. Precedents in indirect liability nonetheless beg for a more detailed analysis. The first subsection accounts for vicarious liability in common law, whereas the

[257] Scott, *supra* note 177.

second unpacks the principal's liability under the *Civil Code of Québec*. This section outlines precedents in civil and common law where such doctrines have applied to cases of police misconduct, including (at times) sexual misconduct. However, it argues that this form of state accountability suffers from a combination of limitations. Indeed, the following subsections contend that indirect liability mechanisms are too focused on individual wrongdoings, offer individualized remedies as opposed to collective ones, fail to tackle systemic components of police sexual misconduct fully,[258] and are restricted in the context of sexual violence. Doing so, they indicate obstacles to accountability the state should foresee and, when combined with the remaining parts of the Chapter, contribute to our argument that the state is blind to the gaps created through the systematization of the law.

1.1 Vicarious liability in Common Law

This subsection on indirect liability starts with an analysis of tort law since the latter has been very influential in sexual violence and state accountability.[259] One of the ways torts can secure state accountability is by claiming that the state is liable for the acts of its agents. The doctrine of vicarious liability recognizes that an employer can be liable for an employee's tortious conduct.[260]

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[258] Some authors made similar arguments with regard to torts, Roach, *supra* note 129 at 42; Brodsky, Day & Kelly, *supra* note 113 at 8.

[259] See, e.g., Julian N Falconer & Sunil S Mathai, "State Misconduct: A Continuum of Accountability" in Margaret E Beare, ed, *Honouring Social Justice* (Toronto: University of Toronto Press, 2008); Gerald Abrahams, *The Law Affecting the Public and the Police* (London: Sweet & Maxwell, 1938); Freya Kristjanson, "Vicarious Liability for Sexual Assault" (1999) 19 Canadian Women Studies 93; Nora West, "Rape in the Criminal Law and the Victim's Tort Alternative: A Feminist Analysis" (1992) 50 U Toronto Fac L Rev 96; *Civil remedies for sexual assault: a report*, by British Columbia Law Institute & Project Committee on Civil Remedies for Sexual Assault, BCLI Report No. 14 (Vancouver: British Columbia Law Institute, 2001).

[260] For further details on this doctrine, see e.g., J W Neyers, "A Theory of Vicarious Liability" (2005) 43:2 ALR 287; Kristjanson, *supra* note 259; British Columbia Law Institute & Project Committee on Civil Remedies for Sexual Assault, *supra* note 259 at 22. The word "employee" will be used in this subsection, but the term "servant of the Crown" would be more appropriate in cases of police sexual misconduct. For instance, the statutory framework uses "servants of the Crown" rather than "government employees" when defining the status of RCMP members, see e.g., *Crown Liability and Proceedings Act*, RSC 1985, c C-50, s 36; *Government Employees Compensation Act*, RSC, 1985, c G-5, s 3.

This means that if a police officer commits sexual misconduct, the state (taking the form of the Crown, a police service, or a city) can be vicariously liable.[261] Nevertheless, this doctrine embraces a narrow perspective on state accountability: one that focuses on pecuniary compensation for the wrongful act of an employee when the connection between the employee's tortious conduct and employment is sufficiently close. It is trite to say that this depiction of accountability falls far from deconstructing patterns of violence, preventing reoccurrence, and understanding the state's role in causing police sexual misconduct.[262] These critiques gain strength when courts fail to ponder the influence of police culture, discriminatory practices, and impunity on an employee's conduct.

Prior to looking at the drawbacks of vicarious liability, we must outline the main features of this doctrine. For this purpose, we must consider the contribution of the Supreme Court of Canada in *Bazley v Curry*.[263] This 1999 decision was not dealing with state accountability for police sexual violence *per se* but significantly contributed to the law on accountability for sexual violence. Curry worked for a non-profit organization running residential facilities for children between six and twelve. The organization endorsed a parental role as its employees supervised children, including in intimate settings, such as bathing and bedtime. Curry took advantage of these situations to sexually abuse the young Bazley. The issues that arose before the Supreme Court were whether vicarious liability applied to sexual assaults committed on a person within the organization's care and whether non-profit organizations were exempted from such liability.[264]

[261] The term employee may be incorrect for police officers. However, they can still be liable under this doctrine as servants of the Crown, see e.g., *Crown Liability and Proceedings Act*, *supra* note 260, s 36. On the liability of municipalities, one should note that they often benefit from short limitation periods. See, e.g., *Cities and Towns Act, CQLR, c. 19*, s 586; *Montréal (City) v Dorval*, 2017 SCC 48, [2017] 2 SCR 250.
[262] See, e.g., Roach, *supra* note 201.
[263] *Bazley v Curry*, [1999] 2 SCR 534.
[264] *Ibid* at para 9.

While the Court did not exempt non-profit organizations,[265] we will concentrate on the first question, as it bears clear implications for police sexual misconduct.

The court in *Bazley v Curry* held that when the connection between the act and the employer is not strong enough, imposing vicarious liability would not meet the policy objectives of fairness and deterrence.[266] For cases of sexual abuse, the Court specified that the nexus between the act and the employer must be exceptionally sturdy. The fact that the misconduct was committed during working hours or on the employer's premises is insufficient to create such a connection.[267] In other words, in such cases, we must answer to the following query: "whether the employer's enterprise and empowerment of the employee materially increased the risk of the sexual assault and hence the harm."[268] The Court established criteria to assess whether the employer created or enhanced risks. These criteria are opportunity, the furtherance of the employer's goals, any conflict or friction created by the employer, the extent of power the employee has over the victim, and the victim's vulnerability.[269] In this case, the organization was held liable. However, the test in *Bazley v Curry* narrows down the type of cases fitting within vicarious liability, especially when they involve sexual violence. It imposes a stringent connection requirement, which may fail to conceptualize the pervasive nature of sexual violence.

[265] *Ibid* at paras 47–56.
[266] *Ibid* at paras 26–36. *Cf* Neyers, *supra* note 260; Bryant Smith, "Cumulative Reasons and Legal Method" (1949) 27 Tex L Rev 454.
[267] *Bazley v Curry*, *supra* note 263 at paras 42–46.
[268] *Ibid* at para 46.
[269] *Ibid* at paras 37–41.

Cases relying on *Bazley v Curry* continue to show the limited ways in which tort law can recognize employers' liability for their employee's sexual wrongs.[270] The test does not admit the systemic nature of sexual violence and the vulnerability of many groups to this type of harm. The system's failures concerning sexual violence call for further protection. This can take the form of legal mechanisms that acknowledge sexual harm as a distinct type of wrong for which society has an obligation to act. Employers need to take a more proactive duty in protecting victims of sexual violence if we want to deconstruct and fight social structures permitting sexual abuse.

One example of this need for more protection is the decision from the Ontario Court of Appeal in *Ivic v Lakovic*. In this case, which involved a plaintiff whom a taxi driver had allegedly sexually assaulted while she was barely conscious and intoxicated after a party, the court ruled that the taxi company was not liable for the sexual misconduct of its drivers since the company's activity did not increase the risk of sexual assault. The court also ruled that making the company liable would not serve the fair compensation and deterrence objectives behind vicarious liability. Incidentally, it implied that making the taxi company liable would not have affected the implementation of preventive measures.[271] This decision treats the event as a single occurrence of sexual violence, but intoxication combined with sexual abuse is a common narrative.[272] A company that requests its employee to enter in contact with vulnerable individuals should be

[270] See, e.g., *Jacobi v Griffiths*, [1999] 2 SCR 570; *KLB v British Columbia*, 2003 SCC 51, [2003] 2 SCR 403; *EB v Order of the Oblates of Mary Immaculate in the Province of British Columbia*, [2005] 3 SCR 45, 2005 SCC 60. See also Nikolas De Stefano, "A Comparative Look at Vicarious Liability for Intentional Wrongs and Abuses of Power in Canadian Law" 98:1 Canadian Bar Review 1 at 9–10; Louise Langevin, Nathalie Des Rosiers & with the collaboration of Marie-Pier Nadeau, *L'indemnisation des victimes de violence sexuelle et conjugale*, 2d ed (Cowansville: Yvon Blais, 2012) at paras 325–328.
[271] *Ivic v Lakovic*, 2017 ONCA 446 at paras 29–48.
[272] See, e.g., Janine Benedet, "The Sexual Assault of Intoxicated Women" (2010) 22:2 Canadian Journal of Women and the Law 435 at 436–442 and 457–459. For examples from cases of police sexual misconduct, see e.g., Ampleman-Tremblay, *supra* note 8.

required to exercise a proactive duty to minimize sexual violence risk. *Bazley v Curry*'s criterion of the creation or furtherance of risks is not enough to accomplish this goal if it is interpreted in a way that does not recognize the risks incurred by some groups.[273] The law must be aligned with social narratives and the literature on sexual violence to ensure that it does not facilitate impunity by failing to apprehend the nature of this harm.[274] Detachment from lived experiences (or social narratives) is a hypothesis explaining this disconnect between the law and the need of citizens.[275]

While *Ivic v Lakovic* is not a decision involving state actors, it shows an apparent detachment from the heightened need for protection, the systemic nature of sexual violence, and how the law envisions employer liability. The state and employers are held to the same standards in vicarious liability. If we keep thinking employers have no specific role in creating safe spaces, we will apply the same benchmark for cases involving state agents. This attitude perverts justice, notably for state systemic wrongs like police sexual misconduct. Case law is more generous in situations other than intoxication. It usually notes the vulnerability of children, although this is not always equated to a finding of vicarious liability. The law should recognize the vulnerability of different groups, notably by incorporating social science evidence and literature on sexual violence and police culture into court rulings.

[273] We could here refer to intoxicated women, Indigenous women, women of colour, or intoxicated women. We could also add other groups at risk of police sexual violence: Ritchie, *supra* note 7; Maynard, *supra* note 7 c 4; Ampleman-Tremblay, *supra* note 8.
[274] See a similar critique in a case of police sexual violence: Koskie Minsky LLP, "Response to Recent Judgment in Hayes v. City of St. John", (29 September 2022), online: *Cision* <https://www.newswire.ca/news-releases/response-to-recent-judgment-in-hayes-v-city-of-st-john-875357955.html>.
[275] See, e.g., Margaret Isabel Hall & Aliya Chouinard, "Systemic Wrongdoing, Public Authority Liability, and the Explanatory Function of Tort Doctrine: Two Case Studies" (2018) 84 SCLR (2d) 71; Koskie Minsky LLP, *supra* note 274.

Social science evidence and literature are means to bring more coherence between lived experiences and the law. For example, the case law does not sufficiently stress the effect of hierarchy and power in the military and the police on the risks of sexual violence.[276] To support this statement, we will discuss *John Doe (G.E.B. #113) v. Canada (Attorney General)*, a case where a cadet described sexual abuse by a training officer.[277] Sexual touching occurred outside cadet activities, except for one occasion in the barracks. The Court of Appeal maintained the conclusion that the state was not vicariously liable for the conduct of the training officer.[278] This decision does not appreciate the possibility that cadet training may inherently involve risks of sexual violence and create conditions for abuse. Since we have documentation on the connection between military and police culture with sexual violence, we should proactively recognize harm created or tolerated by the state in these contexts.

Acknowledging that people in contact with such cultures are vulnerable to sexual violence would be the first step. At trial in the *John Doe (G.E.B. #113) v. Canada (Attorney General)* case, a witness stated that the cadets take part in "a culture of obedience and lack of complaint and that cadets are in a dependent relationship with officers, that cadets are encouraged to respect and obey their officers, and that at camp, cadets depend on their officers to fulfil their physical and emotional needs."[279] This, however, was not enough to find a connection between the act (a sexual assault in the barracks considered outside the scope of the training officer's duties) and the state. This

[276] On the police, see, e.g., Bastarache, *supra* note 4. See also, for a variety of perspective on police culture, Brownmiller, *supra* note 17; Kraska & Kappeler, "To serve and pursue", *supra* note 7; Jones & Sheehy, *supra* note 18 at 620–621; Brière et al, "Le parcours des policières au Québec", *supra* note 139 at 172–174. On the Canadian Armed Forces, see, e.g, Arbour, *supra* note 126; *External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces*, by Marie Deschamps (2015). These lists are not exhaustive.
[277] *John Doe (GEB #113) v Canada (Attorney General)*, 2019 NLSC 33 at 33.
[278] *John Doe (GEB#113) v Canada (Attorney General)*, 2021 NLCA 21.
[279] *Ibid* at 47.

interpretation fails to see that institutional culture is connected to the way of conducting duties. It also precluded any form of state accountability by side-lining concerns outside the individual responsibility of the officer and refraining from seeing that authority might remain outside duties.

Despite these critiques, we must recognize that *Bazley v Curry* led to the application of vicarious liability in many cases of sexual violence, including one case of police sexual misconduct. In 2008, the Ontario Superior Court of Justice analyzed the doctrine of vicarious liability in *Evans v Sproule*, a case of sexual assault by police.[280] Evans was 24 years old when a police officer intercepted her for a traffic violation. She provided him with her sister's identification but then explained the situation. Evans then described that the officer asked her what they should do about her case before driving her to a remote parking lot. He tried to kiss her, grabbed her, and rubbed her legs. She threatened to scream, which paused the sexual assault for a while.[281] In *Evans v Sproule*, Chapnik J. conducted the policymaking analysis required by *Bazley v Curry*. He ruled that the police had increased the risk of sexual assault with their enterprise and had to be recognized vicariously liable under the common law and Ontario statutory provisions. Chapnik J. ruled that this outcome could lead to preventive measures and thus served the purpose of deterrence.[282] This decision created a precedent under *Bazley v Curry* (one that was not followed in *Hayes v City of Saint-John*, discussed later),[283] but its importance is not limited to this

[280] See *Evans v Sproule*, 2008 CanLII 58428; Regina Lee, "Holding the Police Board Vicariously Liable for the Conduct of Its Officers", *The Court* (26 November 2008), online: <www.thecourt.ca/holding-the-police-board-vicariously-liable-for-the-conduct-of-its-officers/>. Evans v Sproule is not the only known precedent in cases of police sexual misconduct, see also *Clark v Canada*, [1994] 3 FC 323, (T.D.).
[281] *Evans v Sproule*, *supra* note 280 at paras 6–11.
[282] *Ibid* at para 83 et seq. Interestingly for the purposes of therapeutic jurisprudence, the plaintiff was awarded $100,000 in non-pecuniary damages, $50,000 in aggravated damages, $40,000 for loss of earning capacity, and approximately $24,000 for past counselling sessions and future participation in a program for people struggling with PTSD. Punitive damages were awarded against the ex-officer. *Ibid* at paras 121–137.
[283] *Hayes v City of Saint John*, *supra* note 127 at para 96.

achievement. By exploring the role of the Police Board in the increased risk of sexual assault, *Evans v Sproule* touched on systemic features of police sexual misconduct.

While a finding of vicarious liability did not establish that the state committed a legal wrong, the decision demonstrated that the policy considerations behind vicarious liability could lead courts to ponder issues beyond individual responsibility. The risk analysis conducted by Chapnik J. supports the suggestion that vicarious liability is "often tantamount to a finding that the employer ought to have done more to control the risks it introduces into society."[284] Consequently, when the employer is the state, vicarious liability is the first step in recognizing the failure of the state to prevent risks introduced by its action. However, the facts in *Evans v Sproule* show similarity with more recent cases of police sexual misconduct in which officers abused victims' isolation and vulnerability, casting doubt on the preventive capacity of vicarious liability.[285] This doctrine can be a way to provide justice to an individual, but it hardly deconstructs systemic structures permitting sexual violence.[286] By systemic, we mean that compensatory relief can aid the direct victim but fails to look at how to prevent reoccurrences, question and monitor the employer's role in tolerating or causing sexual violence, and implement meaningful changes. In other words, despite its engagement with the risks of policing, *Evans v Sproule* brings into question the long-term deterrent effect of vicarious liability.

[284] De Stefano, *supra* note 270 at 13. See also *Bazley v Curry*, *supra* note 263 at paras 30–31. For further details on the risk theory and its potential limitations, see Attila Ataner, "How Strict Is Vicarious Liability? Reassessing the Enterprise Risk Theory" (2006) 64 University of Toronto Faculty of Law Review 42 at 81–96.
[285] See, e.g., Ampleman-Tremblay, *supra* note 8 at 17 ff.
[286] *Cf* Kraska & Kappeler, "To serve and pursue", *supra* note 7.

Given that this mechanism fails to recognize vulnerable groups and the systemic nature of sexual violence, having one vicarious liability precedent like *Evans v Sproule* cannot comprehensively address state sexual violence. We shall also note that *Hayes v City of Saint-John*, a 2022 decision from New Brunswick on police sexual violence, distinguished the case from *Evans v Sproule*.[287] The facts in *Hayes v City of Saint-John* revolve around a Chief of Police's request, in 1975, to transfer former Sergeant Eastbrooks to a position as a City labourer after allegations of sexual contact on teenagers were confirmed. This decision will be further unpacked in subsection 2.1 and section 3, discussing direct liability in common law and class actions. For now, let us note that the Court found no vicarious liability of the City for when Eastbrooks was a police officer. New Brunswick, at the time, did not have statute-imposed vicarious liability for torts committed by police officers like Ontario did in *Evans v Sproule*.[288] As for a common law vicarious liability, the Court found that Eastbrooks acted on his account and did not meet the second prong of the *KLB v British Columbia* test, stating that once the closeness of the relationship is established, "plaintiffs must demonstrate that the tort is sufficiently connected to the tortfeasor's assigned tasks that the tort can be regarded as a materialization of the risks created by the enterprise".[289] While the Court recognized victims were rendered vulnerable because of the power of Eastbrooks – it concluded the power did not come from the City but from the law. It also ruled that police officers

[287] *Hayes v City of Saint John*, *supra* note 127.
[288] *Ibid* at para 96.
[289] *Ibid* at paras 81–105; *K.L.B. v British Columbia*, *supra* note 270 at paras 19–22. The Court notably refers to *671122 Ontario Ltd v Sagaz Industries Canada Inc*, [2001] 2 SCR 983, 2001 SCC 59 (see e.g., paras 33-48 on independent contractors vs employees) in its analysis of Eastbrooks' conduct.

were not employees of the City.[290] In light of this decision, the contribution of *Evans v Sproule* might have been overestimated.[291]

Vicarious liability exhibits substantial limitations by failing to recognize or address the state's role in creating conditions for police sexual misconduct and by burdening the individual plaintiff to share their harm to get compensation. Recognizing the risks an organization introduces is one thing. Nevertheless, if the mechanism cannot offer remedies meant to identify and deconstruct patterns of police violence, it fails to tackle state accountability fully. When the connection between the state and these risks of sexual violence is not acknowledged, like in *Hayes v City of Saint-John*, vicarious liability is even more ineffective at securing state accountability. These criticisms remain valid even if, as the next subsection will show, vicarious liability in the common law is a more accessible mechanism than its equivalent in civil law. We also contend that exposing the limitations of vicarious liability is the first step to arguing the foreseeability of impunity. Finally, we purport that the disconnect between sexual violence, the police, and state accountability reported in this section is a form of wilful blindness, which combines side-lining of the state's role (and the police) in acting against sexual violence and detachment from lived experiences of sexual violence.

[290] *Hayes v City of Saint John*, *supra* note 127 at paras 81–97. On the common law principle that police officers are not employees of those who appoint them and its application in Canadian law, including in police sexual misconduct cases, see, e.g., *Gulkison v Vancouver Police Board*, 2015 BCCA 361 at paras 11–19 and 38–42; *R v Campbell*, [1999] 1 SCR 565 at paras 26–35; *McCleave v City of Moncton*, (1902) 32 SCR 106.

[291] We must note that there was no statutory imposition of vicarious liability against municipalities for actions of police officers in New Brunswick before 1977: *Hayes v City of Saint John*, *supra* note 127 at paras 96 and 99. While *Evans v Sproule* recognizes vicarious liability at common law, it does not discuss the status of the police officer. Also, it relies on a statutory provision that was inexistent in New Brunswick: *Evans v Sproule*, *supra* note 280 at para 100.

1.2 The Liability of the Principal in the Civil Law

Tort law applies in common law provinces and not in Québec.[292] A separate analysis of civil law is thus necessary (1) to provide a more exhaustive overview of indirect liability mechanisms in Canada and (2) to outline the rules applying in Val-d'Or. As for vicarious liability in tort law, the principal's liability can only provide individualized remedies, namely the plaintiff's compensation. It also remains focused on individual wrongs, requires an individual plaintiff, fails to deal with systemic components of police sexual misconduct, and features many restrictions in cases of sexual violence. Contrary to tort law, no precedent on the principal's liability is available in cases of police sexual misconduct. These limitations seriously impede police sexual violence victims from securing state accountability through this path. Given that the critiques of vicarious liability in the common law and the principal's liability in civil law are similar, this subsection aims at putting forward one main distinction between the two mechanisms: the substantial restrictions of the principal's liability in sexual misconduct cases. Here again, these remarks are relevant to enhance a future foreseeability argument. We here refer to foreseeable impunity resulting from state law mechanisms and the failure of the state to mitigate the risks of such impunity. The criterion of the benefit of the employer, discussed in the next paragraphs, is especially relevant to ponder in a foreseeability analysis.

Before critiquing this civil liability option, we must summarize its principles. In Québec, the rules of extracontractual liability are stated in Book Five of the *Civil Code of Québec* (hereinafter "*C.C.Q.*").[293] In the absence of specific rules, this Book extends to the state through

[292] Québec is governed by civil law in private matters: *Constitution Act, 1867*, s 92(13) and (16).
[293] *Civil Code of Québec*, CQLR, c CCQ-1991.

the combined effect of art. 1376 *C.C.Q.*[294] Consequently, art. 1463 *C.C.Q.*, which governs the liability of the principal, applies to the state. This indirect form of liability is engaged in the presence of a relationship of subordination and a fault committed "in the performance of [the subordinate's] duties".[295] To date, art. 1463 *C.C.Q.* has been used to recognize the liability of police officers' principal,[296] albeit not in sexual misconduct cases. This may be because the criterion of performance of duties has historically foreclosed the application of this type of liability to sexual violence.[297]

In 1998, the Québec Court of Appeal extensively analyzed the expression 'performance of duty'.[298] In *Dubé c Havre des femmes inc*., the court summarized three types of situations relevant to the liability analysis: a fault can be committed (1) in the performance of, (2) in abuse of, or, finally, (3) outside of the subordinate's duties. A fault committed in the performance or abuse of duties can lead to the principal's liability when committed within the scope of these said duties.[299]

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[294] *Ibid*, s 1376.

[295] *Ibid*, s 1463. See also Louise Langevin, "Acte criminel de l'employé et responsabilité objective de l'employeur : pour une redéfinition du critère de rattachement" (2013) 47:1 RJTUM 31 at 41; De Stefano, *supra* note 270 at 3. This is in addition to the general requisites for extracontractual liability articulated by art 1457 *C.C.Q*.

[296] See, e.g., *Kosoian v Société de transport de Montréal*, 2019 SCC 59; *Gauthier v Beaumont*, [1998] 2 SCR 3; *Québec (Procureure générale) c Quane*, 2001 CanLII 40120; *Régie intermunicipale de police des Seigneuries c Michaelson*, [2005] RRA 7.

However, the Superior Court, in a motion for dismissal, has concluded that using police equipment, wearing the police's uniform, and relying on the authority implied by the position of the police officer was enough to sustain a *prima facie* conclusion that the officer was acting within the performance of his duties when committing sexual misconduct. See *Proulx c Desbiens*, 2014 QCCS 4117 at paras 25–27.

[297] See, e.g., *Goodwin c Commission scolaire Laurenval*, [1991] RRA 673; *Gosselin c Fournier*, (1985) CS 481; Langevin, *supra* note 295.

[298] *Havre des Femmes inc c Dubé*, [1998] RJQ 346. See also Langevin, *supra* note 295 at 43–44.

[299] *Havre des Femmes inc. c Dubé*, *supra* note 298 at 13–14. On this matter and their exclusion from the employer's liability scheme in Québec, see *The Governor and Company of Gentlemen Adventurers of England v Vaillancourt*, [1923] SCR 414 at 415-419 (per Duff J., dissenting). The Court reproduced Duff J.'s analysis on the exclusion of acts accomplished on the occasion of the subordinate's duties in *Moreau v Labelle*, [1933] SCR 201 at 206–207. See also the very exhaustive analysis of this concept in *Curley v Latreille*, [1920] 60 SCR 131. The notion of abuse lies in the combination of two elements: (1) an improper manner of conducting one's duties, and (2) a conduct that keeps the benefit of the employer as a (partial) objective. On the contrary, a subordinate acting outside of his or her duties and, thus, not pursuing the employer's benefit will not engage the liability of his principal. *Havre des Femmes inc. c Dubé*, *supra* note 298 at 13–14 and 18.

The decision in *Dubé c Havre des femmes inc.* sets out a test to determine whether a subordinate is acting in the performance of their duties. This test and, most specifically, the inclusion of the employer's benefit within it create significant hurdles in cases of sexual violence. How could sexual misconduct benefit the employer? Can sexual misconduct be an improper manner of conducting one's duties, even if an abusive one?[300] The case law's answers to these questions have restricted the application of art. 1463 *C.C.Q.* in the context of sexual violence.[301]

Commission des droits et libertés de la personne c Caisse populaire Desjardins D'Amqui discussed at length the concerns with *Dubé c Havre des Femmes*.[302] In this decision on sexual harassment in the workplace, the court concluded that strict reliance on *Dubé c Havre des femmes inc.* compromises access to a proper remedy for victims of sexual harassment.[303] It ruled that principals should be liable under art. 1463 *C.C.Q.* for sexual misconduct amounting to infringements of the Québec *Charter of Human Rights and Freedoms*.[304] The objective of recognizing the liability of a principal who fails to offer a workplace free from sexual harassment is laudable. However, decisions still often rely on *Dubé c Havre des femmes inc* and the benefit of the employer when assessing principal liability.[305] The application of art. 1463 *C.C.Q.* to sexual

[300] For further critiques, see, e.g., Langevin, *supra* note 295; Langevin, Des Rosiers & Nadeau, *supra* note 270 at paras 313–317.
[301] *Cf Proulx c. Desbiens*, *supra* note 296. This case of sexual assault by police accepted on a *prima facie* basis that the Attorney General could be liable for a sexual assault committed on duty. The case did not go further than preliminary motions.
[302] *Commission des droits de la personne et des droits de la jeunesse c Caisse populaire Desjardins d'Amqui*, [2004] RJQ 335.
[303] *Ibid* at paras 100–109; Langevin, *supra* note 295 at 46–48.
[304] *Commission des droits de la personne et des droits de la jeunesse c Caisse populaire Desjardins d'Amqui*, *supra* note 302 at paras 105–109. *Cf* the reasoning of *Commission des droits de la personne* with *Robichaud v Canada (Treasury Board)*, [1987] 2 SCR 84 rendered in a case relying on human rights legislation.
[305] De Stefano, *supra* note 270 at 20–24. For an example of a recent decision relying on *Havre* and the benefit of the employer in a case of sexual violence, see *Lachance c Institut séculier Pie X*, 2021 QCCS 1064 at paras 193–194 and 293. Other decisions have applied the risk analysis, which according to the literature, is more apt to entrench employers' liability: Langevin, Des Rosiers & Nadeau, *supra* note 270 at paras 321–324.

violence remains contentious, especially if not combined with legal arguments under the *Québec Charter*.[306] Why is there resistance to acknowledging that a principal should be liable in the absence of benefits? Just as for torts, we believe this stems from a lack of recognition of the pervasiveness of sexual violence and the role of institutional culture in permitting the latter. Sexual violence might not be so disconnected from the institutions assigning duties to their employees.

The constraints imposed by art. 1463 *C.C.Q.*, in addition to the concerns on the individualized scope of vicarious liability exposed earlier, makes the principal's liability an ill-suited mechanism to secure state accountability in cases of sexual violence. From the onset, we also indicated that the state's accountability might be more direct than indirect. We should be mindful that while indirect liability is not ideal for dealing with issues of state accountability, it is far from the only available option. Consequently, the second section of this Chapter will unfold a different form of liability that is, in theory, better suited to recognizing state's liability for police sexual misconduct.

[306] Despite the limitations of art. 1463 *C.C.Q.* regarding sexual violence, we should note that the criminal nature of the act is not a challenge *per se*. Indeed, in the case of police sexual crime, art. 1463 *C.C.Q.* should be read in conjunction with art. 1464 *C.C.Q.*, which adds that "[a] subordinate of the State […] does not cease to act in the performance of his duties by the mere fact that he performs an act that is illegal, beyond his authority or unauthorized, or by the fact that he is acting as a peace officer." *Civil Code of Québec*, *supra* note 293, art 1464. Article 1464 *C.C.Q. in fine* has been described as redundant given the label of s. 2.1 of the former *Police Act* (now s. 49 para. 2 of the new *Police Act*): *Police Act,* CQLR, c P-13, s 2.1; *Police Act, CQLR, c. P-13.1*, *supra* note 45, s 49 para 2. The case law had also decided, prior to art. 1464's enactment, that in some cases illegal acts of servants could engage the liability of the master. See, e.g., *The Governor and Company of Gentlemen Adventurers of England v. Vaillancourt*, *supra* note 299. For further details, see Carole Soucy, *La responsabilité extracontractuelle de l'État et le nouveau Code civil du Québec* (1992) at 320–326. For an example of the application of art. 1464 C.C.Q. in the context of police misconduct, see *Guité c Québec (Procureur général)*, 2006 QCCA 354.

2. Direct Liability: A Step Closer to the Recognition of State Accountability?

In the previous section, we argued that we could foresee indirect liability will not fully address the systemic components of police sexual misconduct because of its current interpretations. Some rationales behind that statement are internal limitations and stress on individual responsibility and remedy. Suppose we are correct when arguing that police sexual misconduct is systemic and stems from institutional culture and unintended consequences of state action. As they only narrowly touch on the state's role in causing police sexual misconduct, we must expand our gaze beyond individual responsibility and indirect forms of liability. When referring to the state's role, here we focus on unintended consequence such as the police culture that enables abuses, tolerates misconduct, discriminatory and bullying practices, and prevents justice through shuffling, retirement, and intimidation.[307] These concerns can be hard to remedy through a legal vehicle promoting indirect liability of the state. This form of liability concentrates on one state agent's misconduct and individual harm as opposed to the contribution of the state to systemic violence. Therefore, this section leaves aside indirect liability and looks at the direct liability of the state. This section concludes that the incapacity to secure state accountability for police sexual misconduct through direct liability lies with two sub-critiques outlined in the introduction: internal limitations in legal processes and the individualized nature of remedies. The internal limitations, in particular, are relevant to our foreseeability framework. They also exhibit a failure to see connections between sexual violence and police culture, a situation that we have described earlier as a form of wilful blindness.

[307] See notably Bastarache, *supra* note 4.

2.1 Proceedings Against the Crown or State Authorities in Common Law

Despite the limitations of vicarious liability outlined above, understanding the application of this doctrine remains crucial. On some occasions, plaintiffs have no choice but to frame their arguments in terms of vicarious liability to engage with the state. This is the case when the direct liability of the Crown is barred by statute. Provisions barring the Crown's liability constitute a significant restriction precluding the application of direct liability of the state and a failure to address systemic causes of police sexual misconduct.[308]

Traditionally, the Crown was immune to tort claims due to the maxim 'the King can do no wrong'.[309] In Canada, the *Crown Liability and Proceedings Act* (hereinafter "*CLPA*") has partially lifted the Federal Crown's immunity. That is not to say that all lawsuits against the Federal Crown are permitted under the *CLPA*.[310] For instance, under ss. 3 and 10, the Federal Crown cannot be liable for its negligence. A Crown servant must be personally liable to trigger the Crown's liability which encourages an individualized – rather than institutional – take on accountability for police sexual violence.[311] Applying these provisions, courts have repeatedly ruled that the Federal Crown cannot be liable for failing to stop or prevent police misconduct, such as sexual or psychological harassment.[312] Section 9 of the *CLPA*, interpreted in the case of *Sulz v Attorney General*, also bars the liability of the Crown.[313] Section 9 prevents double recovery by barring any actions against the Crown when the plaintiff received "funds administered by an agency of the Crown in respect of

[308] Brodsky, Day & Kelly, *supra* note 113 at 4.
[309] Peter Hogg, Patrick J Monahan & Wade K Wright, *Liability of the Crown*, 4th ed (Toronto: Carswell, 2011) at 7.
[310] See, e.g., Helene Robertson, "Proceedings against the Federal Crown" (2017) 47:3 Advoc Q 372; Geoffrey S Lester, "Suing the Federal Crown in Tort: Some Practical Points to Remember" (2000) 23:4 Advoc Q 444.
[311] *Crown Liability and Proceedings Act*, *supra* note 260, ss 3 and 10. For further details, see Robertson, *supra* note 310; Lester, *supra* note 310.
[312] See, e.g., *Davidson v Canada (Attorney General)*, *supra* note 140 at para 57; *Sulz v. Attorney General et al*, *supra* note 127 at para 93 et seq.
[313] *Sulz v. Attorney General et al*, *supra* note 127.

the death, injury, damage or loss in respect of which the claim is made."[314] Sulz was a female member of the RCMP who experienced harassment in her workplace. Eventually, she developed a mental condition that stopped her from working. After her discharge from the RCMP, Sulz was granted a pension by the Veterans Review and Appeal Board, which cited the allegations of harassment and concluded that her injury was the result of, or connected to, her work with the RCMP.[315] This award barred her subsequent action against the Crown.[316] While avoiding double recovery is not uncommon in law, we wonder whether the type of award received by Sulz permits addressing the role of the institutions in the harassment (or police sexual misconduct in other cases). Given that the RCMP has difficulty "formally acknowledging that some of its workplace units are dysfunctional", this should be regarded as a pressing issue.[317] Granting remedies through channels that fail to meaningfully discuss the role of the police in creating harm does nothing to acknowledge the dysfunctions in this type of workplace. Under our framework, this amounts to wilful blindness to the institution's role.

While the *Sulz* case involves psychological harassment and not sexual misconduct *per se*, they are linked to police culture. They can both be foreseen when studying the literature and case law on policing in Canada. The 2017 report on civil litigation for harassment in the RCMP disclosed that despite efforts to deal with harassment in the workplace, the organization often downplays the events to protect its image. This document also expands on reprisals and the lack

[314] *Crown Liability and Proceedings Act*, *supra* note 260, s 9. This provision was analyzed in *Sarvanis v Canada*, 2002 SCC 28, [2002] 1 SCR 921. Other limitations are stated in the *CLPA*. However, we have addressed only the ones which are likely to come into play in police sexual misconduct cases, given the scope of this thesis. See, e.g., *Crown Liability and Proceedings Act*, *supra* note 260, s 12.
[315] *Sulz v. Attorney General et al*, *supra* note 127 at para 93 et seq.
[316] *Ibid*.
[317] Fraser, *supra* note 127 at 69.

of objectivity in the investigations.[318] Not only does the RCMP foster a police culture leading to abuse, it is also "resistant to change" and has allowed officers to resign or retire when facing allegations.[319] This is notably problematic in cases the harasser is of higher rank.[320] Without providing accountability mechanisms that identify unintended consequences of state action and deconstruct violent patterns within police forces like the RCMP, state accountability for police sexual misconduct cannot be dealt with.

The fact that the Federal Crown shields itself from liability perpetrates the circle of violence. The victim experiences sexual violence because of a culture originating in the state; the state can claim its liability is barred through provisions such as ss. 3, 9, and 10 of the *CLPA*, which distracts from the state accountability objective of preventing reoccurrence. In the case of s. 9 *CLPA*, the state can also avoid recognizing the nature of the harm, hence revictimizing the person. Granting a pension for a work-related injury compensates the victims in some ways but silences the pervasive nature of harassment or sexual violence within the RCMP and precludes justification. Indeed, the *Sulz* case failed to frame harassment as a systemic problem in the organization and instead treated it as any workplace injury occurring while on duty. The law is part of the pattern of violence. We also believe that revising s. 9 *CLPA* to ensure that a victim of harassment and sexual violence can claim punitive damages against the institution, for example, would show that the state does not minimize the gravity of state sexual violence. It would demonstrate a commitment to new social narratives in our post #metoo era. This could be the first step in identifying violent patterns. However, more is needed to deconstruct these patterns. For example,

[318] *Ibid* at paras 34–47, 62–67 and 69–75.
[319] *Cf Hayes v City of Saint John*, *supra* note 127 allowing transfer to the City to ensure that the police officer would get his pension.
[320] Fraser, *supra* note 127 at paras 5 and 49. See also Bastarache, *supra* note 4 at 82.

s. 3 *CLPA* also precludes state accountability.[321] Does limiting the federal Crown's liability to vicarious liability and breach of duty with regard to property recognize the social narratives of sexual violence and police brutality? The answer must be negative. Amending s. 3 *CLPA* to recognize an exception to Crown immunity in case of sexual violence would be another way to allow for accountability for police sexual misconduct through direct liability. Why was it necessary to look at legislative provisions barring Crown liability? Because they are perhaps the most compelling evidence of the foreseeability of impunity. If one cannot access a mechanism, how can they reach accountability?

While the *CLPA* limits the liability of the Federal Crown, a provincial statute may allow for more claims against provincial Crowns. This is the case in British Columbia. This province's *Crown Proceeding Act* states that "the government is the subject to all those liabilities to which it would be liable if it were a person".[322] Legal actions against the provincial Crown are thus permitted in British Columbia. The British Columbia Law Institute reminds us that in the case of sexual assault, one can bring an action in negligence "against institutional defendants and individual defendants apart from the actual perpetrators."[323] This does not mean that there are no internal limitations to recognizing the direct liability of the provincial Crown in cases of police sexual misconduct.

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[321] This section reads as follows: "The Crown is liable for the damages for which, if it were a person, it would be liable (a) in the Province of Quebec, in respect of (i) the damage caused by the fault of a servant of the Crown, or (ii) the damage resulting from the act of a thing in the custody of or owned by the Crown or by the fault of the Crown as custodian or owner; and (b) in any other province, in respect of (i) a tort committed by a servant of the Crown, or (ii) a breach of duty attaching to the ownership, occupation, possession or control of property.": *Crown Liability and Proceedings Act*, *supra* note 260, s 3.

[322] See e.g., *Crown Proceeding Act*, RSBC 1996, c 86, s 2(c).

[323] British Columbia Law Institute & Project Committee on Civil Remedies for Sexual Assault, *supra* note 259 at 20. On the expansion of tort law to cases on systemic negligence or systemic misconduct, see Hall & Chouinard, *supra* note 275.

For instance, the 'duty of care' requirement in the law of negligence may restrict the type of victims to whom this mechanism is available. Indeed, the police generally owe a duty of care to the public and not to private individuals.[324] In *Evans v Sproule*, the court ruled that the police Board did not owe a duty of care to the plaintiff. The court concluded (1) that there was insufficient proximity between the plaintiff and the Police Board and (2) that sexual assault was not a foreseeable risk.[325] According to one of his colleagues, Sproule had engaged in inappropriate behaviour on a previous occasion. However, this colleague did not report the events or help the woman interacting with Sproule. The judge noted: "[a] few weeks prior to the incident with Ms. Evans, Officer Mulla overheard the inappropriate sexually-charged exchanges between Ms. Zegil and Sproule; and not only did he not offer assistance to the civilian, but he left the scene and took a walk, leaving Ms. Zegil vulnerable to the advances of Sproule. He did not report the incident to his supervisors."[326] Had this colleague disclosed the event, the court might have decided that the police had a duty of care to ensure that individuals were not subjected to Sproule's inappropriate behaviour. Without complaints to the Police Board, Sproule's actions were not in sufficient proximity or foreseeable enough to establish a duty of care.[327] This fails to recognize the blue wall

[324] Exemptions include suspects in criminal investigations and specific groups of victims. See, e.g., *Hill v Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41, [2007] 3 SCR 129; *Jane Doe v Metropolitan Toronto (Municipality) Commissioners of Police*, 160 DLR (4th) 697. In 2018, the Ontario Court of Appeal reconsidered the issue of the duty of care owed by the police to the families of victims of crime and ruled that none exists, see *Connelly v Toronto (Police Services Board)*, 2018 ONCA 368.
[325] *Evans v Sproule*, *supra* note 280 at paras 73–82.
[326] *Ibid* at para 76.
[327] *Ibid* at paras 73–82. For further comments on this case, see Lee, *supra* note 280. The comparison with the *Jane Doe* case is especially relevant: especially on the comparison with the Jane Doe case against the Toronto Police Services *ibid*.

of silence, which can lead police officers to protect their peers.[328] It also fails to acknowledge the swath of literature which makes police sexual violence foreseeable (see Chapter I).

Hayes v City of Saint John reached a similar conclusion and affirmed that the City had no duty of care toward the plaintiffs.[329] In this case, allegations of sexual intercourse with teenagers arose against former Sergeant Eastbrooks. Eastbrooks confirmed, and the Chief of Police planned his transfer to the City.[330] The Court ruled that the evidence did not establish that the persons who worked on the transfer at the City knew or ought to have known of the allegations prior to hiring Eastbrooks. The Chief of Police mentioned to them that it was a police affair, and there was no proof that the person in charge of transfers for the City knew of the sexual misconduct. These reasonings stemmed from the following facts and principles: if the Police Chief had been an employee of the city, his conduct would have amounted in a breach of a duty of care;[331] police officers, including the Chief, were not employees of the City;[332] City managers did not inquire into the reasons of the transfer, but it was not unreasonable to accept the Chief of Police's reasons (even if not inquiring into the reasons appear to be an exception reserved to the police);[333] and the action was against the City and not the police.[334]

Evans v Sproule and *Hayes v City of Saint John* demonstrate a narrow interpretation of the foreseeability of the risks posed by Sproule and Eastbrooks. This results from a blindness to the

[328] See, e.g., Barker, *supra* note 7 at 5–6; Rabe-Hemp & Braithwaite, *supra* note 127 at 129; Puddister & McNabb, "When the Police Break the Law", *supra* note 136 at 18–19.
[329] *Hayes v City of Saint John*, *supra* note 127 at paras 19–62.
[330] *Ibid* at para 1.
[331] *Ibid* at paras 65 and 68.
[332] *Ibid* at 54–55.
[333] *Ibid* at paras 31, 51–53 and 56–62. See also paras 63–69.
[334] *Ibid* at para 5.

impact of the police culture on reporting and sexual violence. There is a clear need to align the law with social evidence and legal studies on the police, which have fleshed out the effect of police culture on officers' behaviours and attitudes toward sexual misconduct. *Evans v Sproule* and *Hayes v City of Saint John* manifest two aspects of police culture documented in the literature: the blue wall of silence and the 'shuffling' practice – the action of transferring a police officer who engaged in misconduct to another police detachment or job.[335] Both practices are unprincipled in a state accountability context as they blur transparency, preclude justification, prevent the assignment of responsibility, and perverts awareness of misconduct.

Since provincial Crowns may be liable for more than the federal Crown, we will continue this discussion on direct liability by analyzing proceedings against the Crown in Québec. The case study of this thesis is set in Val-d'Or, Québec, and understanding the framework in place in this province is essential to apply our theoretical framework to Val-d'Or.

2.2 The Case of Article 1457 of the *Civil Code of Québec*

In Québec, the law related to Crown immunity differs from other jurisdictions.[336] In the absence of specific rules, the liability of the provincial Crown in Québec is generally the same as for private entities.[337] Article 1457 *C.C.Q.*, which governs direct liability in Québec civil law, thus

[335] See, e.g., Barker, *supra* note 7 at 5–6; Rabe-Hemp & Braithwaite, *supra* note 127 at 129; Puddister & McNabb, "When the Police Break the Law", *supra* note 136 at 18–19. On shuffling in the *Hayes* decision, see specifically paras 29-31

[336] For further details, see Soucy, *supra* note 306; Marième Lacroix, "L'immunité judiciaire au Québec : son fondement et sa mise à l'épreuve" (2017) 47:2 Revue générale de droit 309 n 100.

[337] Articles 300 and 1376 *C.C.Q.*, already mentioned, both showcase that public bodies can be liable under the *C.C.Q.* in the absence of specific rules. One of the reasons for the liability in the Crown is a decision of the Supreme Court of Canada rendered in 1935. In *The King v Cliche*, the Court ruled that the Québec Crown could be liable for offences and quasi-offences: *The King v Cliche*, [1935] SCR 561. In this case, a steam roller under the Crown's control, or more precisely, the lack of indications that there was a steam roller on the side of the road caused a car accident in which Mr. Cliche was involved. He argued that the Crown had been negligent and obtained damages. This decision

applies to the state. While civil law has few restrictions regarding the Crown's direct liability, it cannot fully address systemic components of police sexual misconduct. This problem stems from the individualized nature of its remedies, which makes art. 1457 ill-equipped from a state accountability perspective.

To unpack this argument, a few words on art. 1457 *C.C.Q.* are necessary. For this provision to apply, one must prove three distinct elements: a fault, a causal link, and an injury. According to the literature, a fault consists either of a behaviour contrary to the conduct of a reasonable person or, on some occasions, contrary to a legal obligation.[338] One query remains: can the state be *directly* liable for sexual misconduct under Québec law? *Dubé c Le Havre des femmes inc.* recognized that lack of supervision and improper selection might lead to direct liability. The court concluded that direct liability was not applicable in the absence of a fault of the employer.[339] To complement this decision, Louise Langevin, Nathalie Des Rosiers, and Marie-Pier Nadeau's work on behaviours that may engage the direct liability of an employer in cases of sexual violence is helpful. The literature summarizes potential grounds of liability as follows: not investigating allegations of wrongful behaviours, keeping an employee who committed a sexual assault, omitting to provide training, and not properly selecting employees.[340]

interpreted the ancestor, art 94 Code of Civil Procedure, CQLR, c. C-25. This provision was not included in this new version of the *Code of Civil Procedure* enacted in 2014. The new *Code of Civil Procedure* rather posits the rules applicable to the state in its arts. 75 to 81: *Code of Civil Procedure, CQLR, c. C-25.01*, arts 75–81.

[338] Frédéric Levesque, *Précis de droit québécois des obligations* (Cowansville: Yvon Blais, 2014) at para 409 et seq. In the case of professionals like police officers, the standard is slightly different: i.e., the conduct of a reasonable professional. On this standard, see e.g., *Ibid* at para 412; *Kosoian v Société de transport de Montréal*, *supra* note 296. For more nuances on legal obligations and the fault standard, see Levesque, *supra* note at para 415.

[339] *Havre des Femmes inc. c Dubé*, *supra* note 298 at 10–12.

[340] Langevin, *supra* note 295 at 39. See also Langevin, Des Rosiers & Nadeau, *supra* note 270 at para 304.

Similarly, the Supreme Court of Canada in *L'Oratoire Saint-Joseph du Mont-Royal v JJ* recognized that the employer's fault in sexual abuse or sexual harassment cases might result in "breach of a duty to report or to protect, or failure to do what was needed to prevent or put a stop to the abuse".[341] In our opinion, "failure to do what was needed to prevent or put a stop to the abuse" includes letting a discriminatory and violent police culture persist. The case law has not ruled in that sense yet. As long as a form of blindness to the inherent links between police culture and sexual violence remains, and as long as police sexual violence will be examined exclusively under an individualized lens in our liability regimes, we will narrow down the possible avenues of state accountability.

While some of these considerations can allow glancing at systemic components by delving into the state's role in hiring, training, and supervising police officers, as well as stopping the abuses, it remains highly individualized.[342] A feature that most of the mechanisms reviewed until now share is that they are meant to redress the harm caused to a singular victim by a singular defendant.[343] This modality is challenging when trying to secure state accountability, which requires the identification of unintended consequences of state action and dismantling patterns of systemic violence through justification, responsibility, and redress. However, direct liability offers a less individualized approach to wrongdoing than vicarious liability by addressing acts and omissions of the state. Despite this advantage, many hurdles stand in the plaintiffs' way. This is

[341] *L'Oratoire Saint-Joseph du Mont-Royal v JJ*, 2019 SCC 35, [2019] 2 SCR 831 at para 63. *Cf Lachance c. Institut séculier Pie X*, *supra* note 305 at paras 174–178.distinguishing its fact from the ones presented in *Oratoire St-Joseph* and arguing that the defendant did not commit a direct fault as (1) it could not foresee the abuse nor (2) make it stop in the absence of knowledge.

[342] For a similar argument in common law, see *John Doe (G.E.B.#113) v. Canada (Attorney General)*, *supra* note 278 fleshing out the differences between negligence and vicarious liability.

[343] Torts are known to focus on corrective justice for the individual as opposed to systemic redress, see, e.g., Roach, *supra* note 129 at 42; Brodsky, Day & Kelly, *supra* note 113 at 8.

true, especially in proceedings against the Federal Crown. Both direct liability mechanisms studied heretofore are thus insufficient to secure state accountability for police sexual misconduct successfully. This is not to say that all hope is lost. Reforms congruent with our framework could be envisioned. Moreover, many mechanisms have yet to be unpacked: litigation under the *Canadian Charter of Rights and Freedoms* (subsection 2.3), class actions (section 3), and criminal organizational liability (section 4). They all exhibit promising features to tackle the connection between police culture and sexual violence that we decried as missing in previous regimes. Are they the future to remove the blindness alluded to so far? Can we foresee accountability when using them? The answers to both these questions are still unclear.

2.3 Litigation under the *Canadian Charter of Rights and Freedoms*

Subsections 2.1 and 2.2 mostly focused on mechanisms that are not applicable across all provinces and territories. The next instrument – the *Canadian Charter of Rights and Freedoms* ("*Charter*") – has a wider application. The *Charter* has shaped Canadian police powers and significantly contributed to policing police misconduct, which makes it a relevant tool to analyze within this Chapter.[344] We decided to examine the *Charter* separately from other mechanisms because of its nature. Indeed, a finding of liability under the *Charter* is not a ruling on the liability of the state agent who committed the misconduct (here, a police officer) but rather on the direct liability of the state.[345] This reasoning flows from s. 32(1)(a) and s. 32(1)(b), which respectively

[344] See, e.g., James Stribopoulos, "In Search of Dialogue: The Supreme Court, Police Powers and the Charter" (2005) 31:1 Queen's LJ 1; James Stribopoulos, "Has the Charter Been for Crime Control? Reflecting on 25 Years of Constitutional Criminal Procedure in Canada" in Margaret E Beare, ed, *Honouring Social Justice: Honouring Dianne Martin* (Toronto: University of Toronto Press, 2008). For recent judgments affecting police powers, see, e.g., *R v Lafrance*, 2022 SCC 32; *R v Dussault*, 2022 SCC 16; *R v Le*, 2019 SCC 34, [2019] 2 SCR 692. This is not an exhaustive list.

[345] See, e.g., *Vancouver (City) v Ward*, 2010 SCC 27, [2010] 2 SCR 28 at para 22; Kent Roach, *Constitutional Remedies in Canada*, 2n ed (Toronto: Thomson Reuters, 2021) , s 11:13 Loose-leaves, release 2 (10/2021); Gabriella

state that the *Charter* applies to "the Parliament and the government of Canada in respect of all matters within the authority of Parliament" and to "the legislature and government of each province in respect of all matters within the authority of the legislature of each province government of each province".[346] What should be noted here is that the *Charter* is a mechanism specifically designed for accountability in the case of state wrongdoing. Thus, the *Charter* is theoretically the legal mechanism that better fits our conception of state accountability. Nonetheless, it is confronted with some critiques outlined in the Chapter's introduction: the nature of its remedies and the existence of limitations restricting its application in cases of police sexual misconduct. The following paragraphs will expand on this idea.

Section 24(1), one of the remedial provisions of the *Charter*, uses extensive phrasing. This section provides that "[a]nyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances."[347] It allows for a variety of remedies,[348] such as compensation, declaratory relief, stay of proceedings, sentence reduction, mandamus, and supervisory jurisdiction.[349] Many sections of the *Charter* could be (or have been) used in police

Jamieson, "Using Section 24(1) Charter Damages to Remedy Racial Discrimination in the Criminal Justice System" (2017) 22 Appeal 71 at 80.

[346] *Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK)*, *supra* note 53, s 32(1)(a)(b).

[347] *Ibid*, s 24(1). For the purposes of this subsection, we will not examine *Ibid*, s 52. On the difference between these two remedial provisions, see, e.g., Debra M McAllister, "Charter Remedies and Jurisdiction to Grant Them: The Evolution of Section 24(1) and Section 52(1)" (2004) 15 SCLR (2d) 77. See also the Supreme Court's recent analysis of constitutional remedies in *Ontario (Attorney General) v G*, 2020 SCC 38 at para 79 et seq.

[348] For a very exhaustive review of constitutional remedies, including *Charter* remedies under s. 24(1), see Roach, *supra* note 345. On *Charter* remedies, see also Kent Roach, "Charter Remedies" in Peter Oliver, Patrick Macklem & Nathalie Des Rosiers, eds, *The Oxford Handbook of the Canadian Constitution* (Oxford University Press, 2017).

[349] See, e.g., *Vancouver (City) v. Ward*, *supra* note 345; *Canada (Prime Minister) v Khadr*, 2010 SCC 3, [2010] 1 SCR 44; *R v Nasogaluak*, 2010 SCC 6, [2010] 1 SCR 206; *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44, [2011] 3 SCR 134; *Doucet-Boudreau v Nova Scotia (Minister of Education)*, 2003 SCC 62, [2003] 3 SCR 3.

sexual misconduct cases to trigger this remedial provision. The more relevant sections for police sexual violence are s. 7 on infringements of the right to life, liberty, and security contrary to fundamental justice principles, s. 8 on unreasonable searches and seizures,[350] s. 9 on detention,[351] and s. 15 on equality.[352] Sexual assault resulting from strip searches can easily relate to the provision against unreasonable searches and seizures. In contrast, discrimination and sexual harassment against women or female police officers are linked with the section on equality. Sections 7, 9, and 15 have all been invoked in a class action (discussed in section 3) about the Val-d'Or events.[353]

Despite several grounds on which to rely, this *Charter* has some internal limitations preventing plaintiffs from obtaining redress. In cases of police sexual misconduct, the interaction between s. 24(1) and s. 24(2) can restrict the obtention of an appropriate remedy. *Charter* claims

[350] See, e.g., *R v Golden*, 2001 SCC 83, [2001] 3 SCR 679; *R v Desjourdy*, 2012 ONCJ 648 at para 2; *R v Khan*, *supra* note 224. In the literature, see Psutka & Sheehy, *supra* note 18; Jones & Sheehy, *supra* note 18; Tanovich, *supra* note 18.

[351] See, e.g., Ampleman-Tremblay, *supra* note 8 at 20–24.

[352] Section 15 has been invoked, namely in litigation and class actions against the RCMP: *Clark v. Canada*, *supra* note 280; *Merlo v Canada*, 2017 FC 51 at para 13. The decision in *Jane Doe* also allows us to draw parallels between s. 15 and discriminatory police practices. In this case, a serial rapist had been climbing balconies and entering women's apartments in the Church-Wellesley area of downtown Toronto. The police decided not to inform the Wellesley-Church women residents of the risk they were facing since they believed that, once informed, women would become hysterical and make the rapist flee. Jane Doe claimed that the investigation was negligent and that a warning would have allowed her to take preventive measures. She also argued that the conduct of the police amounted to sex-based discrimination. The plaintiff was entitled to damages, both under tort law and the *Charter*. Jane Doe was also granted a declaratory relief under the *Charter*. While the *Jane Doe* case does not deal with sexual misconduct by the police *per se*, it shows that s. 15 of the *Charter* can be applied in cases where the police discriminate against given communities. This reasoning could theoretically be expended to some types of police sexual misconduct, such as gender profiling (a phenomenon studied mostly in the United States): *Jane Doe v. Metropolitan Toronto (Municipality) Commissioners of Police*, *supra* note 324 at paras 713–748; *"Driving While Female": A National Problem in Police Misconduct*, by Samuel Walker & Dawn Irlbeck (2002) A Special Report by the Police Professionalism Initiative University of Nebraska at Omaha. See also *Living Together, Acting Together*, by Secrétariat aux affaires autochtones (Québec: Publications du Québec, 2018) at 22.

[353] *Centre d'amitié autochtone de Val-d'Or c. Procureur général du Québec (demande introductive d'instance)*, *supra* note 53 at paras 109, 112 and 116.

are more likely to originate from the accused in criminal proceedings.[354] In the case of the victim-accused (i.e., a victim of police misconduct accused of a criminal offence), there will likely be a remedial problem between s. 24(1) and s. 24(2). Section 24(2) states that evidence obtained in infringement of the *Charter* can be excluded.[355] While s. 24(1) and s. 24(2) are not exclusive;[356] concurrent civil and criminal remedies cannot be obtained in the same forum.[357] For instance, in the case of police sexual misconduct, s. 8 against unreasonable searches and seizures could be used by an accused who was strip-searched by a police officer (an act which may amount to sexual assault).[358] A criminal court at trial might exclude evidence under s. 24(2), but remedies under s. 24(1) for the harm caused by the sexual assault will be addressed separately. This flows from the label of s. 24(1), stating that only a competent court can grant remedies.[359] Consequently, if an accused seeks a civil remedy, he or she will have to bring a separate *Charter* action under s. 24(1). This is especially relevant to ponder when considering that exclusion of evidence is 24(2) is "not a remedy for police misconduct" thus threatening our framework of state accountability.[360]

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[354] Notably because of the possibility of seeking legal aid, the strength of remedies in the criminal context, and the expenses related to civil suits. See, e.g, Andrew Petter, "The Politics of the Charter" (1986) 8 SCLR 473 at 480–481; Stribopoulos, *supra* note 344 at 57; Jamieson, *supra* note 345 at 76; *Ontario v Fleming*, *supra* note 239 at para 84; Roach, *supra* note 348 at 686–687.

[355] *Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK)*, *supra* note 53, s 24(1)(2). Section 24(2) reads as follows: "Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute."

[356] See, e.g., *Canada v O'Neill Motors Ltd*, [1998] 4 FC 180.

[357] Roach, *supra* note 345 at 11–28; Kent Roach, "Section 24(1) of the Charter: Strategy and Structure" (1986) 29 CLQ 222 at 238–241 and 263–264; *Mills v The Queen*, [1986] 1 SCR 863 at para 292; *Vancouver (City) v. Ward*, *supra* note 345 at para 58; *R v Rehman*, 2016 ONSC 7549 .

[358] See, e.g., *R v Golden*, *supra* note 350; *R v Khan*, *supra* note 224; *R v Desjourdy*, *supra* note 224; Tanovich, *supra* note 18; Psutka & Sheehy, *supra* note 18; Jones & Sheehy, *supra* note 18.

[359] Roach, *supra* note 345 at 11–28; Roach, *supra* note 357 at 238–241 and 263–264; *Mills v The Queen*, *supra* note 357 at para 292; *Vancouver (City) v. Ward*, *supra* note 345 at para 58; *R. v Rehman*, *supra* note 357.

[360] See, e.g., *R v Collins*, [1987] 1 SCR 265 at para 31; *R v Harrison*, 2009 SCC 34, [2009] 2 SCR 49 at para 62; *R v Grant*, 2009 SCC 32, [2009] 2 SCR 353 at para 70.

The duplication of legal processes means the remedy under s. 24(2) might be the only one granted.[361] It is true that under the *Charter*, there is no need for a causal connection between the infringement of rights and the exclusion of evidence.[362] However, this approach impedes addressing police sexual violence and its systemic components. Focusing only on the exclusion of evidence side-lines the necessity for remedies that focus on sexual violence and the contribution of the state to this phenomenon. The Supreme Court of Canada seemed to recognize the need for reparation other than the exclusion of evidence under s. 24(2) in the oral decision *R v Omar* but decided to leave this issue for another time.[363] As of now, additional remedies for police sexual violence in criminal trials are thus unsure at best.

Now that we outlined one of the *Charter*'s limitations with respect to remedies,[364] we should note that the *Charter* is also restricted when applied to police sexual misconduct. As mentioned before, under s. 32, the *Charter* relates to the legislative, executive, and administrative branches of the government. However, a state agent acting outside the scope given to him or her by the law and who acts on his or her own behalf will not engage the state's liability.[365] While a sexual assault resulting from a strip search will most likely fall under the scope of police duties and *Charter* scrutiny, the *Charter* does not generally apply to sexual misconduct committed off-

[361] On costs related to *Charter* claims and the criminal process, see Petter, *supra* note 354 at 480–482.
[362] In some cases, evidence exclusion is granted despite the violation of rights not leading to the collection of illegal evidence: see, e.g., *R v Moonie*, 2013 BCSC 1866.
[363] *R v Omar*, 2019 SCC 32, [2019] 2 SCR 576 at para 1.
[364] At least one other remedial limitation exists: access to justice. It was not included within the text of this chapter since this concern is not exclusive to the *Charter* nor to police sexual misconduct. This issue is the costs related to *Charter* litigation. Petter gives two examples that are quite daunting in this regard. The 1984 *Hunter v Southam* case cost around $200,000, whereas the 1985 *Operation Dismantle v The Queen* affair, which did not go beyond preliminary issues and in which lawyers' fees were reduced, amounted to $50,000 in costs: Petter, *supra* note 354 at 480–481, citing The Toronto Star, April 23, 1985, A-11 and an interview with Operation Dismantle President; *Hunter v Southam Inc*, [1984] 2 SCR 145; *Operation Dismantle v The Queen*, [1985] 1 SCR 441. We can reasonably posit that these outstanding fees will restrict the access to justice for many victims of police sexual misconduct.
[365] See, e.g., *Hill v Church of Scientology of Toronto*, [1995] 2 SCR 1130 at paras 74–75.

duty, as the police officer is not acting as a state agent. This interpretation reduces the cases of police sexual misconduct to which the *Charter* may be applied. This is concerning when the data suggests that off-duty officers commit sexual misconduct.[366] Their off-duty status, however, does not mean they do not present themselves as police officers or that the victim cannot deduce the officer's position.[367] It does not mean either they cannot use their position of power despite being off-duty. The case law on police sexual misconduct provides evidence of these statements.

For example, in *Gateman and London Police Service*, the plaintiff was with off-duty officers when she saw a police uniform in the room.[368] In *R v Von Seefried*, the police officer met the plaintiff while on duty but then made several attempts to locate her before showing up at her house, not wearing a uniform.[369] These cases may fall under the jurisdiction of entities like the Special Investigations Unit ("SIU") in Ontario, which investigates allegations of misconduct by off-duty police officers presenting themselves as police officers, using police equipment, or exercising police powers.[370] In comparison, in Québec, the BEI investigates allegations of sexual assault by *on-duty* allegations police officers and complaints filed by an Indigenous person.[371] A Bill introduced in 2021 planned on expanding the BEI's mandate to all investigations of police

[366] Puddister and McNabb noted that 44.4% of all sexual assault charges laid by the Ontarian Special Investigations Unit were committed off-duty: Puddister & McNabb, "When the Police Break the Law", *supra* note 136 at 9 and 11.
[367] *Ibid* at 11.
[368] *Gateman and London Police Service*, 1998 CanLII 27142.
[369] Confidential Statement of Facts (*R v Von Seefried*). The examples provided in this paragraph are not meant to be exhaustive.
[370] *Special Investigations Unit Act, 2019*, SO 2019, c 1, Sched 5, s 15(2)b. See also Puddister & McNabb, "When the Police Break the Law", *supra* note 136 at 7.
[371] *Police Act, CQLR, c. P-13.1*, *supra* note 45 at para 289.1 para 2. See also Ministère de la Sécurité publique, *supra* note 47.

crimes, whether on or off-duty, but was never enacted.[372] A new Bill from 2023, Bill 14, does not modify the BEI's mandate.[373]

Charter litigation has yet to officially recognize that police sexual misconduct can be connected to the police officer's position even if he or she is off duty.[374] Other areas of Canadian law dealt with the possibility for a police officer to 'reactivate' his or her police officer status. The decision *Guité c Québec (Procureur général)*, a civil law case, showed that an off-duty police officer who carries out tasks that are proper to his function could be perceived as an on-duty police officer for indirect liability.[375] We propose that if, for civil law, the police officer is recognized as acting on behalf of the state, the same should be valid under the *Charter*. The concerns with off-duty police misconduct may prevent tackling systemic components of police sexual violence unless courts rule that the state is accountable for acts perpetrated while off-duty, but somehow still engaging state power.

Despite internal limitations, when used successfully, this instrument can force the state to justify its action, acknowledge responsibility through a judicial decision, and order redress, the three components of the state accountability framework. It should make the *Charter* a suitable

[372] 42nd Parliament, 2nd Session, *Loi modifiant diverses dispositions en matière de sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues* (Presentation), Bill 18 (8 December 2021) , ss 65–66 and 71.
[373] 43rd Parliament, 1st Session, *Loi modifiant diverses dispositions en matière de sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues* (Analysis in Parliamentary Commission), Bill 14 (1 June 2023) , s 90. For a critique of this Bill, see *CONSULTATIONS PARTICULIÈRES ET AUDITIONS PUBLIQUES SUR LE PROJET DE LOI 14 LOI MODIFIANT DIVERSES DISPOSITIONS RELATIVES À LA SÉCURITÉ PUBLIQUE ET ÉDICTANT LA LOI VISANT À AIDER À RETROUVER DES PERSONNES DISPARUES*, by Ligue des droits et libertés (Mémoire présenté à la Commission des institutions de l'Assemblée nationale du Québec, 2023) at 20–25.
[374] This concern with the applicability of the law to off-duty misconduct is not exclusive to the *Charter* and extends to other mechanisms that are reviewed in this chapter. We can think here, for instance, about the discussion on 'performance of duties' in Québec's regime of principal's liability. For a theoretical discussion on 'slippage of duties' see Alice Ristroph, "Covenants for the Sword" (2011) 61:4 University of Toronto Law Journal 657 at 661–662. See also Kelsen, *supra* note 196 at e.g., 305.
[375] *Guité c. Québec (Procureur général)*, *supra* note 306.

mechanism to bring claims of state accountability before the courts, at least in theory. We are ready to concede to David M. Tanovich that the *Charter* has been a powerful tool of social change in some contexts and could be in others. For instance, Tanovich compares the rights of women and the legality of same-sex marriage to racial injustice in the criminal justice system.[376] He claims that the lack of judicial imagination, hostility in some cases, and the failures of lawyers to raise racial claims have led to poor results in correcting racial justice through *Charter* litigation.[377] We argue that the system might not be ready to acknowledge the gendered and racialized state violence that is police sexual misconduct through *Charter* litigation. Consequently, a lack of imagination and advocacy similar to the one depicted by Tanovich could explain the poor results of the *Charter*. We do not want to cast blame on lawyers and judges individually but rather communicate that as long as police sexual violence is not perceived as inherently implicating the state, the *Charter* will not yield desired outcomes.

Some authors complement the criticism put forward by Tanovich and argue that human rights remedies can hardly address the roots of systemic misconduct since they often remain individualized and are somewhat narrowed in their interpretation by the courts.[378] While courts

[376] David M Tanovich, "The Charter of Whiteness: Twenty-Five Years of Maintaining Racial Injustice in the Canadian Criminal Justice System" (2008) 40 SCLR (2d) 655. See also Marie-Andrée Denis-Boileau & Marie-Ève Sylvestre, "Ipeelee and the Duty to Resist" (2018) 51:2 UBC Law Review 548 documenting judicial resistance and briefly (at 594) the lack of creativity from lawyers in the context of sentencing under s. 718(2)(e) of the Criminal Code. While written in a different context, both arguments exhibit judges' and practitioners' resistance to legislative texts that could be vehicles of social justice.

[377] We must note that this text was written in 2008, and, thus prior, to decisions such as *R v Lafrance*, *supra* note 344; *R v Hill*, 2023 SCC 2 at paras 55, 83–90 and 135; *R. v. Le*, *supra* note 344; *R v Chouhan*, 2021 SCC 26. This does not mean, however, that racial arguments are always interpreted generously by the courts. See the recent example of *R v Sharma*, 2022 SCC 39.

[378] For Canadian examples, see Nandini Ramanujam & Miatta Gorvie, "Shifting Ground, Solid Foundations: Imagining a Paradigm for Canadian Civil Society" (2015) 32:1 WYAJ 141; Dominique Clément, "Human rights or social justice? The problem of rights inflation" (2018) 22:2 The International Journal of Human Rights 155–169. *Cf* Karen Bellehumeur, "Systemic Discrimination Against Female Sexual Violence Victims" (2023) 11:1 Can J Hum Rts 131 who claims that victims of sexual violence experience a form of discrimination that could be litigated and redressed under the CHRA.

allow for remedies reaching beyond individual injustices (like in *Doucet-Boudreau*), it will not happen as long as the infringements are formulated as isolated act of strip search, for instance. In other words, the great theoretical flexibility of the *Charter* remedial provision could benefit from legal innovation and creativity to offer further modes of redress. Such flexibility will stem from connections to lived experience and refusal to side-line the state nature of police sexual violence.

The comments on the *Charter* are not to say that claims through other human rights legislation will never be successful. For instance, a Val-d'Or class action, which will be discussed in section 3, invoked – concurrently to the Canadian *Charter* – the Québec *Charter of Human Rights and Freedoms* and, more precisely, ss. 1, 4, 10, and 25. They deal with life, liberty, and freedom; dignity; discrimination; and the right to be treated with respect and humanity when arrested or detained.[379] While awaiting a decision on the merits of this case, we shall remember that the Québec *Charter of Human Rights and Freedoms* allows mainly for compensation, a redress that we judged insufficient to address the structural components of police sexual violence in earlier comments. Other remedies lie with cessation of the violation, punitive damages, declarations of invalidity, and declarations of unenforceability (*déclarations d'inopposabilité*).[380] While Québec's instrument applies to the state by virtue of s. 54,[381] the lack of precedents for police sexual violence and the limited remedies call for caution. Indeed, some authors argued that Canadian *Charter* remedies cannot address the roots of systemic misconduct since they often remain

[379] See *Centre d'amitié autochtone de Val-d'Or c. Procureur général du Québec (demande introductive d'instance)*, *supra* note 53 at paras 109, 111–112, and 116; *Charter of Human Rights and Freedoms*, *supra* note 53, ss 1, 4, 10 and 25.
[380] See *Charter of Human Rights and Freedoms*, *supra* note 53, ss 49 and 52; Mélanie Samson et al, *La Charte des droits et libertés de la personne du Québec EN BREF* (Tribunal des droits de la personne, 2020) at 39–44.
[381] See, e.g., *Charter of Human Rights and Freedoms*, *supra* note 53, s 54.

individualized,[382] and these concerns, to the very best of our knowledge – can be extended to the Québec *Charter* that offers fewer remedies.[383] The following section will discuss a mechanism that has, at times, involved human rights: class actions. It will argue that human rights instruments can have an increased value when raised through this collective vehicle while also identifying gaps in accountability in its use.

3. Class Actions: An Illustration of Collective Accountability

Class actions are a promising avenue to deal with state accountability for police sexual misconduct. The Supreme Court noted, in a case on sexual abuse by members of a religious congregation, that this "procedural vehicle has several objectives, namely *to facilitate access to justice, to modify harmful behaviour and to conserve judicial resources*" [Emphasis added.][384] Class actions are an option for expanding access to courts in cases of police sexual misconduct. The objective of modifying harmful behaviour also aligns with our contention that state accountability should identify unintended consequences of state action and break down patterns of

[382] See, e.g., Mary Eberts, "Section 15 Remedies for Systemic Inequality: You Can't Get There From Here" in Sheila McIntyre & Sanda Rodgers, eds, *Diminishing Returns: Inequality and the Canadian Charter of Rights and Freedoms* (Marham, Ont.: LexisNexis Butterworths, 2006); Ramanujam & Gorvie, "SHIFTING GROUND, SOLID FOUNDATIONS", *supra* note 378; Brodsky, Day & Kelly, *supra* note 113 at 27–28. *Cf* Jamieson, *supra* note 345. This author argues, at p. 94, that "When the damages lie against the state as a whole, the deterrence value remains at a general level and nudges the state towards implementing policies that will better avoid discrimination in the future." She nevertheless acknowledges that *Charter* damages are not a perfect redress to systemic misconduct, such as racial discrimination. For a more general account of human rights law limitations, see Clément, "Human rights or social justice?", *supra* note 378.

[383] We do not wish to dismiss the role of the *Commission des droits de la personne et de la jeunesse* (CDPJQ) in many areas, including racial profiling and sexual harassment, see a summary of their work on racial profiling at Commission des droits de la personne et de la jeunesse, "Racial profiling", online: <https://www.cdpdj.qc.ca/en/our-positions/issues/racial-profiling>.; On sexual harassment, see, e.g., Michel Coutu & Pierre Bosset, "Étude no 6: La dynamique juridique de la Charter" in *Après 25 ans : La Charte québécoise des droits et libertés* (Commission des droits de la personne et des droits de la jeunesse, 2003) at 258; *Commission des droits de la personne et des droits de la jeunesse c Caisse populaire Desjardins d'Amqui*, *supra* note 302.

[384] *L'Oratoire Saint-Joseph du Mont-Royal v. J.J.*, *supra* note 341 at para 6 citing Hollick v. Toronto (City), 2001 SCC 68, [2001] 3 S.C.R. 158, at para. 15; Western Canadian Shopping Centres Inc. v. Dutton, 2001 SCC 46, [2001] 2 S.C.R. 534, at paras. 27 29; Vivendi Canada Inc. v. Dell'Aniello, 2014 SCC 1, [2014] 1 S.C.R. 3, at para. 1. See also Pierre-Claude Lafond, "Le recours collectif: entre la commodité procédurale et la justice sociale" (1998) 29 RDUS 3 depicting the class action in Québec as a tool of social justice allowing access to justice.

violence. Moreover, this mechanism admits police sexual misconduct is more than the act of isolated rogue officers against one victim and shows its systemic nature. As demonstrated by the numerous actions against the RCMP, class actions have been a popular approach to handling police sexual misconduct.[385] Given its collective approach, we should scrutinize class actions closely.[386]

While class actions against the RCMP often make factual claims akin to any other civil liability action, they usually help demonstrate that the problem expands beyond one state agent.[387] *Davidson v Canada (Attorney General)* illustrates the statement above. In this case, Davidson, a former officer, claimed that the RCMP failed to offer a workplace free from discrimination, harassment, and bullying. She stated that female officers were the object of degrading and sexual comments by male police officers and were less likely to be mentored or have rewarding career opportunities.[388] The court ruled that the Crown could be vicariously liable for systemic negligence within the RCMP.[389] We must remember that the Federal Crown cannot be directly liable for not stopping or preventing misconduct.[390] So how does vicarious liability for systemic negligence operate?

The difference here is that the claim of Davidson was not against the RCMP as an institution but against a collective of male members of the RCMP who "collectively sexually

[385] For a list of civil proceedings against the RCMP, see Bastarache, *supra* note 4 at Appendix 4.
[386] Some argue that class actions are not collective *per se* as only the realization of an individual right through a collective process: see a summary of these arguments in Lafond, *supra* note 384 at 28–31.
[387] Former Justice Bastarache is eloquent in this regard, see Bastarache, *supra* note 4. On the bad apple theory, see also an interview given by Marc Alain with regards to the Val-d'Or events, *note 40 at 12:07-12:22.*
[388] See also, Beare, *supra* note 124; Bastarache, *supra* note 4; Brière et al, "Le parcours des policières au Québec", *supra* note 139. For a comparative perspective, see Prokos & Padavic, "'There Oughtta Be a Law Against Bitches'", *supra* note 139.
[389] *Davidson v Canada (Attorney General)*, *supra* note 140 at paras 1–4.
[390] *Ibid* at para 57; *Crown Liability and Proceedings Act*, *supra* note 260, ss 3 and 10.

harassed or sexually discriminated […] or who facilitated, acquiesced, or condoned the misconduct against their female colleagues."[391] This allowed for a finding of liability since the Crown can be vicariously liable for the actions of a group of servants (without needing to prove which servant from the said group committed a tortious act).[392] It prolongs the bad apple argument to 'a group of bad apples'. Therefore, this decision could suggest that the RCMP as an organization is not responsible for the behaviours reported in *Davidson* but instead that a group of police officers is. In this way, it casts doubt on whether 'collective' vicarious liability tackles state accountability. While this concern is genuine, we believe this interpretation is an attempt at circumventing the immunity of the Crown. We must also recognize that it has provided a somewhat – albeit limited – collective understanding of police sexual misconduct. While having multiple injured parties willing to participate in the process can be challenging, the collective mechanism supported by class action makes it easier to see sexual violence beyond the offender-victim dyad, even if this is through systemic negligence. The next step for state accountability would be to concede the state's role in fostering harmful behaviours and not solely focus on a group of Crown servants.

The 'collective' scope that can be given to vicarious liability is not all we should retain from *Davidson v Canada (Attorney General)*. The action, consolidated with *Merlo v Canada*, led to a settlement approved in 2017.[393] This settlement included monetary compensation and non-monetary remedies such as "institutional change initiatives within the RCMP, a public apology,

[391] *Davidson v Canada (Attorney General)*, *supra* note 140 at paras 59–76.
[392] *Ibid* at para 76; *Williams v Canada (Attorney General)*, (2005), 76 OR (3d) 763. For an explanation of the absence of a requirement to identify the Crown's servant, see Hogg, Monahan & Wright, *supra* note 309 at 183–184. These authors raise doubts about the possibility of relying on Crown liability for systemic misconduct. The decision does not change that fact, as the liability still lies in one or a group of crown servants. For a theoretical perspective on imposing vicarious liability for a group of tortfeasors, see Cohen, "Regulating Regulators", *supra* note 255 at 220–221.
[393] *Merlo v Canada*, 2017 FC 533.

and the creation of a scholarship".[394] The court applauded these non-pecuniary remedies that could not have been ordered in the judicial process.[395] Settlements offer greater flexibility as to what parties wish to include as redresses and, thus, fit within our conception of remedy detailed in Chapter I. While we will not scrutinize all settlement agreements stemming from class actions,[396] they have addressed state accountability differently than legal actions examined heretofore. Settlements can foster institutional changes. Hopefully, these changes include identifying unintended consequences of state action and deconstructing institutional norms and practices taking part in systemic violence patterns, as displayed in the following paragraphs.

Finally, class actions and their settlements have warranted optimism in police misconduct cases as well as in other types of state systemic wrongdoings. For example, the court approved a settlement of the Heyder and Beattie class actions in 2019.[397] It shows that this type of legal action can lead to forms of redress aimed at dismantling violence patterns and recognizing the state's role in creating systemic wrongdoings. The plaintiffs alleged sexual assault, sexual harassment, and discrimination based on gender, gender identity, sex, and sexual orientation in the military. The settlement led to an apology from three state representatives[398] along with a series of measures, including financial compensation, a restorative program, changes in policies addressing sexual assault, and changes in policies regulating entitlement to disability payments (as well as

[394] *Ibid* at para 10.
[395] *Ibid* at 10.
[396] For another settlement example, see *Tiller v Canada*, 2020 FC 320.
[397] *Heyder v Canada (Attorney General)*, 2019 FC 956.
[398] Honourable Anita Anand, *DND/CAF Sexual Misconduct Apology – Minister of National Defence's Apology* (Government of Canada, 2021); Deputy Minister Jody Thomas, *DND/CAF Sexual Misconduct Apology – Deputy Minister's Apology* (Government of Canada, 2021); General Wayne Eyre, *DND/CAF Sexual Misconduct Apology* (Government of Canada, 2021).

reconsideration of claims) for veterans.[399] The restorative program, for instance, explicitly identifies the alteration of culture as its objective.[400] Apologies recognized that the state and the Canadian Armed Forces (CAF) failed to protect its members, to provide a safe workplace, and to secure accountability systematically. They also stated that the government and armed forces had let a 'regressive' and 'exclusionary' culture persist.[401] Compared to financial compensation alone, the combination of these remedies can start a state accountability process by breaking down violence patterns. It is also a clear acknowledgment of the connection between the state and the wrongs committed in the CAF, which paves the way for such recognition in other contexts. As of August 2022, 5239 claimants had requested to participate in the restorative justice initiative, and 13280 out of 19719 claims had been approved or paid.[402]

New developments could occur as two class actions on police sexual violence are currently ongoing across the country. The first one was launched on December 14, 2021, in the context of the Val-d'Or crisis, and targets the liability of the Québec Government.[403] A first decision in June 2022 ruled that omitting to disclose the members' and the designed member's identity in the filing documents did not invalidate the action.[404] The tribunal was concerned that class members would experience a lack of access to justice should they be forced to identify themselves to participate.[405]

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[399] "Home", online: *CAF-DND Sexual Misconduct Class Action Settlement* <https://www.caf-dndsexualmisconductclassaction.ca>.

[400] Government of Canada, "About Restorative Engagement", online: <https://www.canada.ca/en/department-national-defence/services/benefits-military/health-support/sexual-misconduct-response/restorative-engagement/about-restorative-engagement.html>.

[401] Honourable Anita Anand, *supra* note 398; Deputy Minister Jody Thomas, *supra* note 398; General Wayne Eyre, *supra* note 398.

[402] note 399.

[403] *Centre d'amitié autochtone de Val-d'Or c. Procureur général du Québec (demande introductive d'instance)*, *supra* note 53.*Centre d'amitié autochtone de Val-d'Or c. Procureur général du Québec (demande introductive d'instance)*, *supra* note 51.

[404] There is a specific process to disclose the plaintiffs' identification to a restricted group of individuals: *Centre d'amitié autochtone de Val-d'Or c. Procureur général du Québec*, *supra* note 54.

[405] *Ibid*. See para 33 on the "designed member".

It displayed sensitivity to the consequences of state systemic violence, including the fear of retaliation. Victims of police sexual violence might refrain from participating in state-led accountability processes because they anticipate reprisal.[406] The Attorney General pleaded that the action was irregular as it did not identify the name of the parties. Requesting the designed member to be identified in the courts' document would have risked revictimizing group members. By accepting anonymity, the court broke down one barrier to justice. Those obstacles to justice, as explained in the section on direct liability, are part of the circle of violence created by unintended consequences of state action: a victim experiences sexual violence at the hand of the state and cannot have the harm recognized because of the law. We must note that the decision has been appealed and could be reversed.

Notwithstanding the result, a social accountability approach has emerged from this class action, which may, in itself, be beneficial for the community. Indeed, an interviewee argued,

> **Interview C2:** *I feel that, […] it was especially the […] assistance of the Native Friendship Centre [...] that it was crucial. [...]*
>
> *I see a lot of investment still today – Well obviously there […] is the class action, but […] you can see that there is still a lot of investment hmm... [...] Just [a lot of] commitment to this […] issue from the Native Friendship Centre.*[407]

This excerpt points us to a way of stepping even further away from the individualized nature of various liability regimes. Suppose civil society or the community participates in class actions and

[406] See, e.g., Human Rights Watch, *supra* note 4 at 18–19 and 59–60. For further details on reporting and fears of intimidation, see Chapter III of this thesis.
[407] C2, at pp. 13-14.

acts in collaboration with law firms to stay connected to the lived experiences of plaintiffs. In that case, class actions might emerge as a more principled state accountability mechanism in state law.

The second development in the area of class actions is the case of *Hayes v City of Saint John*, and shows more limitations than the first example. The court ruled that the City was not vicariously liable, nor did it have a duty of care to the plaintiffs. The decision is currently appealed to the New Brunswick Appeal Court.[408] This class action exhibited a different, yet troubling, fact pattern. It involved a deceased police officer, former Sergeant Kenneth Estabrooks, who committed sexual offences while employed as a police officer between 1953 and 1975. Upon being informed that Estabrooks had committed sexual abuse, authorities transferred him to another City department, where he worked until 1983.[409] This is a reminder of a pathology of immunity, also known as police shuffling.[410] A private investigator hired by the City of Saint John to look at the case indicated that Estabrooks could have harmed as many as 263 youths.[411] Similarly to *Centre d'amitié autochtone de Val-d'Or c Procureur général du Québec*, the court denied a motion by the defendant to obtain the names of potential class members and the timeframes of their alleged assault before the certification of the action.[412] Nevertheless, as aforementioned, when the case made it to trial, no finding of liability occurred in this case. The firm representing the group members issued a press release expressing that "[t]he court's decision is premised on extremely outdated legal concepts. Society has evolved. The purpose of the law is to evolve as well. Now,

[408] Koskie Minsky LLP, *supra* note 274.
[409] *Hayes v City of Saint John*, *supra* note 127. See also *Ibid* at 1–4.
[410] See, e.g., *Hayes v City of Saint John*, *supra* note 127 at para 1. See also Rabe-Hemp & Braithwaite, *supra* note 127 at 141.
[411] Connell Smith, "Kenneth Estabrooks case costs Saint John $446K in investigation bills", *CBC* (25 April 2016), online: <https://www.cbc.ca/news/canada/new-brunswick/estabrooks-saint-john-police-sexual-abuse-class-action-bobby-hayes-1.3552168>.
[412] *Hayes v Saint John (City)*, 2016 NBQB 51.

more than ever before, Canadians understand the importance of protecting child victims of sexual assault. Canadians also understand the importance of holding powerful institutions accountable. Our Courts must recognize these truths as well."[413] This statement aligns with our wilful blindness argument and resonates with the Supreme Court's words, albeit in the different context of domestic violence: "Laws do not spring out of a social vacuum."[414] The limitations on civil liability noted previously, and impacting class actions, are rooted in laws that applied restrictively the risk of sexual violence, including but not limited to police sexual violence. Plaintiffs in *Hayes* pushed the court to adapt its reasoning within social narratives, which requires an understanding of the literature collected on police misconduct and sexual violence, as well as the lived experiences of victims. They were unsuccessful, but their arguments displayed will from non-state actors to challenge the state's conception of liability. As of now, similar attempts have mostly been unsuccessful as demonstrated in this Chapter.

Class actions are not available to all victims of police sexual misconduct[415] (and, as *Hayes* demonstrated, not always fruitful). In workplace sexual misconduct, not all police officers are entitled to litigate their case before courts, as shown in *Rivers v Waterloo Regional Police Services Board*.[416] The court explained it had no jurisdiction since the Human Rights Tribunal of Ontario or an arbitrator ruling over the Collective Agreement could have heard the dispute. The court's

[413] Koskie Minsky LLP, *supra* note 274.
[414] *R v Lavallée*, [1990] 1 SCR 852 at 872.
[415] Rules related to class actions are not the same for every province. For example, the rules applying in Québec can be found in the *Code of Civil Procedure, CQLR, c. C-25.01*, *supra* note 337, arts 571 et seq.
[416] The facts reported in this case are analogous to the situation described by many RCMP members. The plaintiffs reported a culture of humiliation, including sexual harassment and systemic sex-based discrimination by male officers, as well as distrust in complaint mechanisms: *Rivers v. Waterloo Regional Police Services Board*, *supra* note 4 at paras 6–11 and 34. Confirmed by the Ontario Court of Appeal in *Rivers v. Waterloo Regional Police Services Board*, *supra* note 140. Leave to appeal refused, *Rivers v Waterloo (Regional Municipality) Police Services Board*, [2019] SCCA No 232.

comments on tort law are also highly relevant in this analysis of state law and police sexual misconduct, as fleshing out additional limitations. First, we cannot expand tort law when a human rights scheme covers the same issue. As shown in section 3, the existence of a human rights scheme should not be equated to a real shot at state accountability. Human rights laws often have individualized approaches, are not always applicable to police sexual violence, especially in the case of off-duty misconduct, and do not allow for creative remedies through settlements like class actions. As for the arbitrator, resorting to the collective agreement of the police might not be sufficient to communicate blame publicly. The court stated that imaginative actions might be attempts at escaping the legislative intent of deferring dispute to labour law fora.[417] The more relevant question is why individuals want to avoid those dispute resolution mechanisms. Former Justice Bastarache pointed out that victims can see some mechanisms with distrust and stated: "most women said they would never use the grievance or harassment complaint system as they simply had no faith in its efficacy or fairness."[418] We do not have evidence that plaintiffs in *Rivers v Waterloo Regional Services Board* proceeded by class action because they wanted a mechanism truly independent and exterior to the police. It is, however, a hypothesis to consider. Second, the tort of sexual harassment does not exist in Canadian common law,[419] which points to another disconnect between lived experiences and law. *Rivers v Waterloo Regional Police Services Board* thus displayed substantial restrictions to expanding tort law and class actions against the police. This is unfortunate as many victims of police sexual violence are police officers.[420]

[417] *Rivers v. Waterloo Regional Police Services Board*, *supra* note 4 at para 26.
[418] Bastarache, *supra* note 4 at 80–81.
[419] *Rivers v. Waterloo Regional Police Services Board, supra* note 4 at paras 51–58. For further details on the tort of sexual harassment alleged in Rivers, see Peter S Spiro, "No tort of Sexual Harassment, but it can increase damage for dismissal", (2019), online: *CanLII Connects* <https://canliiconnects.org/en/commentaries/67531>. In the context of police sexual misconduct, see also *Petrovics v Canada*, 1999 CarswellNB 51; *Petrovics v Canada*, 1999 CarswellNB 101.
[420] See, e.g., Ampleman-Tremblay, *supra* note 8 at 26–27; Bastarache, *supra* note 4.

As demonstrated by the previous paragraphs, class actions can expand beyond compensation, provide systemic remedies, and protect the anonymity of complainants. Settlements can include a wide array of measures, which spread from reform policies to funding for educational or restorative programs. In some cases, class actions also allowed for acknowledging the state's role in sexual violence and breaking down violence patterns. Cases like *Hayes v City of Saint John* challenged this statement and reinforced the state's blindness to the police culture (e.g., the blue wall of silence, shuffling, and the impact of authority). We can, thus, only wait for the appeal decision and the new development in the Val-d'Or case to assess whether optimism for this state accountability mechanism is warranted.

The last section will discuss another mechanism that shows promise, albeit mainly on a theoretical level: the criminal liability of an organization. It will nevertheless argue that there are currently obstacles to its application in files involving sexual violence. As posited in this Chapter's introduction, understanding the limits of state law mechanisms is an important step to eventually successfully claiming wilful blindness or foreseeability of impunity. These standards, discussed in Chapter I, require evidence. Our analysis of state law started to build such documentation for criminal liability, and the various forms of liability unfolded until now.

4. Criminal Liability of the Police

This last section builds on an argument from the last chapter by analyzing a mechanism often seen as targeting individual responsibility: criminal law. Chapter I touched on the possibility of addressing the state's contribution to criminality and the increasing recognition of broader social

contexts in criminal law through sentencing by relying on Marie Manikis' typology of state blame.[421] It concluded that despite some improvements, a criminal law approach was inappropriate in dealing with state accountability, as it focuses too much on the individual, fails to engage with state wrongs against law-abiding citizens, and waits until the very last step of the process to engage the state's role. In this second Chapter, we will attempt to reconcile our arguments on state accountability with new interpretations of criminal law emphasizing the state's conduct rather than considering the state as a secondary agent in sentencing. Nevertheless, we will stand by our initial perspective, which departs from a purely criminal law understanding of state accountability. Criminal law emphasizes a narrow portion of the police sexual violence spectrum and, when applicable, exhibits substantial limitations.

If we accept the premise that criminal law serves to categorize and organize wrongdoings,[422] the state had the responsibility in Val-d'Or to look at alternative criminal classifications that could fit the events. As the *Kienapple* principle dictates,[423] this does not mean assessing whether alternative charges can be laid against police officers for the same events. We rather mean that there was a lack of creativity in the classification of the police misconduct in Val-d'Or as exclusively 'sexual assault (s. 271)', 'kidnapping (s. 279(1))', and 'assault (s. 266)'.[424] While these classifications are crucial for individual justice,[425] they do not encompass the state's

[421] Manikis, *supra* note 15.
[422] Ristroph, *supra* note 16.
[423] This principle borrows its name from *Kienapple v R*, [1975] 1 SCR 729.
[424] These classifications are inspired by the classification of the files investigated by the SPVM. They can be found in the Independent Civilian Observer's report. The latter specifies that the SPVM's ordering does not refer to legal categories; we thus transpose the comments into possible criminal conduct when possible. Our classification may not be exhaustive of all the incidents reported in Val-d'Or given scarcity of information on individual complaints: Lafontaine (2016), *supra* note 4 at Appendix F.
[425] We will later argue that we need to recognize the type of harm that occurred in order to truly remedy it in relation to the insufficient analysis of both sexual violence and police misconduct by the Viens Inquiry.

contributory harms and the systemic dimension of the wrongdoings. Addressing state blame shall not be reserved exclusively for sentencing.

Conceptualizing the acts committed in Val-d'Or as resulting from collective criminal behaviours calls for delving into Sylvia Rich's account of police violence.[426] This author states there is no indication that the investigation in Val-d'Or went beyond individual liability.[427] Rich pleads in favour of innovation within criminal law narratives by expanding on organizational liability, a mechanism similar to a "modified form of vicarious liability"[428] codified under ss. 22.1 and 22.2 of the *Criminal Code*.[429] The author believes that 'pervasive patterns' such as the ones displayed in Val-d'Or share similarities with acts traditionally prosecuted through organizational criminal liability, like fraud.[430] These common features are that employees are involved in the crime, that the employer provides means of committing the crime, and that the employer is responsible for guiding its employees in executing their duties.[431] According to Rich, s. 22.2(c) of the *Criminal Code* is the most critical provision to hold the police (and, thus, the state) accountable.[432] This provision reads as follows:

> 22.2 In respect of an offence that requires the prosecution to prove fault — other than negligence — an organization is a party to the offence if, with the intent at least in part to benefit the organization, one of its senior officers
>
> […]

[426] Rich, *supra* note 5.
[427] *Ibid* at 137-138.
[428] *Ibid* at 144. Other authors situate the senior officer doctrine of organizational liability between the directing minds doctrine and vicarious liability: Todd Archibald, Kenneth Jull & Kent Roach, "367 — The Changed Face of Corporate Criminal Liability" (2004) 48 Criminal Law Quarterly 367 at 6; Todd Archibald, Kenneth Jull & Kent Roach, "Critical Developments in Corporate Criminal Liability: Senior Officers, Wilful Blindness, and Agents in Foreign Jurisdictions" (2013) 60 Criminal Law Quarterly 93 at 3.
[429] *Criminal Code*, RCS, 1985, c C-46, s 22.1 and 22.2; Rich, *supra* note 5.
[430] Other authors are concerned that an expansion of the scope of this type of liability for *mens rea* crimes because of stigma, the possibility of convicting a corporation for the *mens rea* crime of a senior officer while the corporation was only negligent and chilling effects on cooperation:
[431] Rich, *supra* note 5 at 139.
[432] *Criminal Code*, *supra* note 429, s 22.2(c); Rich, *supra* note 5 at 143 ff.

> (c) knowing that a representative of the organization is or is about to be a party to the offence, does not take all reasonable measures to stop them from being a party to the offence.[433]

The application of this provision to police organizations made its appearance in the literature with Rich's piece on Val-d'Or and arguments such as the one of Todd Archibald, Kenneth Jull, and Kent Roach. These authors conclude that changes in the law on criminal organizational liability render the police (as a governmental institution) susceptible to being prosecuted as an organization under s. 2 of the *Criminal Code*.[434] Rich contends that, in a case like the Val-d'Or crisis, a senior officer could be a police officer having control over discipline and spending, and this officer might be located in Val-d'Or. As the headquarters of the SQ are far from the town, the level of control required by s. 22.2 might rest with someone who is not from the headquarters.[435] The new regime of criminal law looks at the organization, the way it operates, and the role of officers as opposed to focusing exclusively on titles[436] as shown by the codified definition of "senior officer":

> representative who plays an important role in the establishment of an organization's policies or is responsible for managing an important aspect of the organization's activities and, in the case of a body corporate, includes a director, its chief executive officer and its chief financial officer;[437]

In Rich's opinion, one of the trickiest parts in cases like Val-d'Or is the demonstration that the senior officer knew future crimes would occur. She nevertheless reminds us that wilful

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[433] *Criminal Code*, *supra* note 429, s 22.2(c).
[434] See *Ibid*, s 2; *An Act to amend the Criminal Code (criminal liability of organizations)*, SC 2003, c 21. See also, Rich, *supra* note 5 at 143-144; Archibald, Jull & Roach, *supra* note 428 at 5.
[435] Rich, *supra* note 5 at 145-146.
[436] See, e.g., Archibald, Jull & Roach, *supra* note 428 at 2; Kenneth Jull, "One million dollar fine confirms the shift of corporate criminal liability from the boardroom to the middle managers", (24 April 2015), online: *Lexology* <https://www.lexology.com/library/detail.aspx?g=fd08939e-d661-4b64-9c35-8beeb902b650>; *R c Pétroles Global inc*, 2015 QCCS 1618 at paras 74–77; *R v Metron Construction Corporation*, 2013 ONCA 541 at paras 16, 27–29, 53–63 and 90.
[437] *Criminal Code*, *supra* note 429, s 2.

blindness (here, the traditional definition and not our expansion) is equivalent to knowledge.[438] The fact that Jean Vicaire reported allegations of police sexual misconduct to his superior at the SQ before *Enquête*'s broadcasting and that some police officers might have been aware raise at least some doubts about the wilful blindness of the organization.[439] However, further investigation is required. We stress again that the Director General is not necessarily a senior officer who may trigger the application of organizational liability. The fact that the former Director General of the SQ reported having no knowledge that police officers engaged in these behaviours before May 2015 is, thus, not an obstacle to the criminal liability of the organization.[440] However, wilful blindness in Canadian law is a very high standard, which would most likely be hard to prove in cases like Val-d'Or. It does not consider social anthropology conceptions of ignorance, which we argue explain most gaps in state accountability for police sexual misconduct. It is also framed exclusively in criminal law and thus rejects part of the police sexual violence spectrum.

Finally, regarding the intent to partially benefit the organization required by criminal organizational liability, Rich divides crimes that occurred in Val-d'Or and ponders whether such

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[438] Rich, *supra* note 5 at 146; for a substantial discussion on knowledge and willful blindness, see *R. v. Briscoe*, *supra* note 13. " See also Archibald, Jull & Roach, *supra* note 428 at 2–3 and 14–15. See also, Jennifer A Quaid, "What's Good for the Goose is Good for the Gander: Considering the Merits of a Presumption of Organizational Capacity in Canadian Criminal Law" in Marie-Ève Sylvestre, Julie Desrosiers & Margarida Garcia, eds, *Réformer le droit criminel au Canada: défis et possibilités/Criminal Law Reform in Canada: Challenges and Possibilities* (Cowansville: Les Éditions Yvons Blais, 2017) 93 at 108–109.

[439] *Témoignage devant l'honorable Jacques Viens, 23 août 2018, vol. 127*, by Jean Vicaire (Val-d'Or: Commission d'enquête sur les relations entre les Autochtones et certains services publics : écoute, réconciliation et progrès, 2018) at 103–106; *Témoignage devant l'honorable Jacques Viens, 24 août 2018, vol. 128*, by Jerry Anichinapéo (Val-d'Or: Commission d'enquête sur les relations entre les Autochtones et certains services publics : écoute, réconciliation et progrès, 2018) at 230–236 and 238; Québec Native Women Inc., *supra* note 126 at 15–16 and 28–29; *Centre d'amitié autochtone de Val-d'Or c. Procureur général du Québec (demande introductive d'instance)*, *supra* note 53 at paras 128–129. We remind here that police officer must report criminal conduct to their director, *Police Act, CQLR, c. P-13.1*, *supra* note 45, s 260.

[440] See, e.g., *Témoignage devant l'honorable Jacques Viens, 26 octobre 2018, vol. 156*, by Martin Prud'homme, Ginette Séguin & Jean-Pierre Pelletier (Val-d'Or: Commission d'enquête sur les relations entre les autochtones et certains services publics, 2018) at 221.

events could pass the test of intent. For kidnapping occurring through starlight tours, she concludes that it was connected to the duty of controlling public intoxication and that the data throughout Canada suggest this may be an informal police practice.[441] If this interpretation was accepted, then kidnapping could be said to benefit the organization. As Rich acknowledges herself, the criterion of the employer's benefit is harder to justify for acts of sexual violence or assault upon refusal to engage in sexual activities.[442] *R v Hydrobec* indicates that only a "partial benefit" is needed, and that latter means the absence of harm. It also states that acts harmonious with the company's goal are those not contrary to its interests and aiming at destroying it.[443] This very expansive description is again challenging to apply in cases of sexual violence. Will courts accept that sexual violence does not harm an organization and its goal? It is difficult to frame sexual violence as not damaging the reputation of the police and the public's confidence; both are required for law enforcement to be effective. Rich suggests that a judge could accept social evidence that sexual assault by the police is a tool of domination and colonization and thus perhaps meet the requisites of s. 22.2.[444] While this analysis is novel from a theoretical standpoint, the legal vehicle behind s. 22.2 is confronted with numerous problems that make its application hypothetical.

Despite the creative analysis of Rich, organizational criminal liability faces similar issues as other forms of liability, namely the internal limitations regarding its application to sexual

[441] Rich, *supra* note 5 at 147–149.
[442] *Ibid* at 149–150.
[443] *R c Hydrobec (9031-7579 Québec inc)*, 2017 QCCQ 10710 at paras 164–172; Rich, *supra* note 5 at 146–147. We believe the adequation between "against the interests for the company" and "aiming at its destruction" might be too restrictive. Destruction is not the only way to go against someone's or something's interests. This interpretation is, in our opinion, problematic for the application of s. 22.2 although it could facilitate the recognizance of the police criminal liability for police sexual misconduct.
[444] Rich, *supra* note 5 at 149–151. *Cf* Deer, *supra* note 19.

violence and the focus on individual intent.[445] Nevertheless, if Rich's vision of criminal law was applied, it could lead to a legal recognition of state accountability that has not been achieved otherwise. It could also lead to systemic remedies as ss. 715.3 and 732.1(3.1)(d) allow monitoring of the organization and requesting new policies. The organization can also be under probation.[446] These three examples may ensure that we oversee the police more systematically. These sanctions are added to the "significant publicity and stigma" related to criminal accusations against a corporation or organization.[447] However, for this to happen, an approach departing from individual blame and recognizing the collective criminal enterprises must exist outside of financial crimes. This might be hard to achieve in a system "normally focus[ing] on individual responsibility and brokenness" of the accused.[448] At the moment, the promises of this type of liability are thus more theoretical than practical. We are cautious about categorizing this option as an effective state accountability mechanism without practical applications. We must also carefully consider the limitations to its expansion to sexual violence and the limited engagement with the police sexual violence spectrum. Finally, as for civil liability in Québec, the benefit of the employer criterion creates hurdles that we can hardly overcome if courts continue to apply restrictive interpretations of the connection between sexual violence and police duties. These narrow interpretations show a disconnect we often referred to throughout this Chapter: the refusal to understand sexual violence as related to state power and police culture.

[445] As Quaid explains, criminal law still focuses strongly on individual blame. Despite the changes in organizational liability introduced in 2004, an organization cannot commit a crime *per se* in Canadian criminal law, see, e.g., Quaid, *supra* note 438 at 108 and 118–121. For a theoretical discussion on the state as having separate intents from its subjects, see NW Barber, *The Constitutional State* (Oxford: Oxford University Press, 2011) at 104–123.
[446] *Criminal Code*, *supra* note 429, s 715.3 and 732.1(2.1)(d); Archibald, Jull & Roach, *supra* note 428 at 11 and ff.
[447] Archibald, Jull & Roach, *supra* note 428 at 2.
[448] Lawrence & Parkes, *supra* note 121 at 3 (Westlaw Canada). For various arguments on the focus on individual responsibility versus collective blame or responsibility in Canadian Law, see, e.g., Bellot & Sylvestre, *supra* note 141 at 38–39 and 54; Berger, *supra* note 121; Quaid, *supra* note 438.

As for every other mechanism presented in this Chapter, criminal liability is restrained by internal limitations. This Chapter focused on limitations to demonstrate that there are currently numerous obstacles in state law when pursuing state accountability for police sexual misconduct and that these obstacles, if foreseeable or deliberately ignored, can take part in our state accountability framework for police sexual misconduct and impunity. Doing so, it engaged with the research goals to analyze limitations and create a framework that responds to these restrictions. Finally, by arguing that liability regimes in Canadian law and Québec civil law cannot provide state accountability, it also started to engage with the research objective of applying our theoretical framework to Val-d'Or.

Conclusion

As this Chapter displayed, state law offers accountability mechanisms to victims of police sexual misconduct. State law is full of avenues and potential promises but also full of disappointments. When studying the mechanisms in a vacuum, we observe that substantial restrictions may impede accountability. State law offers mechanisms to litigate one's rights or assert the liability of a wrongdoer. However, it is not competent to secure state accountability for police sexual misconduct without reforms aligned with our theoretical framework or if not complemented by other accountability processes. The individualized nature of Canadian law makes it difficult to address the causes and wrongs created by such a systemic phenomenon. Moreover, the intersection of sexual violence and police misconduct causes internal limitations like the bolstered connection requirement under *Bazley v Curry*, the scope of duties and benefits of the employer under the civil law doctrine of principal's liability, Crown immunities, the notion of fault under art. 1457 *C.C.Q.*, the non-applicability of the *Charter* to off-duty state agents, the

jurisdiction of arbitrators and human rights tribunal in class actions against some police forces, and the intent requirement under the *Criminal Code*. Legal mechanisms presented in this Chapter also had a narrow conception of remedy, which often boiled down to individual compensation, except for settlement agreements, some *Charter* remedies, and criminal organizational liability. Nevertheless, the last mechanism is nothing more than a theoretical argument at the moment.

This Chapter focused on state law and embraced a very theoretical approach, notably by laying grounds for potential foreseeability and wilful blindness claims about impunity for police sexual misconduct. In subsequent Chapters, we will continue to apply our state accountability framework to Val-d'Or by examining state accountability mechanisms deployed during the crisis. These Chapters will look at three state accountability mechanisms by relying on qualitative interviews of members of civil society and the media: the independent investigation of police crime (Chapter III), coverage by the media (Chapter IV), and the Viens Inquiry (Chapter V). They will argue that the best way to secure state accountability is through social accountability and merging several approaches to ensure that multiple dimensions of the problem are addressed. This may mean relying on state law while exerting pressures to innovate when legal avenues are too restricted, ensuring enhanced media coverage of a public inquiry to broadcast findings more broadly to the population, and any number of suitable combinations.

CHAPTER III – LESSONS FROM VAL-D'OR AND THE *BUREAU DES ENQUÊTES INDÉPENDANTES*: STATE ACCOUNTABILITY AND THE INVESTIGATION OF POLICE CRIMES

Chapter I built a framework for state accountability and argued that police sexual misconduct could be conceived as an unintended consequence of state action. It positioned police sexual misconduct as systemic and institutional rather than resulting from the behaviours of rogue officers and excluded an individual responsibility lens from the ambit of the thesis.[449] Chapter II then looked at state accountability for police sexual misconduct by scrutinizing the case law and Canadian legislative framework. The latter indicated that the limitations of civil and common law liability regimes, class actions, the *Canadian Charter of Rights and Freedoms*, and criminal organizational liability are too substantive to yield satisfactory outcomes. Indeed, we contended that these mechanisms conflict with our state accountability framework by dismissing lived experiences of sexual violence and side-lining the impact of police culture and, more generally, state contributory harm. While the analyses provided in the first chapters allow setting the stage for the study of state accountability for police sexual misconduct, they are insufficient to grasp how state accountability mechanisms operated in Val-d'Or and offer little insight into the responses and perceptions of civil society and the media.

This third Chapter introduces a second part of the thesis, which relies on empirical data to describe and comment on the successes or failures of state accountability mechanisms. Consequently, this Chapter and subsequent ones suggest answers to the research question on responses and perceptions of civil society and the media. More precisely, this third Chapter builds on our interviews and analyzes criminal investigations in Val-d'Or. Before we unpack our

[449] Here again, we do not mean that individual responsibility mechanisms are not essential or that they cannot secure a form of justice for victims of police sexual misconduct, but that our take on the phenomenon is institutional and not individual.

arguments, we must note that while criminal law focuses on individual responsibility, the issues investigated here target institutional design and choices taken by authorities in matters of criminal justice, which are both matters of state responsibility. The Chapter does not look at whether the criminal investigations addressed the individual responsibility of police officers. In other words, this Chapter explains how the unintended consequences of institutional design and the state's choices in criminal justice contributed to impunity for police sexual violence in Val-d'Or. It also proves that this impunity can be foreseen or result from wilful blindness, like in the case of detachment from history and Indigenous complainants' lived experiences. Through qualitative and doctrinal research, the Chapter reaches an overarching conclusion: the state failed to respond to the concerns of civil society and design an effective investigative mechanism for police sexual misconduct in and after Val-d'Or. Therefore, it did not secure accountability. This contention is two-fold: (1) according to our interviews and the literature, state accountability for police sexual crimes requires an accessible, independent, impartial, and transparent investigative mechanism, and (2) since the Val-d'Or crisis, the mechanisms implemented by the state have presented substantial limitations in matters of accessibility, transparency, independence, and impartiality. This second statement is inherently tied to foreseeability and wilful blindness, as we must inquire why strong concerns and limitations remain despite documentation and pressure by civil society and the media.

This Chapter will elaborate on examples of state decisions and practices related to the investigation of police crime in Québec that are currently precluding state accountability to

demonstrate the validity of our argument.[450] These examples are (1) the reporting mechanisms, (2) the independence and impartiality of the SPVM and the BEI, and (3) the absence of clear communication to the public, notably by the BEI. Each example is treated separately, and each section will frame participants' remarks within the literature on police misconduct, independent investigations, and criminal law, including civil society's reports on police crimes and related matters.[451]

Prior to delving more fully into our argument and examples, it is crucial to overview the mechanisms covered under the term 'criminal investigations' to avoid any vagueness. The SPVM, the Independent Civilian Observer, the DPCP, and the BEI composed the core of the criminal law response to the Val-d'Or crisis.[452] We propose that these entities are a mix of different social accountability strategies and that analyzing these mechanisms allows us to document a dialogue between civil society and state actors. A few words on each of these mechanisms and their connection to the theoretical framework will provide a better understanding of the claims advanced in this Chapter.

The SPVM: On October 23rd, 2015, the SPVM was mandated by the Ministry of Public Security to conduct all criminal investigations on allegations of abuse by members of the SQ in

[450] As posited in Chapter I, these practices and legal norms from which stem the investigation of police criminal sexual misconduct may result from decisions that were not intentionally aimed at reducing chances of state accountability but that ultimately had that effect.
[451] See, e.g., Lafontaine (2016), *supra* note 4; Lafontaine (2020), *supra* note 4; Cloutier, *supra* note 24; Prud'homme, Séguin & Pelletier, *supra* note 440; Québec Native Women Inc, "Ka Utshinikanat Utinniunnuau: Celles dont on a pris la vie" (2018) 45; Rosa, Courville & Côté, *supra* note 29; National Inquiry into Missing and Murdered Indigenous Women and Girls, *supra* note 4. Of note, the Viens Inquiry is analyzed separately in Chapter V.
[452] We must remind ourselves here that the analysis of criminal liability in Chapter II is theoretical and found no application in Val-d'Or.

Val-d'Or (i.e., phase I of the investigations).[453] This was not an unusual choice since the SPVM oversaw independent investigations for Western Québec at the time.[454] The SPVM's response was not limited to sending a few officers to Val-d'Or. As a first step, they conducted a reconnaissance mission, established connections with local partners, and developed communication strategies with Indigenous communities.[455] They also investigated an active crime scene and sent two anthropologists to conduct a social inquiry in Val-d'Or.[456] The SPVM recruited its team on a voluntary basis which led a group of eight police investigators, four backup investigators, two police detectives ("*lieutenants-détectives*"), and two consultation officers ("*Les Survivantes*")[457] to participate in the "Val-d'Or Project".[458] This group was augmented by the SPVM Aboriginal Liaison Officer and two Indigenous police officers, one from the Abenaki Police Force and one from the Eeyou Eenou Police Force.[459] On November 2nd, 2015, officers received training on Indigenous realities from anthropologists who collaborated with civil society (i.e., Native Québec Women and *Projets autochtones du Québec*).[460] The investigations expanded to a second phase in April 2016. At that date, a hotline administered by the Native ParaJudicial Services of Québec (SPAQ) was added to the SPVM phone line in operation since October 2015.[461] These lines were

[453] note 26.
[454] Parent-Samuel & Côté, *supra* note 31 at 75; *Témoignage devant l'honorable Jacques Viens, 19 octobre 2018, vol. 151*, by Madeleine Giauque (Québec: Commission d'enquête sur les relations entre les Autochtones et certains services publics : écoute, réconciliation et progrès, 2018) at 15. The Québec Ombudsman reproduces the directive that was applicable before the BEI's implementation, which confirms the practice of having a different police force investigating allegations against the police. We must note here that this targeted death as a result of a police intervention: Protecteur du citoyen, "Procédure d'enquête appliquée au Québec lors d'incidents impliquant des policiers (Politique ministérielle du ministère de la Sécurité publique): Pour un processus crédible, transparent et impartial qui inspire confiance et respect" (2010) 123 at 9 and 79.
[455] Parent-Samuel & Côté, *supra* note 31 at 75–76 and 141.
[456] *Ibid* at 75, 75, 78 and 81.
[457] *Les Survivantes* is a program aimed at providing education on sexual exploitation. It is affiliated with the SPVM. Lafontaine (2016), *supra* note 4 at 28.
[458] Parent-Samuel & Côté, *supra* note 31 at 77.
[459] *Ibid* at 77–78 and 99–100. One of these officers was also in the investigation team of phase II. The second officer could not come back and was not replaced upon a decision of the Ministry, Lafontaine (2020), *supra* note 4 at 50–51.
[460] Parent-Samuel & Côté, *supra* note 31 at 104.
[461] *Ibid* at 88.

not the only outreach initiative. Indeed, the SPVM produced video capsules in various languages (i.e., French, English, Atikamekw, and Cree) to disseminate in communities and provide them with information on the mandate of the SPVM.[462]

The social accountability framework proposes complementing existing mechanisms with grassroots actions, including litigation, public participation, protests, and advocacy. As the SPVM's response did not strictly rely on police officers and showed openness to collaboration with civil society, the initiatives mentioned above could be considered under a social accountability model. This thesis goes further. Archiving our participants' insights and critiques is a way to challenge the existing framework through bottom-up processes. In this sense, academia (such as this thesis) contributes to social accountability. The United Nations notably recognized the input of academic research to police accountability in the following way: "Another group that may give voice to the public are academics, both in universities as well as those working for private research institutions. They often conduct research into public opinion on matters related to policing, such as security and crime."[463] Some participants reached a similar conclusion when arguing that this doctoral project was a form of civil society-based discourse meant to contest how state accountability is conceived in our society. They stipulated:

> **Interview C1:** *It's an important project and, hum, it contributes to civil society, which is also you. [...] It's the scholars […] who continue to scrape the matter, and who continue to think that it's serious.*[464]

> **Interview C2:** *[I]t's scholars like you who have more to say. I can't wait to read your […] thesis because when you practice law you ask yourself a lot of interesting questions, but*

[462] *Ibid* at 142.
[463] United Nations, *Handbook on Police Accountability, Oversight & Integrity* (New York, 2011) at 104.
[464] C1, p. 40.

> *[…] you don't have the time to, after that it's just not my job to [...] to find answers... To those questions.*[465]

The Independent Civilian Observer: The Québec government appointed the Independent Civilian Observer on November 4th, 2015.[466] The Independent Civilian Observer, Fannie Lafontaine, is a law professor who specializes in criminal law and human rights. She did not fulfil her mandate as a state agent but as a civilian expert. Her task was clear: overseeing the impartiality and integrity of the SPVM's investigations. She conducted her duties for both phases of the investigations and submitted her reports respectively in November 2016 and August 2020.[467] The Independent Civilian Observer reports determined the impartiality and integrity of the investigations.[468] Her mandate, along with the one of the SPVM, ended in September 2018, with the expansion of the BEI's mandate (discussed later).

We compare this initiative to civilian oversight agencies, a strategy cited as a social accountability measure by the literature.[469] We must recall that Lafontaine is a civilian who directly participated in state accountability mechanisms. She took the opportunity to issue recommendations to institutions beyond the SPVM, such as the BEI, the Ministry of Public Security, and the DPCP. She also highlighted that criminal investigations did not address the systemic violence underlying the Val-d'Or crisis. In this sense, she opened a dialogue with state institutions and called for change.[470] Similarly to the SPVM, there is at least another way this actor

[465] C2, p. 15.
[466] Lafontaine (2016), *supra* note 4 at 13.
[467] *Ibid* at 2; Lafontaine (2020), *supra* note 4 at 2.
[468] Lafontaine (2016), *supra* note 4; Lafontaine (2020), *supra* note 4.
[469] See, e.g, Malena, Forster & Singh, *supra* note 206 at 3–4.
[470] Lafontaine (2016), *supra* note 4 at 65–67.

can be examined under a state accountability lens: the dialogue between the work of the Independent Civilian Observer and community members reported in our interviews.

The DPCP: This institution prosecutes most crimes and penal infractions in Québec.[471] In Val-d'Or, the DPCP had a team of three prosecutors working on each file.[472] These prosecutors came from another judicial district and had experience with sexual violence cases.[473] The DPCP focused on a communication principle usually privileged in independent investigations when no charges are laid.[474] This led to a public declaration on November 18th, 2016, explaining the rationales for not laying charges in the first phase of the investigations. This declaration notably stated that the absence of charges did not mean nothing happened.[475] As rightly pointed out by Maître Patrick Michel (now Director of Penal and Criminal Prosecutions) before the Viens Inquiry, prosecutors in Québec examine the evidence and will lay charges based on a sufficiency test, the opportunity to prosecute, and the public interest.[476] The DPCP may be called to collaborate with some civil society organizations like Crime Victims Assistance Centres (CAVACs), notably to provide resources to complainants. [477] However, it is fundamentally a state actor acting for the

[471] *Témoignage devant l'honorable Jacques Viens, 15 juin 2017, vol. 8*, by Patrick Michel & Marie-Chantale Brassard (Val-d'Or: Commission d'enquête sur les relations entre les Autochtones et certains services publics : écoute, réconciliation et progrès, 2017) at 158-159 (Michel). For an example of prosecution power laying outside of the DPCP's jurisdiction, see, e.g., *Loi sur l'administration fiscale*, RLRQ, c A-6002, s 12.0.2a).
[472] Under the DPCP latest directives, there must be a committee of prosecutors for some independent investigations only. Criminal investigations obey different rules: Directeur des poursuites criminelles et pénales, *POURSUITE CONTRE UN POLICIER - ALLÉGATION D'INFRACTION CRIMINELLE ET ENQUÊTE INDÉPENDANTE (Directive POL-1)* (2021) at paras 4–6 and 12–14.
[473] Directeur des poursuites criminelles et pénales, *supra* note 38 at 2–3.
[474] Michel & Brassard, *supra* note 471 at 222–225. See also Directeur des poursuites criminelles et pénales, *supra* note 472 at para 21.
[475] See e.g., Michel, *supra* note 83 at 217-225 (Michel); Directeur des poursuites criminelles et pénales, *supra* note 38.
[476] Directeur des poursuites criminelles et pénales, *ACCUSATION - DÉCISION D'INTENTER ET DE CONTINUER UNE POURSUITE (Directive ACC-3)* (2022) at para 4.
[477] See, e.g., Michel & Brassard, *supra* note 471 at 229-231 (Brassard).

public interest. [478] The social accountability component of this entity is tenuous apart from the dialogue established by this thesis between the DPCP and participants.

The DPCP will be examined more superficially throughout this Chapter, as little data was collected on this entity. We shall note that while we obtained very few insights on prosecutions in Québec, most participants were not surprised with the decision not to lay charge either because of the stringency of legal requirements, perception of police immunity, or the insight that the system is not designed to bring justice to Indigenous peoples.[479] These concerns can be tied to the idea of detachment raised in Chapter I, which leads the state to be blind to the experience of people having different realities.

The BEI: The BEI's first mandate is to conduct independent investigations in cases of police intervention resulting in death or serious injury. It is also responsible for criminal investigations in cases of on-duty police crime.[480] The need to transition from police-on-police investigations to an independent investigations unit gathered weight, notably in the aftermath of the death of a young Montrealer, Fredy Villanueva, shot by the police in 2008. The then-Minister of Public Security Jacques P. Dupuis revealed, while responding to a petition on the matter, that the investigation mechanism in the case of death or serious injury caused by a police intervention was under review by the Ministry.[481] In February 2010, Québec's Ombudsman examined the

[478] *Act respecting the Director of Criminal and Penal Prosecutions*, RLRQ c D-911 at 1 and 13. On public interest, see Michel & Brassard, *supra* note 471 at 171-173 (Michel).
[479] A1, at 16-17; A2, at 22-23; B1, at 12-13; B2 at 23-24.
[480] Bureau des enquêtes indépendantes, *Plan stratégique 2020-2023* (Gouvernement du Québec, 2021) at 11. See also *Police Act, CQLR, c. P-13.1*, *supra* note 45, s 289.1.
[481] Jacques P Dupuis, *La réponse du gouvernement à la pétition présentée par le député de Vimont le 24 novembre 2009, concernant l'enquête sur l'intervention policière ayant coûté la vie à M. Fredy Villanueva* (National Assembly, 2010) at 2. The investigation of the Villanueva case raised issued of confidence of the public, see, e.g., Protecteur du

Ministry of Public Security policy applicable in cases of independent investigations. It concluded that the framework was unsatisfactory, and called for the creation of an Independent Investigations Unit. The Ombudsman reminded the public that this was not the first time the government was asked to develop such an entity.[482]

A first unsuccessful attempt at reform, Bill 46, proposed a model of civil surveillance in 2011.[483] Bill 12, enacted in 2013, created an Independent Investigation Unit, starting its operations in June 2016. This was eight years after Mr. Villanueva's death and amid the Val-d'Or crisis.[484] The Minister of Public Security then used its power to delegate investigations to the BEI twice: once in 2016 to include investigations of sexual crimes committed by on-duty police officers and once in 2018 to extend the mandate to complaints filed by Indigenous peoples against police officers.[485] While the desire to implement the BEI dates back to when the allegations in Val-d'Or had not surfaced, the expansion of its mandate shows how the crisis contributed to shaping this institution.

The BEI is not a civilian board and, as this Chapter will explain, remains close to other police forces due to its structure and connection with the police world. Nevertheless, as previously argued when detailing the role of the SPVM, understanding top-down mechanisms is crucial when aspiring to grasp their limitations and complement them. Detailing their structures and gaps also

citoyen, *supra* note 454 at 1 and 3–5. The first director of the BEI agrees that the creation of an independent investigations unit stem from public will, Giauque, *supra* note 454 at 14.

[482] Protecteur du citoyen, *supra* note 454 at 43 (on the Corbo report).

[483] 39th Parliament; 2nd Session, *Loi concernant les enquêtes policières indépendantes* (Consultation), Bill 46 (March 2012) presented on December 2, 2011 (Bill 46).

[484] This entity did not respond entirely to concerns brought by civil society in a joint declaration authored by the *Ligue des droits et libertés* in 2012.

[485] Bureau des enquêtes indépendantes, *supra* note 480 at 11; Ministère de la Sécurité publique, *supra* note 47. See also *Police Act, CQLR, c. P-13.1*, *supra* note 45, s 289.1 para 2.

helps any foreseeability and wilful blindness claims. For instance, this Chapter will allow us to see how concerns with police-on-police investigations were reproduced when the BEI replaced the SPVM, hence pointing to either foreseeability of impunity or wilful blindness as limitations of the criminal justice system. This is even more relevant when the BEI, as we know it today, has been the object of many discussions with civil society through Parliamentary Commissions on the never enacted and vehemently critiqued Bill 46[486] and Bill 12.[487] The BEI was thus partially shaped with the assistance of civil society input, and comprehending the state of the law enables inquiries into why many demands for more accountability formulated by civil society were rejected.

[486] Many civil society organizations rejected this Bill and the proposed model of civil surveillance it attempted to implement: see, e.g., Ligue des droits et libertés, *Pour un mécanisme d'enquête sur la police complètement indépendant: Le PL 46 ne nous offre pas le modèle qu'il nous faut* (presented to the Institution Commission of the National Assembly, 2012); Action Autonomie le collectif pour la défense des droits en santé mentale de Montréal, "Pour un mécanisme d'enquête sur la police indépendant, impartial, à caractère civil et transparent: le PL 46 ne répond pas à nos attentes" 6; Ligue des Noirs du Québec, *Mémoire présenté par la Ligue des Noirs du Québec sur le projet de loi 46 concernant les enquêtes policières indépendantes* (presented to the Institution Commission of the National Assembly, 2012); Collectif Opposé à la Brutalité Policière, *Les abus policiers, les bavures et l'impunité, on en a plus qu'assez! Projet de loi 46: pourquoi c'est toujours la police qui enquête sur la police?* (presented to the Institution Commission of the National Assembly, 2012); Table des regroupements provinciaux des organismes communautaires et bénévoles, *Un processus d'enquête véritablement indépendant, impartial et transparent est essentiel pour procurer un sentiment de sécurité à toute la société québécoise : Projet de loi 46 Loi concernant les enquêtes policières indépendantes* (presented to the Institution Commission of the National Assembly, 2012); Réseau d'aide aux personnes seules et itinérantes de Montréal, *Une occasion à ne pas manquer de lutter contre l'impunité : Le Projet de loi 46 concernant les enquêtes policières indépendantes* (presented to the Institution Commission of the National Assembly, 2012).

[487] Bill 12, which led to the creation of the BEI was commented by several civil society organizations. See, e.g., *Avoir le courage politique d'assurer des Enquêtes indépendantes*, by Ligue des droits et libertés (Présenté à la Commission des institutions Assemblée Nationale du Québec, 2013); Ligue des Noirs du Québec, *Mémoire présenté par la Ligue des Noirs du Québec sur le projet de loi no 12 concernant les enquêtes policières indépendantes* (presented to the Institution Commission of the National Assembly, 2013); *Pour protéger la vie des femmes des enquêtes indépendantes s'imposent*, by Regroupement des maisons pour femmes victimes de violence conjugale (Mémoire présenté à la Commission des institutions chargée d'étudier la Loi modifiant la Loi sur la police concernant les enquêtes indépendantes, 2013); Association des groupes d'intervention en défense des droits & en santé mentale du Québec, *«L'éternel recommencement», mémoire de l'Association des groupes d'intervention en défense des droits en santé mentale du Québec Projet de Loi 12, Loi modifiant la Loi sur la police concernant les enquêtes indépendantes* (presented to the Institution Commission of the National Assembly, 2013); *Mémoire de la Coalition contre la répression et les abus policiers*, by Coalition contre la Répression et les Abus Policiers (Mémoire présenté à la Commission des institutions de l'Assemblée nationale du Québec, 2013).

This dialogue with the BEI did not end in June 2016. This Chapter will unveil the continuing conversation between civil society and this institution, a conversation bolstered by the Val-d'Or crisis. Since the BEI's implementation, voices from civil society have persisted in asking for reforms. Some demands date back to a joint declaration signed by 39 civil society organizations in 2012[488] and Bill 46 but were always refused by the state, while others have evolved. Some requests were, on their end, successful. The expansion of its mandate to sexual offence resulted, according to the BEI's first director, in the population's will that the BEI investigate the Val-d'Or crisis.[489] Other examples of collaboration between civil society and the BEI lay in creating an Indigenous Liaison Officer position, who was notably entrusted to advise the direction on Indigenous communities' expectations and needs and suggest how to raise awareness or adapt training [490] in consultation with Indigenous leaders.[491] The first Indigenous Liaison Officer hired in 2018 left in 2021. The BEI's 2021-2022 annual management report indicated that no Indigenous personnel had been hired in any position. A targeted call for applications was released in December 2022 to more than 40 Indigenous organizations,[492] and the BEI was analyzing candidacies as of April 2023.[493] Training sessions on Indigenous realities provided by Québec Native Women in November 2016 and Pierre Picard (*Groupe de recherche et d'interventions psychosociales en milieu autochtone* (GRIPMA))[494] in May 2018, and new attempts at reform through Bill 18 in 2021

[488] We may think of the demand to put independent investigation under the Ministry of Justice, to enact a stand-alone law to deal with such investigations as well as to impose communication obligations after each investigation and disclosure of motive not to lay charges among other things. To see the declaration and full list of demands, see Action Autonomie le collectif pour la défense des droits en santé mentale de Montréal, *supra* note 486 at 18 ff (Appendix).
[489] Giauque, *supra* note 454 at 18.
[490] *Ibid* at 31.
[491] *Ibid* at 33–37.
[492] Bureau des enquêtes indépendantes, *Rapport annuel de gestion 2021 2022* (Gouvernement du Québec, 2022) at 7 and 33.
[493] *Mémoire du Bureau des enquêtes indépendantes: Projet de loi n° 14 Loi modifiant diverses dispositions relatives à la sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, by Bureau des enquêtes indépendantes (Mémoire présenté à la Commission des institutions de l'Assemblée nationale du Québec, 2023) at 6.
[494] In English, 'Research Group on Psychological Interventions in Indigenous Settings' [our translation].

and Bill 14 in 2023, are other examples of cooperation with civil society.[495] This Chapter will thus report, examine, and, at times, create a dialogue between the BEI and our participants, but also between this institution and citizen-led initiatives, such as the *Ligue des droits et libertés* and the Independent Civilian Observer who both recently commented at length on the BEI's operations.

Arguments presented in this Chapter are evidence of a recurrent insight throughout the thesis: policing state accountability for police sexual misconduct is a challenging problem with no clear-cut solution. While waiting for the mechanisms presented in Chapter II to be amended or tested in practice (and while hoping for the issues signalled in this Chapter to be fixed), we need to fall back on mixed approaches to provide check-and-balances and overcome the shortcomings of each mechanism, especially when operating in a vacuum. From a state and social accountability standpoint, reliance on criminal investigations will only yield results if the state responds to the demands of civil society and academia notably by striving for more accessibility, independence, impartiality, and transparency. The following sections will develop examples that touch on such demands by expanding on (1) the reporting mechanisms, (2) the independence and impartiality of the SPVM and the BEI, and (3) the absence of clear communication with the public. As a reminder, each example will support our argument that the state failed to design an effective investigative mechanism for police sexual misconduct in Val-d'Or and did not secure state accountability. They will also help us reach the research goal of applying our framework to Val-d'Or while also answering our research question on civil society and the media's responses and perceptions.

[495] Giauque, *supra* note 454 at 56–57; *Loi modifiant diverses dispositions en matière de sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, *supra* note 372; *Loi modifiant diverses dispositions en matière de sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, *supra* note 373. See also Ligue des droits et libertés, *Le BEI en mode rattrape auprès des Premières Nations et des Inuit* (2020).

1. Reporting Police Sexual Misconduct: Improving Accessibility to the System

This first section deals with the state's duty to offer proper reporting mechanisms to increase the accessibility to criminal justice. It argues that in Val-d'Or, the state failed to fulfil this duty since requesting victims to report police crimes to the police raised significant issues of impartiality and impunity. This section also highlights that the state has shown interest in partially remedying this problem by creating the BEI. For reasons disclosed in this section, efforts have not yielded satisfactory results. In other words, this section contends not only that the state has the responsibility to offer a mechanism that allows complainants to report crimes without fearing retaliation or partiality (including the appearance of partiality), but also that – at the moment – it neglects to fulfil this obligation. These statements lead us to inquire into foreseeability and wilful blindness. Did the state foresee impunity and omit to take reasonable precautions, or was it blind to concerns raised by civil society and academia? This section will offer an overview of issues related to the reporting mechanism and answer to the foreseeability and wilful blindness queries by applying our theoretical framework to Val-d'Or.

When someone wants to report behaviours amounting to criminal acts, this person must usually speak with police officers. This practice causes problems in sexual violence cases – already highly unreported – notably due to the mishandling of cases by police and apprehensions of the justice system.[496] Reporting to the police raises additional anxieties when the criminal act is also

[496] See, e.g., Corte & Desrosiers, *supra* note 16 at 28, 97 and 105; Holly Johnson, "Limits of a Criminal Justice Response: Trends in Police and Court Processing of Sexual Assault" in Elizabeth Sheehy, ed, *Sexual Assault in Canada: Law, Legal Practice and Women's Activism* (Ottawa: University of Ottawa Press, 2012); Lafontaine (2016), *supra* note 4 at 40 and 55; Amy Conroy & Teresa Scassa, "Balancing Transparency and Accountability with Privacy in Improving the Police Handling of Sexual Assaults" (2016) 28:2 Canadian Journal of Women and the Law 342; Lori Haskell & Melanie Randall, *The Impact of Trauma on Adult Sexual Assault Victims* (Department of Justice Canada, 2019) at 24; Campbell, *supra* note 16 at 182–184; Jodie Murphy-Oikonen et al, "Unfounded Sexual Assault: Women's Experiences of Not Being Believed by the Police" (2020) J Interpers Violence 088626052097819; Jodie Murphy-Oikonen et al, "Sexual Assault: Indigenous Women's Experiences of Not Being Believed by the Police" (2022) 28:5

a form of police misconduct. In this latter case, the police officer with whom the alleged victim interacts could be a peer of the alleged offender or at least be perceived as a peer by the individual reporting the criminal conduct. Impunity, or perceptions of impunity, plays a vital role with regard to police crime.[497] For example, some women in Val-d'Or claimed they reported the events but were never heard or believed, which only reinforced the perception that police officers will protect their colleagues.[498] We should also note that on some occasions in the Val-d'Or crisis, the alleged misconduct occurred in police stations.[499] In these cases, both the place and people had the potential to trigger significant traumas and ultimately impact reporting. Taking these issues into account is crucial as, in the absence of an enforceable duty to report colleagues' misconduct in Québec law,[500] breaking the silence may fall solely on the victims' shoulders.[501] We recognize that a duty to report can undermine victims' agency.[502] Still, we cannot help but wonder whether the lack of reporting in police sexual violence cases is because victims do not want accountability or

Violence Against Women 1237. This is in addition to the trauma that reporting can induce on a survivor of sexual violence: Haskell & Randall, *supra* note at 24 and ff. On the disparity between sexual violence and cases reported in Quebec Indigenous communities, see Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 121.

[497] Bosum et al, *supra* note 181 at 34-35 (Saganash); United Nations, *supra* note 463 at 33; Claude Boies, *Mémoire à la Commission des institutions de l'Assemblée Nationale - Projet de loi n° 12, loi modifiant la loi sur la police concernant les enquêtes indépendantes* (Commission des droits de la personne et des droits de la jeunesse, 2013) at 28–29. The Poitras Inquiry recognized the role of the blue wall of silence within investigations of the *Sûreté du Québec* in 1999: see, e.g., Poitras, *supra* note 155 at 30–31.

[498] See note 20. In the literature, see, e.g., Kraska & Kappeler, "To serve and pursue", *supra* note 7.

[499] See, e.g., note 20; note 40; Lafontaine (2016), *supra* note 4 at 61; National Inquiry into Missing and Murdered Indigenous Women and Girls, *supra* note 4 at 100. One participant referred to allegations in the police state of the *Sûreté municipale de Val-d'Or*, A2, p. 3. This police force was replaced by the *Sûreté du Québec* in 2002: *Historique de la desserte policière à Val-d'Or*, by Julie Lacoste & Yannick Cormier, Viens Inquiry 45.2.10 (Sûreté du Québec, 2015) at 6; Prud'homme, Séguin & Pelletier, *supra* note 440 at 211–213. For more information on the reorganization of police services in the province, see *Loi concernant l'organisation des services policiers*, CQLR, 2019, c 1.

[500] *Police Act, CQLR, c. P-13.1*, *supra* note 45, s 260; Lafontaine (2020), *supra* note 4 at 153–154; Québec Native Women Inc., *supra* note 126 at 29–30; Ampleman-Tremblay, *supra* note 8 at 14–16. *Cf* Alain, *supra* note 126 at 8–9, 15 and 22–23; Alain, *supra* note 126 at 63–139.

[501] Indeed, the default of enacting an enforceable duty to report for police officers who witnessed professional misconduct, as well as the inadequacy of the *Code of Ethics of Police Officers* to name sexual violence, an issue discussed in another paper, are two components of the current system that would benefit from significant changes to facilitate access to state accountability for police sexual violence: see Ampleman-Tremblay, *supra* note 8 at 11–12.

[502] See, e.g., Arbour, *supra* note 126 at 149–162.

because the system is not a welcoming place for them. Relying on sexual violence literature and our interviews, we can hypothesize that the answer is probably an intertwined mix of the two.[503]

In Val-d'Or, complainants sometimes went to a police station outside of town or resorted to civil society and phone lines to initiate contact with the police.[504] It is important to note that hotlines administered by the SPAQ and the SPVM (now transferred to the BEI) operated throughout the Val-d'Or crisis.[505] It is also essential to underscore that since the Val-d'Or crisis, complainants in files of sexual assault by on-duty police officers and Indigenous complainants may report directly to the BEI.[506] The situation has improved in at least one significant way: the possibility to report misconduct to an entity other than a traditional police service, but disappointment remains. The fact that the BEI struggles with transparency, impartiality, and independence from other police forces (see sections 2 and 3) and presents itself as a specialized police force[507] raises doubts about the ability of this new mechanism to mitigate the apprehensions listed above. Moreover, it flags a potential wilful blindness claim. Was the state detached from the lived experiences of complainants and side-lined academic commentaries on the importance of accessibility, independence, impartiality, and transparency when creating an independent investigation mechanism?

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[503] See, e.g., Corte & Desrosiers, *supra* note 16 at 28, 97 and 105; Johnson, *supra* note 496; Lafontaine (2016), *supra* note 4 at 40 and 55; Conroy & Scassa, *supra* note 496; Haskell & Randall, *supra* note 496 at 24; Campbell, *supra* note 16 at 182–184; Murphy-Oikonen et al, "Unfounded Sexual Assault", *supra* note 496; Murphy-Oikonen et al, *supra* note 496.

[504] See, e.g., Cloutier, *supra* note 24 at 124; Lafontaine (2020), *supra* note 4 at 45, 55 and 56.

[505] Lafontaine (2016), *supra* note 4 at 18; Lafontaine (2020), *supra* note 4 at 35 and 55.

[506] *Police Act, CQLR, c. P-13.1*, *supra* note 45, s 289.1 para 2; Ministère de la Sécurité publique, *supra* note 47. The BEI confirmed this information on a phone call on April 1, 2022.

[507] *Police Act, CQLR, c. P-13.1*, *supra* note 45, s 289.5 para 2. See also Ligue des Noirs du Québec, *supra* note 487 at 2 and 9; *Rapport final: modernité, confiance, efficience* (Québec: Comité consultatif sur la réalité policière, 2021) at 152; Bureau des enquêtes indépendantes, *supra* note 492 at 3; Bureau des enquêtes indépendantes, *Rapport annuel de gestion 2020 2021* (Gouvernement du Québec, 2021) at 3.

Now that we established a general portrait of the reporting of police sexual misconduct, the following subsections will further delve into how the state – despite the initiatives cited above – failed to deliver an effective reporting mechanism in the Val-d'Or crisis and its aftermath. The critique in these subsections heavily relies on our qualitative interviews, which outlined two dominant preoccupations regarding trust and accessibility to the complaint system: (1.1) the lack of sensitivity to historical relations between the state and Indigenous peoples (assimilated both to the foreseeability and wilful blindness standards) and (1.2) the need for greater support for victims reporting police crimes, namely at the interview stage, explained through detachment from lived experiences.

1.1. The Val-d'Or Crisis: Reporting and its Connections to Historical Distrust

Victims are often afraid to disclose police misconduct, namely because of retaliation and impunity.[508] We cannot stress enough that retaliation was more than theoretical in Val-d'Or, as women were subjected to acts of reprisal and intimidation.[509] Individual retribution was doubled by collective humiliation when police officers decided to wear red bands in support of the suspended police officers (the "*bracelets rouges*"), a libel claim was brought against *Radio-Canada*, and an increase in racism toward Indigenous peoples was witnessed after the episode

[508] On retaliation, see, e.g., Barker, *supra* note 7 at 19; Maher, *supra* note 7 at 359; Stinson et al, *supra* note 17 at 666; Ampleman-Tremblay, *supra* note 8 at 29–32; Human Rights Watch, *supra* note 4 at 59–62. This issue has been discussed not only in academic comments but also by Canadian courts who ruled on cases of sexual assault by police, see, e.g., *R v Nyznik*, *supra* note 63 at paras 83, 86, 155 and 192. In 1999, the Poitras Inquiry recognized that retaliation within the *Sûreté du Québec* was an issue in cases where an officer would disclose misconduct committed by another officer: see, e.g., Poitras, *supra* note 155 at 34.

[509] A1, p. 8; Québec Native Women Inc., *supra* note 451 at 23, 55 (on police sexual misconduct), and 26-28 (more generally). Cloutier, *supra* note 24 at 90–91; Prud'homme, Séguin & Pelletier, *supra* note 440 at 245–246; Québec Native Women Inc., *supra* note 126 at 8–9, 16 and 22–23; Michel & Miller, *supra* note 83 at 77 (Michel). On the fear to report the misconduct, see also C2, p. 5; Anichinapéo, *supra* note 439 at 230–236, 238.

from *Enquête* aired (see Chapter IV for further detail).[510] The crisis in Val-d'Or, including the reactions depicted above, was embedded into a social context to which we cannot be blind. As a result of this background aggression, the apprehensions arising in sexual violence or police misconduct cases must be understood through a particular prism when it comes to Val-d'Or: police sexual misconduct against Indigenous women. The Val-d'Or crisis requires an intersectional analysis (see the introduction for comments on our limited engagement with intersectionality in participants' discourses). This subsection will thus argue that the reporting mechanism should be improved to better respond to the expectations and needs of Indigenous women filing complaints, which are tainted notably by history.[511] It will also show how the absence of improvement can be connected to foreseeability and wilful blindness.

We must pay close attention to history when designing a reporting mechanism. A lack of trust defines the relationship between the police and Indigenous peoples due notably to colonialism, discrimination, previous traumatic experiences with the police, and the risk of judicialization.[512] The insights of a participant who expanded on Canadian history are especially

[510] Lafontaine (2016), *supra* note 4 at 38 and 48; Rosa, Courville & Côté, *supra* note 29 at 24–25; Québec Native Women Inc., *supra* note 451 at 28–31; Edith Cloutier, "Le Centre d'amitié autochtone de Val-d'Or accueille positivement la décision des policiers de retirer le bracelet rouge 144", *Val-d'Or Native Friendship Centre* (22 October 2018), online: <https://www.caavd.ca/actualite/le-centre-damitie-autochtone-de-val-dor-accueille-positivement-la-decision-des-policiers-de-retirer-le-bracelet-rouge-144>; Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 283–285; *Final Brief*, by Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government & Cree Board of Health and Social Services of James Bay (Val-d'Or: Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, 2018) at 26–27; Vicaire, *supra* note 439 at 69–72; Québec Native Women Inc., *supra* note 126 at 18–19 and 26–27; National Inquiry into Missing and Murdered Indigenous Women and Girls, *supra* note 4 at 112. Libel lawsuits against journalists have been used at least at one another occasion by the police, see Roach, *supra* note 16 at 54.

[511] A1, p. 27. For instance, the Civilian Independent Observer notes that distance may be an issue leading to underreporting of police misconduct by Indigenous complainants, especially in deontological cases with short limitation delays: Lafontaine (2020), *supra* note 4 at 153–155. This report also notes that the short limitation delay is often over before the criminal process ends. See also Québec Native Women Inc., *supra* note 451 at 42. On the lack of services associated with distance, see Corte & Desrosiers, *supra* note 16 at 79–80.

[512] This is recognized by the Supreme Court *inter alia* in *R v Lafrance*, *supra* note 344. See also C1, p. 1; Lafontaine (2016), *supra* note 4 at 42–43; Lafontaine (2020), *supra* note 4 at 115–116; Bosum et al, *supra* note 181 at 24

valuable when trying to understand reporting mechanisms through a historical and racial lens. This participant went back to the Canadian Constitution and explained how the division of powers and the policies put in place are sources of harm that have carried on until today, notably by impacting the relationship between the police and Indigenous peoples. The discussion started with a comment from the participant: "*When came the moment to sign the Constitution, many had a query: 'What should we do with the Indians?*'"[513] The answer to this question lies with the federal government, which handles matters related to "Indians, and Lands reserved for the Indians" under s. 91(24) of the *Constitution Act, 1867*.[514] From this observation, the participant continued their historical account of the Federal government's approach and its effect on Indigenous peoples in the following words:

> **Interview B2:** *"As soon as there is a problem, send it to us! We will deal with it." [The participant is here responding as if they were the Federal government*]*. This attitude was implemented at the inception of the country*. […]
>
> *Therefore, every province encountering an issue with the Indians, they threw it to the Bureau of Indian Affairs.* […] *In Québec […] it was always like this. As soon as it was a matter related to the Indians: an Indian at school – the federal paid […] tuitions; an Indian at the hospital – the government hmm the federal paid for the Indian while they were hospitalized; Indians incarcerated – the federal paid.* […]
>
> *Across the province, […] this attitude started to grow. […] [T]he institution of justice became like this; the institution of education became like this; <u>it was a common practice to ignore</u> and to send the bill to the federal when encountering an Indian.*

(Saganash); Québec Native Women Inc., *supra* note 451 at 8–11, 18–19 and 40; Cloutier, *supra* note 24 at 103–106; Corte & Desrosiers, *supra* note 16 at 68–70; National Inquiry into Missing and Murdered Indigenous Women and Girls, *supra* note 4 at 103; Québec Native Women Inc, *Les femmes autochtones et l'exploitation sexuelle* (2014) at 6–7 dans le cadre de la consultation du comité interministériel du gouvernement du Québec sur l'exploitation sexuelle; Human Rights Watch, *supra* note 4; Jaccoud, Barbeau-Leduc & Spielvogel, *supra* note 123; Palmater, "Shining Light on the Dark Places", *supra* note 123; Rosa, Courville & Côté, *supra* note 29 at 31; Maynard, *supra* note 7 at 118–119. On judicialization of women reporting police misconduct, see Michel & Miller, *supra* note 83 at 104 and 108 (Miller).

[513] B2, p. 6.

[514] *Constitution Act, 1867*, *supra* note 292, s 91(24). The Viens Inquiry provides a detailed overview of the legal framework regulating relations between the British and Canadian Crowns and Indigenous peoples, see Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 c 3.

Interviewer: *Yeah, and it's at the foundations of today's society?*

Exactly, that's it! So it's the same thing with the police.[515] [Our emphasis.]

According to this participant, the practice of waiting for the federal to weigh in can be articulated as deliberate ignorance of Indigenous matters by the provinces. They suggested that this choice, which still has repercussions today, allowed provincial state agents to dismiss Indigenous peoples and justified discriminatory treatment. The participant reported a form of wilful blindness from the provinces. When unpacking the meaning of the last portion of the excerpt, the participant offered one historical example of discriminatory treatment by the police. They stated that, as a child, they witnessed Indigenous individuals being arrested by police soon after they returned to town after spending winters in their territories. According to this participant's interpretation, they could only have been arrested because of intoxication prior to their departure, several months before. The interviewee suggested that this practice eventually evolved into other discriminatory treatments by the police, notably bringing intoxicated Indigenous individuals out of town (a practice known as 'starlight tours'). The historical presence of intimidation by the police is what, for this participant, permitted the Val-d'Or crisis to happen, as well as the way the police treat Indigenous women across the country.[516] They saw continuity in the crisis.

[515] B2, pp. 7-9. The division between federal and provincial powers and its effect on today's policing was reported by the SPVM, see, e.g., Rosa, Courville & Côté, *supra* note 29 at 35 and 41. See also Secrétariat aux affaires autochtones, *supra* note 352 at 5–7.

[516] B2, pp. 6-11. *Cf* Amy M Alberton et al, "Intersection of Indigenous Peoples and Police: Questions about Contact and Confidence" (2019) 61:4 Canadian Journal of Criminology and Criminal Justice 101–119 at 102. This insight also contrasts with A2's comments (pp. 41-44), on federal disengagement nowadays. This participant claimed that the federal government fails to take responsibility in Indigenous issues, such as the events in Val-d'Or. On its end, the report *Rebâtir la confiance* argued that there should be a principle like the Jordan principle in matters of sexual and domestic violence: Corte & Desrosiers, *supra* note 16 at 81.

This participant's argument on continuity can, alternatively to wilful blindness, be connected to foreseeability as we have countless evidence of distrust between Indigenous peoples and the police rooted in historical abuses.[517] Indeed, for participant B2, the fact that the Val-d'Or crisis happened was evidence that the state not only ignored but failed to take reasonable steps to protect Indigenous peoples despite historical evidence of abuse and distrust. This example is only one of many illustrations displaying the troubling nature of the relationship between the state (and, more specifically, the police) and Indigenous peoples. Consequently, when reporting police sexual misconduct, a highly sensitive event, we need to pay attention to how asking victims to report directly to the police or a state agency like the BEI lacks historical insights and sensitivity.[518] If not, this may lead to a mechanism ignored by the people wanting to seek accountability because of their distrust of the state or belief that the system is not responding to their needs.

Adapting the reporting mechanism to is crucial as Indigenous complainants were over-represented not only in the first allegations from Val-d'Or, but they still are before the BEI. The former director of the BEI reported, in 2018, that 44% of complainants in criminal allegations against a police officer and 17% of complainants in independent investigations were Indigenous.[519] The annual report of the BEI from 2021-2022, on its end, indicated that 41 out of 83 (49%) complaints in criminal investigations cases involved someone from an Indigenous community.

[517] A high volume of sources could be cited here. See, e.g., Alberton et al, "Intersection of Indigenous Peoples and Police", *supra* note 516; *Public perceptions of the police in Canada's provinces, 2019*, by Dyna Ibrahim, Zotero (Ottawa: Juristat: Canadian Centre for Justice Statistics; Ottawa, 2020); Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 c 7: Findings on Police Services; *BROKEN TRUST: Indigenous People and the Thunder Bay Police Service*, by Gerry McNeilly (Office of the Independent Police Review Director, 2018) at 19, 22–23 and 30–53; Human Rights Watch, *supra* note 4 at 36 and 66; National Inquiry into Missing and Murdered Indigenous Women and Girls, *supra* note 4 at 102 and 110–114. This is not an exhaustive list.
[518] A1, p. 27. See also Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government & Cree Board of Health and Social Services of James Bay, *supra* note 510 at 35–36 although focusing on Police Ethics.
[519] Giauque, *supra* note 454 at 69.

None of these files led to charges.[520] The data for the first portion of 2023 indicated that 6 of the 9 files involved an Indigenous person in criminal cases (February 2023). By contrast, none of the 10 independent investigations was triggered by an Indigenous complainant (March 2023).[521] The need for a reporting mechanism adapted to Indigenous complainants alluded to above is illustrated by other comments from interviewee B2 cited above.

This participant vehemently disapproved of the Viens Inquiry's reference to official complaints. On the one hand, this person stated that reporting to the police was non-sense (especially given the pre-existing relationship with the police) and, on the other hand, that informal complaints outside of formal instances were not heard.[522] They expressed, with anger:

> **Interview B2:** *The young girls, the young girls in Val-d'Or […] They were treated like this for years!*
>
> Interviewer: *Yes, but you, when is the first time you heard of allegations of sexual misconduct in Val-d'Or?*
>
> *(…) Oh my god, it's been so long. In the 80s, I think. In the beginning of the 90s. […] Well, you don't report that to the Sûreté du Québec's station.*
>
> Interviewer: *No, it's, it's difficult when the Sûreté du Québec is involved in committing these misconducts, right?*
>
> "*You must report misconduct [there]", that's what we were told… […] that doesn't make sense. […] It prevented all acts of […] reporting of these type of misconducts. When the Viens Inquiry started its operations, they spoke of […] evidence, and what's the word: "complaints". […] To file a complaint. […] It was so (...) I find it so ridiculous, so silly, so unconscious! […] To say: "There was no complaint." Well, damn right, there was no complaint! But, we f*** grumbled.*[523]

[520] Bureau des enquêtes indépendantes, *supra* note 492 at 22.
[521] Bureau des enquêtes indépendantes, *supra* note 493 at 7–8.
[522] B2, p. 11-12.
[523] B2, p. 10-11.

This participant's comments presume an institutional incomprehension of the obstacles to reporting sexual misconduct and the consequences police misconduct may have on (Indigenous) victims. The combination of procedural requirements, racism, and distrust of the police may halt accountability processes. A sensitive mechanism must be attentive to the needs of the persons using it. Unfortunately, our study excludes victims from the sample, so we cannot expand on specific features of reporting mechanisms that would enhance trust. The literature and some participants provided ideas to make the system more responsive to victims' needs and, ultimately, accessible. The following subsection will present these suggestions. It will also analyze whether the implementation of the BEI responded to some of the critiques outlined heretofore.

1.2 Lessons From Val-d'Or and the *Bureau des Enquêtes Indépendantes*: How can we Do Better?

In terms of state accountability, the discussion within this first section can be reformulated as follows: the state must offer a mechanism that will allow victims to report crimes without fearing retaliation or impartiality (including the appearance of impartiality), and should it not fulfil this duty, it should be held accountable. This is part of our broader argument stipulating that Val-d'Or had no effective criminal investigation mechanism and thus failed to secure state accountability. Subsection 1.1 treated the necessity of offering a reporting mechanism sensitive to historical relations of distrust. This subsection will build on previous sections by using the literature on best practices in sexual violence cases and police misconduct files and participants' insights.

While providing a mechanism truly responsive to victims' needs and embedded within a socio-historical context is far from an easy task, the literature and our data suggest that there are

ways to improve the trust of complainants, some of which are transposable to the context of Québec: discussing the events with a woman (from an Indigenous police force in cases of Indigenous complainants);[524] receiving moral support from elders or another person at the reporting, interview and judicial stages;[525] reporting crimes in another language than French or English (including in Indigenous languages);[526] and reporting outside police stations to a plainclothes police officer assisted by a social worker or another member of civil society.[527]

Given that the BEI became operational amid the Val-d'Or crisis and is now in charge of the complaints by Indigenous peoples and allegations of sexual assault by on-duty police officers, examining whether this mechanism improved since the Val-d'Or crisis is an excellent way to assess state accountability. In other words, did the state use the knowledge it gained to design a better-equipped investigation mechanism? We remind the reader that institutional design and choices of authorities participating in the criminal justice system rest on the state and that they may result in impunity for police sexual violence. If the answer to the question above is negative, according to our framework, we could try to hold the state accountable. This argument can be

[524] Lafontaine (2016), *supra* note 4 at 46 and 62; Lafontaine (2020), *supra* note 4 at 143–144; United Nations, *supra* note 463 at 34; *Nānīawig Māmawe Nīnawind. Debout et solidaires. Femmes autochtones disparues ou assassinées au Québec*, by Québec Native Women Inc (Kahnawake: Femmes Autochtones du Québec, 2015) at 48; Michel & Miller, *supra* note 83 at 93.

[525] C1, pp. 30-31; Lafontaine (2016), *supra* note 4 at 47–48; Lafontaine (2020), *supra* note 4 at 137–141; Corte & Desrosiers, *supra* note 16 c 2.

[526] For services in Indigenous peoples' langages : Lafontaine (2016), *supra* note 4 at 63–64; Lafontaine (2020), *supra* note 4 at 134–135; Corte & Desrosiers, *supra* note 16 at 57–59 and 80. *Cf* Rosa, Courville & Côté, *supra* note 29 at 15. This report observed that the communication difficulties in Val-d'Or arose from the culture more than language.

[527] On receiving complaints outside police stations, see, e.g., Lafontaine (2016), *supra* note 4 at 61; United Nations, *supra* note 463 at 45; Rosa, Courville & Côté, *supra* note 29 at 34; Corte & Desrosiers, *supra* note 16 at 102; Parent-Samuel & Côté, *supra* note 31 at 101–102. We could imagine something like the foundation Marie Vincent which assists children. In this case, the police and other state agents visit the foundation when needing to speak or provide services to children: Corte & Desrosiers, *supra* note 16 at 64. See also the recommendations to test a new centre where all services would be delivered at the same location or that police officers always be assisted by civil society at the reporting stage: *Ibid* at 66-67 (recommendation 15), and 102-103 (recommendation 43). We shall note that the *Sûreté du Québec* has been open as an alternative to traditional police services, with some initiatives such as social workers paired with police officers and a community police station: see, e.g., Prud'homme, Séguin & Pelletier, *supra* note 440 at 225 and 285–289. The list of solutions provided in the text is not exhaustive.

divided into two alternative contentions: (1) if the state did not develop a more effective mechanism, could it foresee impunity and did it maintain the status quo? or (2) was it blind to the limitations of the system and the lived experiences of complainants? If either of these queries is answered affirmatively, our framework dictates that the state must be held accountable through one of the mechanisms detailed in this thesis.

To apply the theoretical underpinnings cited above to the reporting mechanism, we must investigate what a principled system would look like. To this challenging question, we answer that a first step would be a systematically mixed approach between civil society and the BEI, as it might help mitigate apprehensions regarding the formality of complaints and the absence of support.[528] However, as appositely noted by the BEI, this solution requires multiple partners from civil society as complainants rarely trust all organizations.[529] Nonetheless, a systemic problem deserves a systemic solution, and the BEI currently does not offer that. As sections 2 and 3 will show, this institution would benefit from boosting its transparency and severing its ties with the police world, in addition to automatically offering civil society support to all victims. According to data gathered in our interviews, these components would facilitate the qualification of the BEI as an effective state accountability mechanism. This thus supports our arguments that (1) state accountability for police sexual crimes requires an accessible, independent, impartial, and transparent investigative mechanism and that (2) this was not the case in Val-d'Or or its aftermath.

[528] For instance, some police stations in Québec already have civil society members (e.g., a social worker) in police stations to avoid revictimization by the criminal justice system. Complainants may meet with a representative from civil society before reporting and receive assistance throughout the process: Corte & Desrosiers, *supra* note 16 at 64.
[529] The BEI indicated on a phone call on April 1, 2022, that complainants do not necessarily trust civil society.

While two interviewees had been in direct contact with the BEI[530] and claimed the entity was open and receptive to them – the perceptions from other participants and the literature cast doubts on whether the BEI responds to the needs of civil society. We should also note that changes within accountability mechanisms (e.g., switching the reporting to the BEI) call for tests to ensure that new mechanisms are more effective than previous ones.[531] Without knowing victims' feelings toward the previous and new processes, the question 'Did the BEI properly fix the problems noted in Val-d'Or?' remains partially unanswered and primarily theoretical. We can, thus, only start to unpack the response to this complex question.

Currently, complaints of sexual assault by on-duty police officers, complaints about police crime reported by an Indigenous complainant, and independent investigations are under the BEI's jurisdiction. Bill 18 aimed to expand the BEI's mandate and bring all criminal investigations where a police officer is a suspect under its jurisdiction. The Bill no longer referred exclusively to sexual assault committed by *on-duty* police officers, which was a significant improvement recognizing that police authority can be exerted when the officer is off-duty.[532] However, it has not been enacted, and Bill 14, introduced in 2023 in replacement of Bill 18, is not modifying the mandate of the BEI. At the time of writing, Bill 14 was under analysis by a Parliamentary commission and very close to its enactment. The withdrawal of off-duty sexual misconduct from Bill 14 was seriously critiqued by the *Ligue des droits et libertés*. This civil society organization participated in many consultations on independent investigations.[533]

[530] A1; C1.
[531] United Nations, *supra* note 463 at 36.
[532] *Loi modifiant diverses dispositions en matière de sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, *supra* note 372 at 65, 66 and 71.
[533] Ligue des droits et libertés, *supra* note 373 at 21.

On the need to collaborate with civil society, the BEI confirmed that they work with civil society and Indigenous communities as well as meet complainants outside their offices. They stated that they offer civil society assistance before and after interviews with a member of the BEI to all complainants.[534] The interviews, on their end, are conducted with the complainant alone, except for some juvenile cases.[535] One interviewee condemned the police practice of one-on-one interviews and raised that better support at the interview stage would allow victims to speak out confidently:

> **Interview C1:** *The reason for conducting interviews [one-on-one] is that we do not want the third party to become a compellable witness before the court. So look, if I am accompanying you and I hear everything you say, the defence when they question you, they can say: "Hey! [X] was there". But that's not a rule, it's like a tradition. And I find that in the Indigenous communities, I've heard it so many times, it was said at the Viens Inquiry, these traditions must change. So, there are changes that could be made to assist […] victims to speak out within the criminal justice system. […]*
>
> *A woman who ends up alone* […] *even if the police officers are not wearing uniforms, even if she meets them at a place she suggested, even if they are nice, even if they are sweet, even if they are everything* […] *Should she want to be accompanied by an elder or someone, there is no reason [not] to change that.*[536] [Our emphasis.]

This excerpt suggests that assistance would be an essential improvement to implement, yet it faces much resistance. This support should come not necessarily from counsel but from anyone who can provide moral assistance. According to the participant, the rationale behind this practice is witness

[534] See, e.g., Giauque, *supra* note 454 at 118–119 and 176–178. The BEI provided similar information on a phone call on April 1, 2022.
[535] As indicated by an investigator of the BEI over the phone on April 1, 2022.
[536] C1, p. 30-31. See also, Québec Native Women Inc., *supra* note 126 at 21; Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government & Cree Board of Health and Social Services of James Bay, *supra* note 510 at para 125.

compellability.[537] From our understanding, this rigidity of the one-on-one interview rule stems directly from the *Canada Evidence Act* ("CEA").[538] Before unpacking the CEA, we must note that the interview process is framed as a form of wilful blindness, as the strict reliance on evidentiary rules permits the law to push aside concerns that could increase trust. We can also suggest the hypothesis that the decision not to allow third parties is detached from the lived experience of victims who must report traumatic events. It is even more problematic when, in addition to the socio-anthropological manifestations of wilful blindness, the assertion of the police is unsound in law. We must also stress that while modifying this interviewing practice and offering better support is rightly correlated to cultural safety,[539] victim support could be beneficial in several types of cases in which the victims experienced traumatic events, had previous negative encounters with the police or feel that they require assistance at this stage. The following paragraphs will outline whether the police practice is founded in a legal rule and, more precisely, in s. 9 of the CEA.

A very strict application of s. 9(2) of the CEA can lead to the conclusion that if third parties were present at the interview, they could be compelled to testify when the complainant contradicts their previous statement.[540] The BEI is one of the institutions adopting this interpretation.[541] While a party cannot generally challenge the credibility of its witness,[542] s. 9(2) allows cross-examination

[537] Lafontaine (2016), *supra* note 4 at 47–48; Lafontaine (2020), *supra* note 4 at 139–141; Phone Call BEI – April 1, 2022. See also Éducaloi, *Accompagner les victimes d'agressions à caractère sexuel en situation de vulnérabilité: enjeux juridiques et bonnes pratiques* (Éducaloi, 2022).
[538] *Canada Evidence Act*, RSC, 1985, c C-5, s 9.
[539] A1, p. 27; C1, pp. 30-31. See also Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government & Cree Board of Health and Social Services of James Bay, *supra* note 510 at 32–33 and 38 (recommendation 34).
[540] *Canada Evidence Act*, *supra* note 538, s 9. See also Fédération des policiers et policières municipaux du Québec, *Mémoire sur le projet de loi no 46 Loi concernant les enquêtes policières indépendantes* (présenté à la Commission des institutions, 2012) at 12.
[541] As indicated by an investigator of the BEI over the phone on April 1, 2022. We should note that the DPCP also refrains from allowing third parties to participate in meetings on the facts. See, e.g., Directeur des poursuites criminelles et pénales, *AGRESSION SEXUELLE ET AUTRES INFRACTIONS À CARACTÈRE SEXUEL ENVERS LES ADULTES (Directive AGR-1)* (2022) at para 8.
[542] *Canada Evidence Act*, *supra* note 538, s 9(1).

of witnesses for video-recorded, audio-recorded, and written declarations, including declarations to BEI's investigators.[543] The cross-examination under s. 9(2) is limited to questions pertaining to that statement.[544] To proceed, the party must follow the procedure provided by the Court of Appeal for Saskatchewan in *R v Milgaard*, which requests notably, at its fifth step, that "Counsel […]prove the statement or writing. This may be done by producing the statement or writing to the witness. If the witness admits the statement, or the statement reduced to writing, such proof would be sufficient. *If the witness does not so admit, counsel then could provide the necessary proof by other evidence*" [Our emphasis].[545] We shall note that the section discussed in *R v Milgaard* has since been amended and extends beyond written statements or reduced to writing. Indeed, s. 9(2) targets the following: "a statement in writing, reduced to writing, *or recorded on audio tape or video tape or otherwise*" [our emphasis].[546]

Proving the declaration of a witness who does not admit to making the declaration can be made through various means, including the testimony of a compelled witness. To our knowledge, this is the rationale behind the police's argument to deny third parties' presence. Such a contention might be appealing, but we purport it is unsound in law. Ensuring that all interviews involving police sexual violence offences are video-recorded would circumvent any concerns, as it would provide reliable evidence of the statement.[547] Using video evidence rather than a testimony

[543] *Ibid*, s 9(1) and 9(2); Martin Vauclair & Tristan Desjardins, *Traité général de preuve et de procédure pénales*, 28th ed (Montreal: Yvon Blais, 2021) at para 39.13. See *Ibid* at para 39.21-39.50 for further explanation on s. 9 of the Canada Evidence Act.
[544] See, e.g., *Canada Evidence Act*, *supra* note 538, s 9(2); David M Paciocco, Palma Paciocco & Lee Struesser, *The Law of Evidence*, 8th ed (Toronto: Irwin Law, 2020) at 656.
[545] *R v Milgaard*, (1971), 2 CCC (2d) 206 at para 55. Leave to appeal before the Supreme Court of Canada refused: *Milgaard v The Queen (Sask)*, [1971] SCR x. This procedure was approved by the Supreme Court of Canada in *McInroy v The Queen*, [1979] 1 SCR 588.
[546] *Canada Evidence Act*, *supra* note 538, s 9(2).
[547] *Cf R v B (KG)*, [1993] 1 SCR 740 at 794. We must also note that the Supreme Court recognized the value of video-recorded police interviews as early as 2000: *R v Oickle*, [2000] 2 SCR 3 at para 46.

explaining the content of the video-recorded interview would align with the best evidence rule, which asserts, in the words of the Court of Appeal of Alberta: "an admonition that real evidence is usually more reliable than human evidence."[548] We should remember that the procedure discussed in the previous paragraph applies in the limited situations of a witness not recognizing previous declarations.[549] Consequently, the narrow portion of cases in which s. 9(2) will be raised successfully, coupled with the availability of video evidence, renders heightened police concerns on compellability superfluous.

A second occasion when witness compellability can be relevant lies with s. 9(1) of the CEA, a process independent from s. 9(2). This section stipulates:

> …if the witness, in the opinion of the court, proves adverse, the party may contradict him by other evidence, or, by leave of the court, may prove that the witness made at other times a statement inconsistent with his present testimony, but before the last mentioned proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, shall be mentioned to the witness, and he shall be asked whether or not he did make the statement.[550]

Section 9(1) provides a procedural avenue for parties to contradict adverse witnesses who made inconsistent statements. When a party invokes s. 9(1), the judge decides whether the witness is adverse or hostile in a *voir dire* and, in the affirmative, whether a challenge is permitted. The judge then rules on the extent of the cross-examination allowed. If the witness denies making the statement, the party seeking the application of s. 9(1) can prove the inconsistent statement was made with other evidence (short of cross-examination, which is not permissible). After hearing or

[548] *R v After Dark Enterprises Ltd*, 1994 ABCA 360 at para 6.
[549] *R v Milgaard* also highlighted that s. 9(2) does not create an absolute right to cross-examination but is decided based on judicial discretion: *R v Milgaard*, *supra* note 545 at 54.
[550] *Canada Evidence Act*, *supra* note 538, s 9(1).9(1) On the independence from s. 9(2), see, e.g., *Appendix K Memorandum of Law - s. 9(2) of the Canada Evidence Act*, by John Agioritis at 2592–2593.

seeing evidence provided by counsels, if the judge declares adversity, accepts the challenge, and allows some cross-examination; the trial will resume, and the challenge will commence. The party initiating the challenge gives the witness an opportunity to refresh their memory and presents evidence proving the inconsistency if they continue denying making the statement.[551] The evidence proving the inconsistent statement raises the issue of witness compellability. We contend the arguments we flagged for s. 9(2) equally apply to s. 9(1). Section 9(1) should not pose a problem if interviews are video recorded, as the video would constitute reliable evidence. We must add – alternatively – that should the party absolutely wish to compel a witness that attended the police interview, the police officer taking the declaration could fit this purpose. There is no need to call the third party who was only present to provide moral support.

To complete our discussion on witness compellability, we must briefly address *R v KGB*.[552] This decision deals with the admissibility of a prior inconsistent statement of a witness other than the accused. It centres on the truth of the prior inconsistent statement rather than the mere existence of this statement for credibility purposes like the processes under s. 9 of the CEA. Prior to this ruling, the common law had traditionally refused to admit such statements for reasons related to the hearsay rule. More precisely, *R v KGB* rules that substantive admissibility of the inconsistent prior statement depends on the necessity of its admission and its reliability, both assessed by the judge in a *voir dire*.[553] Under *KGB*, admission of prior inconsistent statements is permissible only if there is "some substitute factor to demonstrate the sufficient reliability to make it safe to admit

[551] See, e.g., Paciocco, Paciocco & Struesser, *supra* note 544 at 667–669; Vauclair & Desjardins, *supra* note 543 at para 39.32 and ff.
[552] *R. v. B. (K.G.), supra* note 547.
[553] *Ibid* at 783 ff.

the evidence."[554] Several factors constitute guarantees of this reliability, notably (i) the fact that the statement was made under oath, solemn affirmation, or solemn declaration; (ii) the fact that the statement was video-recorded; and (iii) the opportunity for parties to cross-examine the witness.[555] Finally, offering support to complainants by permitting them to rely on substitute evidence should be interpreted in a way compatible with the necessity threshold.

For our argument on third-party support at the police interview, one of the principal objections to retain on the admission of the previous statement under the hearsay rule is that the judge cannot examine the witness' demeanor when providing the prior inconsistent statement. *R v KGB* recognizes that this objection might be alleviated by video evidence of the interview in which the statement was initially given.[556] Consequently, statements of complainants in cases of police sexual violence should be taken under oath (or as solemn affirmation or declaration) and video-recorded to avoid the application of s. 9 CEA or *KGB. KBG* acknowledges that it is entirely possible to do so in police interviews. [557] Video-recording all interviews at the BEI is sufficient to overcome most concerns (both under the best evidence rule and the *KGB* approach on reliability) related to third-party assistance during the interview of a complainant. Incidentally, video-recording is recommended for all cases of police crimes committed in Québec.[558]

Other jurisdictions recognize the vulnerability of some individuals to police questioning and allow the suspect to be accompanied and receive advice from a third party when the police

[554] *Ibid* at 787.
[555] *Ibid* at 791, 792–794, 796, and 803.
[556] *Ibid* at 764–768.
[557] *Ibid* at 791 and 795.
[558] Lafontaine (2020), *supra* note 4 at 68.

question them.[559] These guarantees are even stronger for Indigenous peoples, whose vulnerability regarding police questioning is recognized in some states.[560] Why not transpose these rules to complainants in police sexual violence cases? Caution is required prior to undertaking this massive change in police interviews. Indeed, before suggesting a substantial modification in the interviewing procedure, we must unpack a counter-argument: admitting third parties could threaten the voluntariness of the declaration should third parties consciously or unconsciously exert pressure on the victim. Providing advice during the interview could also temper the viability of the declaration. We can nevertheless think of strategies to circumvent these issues.

To avoid influencing the alleged victim and corrupting witnesses, we could foresee (1) an obligation for the third party to remain silent (or at least refrain from commenting on the facts); (2) a police discretional power to exclude the third party should they interfere with the questioning[561] or should the police have reasonable grounds to suspect that the third party is exercising undue influence; (3) the right for the complainants to refuse the support or retract their consent to the presence of a third party at any time; and (4) the impossibility of being accompanied by someone who might be called to testify. The fourth requirement prevents the application of s. 698(1) of the *Criminal Code* on the attendance of witnesses "likely to give material evidence."[562] Other jurisdictions have developed an independent third-party program or allow for an "interview friend/appropriate adult",[563] which can be source of inspiration to fulfil the fourth requirement.

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[559] See, e.g., Kerry G Watkins, "The Vulnerability of Aboriginal Suspects When Questioned by Police: Mitigating Risk and Maximizing the Reliability of Statement Evidence" (2016) 63 CLQ 474; Lorana Bartels, *Police Interviews with Vulnerable Adult Suspects: (619012012-001)* (Australian Institute of Criminology, 2011).
[560] See, e.g., Watkins, *supra* note 559.
[561] *Cf* We should also note that interfering with questions could lead to criminal charges against the party for obstruction of a police officer under s. 129 of the *Criminal Code*, for example.
[562] *Criminal Code*, *supra* note 429, s 698(1).
[563] This is mostly developed for people with disability or other forms of vulnerability. See, e.g., Bartels, *supra* note 559 at 7, 9 and 10; *Crimes Act 1914 (Cth)* Art IC, Division 3, s. 23H(Australia). Kate Gendle & Jessica Woodhams,

The concepts underlying this proposition (e.g., reasonable grounds to suspect, consent, voluntariness, material evidence) are already used in criminal law (including investigations) and would, thus, align with the police's expertise and knowledge.

Prior to moving on to other considerations, the decision of the Supreme Court of Canada in *R v Lafrance* recognized that the right to counsel might operate differently depending on the individual characteristics of the accused. The majority argued that factors such as "gender, youth, age, race, mental health, language comprehension, cognitive capacity or other considerations, coupled with developments that may occur in the course of police interrogation" can be examined to determine whether the right to counsel was infringed in the police interview.[564] We see this as an opening of the highest Court to particularize police interviews to the situation of the person experiencing it. This decision was rendered in the context of an accused's right, but it shows some flexibility in adapting police practices to an individual's vulnerability and lived experience. Another example of adaptation to the individual's characteristics lies with s. 25(1) of the *Youth Criminal Justice Act*, which grants the right to counsel at "any stage of proceedings".[565] Section 10b) of the *Canadian Charter of Rights and Freedoms*, as a comparison, does not require counsel to be present at the police questioning stage.[566] The Youth legislation recognizes – as is the case with our examples from other jurisdictions – that some individuals must be granted broader protection in police interviews. Our proposition builds on the openness of the Court and the Youth

"Suspects who have a learning disability: Police perceptions toward the client group and their knowledge about learning disabilities" (2005) 9:1 J Intellect Disabil 70–81.

[564] *R v Lafrance*, *supra* note 344 at para 79. See also Sam MacDougall, "Case Comment: R v Lafrance", (3 December 2022), online: *Chambers* <https://ojs.lib.uwo.ca/index.php/uwojls/announcement/view/186>.

[565] See, e.g., *Youth Criminal Justice Act*, SC 2002, c 1, s 25(1); Larry C Wilson, "The Role of Counsel in the Youth Justice Criminal Act" (2003) 40:4 Alberta Law Review 1029; *R v KPD*, 2015 ONCJ 88 at para 1.

[566] *Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK)*, *supra* note 53, s 10(b); *R v Sinclair*, 2010 SCC 35, [2010] 2 SCR 310.

legislation regarding custodial interviews, as well as on comparative law, to adapt the law to victims of police sexual violence.

As we laid out in Chapter I, accountability requires remedies. An accessible complaint system is the first step in obtaining such redress.[567] Having a proper mechanism is thus a vital component of the state accountability process for police sexual misconduct. There has been improvement since the creation of the BEI, as complainants may now report police crimes directly to the BEI.[568] However, work is still ongoing. Supporting victims more systematically, adding sexual offences committed by off-duty officers within the BEI's mandate, and testing novel procedures to measure their impact would strengthen the reporting mechanism.

Limitations outlined in the first subsection may result from side-lining the importance of historical, social, and psychological factors. They can also originate in a detachment from lived experiences. These problems with the reporting mechanism must be complemented by other matters related to institutional design observed at the BEI; notably its lack of independence, impartiality, and transparency. Ultimately, these indicators impact public confidence.[569] Should distrust remains, there is little hope that victims will entirely rely on mechanisms such as the BEI, even if it makes reporting more accessible. Therefore, the following subsections will examine allegations of lack of independence, impartiality, and transparency more closely. These principles are at the core of an effective state accountability mechanism. As we previously signposted, this

[567] United Nations, *supra* note 463 at 44.
[568] *Police Act, CQLR, c. P-13.1*, *supra* note 45, s 289.1 para 2, 289.3, 289. 6. Complaints by Indigenous persons were added to the BEI's mandate by the Ministry of Public Security, see, e.g., Lafontaine (2020), *supra* note 4 at 9.
[569] The Court of Québec noted the importance given to public confidence, independence, and transparency in discussions leading to the BEI: *Celik c Bureau des enquêtes indépendantes*, 2021 QCCQ 4921 at paras 68–70.

Chapter argues that no compelling state accountability mechanism pertaining to criminal allegations operated in Val-d'Or and its aftermath.

2. Investigations of Police Crimes: Participants Insights on Québec's Models since 2015

When focusing on *ex post facto* accountability mechanisms and embracing a descriptive approach to state accountability, [570] reporting crimes is not the end of accountability for police crimes. In fact, it is just the beginning. Therefore, this subsection will continue the discussion and suggest that the state failed (1) to ease concerns regarding police-on-police investigations and to (2) to ensure total independence and impartiality of its investigative organizations in cases of police sexual misconduct during and after the Val-d'Or crisis.

The recommendation to entrust investigations on police misconduct to a different entity is partially moot since the BEI took over allegations of sexual offences involving *on-duty* police officers in the fall of 2016 and allegations of criminal misconduct against Indigenous people in September 2018.[571] However, since the case study has both descriptive and normative aims, this Chapter calls for examining participants' perceptions and responses to all mechanisms implemented in Val-d'Or. This means we collected perceptions and responses on the SPVM's, the Independent Civilian Observer's, and the BEI's involvement in the Val-d'Or crisis. This subsection will argue that apprehensions about police-on-police investigations were not entirely put to rest in Val-d'Or. To this day, concerns remain. More precisely, this section will contend that

[570] See Chapter I and Bovens, Schillemans & Hart, "DOES PUBLIC ACCOUNTABILITY WORK?", *supra* note 186 at 227.
[571] *Police Act, CQLR, c. P-13.1*, *supra* note 45, s 289.1 para 2, 289.3, 289. 6. Complaints by Indigenous persons were added to the BEI's mandate by the Ministry of Public Security, see, e.g., Lafontaine (2020), *supra* note 4 at 9; another potential expansion was found in *Loi modifiant diverses dispositions en matière de sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, *supra* note 372, ss 65–66.

impartiality and independence in police investigation have not been fully achieved throughout and since the Val-d'Or crisis, which threatens state accountability for police sexual misconduct. The reproduction of similar concerns with the new system can be understood as a form of wilful blindness. Insights from participants will provide evidence of the side-lining of civil society demands and disconnect from society's experience.

2.1 The *Service de Police de la Ville de Montréal* and the Independent Civilian Observer: A Satisfactory ad hoc Mechanism?

The Independent Civilian Observer noted that police-on-police investigations automatically raise suspicions of partiality.[572] In this context, it is unsurprising that almost all participants harshly criticized the government's choice to mandate the SPVM to investigate the allegations of police misconduct in Val-d'Or. It is an understatement to say that the investigative procedures for criminal police misconduct in Val-d'Or were the subject of much disappointment in participants' discourses.[573] Interviewees' responses were divided into two trends: (1) general concerns about police-on-police investigations and (2) distrust of the SPVM. The first category includes participants who expressed their concerns with police-on-police investigations like in this excerpt,

> **Interview C1:** *At the time, the BEI, the Bureau des enquêtes indépendantes, was not yet in operation – the fear of bias due to police-on-police investigations was obviously still present, especially since we were talking about Indigenous communities and, therefore, about the very (…) historical, let's say, lack of trust between […] certain Indigenous communities and the police services*.[574]

or, in this second comment:

[572] Lafontaine (2016), *supra* note 4 at 59. See also, e.g., Jack R Greene, "Make Police Oversight Independent and Transparent" (2007) 6:4 Criminology & Public Policy 747; Bureau des enquêtes indépendantes, *supra* note 480 at 11; *Wood v Schaeffer*, 2013 SCC 71, [2013] 3 SCR 1053 at para 36; Giauque, *supra* note 454 at 183.
[573] See also Cloutier, *supra* note 24 at 126.
[574] C1, p. 1.

> **Interview B1:** *So hmm, the SPVM, hmm we were not very happy because the police […] that investigate on the police […] It's what we've said since the beginning, it's never a good solution.*[575]

This first trend also comprises another participant who argued that resorting to the SPVM instead of the SQ was the obvious first step in the absence of another mechanism. However, this participant believed that more transparency within the SPVM's investigations would have improved state accountability.[576] The other tendency amongst participants was to denounce the decision to entrust investigations to the SPVM vehemently. This was the case for participants A2 and B2:

> **Interview A2:** *Are you a hockey fan? [Entrusting the investigation to the SPVM was] like taking a coach from the American League to come and coach a club in the National League. The SPVM, what f**** notion do they have on Indigenous realities except arresting drunken Inuit on the street corner [...] somewhere on Sainte-Catherine/Saint-Laurent […] What would have been really necessary, it is an implication of the native police forces, the real ones. […] [A] police force that is much more aware of the reality of Indigenous people, more present, would have given a lot more credibility to the whole thing.*[577] [Our emphasis.]

> **Interview B2:**
> Interviewer: *How did you react to the decision to entrust the investigations to the SPVM?*
>
> *Well, they were sinking even deeper. […] Montréal… Is there a worst place than Val-d'Or to manage this? Given the conduct [of the SPVM] towards homeless peoples […] Well, it's terrible. […] [Y]ou don't entrust an investigation to a police force, you won't investigate on your buddy! […]* [578]

[575] B1, p. 11.
[576] A1, pp. 14-14. The recommendation to take all investigations of criminal misconduct committed on or off-duty members of the SQ was formulated by the Poitras Inquiry years 16 years before the Val-d'Or crisis, yet the BEI was not operational before 2016 and had a stricter mandate (on-duty sexual assault, complaints by Indigenous persons and independent investigations): Poitras, *supra* note 155 at 82.
[577] A2, pp. 21-22.
[578] B2, p. 20.

The strong reactions participants A2 and B2 could be linked (in addition to general concerns on police-on-police investigations) to the disapproval of the SPVM as an entity. Their comments suggest that racial profiling affecting Indigenous men and women disproportionately and the judicialization of homelessness in the metropolis are two rationales accounting for these heated responses.[579] Given the smaller quantity of data collected on the SPVM, we can only speculate on the precise sources of anger against this police organization. One thing is nevertheless obvious: this choice raised suspicion and distrust, albeit to a different degree. These perceptions are also found outside of our data set. For instance, Ghislain Picard, Chief of the Assembly of First Nations for Québec and Labrador, claimed that the trust between the SQ, RCMP, SPVM, and Indigenous peoples was broken and requested an Indigenous police force oversee the investigations.[580] The excerpts from interviews and Picard's insights are aligned with our framework of wilful blindness since pointing to detachment from reality in Val-d'Or. They point to the need for a state response connected to the lived experiences of Indigenous peoples.

The SPVM was not the only state-based mechanism implemented to deal with the criminal law dimension of the Val-d'Or crisis. This brings us to the next logical question: whether the state succeeded in mitigating the apprehensions of society, and the initial disapproval of the SPVM,

[579] See, e.g., Bellot & Sylvestre, *supra* note 141; Sylvestre, *supra* note 141; Sylvestre, *supra* note 141. On racial profiling in Montreal, see, e.g, Armony, Hassaoui & Mulone, *supra* note 16; Livingstone, Meudec & Harim, *supra* note 141. See also Christopher Curtis, "Quebec 'missed a huge opportunity' to address systemic racism", *Ricochet* (16 October 2020), online: <https://ricochet.media/en/3328/quebec-missed-a-huge-opportunity-to-address-systemic-racism>. For further information on Indigenous women in Québec and homelessness, see, e.g., National Inquiry into Missing and Murdered Indigenous Women and Girls, *supra* note 4 at 33–38; Québec Native Women Inc., *supra* note 451 at 38 (namely).See also Marie-Ève Drouin-Gagné & Carole Lévesque, *La condition itinérante parmi la population autochtone au Québec* (Commission d'enquête sur les relations entre les Autochtones et certains services publics); Bellot & Sylvestre, *supra* note 141; Rosa, Courville & Côté, *supra* note 29 at 25, 28, 32 and 36; *Règlement concernant les nuisances, la paix, le bon ordre et les endroits publics*, *supra* note 141.

[580] See, e.g., Magdaline Boutros & Stéphanie Marin, "Le chef Picard somme Couillard de se rendre à Val-d'Or d'ici 24 heures", *L'Actualité* (27 October 2015), online: <Le chef Picard somme Couillard de se rendre à Val-d'Or d'ici 24 heures>.

through its actions in and after 2015. From the onset, one of the most important state responses was to nominate an Independent Civilian Observer to inquire into the integrity and impartiality of the SPVM's investigation. The reports of this Observer, concluding that investigations were conducted impartially and with integrity, were, however, insufficient to entirely erase pre-existing concerns. Wider consultations with the public and individuals involved in the Val-d'Or crisis would provide more perceptions of the influence of the Independent Civilian Observer on state accountability and public trust, but our sample indicates that this measure, while not inadequate, was too restricted. The Independent Civilian Observer herself observed the limits of criminal investigations when facing systemic issues such as the ones at play in the Val-d'Or crisis.[581] Consequently, while both reports of the Independent Civilian Observer are highly detailed, we do not believe this exercise entirely overcame initial distrust of the SPVM nor fully promoted state accountability for police sexual misconduct in Val-d'Or.[582] As stated by one of the participants in our study: "*one [Independent Civilian] Observer… only one for a problem that is systemic and rooted in police forces* […] *the impact of this exercise will be extremely limited*".[583] Sylvia Rich went beyond this critique and characterized the Independent Civilian Observer as a method to "legitimize the resulting inaction".[584]

Discussions relating to the SPVM or the Independent Civilian Observer in our interviews were generally short and revealed the need to improve communication between the state and the population. On two occasions, participants conflated the SPVM with the BEI or the Independent

[581] Lafontaine (2016), *supra* note 4 at 65–67; Lafontaine (2020), *supra* note 4 at 33.
[582] The mandate of the Independent Civilian Observer was intimately tied to increasing public confidence: Lafontaine (2016), *supra* note 4 at 17; Lafontaine (2020), *supra* note 4 at 167–170.
[583] B1, p. 11.
[584] Rich, *supra* note 5 at 137.

Civilian Observer,[585] demonstrating the need to provide further information to civilians when deploying new or ad hoc initiatives.[586] Participants did not mention the SPVM's communication efforts in Val-d'Or, including meetings with the population, collaboration with Indigenous organizations in Montreal, and the production of information videos in Indigenous languages.[587] The Independent Civilian Observer noted that wider circulation of the phone lines and video capsules on social media was much needed.[588] This may be one reason why participants did not identify such techniques. Furthermore, no interviewees commented on the presence of Indigenous police officers within the SPVM investigation team, despite some participants' criticism that this police force generally lacked comprehension of Indigenous realities. We do not contend that hiring two police officers is sufficient to provide culturally appropriate police services. Still, the fact that it was not raised, again, may suggest that more communication efforts are needed to reinforce trust and, ultimately, accountability.[589] If state accountability rests partiality with state response, the latter needs to be communicated clearly and frequently to reach the population (see section 3 for more information).

Until now, the use of narrative excerpts has shown that the SPVM and the Independent Civilian Observer did not, in the eyes of the participants, offer an effective state accountability mechanism

[585] A2, p. 22; B1, p. 12. Similarly, the Viens Inquiry noted that Indigenous peoples are usually unaware of the different complaint mechanisms: Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 288.
[586] *Cf* Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government & Cree Board of Health and Social Services of James Bay, *supra* note 510 at 36–37. This brief exposes that some complainants are confused by the Police Ethics Commission and recommended information sessions dedicated explicitly to Indigenous persons.
[587] Rosa, Courville & Côté, *supra* note 29 at 4–5; Lafontaine (2016), *supra* note 4 at 28–31; Lafontaine (2020), *supra* note 4 at 56–57.
[588] Lafontaine (2016), *supra* note 4 at 30–31; Lafontaine (2020), *supra* note 4 at 57.
[589] It shall be noted that in the different phases of the investigation, two Indigenous police officers worked with the SPVM while no police officers identifying as Indigenous from the SPVM took part to the "Val-d'Or Project". Lafontaine (2016), *supra* note 4 at 27 and 47; Lafontaine (2020), *supra* note 4 at 126–127. The Independent Civilian Observer notes that none of the Indigenous police officers had the rank required to conduct investigations but that they could have been involved in some capacity.

in Val-d'Or. This does not mean these entities put in no effort or yielded no outcomes. The following subsection will continue the analysis of responses and perceptions of civil society and the media and focus on excerpts commenting on the BEI.

2.2. The *Bureau des Enquêtes Indépendantes*: An Independent Entity or Police-on-police Investigations 2.0?

Given the participants' discourses on the SPVM and the Independent Civilian Observer – we were curious to know their takes on the BEI, which began its operation amid the Val-d'Or crisis. Did the state learn from the initial concerns formulated in the first months of the Val-d'Or crisis? Did it produce an effective investigative mechanism for police sexual misconduct in Val-d'Or? Or was it wilfully blind to the system's limitations and society's demands? As we argue that an effective mechanism must be based on accessibility, independence, impartiality, and transparency, the current subsection will deal with impartiality and independence. Section 3 will unpack the response to these questions from a transparency standpoint.

Most participants welcomed the BEI with skepticism. Assessments of the BEI by the interviewees were often succinct and yet showed varying degrees of cynicism. The answers went from "*Did [the system] improve with all the efforts deployed in Val-d'Or? […] Yes, a little bit. On paper. The BEI, it's good, it's better than police-on-police investigations, but there are still several concerns with [the current system]*"[590], passing by pointing to a greater need for transparency (see

[590] C1, p. 36.

section 3)[591] and ending with more critical comments, such as "*They are never independent. They will never be independent*".[592]

Is there hope for investigations of police criminality?[593] Or should we accept the observation that an investigative agency will never be independent, as proposed in the last quote?[594] The BEI must foster guarantees of independence and impartiality to be a principled state accountability mechanism, but we should not condemn it too soon. As suggested by a participant who refrained from discussing the BEI before better understanding its influence on the long term, seeing the impact of new institutions may require patience.[595] The BEI requires additional time to develop, but its experience since 2016 and the legal framework in which it evolves already show causes for concern. This is especially true since the BEI succeeded other systems, could benefit from the literature and the experience of other Canadian provinces, and did not technically start from scratch. We agree with the participant pointing to an improvement of the system on paper while at the same time requesting further efforts from the state to ensure accessibility (see section 1 on the reporting mechanism), independence, impartiality, and transparency (see section 3 on the latter). The statements from participants being relatively brief, we must rely on the literature to delve more substantially into the concerns regarding independence and impartiality at the BEI.

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[591] A1, pp. 12-14.
[592] B2, p. 21. This quote shows that Professor Roach may be right when arguing that some critiques of independent investigation units will never satisfy the degree of independence of such organizations, see Roach, *supra* note 16 at 73.
[593] No model is perfect as acknowledged by the *Commission des droits de la personne et des droits de la jeunesse*, see, e.g., Evelyne Pedneault, *Commentaires sur le projet de règlement sur le déroulement des enquêtes dont est chargé le bureau des enquêtes indépendantes* (Commission des droits de la personne et des droits de la jeunesse, 2015) at 13; Boies, *supra* note 497 at 13.
[594] Regina G. Lawrence raises a similar question when she states: "Is any objective definition of "police accountability" possible, given that some societal groups will probably always view police with suspicion and that police will probably always believe that they should be given greater latitude and benefit of the doubt?": Regina G Lawrence, "Making a Problem of Brutality" in *The Politics of Force: Media and the Construction of Police Brutality*, updated ed (New York: Oxford University Press, 2022) at 45.
[595] B1, p. 12.

The critiques of the BEI take different forms but often boil down to two main concerns: lack of impartiality and independence (notably because of existing ties with the police world).[596] Links to the police can be found on many sites. From the onset, the BEI relies on resources from external police forces such as the SPVM, the *Service de police de la Ville de Québec*, and the SQ, hereby showing dependence on other police forces.[597] Data from 2020-2021 point to 88 demands of assistance to other police services for independent investigations conducted by the BEI.[598] In 2021-2022, requests to other police services for independent investigations dropped to 44, a decrease attributable to training on judicial identification and scene analysis within the BEI's team.[599] It is important to note that the BEI conducts both independent and criminal investigations. While the use of resources appears to be a problem residing with the independent investigations, since the entity performs both types of investigations, the perception of one side of the entity could have repercussions on the public's confidence in the organization. Resource independence is a crucial indicator of independence, as specified by Open Society:

> The problem of inadequate funding should not be addressed by relying on police support for tasks such as interviewing witnesses or securing and storing evidence. Reliance on police support is one of the two primary indicators of a lack of independence on the part of police oversight agencies.[600]

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[596] *Cf* S P Savage, "Thinking Independence: Calling the Police to Account through the Independent Investigation of Police Complaints" (2013) 53:1 British Journal of Criminology 94 at 100–104.

[597] See *Regards critiques sur les trois premières années d'activité du Bureau des enquêtes indépendantes*, by Ligue des droits et libertés & Coalition contre la Répression et les Abus Policiers (2020) at 19–20. See also Ligue des droits et libertés & Coalition contre la Répression et les Abus Policiers, *Le BEI dépend des services de soutien de la SQ, du SPVM et du SPVQ dans la quasi-totalité de ses enquêtes indépendantes* (2021).

[598] Bureau des enquêtes indépendantes, *supra* note 507 at 21.

[599] Bureau des enquêtes indépendantes, *supra* note 492 at 6 and 20. Indeed, the BEI indicated that training allowed the BEI's team to conduct scene analysis in more than 20 cases, which consequently diminished demands to other police forces.

[600] Open Society Justice Initiative, Scott & Lisitsyna, *supra* note 137 at 16, 41 and 52. See also United Nations, *supra* note 463 at 55. See also, Savage, "Thinking Independence", *supra* note 596 at 105–108; Boies, *supra* note 497 at 36; *Police Act, CQLR, c. P-13.1*, *supra* note 45, s 289.20.

As for impartiality, the presence of former police officers was signaled by civil society. Former police officers acting as investigators may create an appearance of impartiality or conflict of interest.[601] Civil society has also decried the BEI's reliance on the legal notion of "peace officer" since it may lead to employees not being counted as former police forces members despite having worked in police departments as civilians. A peace officer is defined by the *Criminal Code* as "a police officer, police constable, bailiff, constable, or other person employed for the preservation and maintenance of the public peace or for the service or execution of civil process".[602] Part of civil society argues that hiring civilian members of the police can equally create an appearance of partiality.[603]

With this caveat noted, a 2020-2021 report indicated that 18 investigators were former peace officers and 21 were civilians, whereas, in 2021-2022, 15 were former peace officers and 20 had other backgrounds.[604] The latest data from 2023 put forward that 18 investigators are former peace officers and 23 are civilians (e.g., individuals with graduate degrees in social science or law, high school directors, journalists, and civil investigators for a non-police entity).[605] The majority are thus civil investigators, which could contribute to mitigating appearances of impartiality. Room for improvement still exists. The BEI does not comply with the recommendations of the *Commission des droits de la personne et des droits de la jeunesse* to further distance itself from police-on-police investigations by asking assistance from former police officers only when needed,

[601] Ligue des droits et libertés & Coalition contre la Répression et les Abus Policiers, *supra* note 597 at 18. *Cf* Open Society Justice Initiative, Scott & Lisitsyna, *supra* note 137 at 34–36.
[602] *Criminal Code*, *supra* note 429, s 2c.
[603] Ligue des droits et libertés, *Les enquêteurs du BEI sont en majorité issus du milieu policier* (2020) at 1–2. See also Pedneault, *supra* note 593 at 26–27.
[604] Bureau des enquêtes indépendantes, *supra* note 507 at 4; Bureau des enquêtes indépendantes, *supra* note 492 at 4. For an example of critique against hiring former peace officer, see Coalition contre la Répression et les Abus Policiers, *supra* note 487 at 16–21.
[605] Bureau des enquêtes indépendantes, *supra* note 493 at 6.

hiring a majority of investigators *who have never worked for police services*, and, when hiring police officers, ensuring that they did not work as such for a minimum of five years.[606]

There is a germane concern that when hiring investigators who have previously worked for a police force, investigation units foster an appearance of impartiality. The presence of former peace officers or former civilian employees of police services may also create the appearance that the BEI is not truly independent from the police.[607] Other factors contribute to this perceived lack of independence, including that this institution is tied to the Minister of Public Security rather than the Minister of Justice, its depiction as a "specialized police force",[608] and the absence of distinct legislation to regulate the BEI. Currently, this institution is regulated by the *Police Act*, as opposed to Ontario's Special Investigation Unit, which benefits from a stand-alone statute.[609] The BEI should be legally distinct from the police. Otherwise, there is a risk that these connections may

[606] Boies, *supra* note 497 at 36–38; Ligue des droits et libertés, *supra* note 603; *Police (Independent Investigations Office) Amendment Act, 2011*, SBC 2011, c 8 (Bill 12), s 38.06 (3) and 38.13 (2)(b). The Quebec Ombudsperson conducted researched and concluded that when properly accompanied civil investigators are highly competent: *Pour un processus crédible, transparent et impartial qui inspire confiance et respect RAPPORT SPÉCIAL DU PROTECTEUR DU CITOYEN sur la procédure d'enquête appliquée au Québec lors d'incidents impliquant des policiers*, by Protecteur du citoyen (Québec, 2010) at 49–51; Protecteur du citoyen, *Mémoire du Protecteur du citoyen présenté à la Commission des institutions dans le cadre des consultations particulières sur le Projet de loi no 12 Loi modifiant la Loi sur la police concernant les enquêtes indépendantes* (presented to the Institution Commission of the National Assembly, 2013) at 4–5.

[607] See, e.g., Ligue des droits et libertés, *supra* note 487 at 6 and 14–16; Boies, *supra* note 497 at 29; Association des groupes d'intervention en défense des droits & en santé mentale du Québec, *supra* note 487 at 8 and 18–19; Regroupement des maisons pour femmes victimes de violence conjugale, *supra* note 487 at 19. See also Protecteur du citoyen, *supra* note 454 at 30–34.

[608] *Police Act, CQLR, c. P-13.1*, *supra* note 45, s 289.5 para 2; Boies, *supra* note 497 at 39; Ligue des Noirs du Québec, *supra* note 487 at 2 and 9; Association des groupes d'intervention en défense des droits & en santé mentale du Québec, *supra* note 487 at 15; note 507 at 152; Bureau des enquêtes indépendantes, *supra* note 492 at 3; Bureau des enquêtes indépendantes, *supra* note 507 at 3. *Cf* Protecteur du citoyen, *supra* note 454 at 46–47 proposing compelling counterarguments for anchoring the BEI's in the Ministry of Public Security. On the problems with reassigning the authority to the Ministry of Justice, see Coalition contre la Répression et les Abus Policiers, *supra* note 487 at 15. These concerns might stem from the proximity between police services and the prosecution, see *Ibid* at 41–47.

[609] See, e.g., Open Society Justice Initiative, Scott & Lisitsyna, *supra* note 137 at 15–16; United Nations, *supra* note 463 at 49; Ligue des droits et libertés, *supra* note 487 at 8–9; Association des groupes d'intervention en défense des droits & en santé mentale du Québec, *supra* note 487 at 15; Regroupement des maisons pour femmes victimes de violence conjugale, *supra* note 487 at 19; *Police Act, CQLR, c. P-13.1*, *supra* note 45, s 289.1 ff; *Special Investigations Unit Act, 2019*, *supra* note 370.

conflate the police and the BEI for the public and deter complainants who fear or distrust the police. It is the state's responsibility to provide a legislative structure that fosters independence and impartiality.

The previous paragraphs have argued for severing ties between the BEI and the police to increase independence, a component identified at the very beginning of this Chapter as a marker of state accountability for police sexual misconduct. Independence can be assessed through at least one other way: the appointment of its directors. The BEI score is mixed on this indicator. Sections 289.7 and 289.8 of the *Police Act* stipulate that the Minister chooses the Director from a list of at least three candidates created by a committee. The membership of this committee is the following: "the Deputy Minister of Justice or the Deputy Minister's representative, an advocate recommended by the Barreau du Québec, a former director of a police force who is not a peace officer, recommended by the board of directors of the Association des directeurs de police du Québec, the secretary of the Conseil du trésor or the secretary's representative and the executive director of the École nationale de police du Québec".[610] While the police do not name the Director, the committee comprises a few influential individuals from the police world. Therefore, this process still raises concerns about the BEI's independence.[611]

The absence of a two-thirds majority approval from Parliament when naming the Director can also create an appearance of dependence. A 2019 legislation introduced the requirement of a two-thirds majority to confirm the appointment of the Director General of the SQ, the DPCP, and

[610] *Police Act, CQLR, c. P-13.1*, *supra* note 45, s 289.7 and 289.9; Ligue des droits et libertés & Coalition contre la Répression et les Abus Policiers, *supra* note 597 at 21. For information on the nomination process of the Assistant Director, see *Police Act, CQLR, c. P-13.1*, *supra* note 45, s 289.8.
[611] Ligue des droits et libertés & Coalition contre la Répression et les Abus Policiers, *supra* note 597 at 21.

the Anti-Corruption Commissioner.[612] The BEI was in operation in 2019, but the changes within the legislation did not target the BEI Director.[613] The nomination process could be modified by entering amendments to the *Police Act*. The state is the only entity with such power. The BEI nevertheless meets some traditional markers of independence, including that the Director and Assistant Director are not police officers but experienced lawyers or retired judges who have not been peace officers before joining the BEI[614] and that the Director and Assistant Director are appointed for a renewable term of a maximum of five years.[615] In other words, when the state designed the BEI, it did ensure that the latter would meet some indicators of independence traditionally identified by the literature and civil society.

As stated in the introduction, this Chapter revolves around one argument: the state failed to respond to civil society and academia as well as to design an effective investigative mechanism for police sexual misconduct in Val-d'Or. Hence, it did not secure state accountability. The obstacles to state accountability were framed as possible examples of foreseeability and wilful blindness. Nevertheless, as one of the participants pointed out, the BEI constitutes an improvement

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[612] *Police Act, CQLR, c. P-13.1*, *supra* note 45 at 56 and 56.1; *An Act to amend the rules governing the appointment and dismissal of the Anti-Corruption Commissioner, the Director General of the Sûreté du Québec and the Director of Criminal and Penal Prosecutions*, SQ 2019, c 6, s 9; Antoine Robillard, "Nouvelle étape dans le processus de sélection du prochain DG de la SQ", *Le Devoir* (22 November 2021), online: <https://www.ledevoir.com/politique/quebec/649053/des-deputes-recevront-lundi-la-proposition-du-gouvernement-pour-le-prochain-dg-de-la-surete-du-quebec>; United Nations, *supra* note 463 at 50.56, The bill also clarifies the process of dismissal another indicator of independence according to the literature: Open Society Justice Initiative, Scott & Lisitsyna, *supra* note 137 at 21. The Hansard shows the discomfort of some Parliament members with this new act that expands to the police (including the Anti-Corruption Commissioner) and the DPCP. They would have liked to have these two matters separated, but the motion was defeated: *Journal des débats de l'Assemblée 28 février 2019 — Vol. 45 N° 20* at 948–959.

[613] *An Act to increase the jurisdiction and independence of the Anti-Corruption Commissioner and the Bureau des enquêtes indépendantes and expand the power of the Director of Criminal and Penal Prosecutions to grant certain benefits to cooperating witnesses*, SQ 2018, c 1.

[614] Open Society Justice Initiative, Scott & Lisitsyna, *supra* note 137 at 18–19; *Police Act, CQLR, c. P-13.1*, *supra* note 45, s 289.9.

[615] *Police Act, CQLR, c. P-13.1*, *supra* note 45 at 289.12. *Cf* Open Society Justice Initiative, Scott & Lisitsyna, *supra* note 137 at 20.

from police-on-police investigations, and the state achieved partial success with the creation of this institution. As we wait for political will to reform this institution beyond the current Bill 14, we share some of the participants' skepticism. The BEI is a new mechanism that needs to be refined. For this purpose, implementing measures to promote independence is indispensable. Without these guarantees, there is a risk of compromising the prevention and prosecution of police sexual misconduct and seeing the public's confidence in the institution erode. Public perception of investigations into police misconduct is a critical component of justice, as the Supreme Court of Canada taught us in *Wood v Schaeffer*:

> Whether or not police investigations conducted into fatal police shootings in the 1980s were actually biased, the public did not perceive them to be impartial (see, e.g., Task Force Report). This history teaches us that appearances matter. Indeed, it is an oft-repeated but jealously guarded precept of our legal system that "justice should not only be done, but should manifestly and undoubtedly be seen to be done" (*R. v. Sussex Justices, Ex parte McCarthy*, [1924] 1 K.B. 256, at p. 259, *per* Lord Hewart C.J.). And that is especially so in this context, where the community's confidence in the police hangs in the balance. [Our emphasis.][616]

The former Chief Justice of Canada, Beverley McLachlin, concurred with the statement that appearance matters when she expressed, in a different context, "Public support for the courts is not tied to the popularity of the decision or that, so much as to the perceived integrity of the judicial process."[617] Transposing these arguments to the BEI and state accountability, we must ensure that the state's decisions when creating and reforming the BEI lead to an entity that is conceived as impartial and independent.[618] These arguments are not novel. In 2010, the Québec Ombudsperson,

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[616] *Wood v. Schaeffer*, *supra* note 572 at para 48 see also 49 and 52; United Nations, *supra* note 463 at 33, 36–37 and 56–57; Boies, *supra* note 497 at 40–41. The Report *Rebâtir la confiance* also notes the importance of confidence and the insufficiency of procedural fairness in creating feelings of justice: see, e.g., Corte & Desrosiers, *supra* note 16 at 33–39, 107 and 108. On public confidence in investigations on police induced injury or death by police, see, e.g., Protecteur du citoyen, *supra* note 454.

[617] The rt hon Beverly McLachlin, CJC, "Preserving Confidence in the Courts and the Legal Profession" (2003) 29:2 Manitoba Law Journal 277 at 278. See also Savage, "Thinking Independence", *supra* note 596 at 95.

[618] Public confidence also dovetails into the framework of the infrastructural network outlined in Chapter I. By claiming that public confidence is key to fostering strong accountability mechanisms, we rely on the relational aspect

in a document on independent investigations, quoted with approbation an excerpt from a report on the SIU in Ontario stating that the unit should allow for accountability and *perceived* accountability.[619] Finally, in 2021, the Court of Québec ruled against the BEI for their fault in communicating with a victim's family. It relied on the principle of appearance of justice, showing *Wood v Schaffer*'s importance beyond the context in which it was initially rendered.[620]

The elements pointed out in this Chapter demonstrated that the BEI's institutional design might not permit achieving this appearance of impartiality and independence from the police. However, we cannot answer the essential question of why the state created an entity that replicates similar concerns to police-on-police investigations. Wilful blindness might be part of that response. Further study will be required. Detachment from lived experiences and side-lining of concerns here must be put against the feasibility of having a purely independent institution without connections to the police.[621] Severing all ties might weaken trust between the police and the BEI, rendering work more challenging.[622] Waiting for more studies to examine potential reforms of the BEI's structure and their practicability, we suggest public confidence and state accountability may

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of infrastructural power. Analyzing public confidence and its lack thereof permits understanding the reception of state power by civil society.

[619] Protecteur du citoyen, *supra* note 606 at 26. The Ombudsperson was quoting the following document: *Investigation into the Special Investigations Unit's operational effectiveness and credibility- Oversight Unseen*, by André Marin (2008) at 6 (or 5 in the French version).

[620] *Celik c. Bureau des enquêtes indépendantes*, *supra* note 569 at paras 79–80.

[621] We recall that Québec's Ombudsperson saw value in benefiting from experienced police officers, see Protecteur du citoyen, *supra* note 606 at 49–51; Protecteur du citoyen, *supra* note 606 at 4–5.

[622] Several police forces reported a potential lack of credibility and, at times trust by the police, drawing from an overreliance on civilians: see, e.g., Association des policières et policiers provinciaux du Québec, *PROJET DE LOI NO 12 LOI CONCERNANT LES ENQUÊTES POLICIÈRES INDÉPENDANTES* (presented to the Institution Commission of the National Assembly, 2013) at 15; Association des directeurs de police du Québec, *CONSULTATION Projet de loi no 12 Loi modifiant la Loi sur la police concernant les enquêtes indépendantes* (presented to the Institution Commission of the National Assembly, 2013) at 8; Fédération des policiers et policières municipaux du Québec, *supra* note 540 at 5–9; Service de police de la Ville de Montréal, *Mémoire Projet de loi n°12 Loi concernant les enquêtes policières indépendantes* (presented to the Institution Commission of the National Assembly, 2013) at 4–10; Fraternité des policiers et policières de la ville de Québec, *Mémoire sur le Projet de loi numéro 12 (Loi concernant les enquêtes policières indépendantes)* (presented to the Institution Commission of the National Assembly, 2013) at para 46.

also be secured through enhanced communication and transparent practices. Communication is part of the authorities' way of administrating criminal justice. Just as institutional design, it is the responsibility of the state and can improve state accountability.

3. Transparency Deficits in Investigations of Police Criminality

As previous paragraphs have hinted, another marker of state accountability in police sexual misconduct investigations is transparency. Given the importance of information in accountability processes, lack of transparency is a significant cause for concern. The following paragraphs will argue that the state has partially failed to guarantee transparency of its investigations, hereby mitigating state accountability. It will do so primarily by unpacking unresolved transparency issues at the BEI, thus maintaining barriers to state accountability in preventing and prosecuting police sexual misconduct. We should note that transparency was already a thorn in the flesh of independent investigations conducted in the regime preceding the BEI, which begs the question of whether the state side-lined the importance of providing information to enhance the quality of accountability mechanisms.[623]

3.1 Advocating for Enhanced Information Duties at the *Bureau des enquêtes indépendantes*

One way to support the contention that the state does not do enough to put in place transparent investigations of police crimes as required by state accountability is to evaluate practices at the BEI. The data collected through interviews partially justifies the emphasis of this

[623] See e.g., Protecteur du citoyen, *supra* note 454 at 24–28. The BEI, on its end, recognizes the importance of transparency as long as it does not interfere with investigations: Bureau des enquêtes indépendantes, *supra* note 492 at 13. On the importance of information for accountability processes, see Chapter I (section 3).

third section of the BEI.[624] This may not come as a surprise, as the opacity of the BEI has been critiqued on different occasions since the BEI's inception. In 2020, the Independent Civilian Observer described the entity as "unacceptably opaque and unrepresentative".[625] She saw the absence of notification to the public at the beginning of a criminal investigation by the BEI and the default to share motives when no charges are laid after a criminal investigation as threats to public trust.[626] She also indicated that the public has high expectations in these matters. This is true for both independent and criminal investigations. They are, however, often treated separately in the legal framework for reasons pertaining notably to the presumption of innocence and privacy.[627]

We are left wondering why the BEI, three years after the latest Independent Civilian Observer report, still resists some requests for more transparency. Bill 14, introduced in 2023, explicitly adds to the BEI's mandate (by amending s. 289.1 of the *Police Act*) that investigations must be conducted transparently and impartially.[628] As the following paragraphs will show, the inclusion of this statement symbolically reaffirms the importance of transparency but is not accompanied by significant reforms, hereby maintaining barriers to transparent investigations.

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[624] C1; A1. We will not engage with the operation of individual victims' rights to information as we are tackling here the issue of state accountability for police sexual misconduct and thus focus on information to the public and not exclusively to victims. This remains true, although some arguments within this subsection are compatible with *Canadian Victims Bill of Rights*, SC 2015, c 13, s 2, ss 6–7.

[625] Lafontaine (2020), *supra* note 4 at 30 (translation from English report at 28). She adds: the "BEI appears as a laggard in Canada in terms of transparency, as it fails to disclose any information whatsoever on criminal investigations cases into allegations of sexual assault or following a complaint by an Indigenous person." *Ibid* at 109–111 (translation from the English version of the report, at p. 102).

[626] Lafontaine (2020), *supra* note 4 at 104–106; Directeur des poursuites criminelles et pénales, *supra* note 472 at paras 20–21; Directeur des poursuites criminelles et pénales, *Lignes directrices du Directeur des poursuites criminelles et pénales concernant la publication des motifs d'une décision de ne pas porter d'accusation* (2015) at paras 1 and 20–25. Paragraph 21 has no equivalent in the case of criminal investigation against the police.

[627] See, e.g., Lafontaine (2020), *supra* note 4 at 104–106.

[628] *Loi modifiant diverses dispositions en matière de sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, *supra* note 373, s 90. The Ligue des droits et libertés appositely noted that this amendment does not mention independence: Ligue des droits et libertés, *supra* note 373 at 20.

Side-lining the importance of providing clear information (which we recall is a form of wilful blindness, albeit not necessarily conscious) and an overreliance on due process might be part of the issue. Without diminishing the latter's value for a fair criminal justice system, the assertion is not always legally sound, especially when other jurisdictions do better. For state accountability mechanisms to gain public trust and improve their chances of successfully justifying state action, one of the components of our state accountability framework, it should be mandatory for state actors to give accounts of their actions throughout the investigation of police crimes.[629] A report published by the *Ligue des droits et libertés* and the *Coalition contre la Répression et les Abus Policiers* concurred with improving transparency at the BEI since it would provide more indicators of the quality and impartiality of the investigations. The report stated that without detailed information on each investigation file, families of victims and victims are not well-equipped to assess the overall process or the decision not to lay charges.[630] The SPVM also highlighted the necessity for transparency and heightened communication with families and victims when consulted in 2013 on the future independent investigations unit. The state has been made aware of the importance of a transparent mechanism.[631] To improve the system, the BEI must include robust transparency guarantees applying to *all* its cases.

[629] Similarly, Lafontaine contended that the duty of obtaining information should not be something victims have to deal with: Lafontaine (2020), *supra* note 4 at 151.
[630] Ligue des droits et libertés & Coalition contre la Répression et les Abus Policiers, *supra* note 597 at 30. Some testimonies from families of victims cast doubt on the trust of families on the BEI. See, e.g., *Ibid* at 50–52; Tracy Wing, "J'ai rapidement perdu confiance dans le Bureau des enquêtes indépendantes", (décembre 2020), online: <https://liguedesdroits.ca/temoignage-rapidement-perdu-confiance-bei/>; Ligue des droits et libertés & Coalition contre la Répression et les Abus Policiers, "Les proches des victimes et le Bureau des enquêtes indépendantes Quel traitement pour les proches des victimes ?", (21 September 2020), online: <https://liguedesdroits.ca/rapport-bei-2020-texte-complementaire-proches-victimes/>; Adama Diouf, "« Je suis dans la souffrance toute seule », dit la mère de Jean René Junior Olivier", *Radio-Canada* (1 August 2022), online: <https://ici.radio-canada.ca/nouvelle/1902599/jean-rene-junior-olivier-homme-noir-tue-police-repentigny?fbclid=IwAR1_Yz32-D3plKnIufXQpG0QR6oDbcX_0CNb6D8iIhk64DiKRiF8GWOo59E>.
[631] Service de police de la Ville de Montréal, *supra* note 622 at 10; Association des directeurs de police du Québec, *supra* note 622.

To respond to these requests on transparency, we propose – in addition to enacting s. 90 of Bill 14 recognizing transparency and impartiality as part of the BEI's mandate – a bipartite duty to inform by (1) providing sufficient details (2) in clear language.[632] This duty would increase the accessibility of the BEI. However, it would not translate into eschewing to consider confidentiality. There is no need to share parties' and witnesses' names nor infringe the presumption of innocence.[633] The SIU, the Ontarian counterpart of the BEI, shows one way to execute the duty to inform. In case no charges are laid, the organization publishes a report containing information on the investigation. This report originates from a legislative provision:

> If an investigation under section 15 does not result in charges being laid against an official, the SIU Director shall publish a report on the website of the Special Investigations Unit containing the following information:
>
> 1. The reasons why the investigation was thought to be authorized under section 15.
> 2. A detailed narrative of the events leading to the investigation.
> 3. A summary of the investigative process, including a timeline noting any delays.
> 4. A summary of the relevant evidence considered, subject to subsection (2).
> 5. Any relevant video, audio or photographic evidence, de-identified to the extent possible, subject to subsection (2).
> 6. The reasons for not laying a charge against the official.
> 7. Any other information that may be prescribed.[634]

Of relevance for our analysis of police sexual violence, the SIU does not circulate reports on sexual offences to respect privacy and encourage reporting. The statute regulating this entity still provides stronger guarantees than the Québec legislation in every other case. In Québec, ss. 10

[632] *Loi modifiant diverses dispositions en matière de sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, *supra* note 373, s 90.See Corte & Desrosiers, *supra* note 16 at 107 stresses the importance of information of clear communication. *Cf* McLachlin, C.J.C., *supra* note 617 at 284–286.
[633] See, e.g., Lafontaine (2020), *supra* note 4 at 42; Directeur des poursuites criminelles et pénales, *supra* note 626 at paras 5–6.
[634] *Special Investigations Unit Act, 2019*, *supra* note 370, s 34(1).

to 12 of the *Regulation respecting the conduct of the investigations of the Bureau des enquêtes indépendantes* ("regulation") cover the communication obligations of the BEI's Director but are nowhere close to the requirements laid out in the Ontario act.[635] In *Celik c Bureau des enquêtes indépendantes*, the court recognized the BEI failed to meet its obligations by sharing a narrative that was harmful to the family and showed a lack of impartiality and independence. Rationales behind this ruling included the BEI's reliance on the police version of the events and illegitimate concerns that informing the public of the facts might usurp the prosecution's role of deciding on charges. Both were linked to impartiality.[636] However, the court ruled that the BEI did not have to include the nature of the events in the communication the public. This decision was a success for the family but depicted communication obligations in a very narrow way. Indeed, the court ruled that s. 11 of the regulation targets the communication of the investigative process. Information on the investigative process incorporates, in the court's opinion, details on "the identity of the deceased, the identity of the persons present at the event, the parameters and limits of the scene, the elements of the evidence collected to ensure its preservation and any document related to the event" (our translation).[637] It is possible to include more than this description of the investigative process in a manner that respects impartiality as well as the prosecution's and the BEI's mandates. The excerpt from the *Special Investigations Unit Act, 2019*, cited above, is evidence that an independent investigations unit can circulate the reasons for the investigation, the specific facts,

[635] *Regulation respecting the conduct of the investigations of the Bureau des enquêtes indépendantes, RQLR, c. P-13.1, r. 1.1*, ss 10–12. See also *Police Act, CQLR, c. P-13.1*, *supra* note 45, s 289.4 and 289.23.
[636] *Celik c. Bureau des enquêtes indépendantes*, *supra* note 569 at paras 80–111. On this case, see also Ligue des droits et libertés, "Rapport du coroner sur le décès de Koray Kevin Celik La décision du DPCP de ne pas porter d'accusation doit être révisée", (22 April 2023), online: <https://liguedesdroits.ca/rapport-du-coroner-sur-le-deces-de-koray-kevin-celik-la-decision-du-dpcp-de-ne-pas-porter-daccusation-doit-etre-revisee/>. Many sections of regulation have been contested since their enactment, see, e.g., *Fraternité des policiers et policières de Montréal c Bureau des enquêtes indépendantes*, 2022 QCCS 2486; *ibid.*
[637] *Celik c. Bureau des enquêtes indépendantes*, *supra* note 569 at para 85.

and motives for not laying charges. It also stipulates precise requirements on the nature of the evidence within the SIU report.

The government of Québec should find inspiration in the practices of its Ontarian neighbour and take further steps toward enhancing transparency in investigations of the police. For instance, the duties of the BEI should also be exhaustively listed in a statute or regulation. Bill 18, which attempted to reform the BEI, would have introduced formal obligations of information much more detailed than those entrenched in the current regulation. Nevertheless, these obligations would have applied only to independent investigations and not investigations of police crimes.[638] The new Bill 14 provides that the BEI must publish motives for closing investigations they believe lead to no death or serious injury.[639] The Bill is silent on any transparency guarantees for criminal investigations. Another example lies with the prosecutorial decision not to lay charges. The state should offer the same guarantees in cases of criminal allegations as for independent investigations (i.e., "the decision-making process leading to the decision, the main facts of the case, the applicable law, and the substance of the reasons for not proceeding" (our translation)).[640] This separation of obligations for criminal and independent investigations reinforces the idea that transparency is not as important when investigating police crimes. This goes against participants' insights on state accountability. Access to sufficient and clear information should be guaranteed in all police crimes. The examples from this paragraph are all options for complying with the first element of our

[638] *Loi modifiant diverses dispositions en matière de sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, *supra* note 372, s 77. The new section 289.21.2 detailing communication observation refers to s. 289.1 para 1 and not 286 on criminal investigations (all sections here referred to sections as modified by Bill 18).
[639] *Loi modifiant diverses dispositions en matière de sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, *supra* note 373, ss 92 and 94. The BEI welcomed this change: Bureau des enquêtes indépendantes, *supra* note 493 at 11–12.
[640] Directeur des poursuites criminelles et pénales, *supra* note 472 at para 21. See also *LIGNES DIRECTRICES DU DIRECTEUR DES POURSUITES CRIMINELLES ET PÉNALES CONCERNANT LA PUBLICATION DES MOTIFS D'UNE DÉCISION DE NE PAS PORTER D'ACCUSATION* (2015).

information duty (i.e., giving sufficient details to the public) at different stages of the investigations.[641] They are not exhaustive.

This subsection on the necessity to share information showed that the state fails to design a transparent criminal investigation mechanism, as required in this Chapter's introduction. We ought to recognize the necessity of transparency in criminal investigations involving police officers, as it might impact public confidence in our system. This must be done by providing clear guidance in the law, which requires more than the symbolic acknowledgment of s. 90 of Bill 14. Investigations into police crime are not typical criminal cases and, from the onset, raise several concerns concerning state accountability. This first subsection alluded to amendments to the legal framework to include more provisions on the BEI's communication duties. However, transparency also calls for a specific type of information: one intelligible to laypeople. The following subsection will show that our assertion that the state fails to offer a transparent accountability mechanism remains true without providing digestible information targeting non-lawyers.

3.2 Improving Legal Literacy

The previous section accounted for the communication of information in enough detail, which is only one of the components of the information duty we suggest adopting to improve state accountability. The second branch of the duty lies with the clarity of this information, which is another aspect that may prevent the public from assessing the quality of the process. As alluded to in the introduction, the state is responsible for the design of its mechanism and the choices of

[641] Some organizations within civil society believe this information is not sufficient: Ligue des droits et libertés & Coalition contre la Répression et les Abus Policiers, *supra* note 597 at 53. In the 2020-2021 report, the BEI has highlighted communications as one BEI's commitments: Bureau des enquêtes indépendantes, *supra* note 507 at 16–17. See also Pedneault, *supra* note 593 at 27–29.

authorities operating it. Communication in clear terms falls in the last portion of state responsibility for criminal investigations. Currently, the state does not provide clear information and, thus, has not put in place an effective investigative mechanism for police sexual misconduct. We remind the reader that state accountability for police sexual crimes requires an accessible, independent, impartial, and transparent investigative mechanism. Since the Val-d'Or crisis, the BEI has presented substantial limitations regarding state accountability.

In addition to the need for better practices regarding the dissemination of information throughout the investigative process, three participants brought forward the difficulty for laypeople to comprehend the technicalities of criminal law and evaluate the quality of the work produced by the police, prosecutors, or independent agencies without having a thorough understanding of the law and due process.[642] They argued that, although they believed that police sexual misconduct had happened in Val-d'Or, we should be cautious about condemning the entire justice system for the absence of criminal trials in cases of police crimes. The interviews raised a new concern: legal literacy. In other words, people who are not legally trained may lack the required knowledge to assess the validity of state actors' decisions in matters as delicate as police sexual misconduct, as implied in this excerpt:

> **Interview C1:** *If the population only sees the result – "no charges laid" – obviously they conclude: "Well, the investigation wasn't done impartially." It's unfair to the police* […] *But it's also unfair to victims. Hence the importance of transparency.* […]
>
> *So, so we may criticize some behaviours by the police or* […] *structural problems within the institution. It remains that they do not control all the variables that impact their reputation […] So, without transparency within the investigations* […] *there is no accountability for the public […] What are the means the investigation used to uncover the*

[642] A1, pp. 15-16; C1, pp. 16-18, C2, pp. 10-11.

> *truth? Well, it's clear that the only […] compass accessible to the public to take position is: 'were charges laid?'* […]
>
> *Cleary the public is ill-equipped to grasp some of these issues.*[643]

This insight echoes the testimony of a representative of the DPCP, Maître Patrick Michel, before the Viens Inquiry on the public's obliviousness of the practices and rules at play within the justice system. While not discussing investigations against the police in particular, Michel went over the prosecution process. He explained that the population is often confused by prosecutorial standards and norms, a problem that can ultimately affect public confidence.[644] Michel asserted that the decision not to lay a charge, for instance, does not mean an act did not occur or is ethical but reminded the venue that the prosecution must analyze the evidence's sufficiency under a stringent test.[645] The public's lack of expertise in legal proceedings was also a concern for participant C2. They doubted that the population can always evaluate the quality of the state's action in criminal justice: "*At times, laypeople, and it's not that I want to criticize them, but they can condemn hastily without having access to all the information*."[646] This only buttresses the necessity for better transparency, including the dissemination of information in sufficient and plain language.[647]

In light of our participants' insights, we conclude that information is only a part of transparency. The type of information provided is equally important. A few details are required to complete this discussion on the duty to inform. The Québec's Ombudsperson stated, when

[643] C1, pp. 16-18.
[644] Michel, *supra* note 83 at 173-174 (Michel). He provided the example that prosecutors are not victims' lawyers, which sometimes creates confusion for laypeople.
[645] Michel & Brassard, *supra* note 471 at 184–186 and 198.
[646] C2, p. 11.
[647] *Cf* Cree Women of Eeyou Istchee Association, *supra* note 91 at 2. The latter asks for accessible information in vulgarized language. The document refers to access to information with regard to rights, but we believe accessible vulgarized language is needed in other contexts.

commenting on the Bill creating the BEI, that the two preconditions for transparency are: "public's knowledge of the applicable law and timely communication of motives for a decision or outcome."[648] The first part of this excerpt can be tied to our legal literacy proposition. Although it was absent from our interviews, we recognize the value of the second prong of the Ombudsperson definition. We shall also note that 'information' refers to formal and informal communication with the public. On this matter, participant A1 expressed disappointment regarding the SPVM's decision not to explain their investigative process upon requests for news stories.[649] The police or the BEI should not wait to be legally mandated to provide information to build these communications strategies and contact the public. Finally, we must observe that improving the communication within state accountability mechanisms for police sexual misconduct would perfectly align with a social accountability approach, which "include[s] efforts to enhance citizen knowledge and use of conventional mechanisms of accountability".[650]

The last two subsections revealed that many conceptions of accountability pass through information. In Chapter I, building on the literature on accountability, we argued that the quality and quantity of information available influence the result of accountability processes and is a condition of success rather than a condition of the existence of accountability mechanisms.[651] The data reinforces this conception but also adds depth to it. Information should not be limited to providing the results of an investigation or the rationale for a decision. The information should be adapted to the recipient and, more generally, the public. This may mean offering versions that are

[648] Protecteur du citoyen, *supra* note 606 at 12 (free translation). See also Association des groupes d'intervention en défense des droits & en santé mentale du Québec, *supra* note 487 at 21.
[649] A1, p. 14.
[650] Malena, Forster & Singh, *supra* note 206 at 3–4. See also Brinkerhoff & Wetterberg, *supra* note 188; Malena, Forster & Singh, *supra* note 206 at 7.
[651] See Chapter I (section 3).

accessible or complementing communications with explanations of legal terminology. Detachment from lived experience can preclude this type of communication. The state must put itself in the position of the public to ensure that communication will be effective. Timeliness of communication and informal contacts with the public were also noted as goals to pursue to enhance state practices. In any case, information is a crucial factor in assessing the effectiveness of state accountability mechanisms.

Interviewees emphasized transparency in investigations of police sexual crimes. While the latter is essential, communication issues only partially address critiques against the BEI. The same is valid for independence and impartiality discussed above. Consequently, prior to concluding this Chapter, we wish to point to a few elements that would improve the BEI and assist the state in fulfiling its obligation to design and provide an accountability mechanism for police sexual misconduct: adding a non-communication rule in cases of investigations of police crimes so that police officers involved do not communicate;[652] ensuring representation and diversity,[653] compiling demographic data, including race, for all investigations of the BEI;[654] documenting and

[652] Lafontaine (2020), *supra* note 4 at 77–79. See also, *Police Act, CQLR, c. P-13.1*, *supra* note 45, s 289.4; *Regulation respecting the conduct of the investigations of the Bureau des enquêtes indépendantes, RQLR, c. P-13.1, r. 1.1*, *supra* note 635, ss 1–2.
[653] See, e.g., Open Society Justice Initiative, Scott & Lisitsyna, *supra* note 137 at 37; Ligue des droits et libertés & Coalition contre la Répression et les Abus Policiers, *supra* note 597 at 44–49; Lafontaine (2016), *supra* note 4 at 44–46; Lafontaine (2020), *supra* note 4 at 127–134; Protecteur du citoyen, *supra* note 454 at 34–36. For the latest data on these issues, see Bureau des enquêtes indépendantes, *supra* note 492 at 7 and 33.
[654] See, e.g., Lafontaine (2020), *supra* note 4 at 107–109. See also Open Society Justice Initiative, Scott & Lisitsyna, *supra* note 137 at 64–65; Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 223–226; Ligue des droits et libertés, *supra* note 495.

sanctioning delays;[655] monitoring police practices to avoid improper note drafting in cases of police sexual misconduct;[656] and granting power to sanction breaches of collaboration.[657]

Conclusion

This Chapter outlined legal provisions or practices acting as barriers to accountability in criminal investigations of police sexual misconduct. They posited that the state could foresee such barriers (e.g., the impact of colonialism on trust) or might have been wilfully blind to some (e.g., witness compellability and the need for clear communication). The content of the interviews mostly dictated the choice of themes covered in this Chapter, and it is trite to say that the latter is not an exhaustive account of all issues related to investigating police crime. Still, participants' discourses, complemented by the literature on independent investigations and the Val-d'Or crisis, proposed a glimpse into the legal framework and supported our arguments regarding criminal investigations of police misconduct: (1) state accountability for police sexual crimes requires responsiveness to civil society, which translates notably into an accessible, independent, impartial, and transparent investigative mechanism, and (2) since the Val-d'Or crisis, the mechanisms implemented by the state have presented substantial limitations in matters of accessibility, transparency, independence, and impartiality. These contentions were summarized as follows: the

[655] See, e.g., Ligue des droits et libertés & Coalition contre la Répression et les Abus Policiers, *De très long délais* (2020).
[656] See, e.g., Pedneault, *supra* note 593 at 22–23; Lafontaine (2020), *supra* note 4 at 77–80; Ligue des droits et libertés & Coalition contre la Répression et les Abus Policiers, *supra* note 597 at 27–29; *Wood v. Schaeffer*, *supra* note 572; Open Society Justice Initiative, Scott & Lisitsyna, *supra* note 137 at 42; Ligue des droits et libertés & Coalition contre la Répression et les Abus Policiers, *Des rapports de police rédigés sous influence* (2020).
[657] Open Society Justice Initiative, Scott & Lisitsyna, *supra* note 137 at 40–41; Pedneault, *supra* note 593 at 12–17; *Mémoire du Protecteur du citoyen présenté à la Commission des institutions Projet de loi no 107 Loi visant à accroître la compétence et l'indépendance du commissaire à la lutte contre la corruption et du Bureau des enquêtes indépendantes ainsi que le pouvoir du directeur des poursuites criminelles et pénales d'accorder certains avantages à des témoins collaborateurs*, by Protecteur du citoyen (Québec, 2017) at paras 50–57; Boies, *supra* note 497 at 33–35; Ligue des droits et libertés, *supra* note 487 at 12, 13 and 20; Lafontaine (2020), *supra* note 4 at 80–81.

state did not design an effective state accountability mechanism for police sexual misconduct during and after the Val-d'Or crisis. As the state is responsible for providing such a mechanism, it should be held accountable when failing to do so and when such failure is foreseeable or rooted in wilful blindness.

Nevertheless, the Chapter fleshed out some solutions that would assist in rectifying the consequences of policies and practices currently precluding accessibility, independence, impartiality, transparency, and, more generally, state accountability. These suggestions pass through reviewing and testing novel complaint mechanisms that respond to the needs of victims of sexual violence and the socio-historical context. They also include fostering independence by altering the nomination process of the BEI Director and severing the entity's ties with the police, notably through independent resources and stand-alone legislation. Increasing transparency for investigations of police crimes, especially in cases where no charges were laid, is another vital component of eventual reform. Waiting for all the recommendations outlined in this Chapter to come to life will require patience. While the state has tried improving its criminal investigations during and in the aftermath of the Val-d'Or crisis, much remains to be done. Until reforms expand beyond the current Bill 14's ambit, reliance on multiple sources of redress to circumvent barriers to accountability in state law (see Chapter II) or in the investigation of police crime is imperative.

The following Chapter on the role of the media in Val-d'Or will continue building on the argument that all mechanisms of state accountability used throughout the Val-d'Or crisis are, when studied in a vacuum, too limited to secure state accountability. It will also explain how the media

can either highlight wilful blindness and foreseeability or reproduce forms of state blindness. Journalism thus stands as a non-state actor with a peculiar status.

CHAPTER IV – MEDIATIC COVERAGE: SECURING STATE ACCOUNTABILITY OR AMPLIFYING HARM?

The media have played an essential role in holding the state accountable in Val-d'Or. In October 2015, *Enquête*, an investigative television show, broadcast an episode disclosing the abuse of Indigenous women by the police in Val-d'Or. The episode, entitled "*Abus de la SQ : les femmes brisent le silence*"[658] referred to several types of police violence, including acts potentially corresponding to the legal classification of sexual assault, sexual extortion, assault, and kidnapping.[659] This journalistic enquiry marked the beginning of what is now known as the Val-d'Or crisis. This news story led to a defamation lawsuit launched by the 48 police officers against Radio-Canada and Josée Dupuis – one of *Enquête*'s journalists – in October 2016. This lawsuit alleged a lack of thoroughness and impartiality.[660] In March 2016, a second episode aired and provided additional narratives documenting the situation across the province (i.e., *Le silence est brisé*).[661] Both episodes are milestones in the Val-d'Or crisis timeline. They shaped the state and civil society's responses to the Val-d'Or events. They also produced grounds to argue for foreseeability or wilful blindness (both legal and extended), essential to revisit state accountability for police sexual violence under our theoretical framework.

[658] See note 20.
[659] See, e.g., Rich, *supra* note 5 using the sexual assault and kidnapping categories.
[660] See, e.g., Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 16; Marie-Michèle Sioui, "Des policiers de la SQ poursuivent Radio-Canada en diffamation", *Le Devoir* (20 October 2016), online: <https://www.ledevoir.com/societe/482583/femmes-autochtones-des-policiers-de-val-d-or-denoncent-le-traitement-qui-leur-est-reserve>. The only decision available in this file is a Court of Appeal agreeing with the Superior Court that the action had to be ruled on its merits. Radio-Canada argued that they were facing a strategic lawsuit against public participation and that this aspect had to be ruled on before the decision on merits: *Société Radio-Canada c April*, 2017 QCCA 2057.
[661] *note 40.*

A study on state accountability for police sexual misconduct in Val-d'Or can, thus, hardly refrain from considering the impact of journalism. While the capacity of the media to signal alarming news to the population may be hard to quantify,[662] this Chapter points out that *Enquête*, predominantly, and journalists, more broadly, alerted Canadians and prompted state action by putting forward information that could not be ignored. Before unpacking this Chapter's content, we will briefly explain why and how we must insert the media in the framework of state accountability on which we have grounded the thesis. Chapters I to III have tackled the problem of state accountability for police sexual misconduct in different fashions. They nevertheless all added to the arguments that (1) the actual state of the law is inadequate and that (2) while waiting for reforms, we must rely on multiple means of redress. These contentions are two prongs of an overarching argument purporting that we cannot exclusively rely on the law – as it currently is – to come to grips with state accountability for police sexual misconduct. A way to circumvent the shortcomings of state law is to rely on social accountability – a theory suggesting that grassroots actions can secure state accountability when the formal system is not operating correctly or offers inadequate responses. A social accountability lens shifts our gaze beyond the law and allows us to investigate bottom-up processes challenging state power, such as investigative journalism.[663] Overall, this Chapter brings social accountability a step further in this thesis by recognizing that media, just like the law, is a critical social sub-system that can contribute to accountability in positive and negative ways.[664] This Chapter also enriches the second element of the above

[662] Markus Prior, "Conditions for Political Accountability in a High-Choice Media Environment" in Kate Kenski & Kathleen Hall Jamieson, eds, *The Oxford Handbook of Political Communication* (Oxford University Press, 2014).
[663] Joshi & Houtzager, "Widgets or Watchdogs?", *supra* note 189 at 154; Malena, Forster & Singh, *supra* note 206 at 3–4. On the media as a bottom-up mechanism, see also, *Innovative Media for Change: Opportunities and Challenges of Media Collaboration in Transitional Justice*, by Julie Viebach, Matilde Gawronski & Carolyn Hoyle (Oxford: Oxford Transitional Justice Research/Centre for Criminology, 2016) at 27–31.
[664] See Lieve Gies, "Law and the media: liberal and autopoietic perspectives" in *Law and the Media: The Future of an Uneasy Relationship* (London: Routledge-Cavendish, 2007) 20 at 102.

statement by conveying that the media cannot be the sole vehicle to secure state accountability.[665] Multiple means of redress are equally needed when relying on social accountability mechanisms that are not state-sponsored.

This fourth Chapter connects the media to the theoretical underpinnings of the thesis in a third way, briefly flagged above: showing grounds for foreseeability or wilful blindness. The media coverage in Val-d'Or contributed to exposing abuses. It also identified manifestations of police sexual violence and their potential causes, including unintended effects, all relevant to assessing state accountability. This Chapter alone does not support the conclusion that the state should be held accountable. However, when all the Chapters are read as a whole, we can observe how the work of the media brought allegations into the public realm and documented police sexual violence. By doing so, the media framed the latter as an issue requiring state action and forced us to think about the state's responses to the allegations. Did the state disregard the systemic nature of police sexual violence, or did it fail to ponder the risk of state action and maintain the status quo upon discovering the allegations through media coverage? For instance, the contentions put forward in this Chapter must be kept in mind as they will make the claim that the Viens Inquiry was wilfully blind to police sexual violence more compelling (see Chapter V). This Chapter is thus

[665] We wish to specify that the impact of the media is assessed through the data collected in Val-d'Or. We do not explore the relationship between the law and the media in other circumstances, such as the receptivity of legal decisions by the media and the impact of this dialogue on accountability or the law, on this matter see e.g., Roach, *supra* note 16 at 57; Judith Lachapelle, "Est-ce qu'une intoxication extrême peut excuser un crime violent?", *La Presse* (22 May 2022), online: <https://plus.lapresse.ca/screens/1770eb75-8ce4-4377-8375-4db58f36ae61%7C_0.html>; Marianne Dépelteau, "Une décision de la Cour suprême soulève des craintes chez les victimes de violence", *Francopresse* (30 May 2022), online: <https://francopresse.ca/2022/05/30/une-decision-de-la-cour-supreme-souleve-des-craintes-chez-les-victimes-de-violence/>. Professor Roach speak to the receptivity to the following decisions: *R v Golden*, *supra* note 350; *R. v. Grant*, *supra* note 360. The press articles comment on the already highly contentious *R v Brown*, 2022 SCC 18 on extreme intoxication akin to automatism. We neither examine aspects not discussed with participants, like the impact of social media. On the latter, see Anne-Marie Pilote & Lena A Hübner, "Femmes autochtones et militantisme en ligne : usages de Facebook et Twitter pour contrer les violences sexuelles dans la foulée du scandale policier de Val-d'Or" (2020) 32:2 rf 167–196.

vital to providing a better understanding of the wilful blindness and foreseeability assertions that surface throughout the thesis.

The Chapter engages with wilful blindness in another way. It argues that the media may reproduce discourses of power and, in so doing, promote ignorance of systemic wrongs.[666] Our theoretical framework demonstrates a connection between the media and the state. This remains true despite the media's independence in broadcasting, discussed in section 4. Indeed, our theoretical underpinnings focus on mechanisms that interact with the state, showing a first nexus between the media and the state. Second, our interpretation of infrastructural power highlights that power negotiations are possible because of a relational dynamic between state and non-state actors (see Chapter I). Bottom-up mechanisms interacting with the state and state-based mechanisms are thus part of one accountability system. This means that media-induced and state-based accountability mechanisms might exhibit common limitations. As the state and the media are tied to the same system and society, they can share narratives and account only for their own vision of a phenomenon (i.e., the dominant one). This can translate into excluding lived experiences, particularly when the lived experiences differ from the majority's.

In other words, although in cases of police sexual violence, the abuse originates from the state and not the media, bottom-up accountability processes can contribute to impunity because of their relation to the state. This will happen when the media and the state are blind to the same elements and share a similar narrative of an event or phenomenon. As we will explain in this

[666] See, e.g., Teun A van Dijk, "Theoretical Foundations of News Media as a Source of Social and Political Power" in Eamon Boyle, ed, *Media Bias and the Role of the Press* (Greenhaven Publishing LLC, 2018); Natalia Antolak-Sapar, "Media as a Reflection of Public Opinion" in *The role of the media in criminal justice policy : prisons, populism and the press* (Milton Park, Abingdon, Oxon; New York, NY: Routledge, 2023).

Chapter, it might have been the case throughout the Val-d'Or crisis, which the media and the state treated as an isolated wrong rather than the symptom of colonialism and police culture. This blindness of the media can then justify the state's choices to emphasize a specific narrative in its accountability mechanisms. For instance, as Chapter V will explain, the fact that the media did not rely on a historical account of sexual violence against Indigenous women across the province partly explains why the Viens Inquiry did not engage with this issue. Media are accountability triggers, but the state might misdirect its accountability mechanism if the media do not raise all relevant issues.

From the moment the first episode aired in October 2015, a series of state responses started to unfold. The journalists from this television show moulded both the Val-d'Or crisis narrative and the responses of the state. Nonetheless, *Enquête* is only one aspect of the media's implication in Val-d'Or. From 2015 onwards, several newspapers, radio shows, and news videos were written or produced by well-known players in the mediatic world and more modest initiatives.[667] As put by one participant, Val-d'Or was the "*centre of attention of the mediatic planet*".[668] Participants generally agreed that journalists – and not only the team of *Enquête* – activated a form of state accountability or at least raised awareness of the situation. They also conceived of this accountability process as one attached to a heavy price. Three broad arguments on the media and state accountability stemmed from interviewee's answers. The sections of this Chapter will each develop one of these contentions: (1) the journalists, notably the ones of *Enquête*, triggered state accountability primarily by bringing allegations of misconduct in the public realm, but (2) they did not unveil the whole story nor (3) fully support the community of Val-d'Or after October 2015.

[667] See Appendix I.
[668] A2, p. 5.

The second and third assertions are gaps in state accountability since we may posit that the truth was only partially disclosed and that the initial exposure, followed by a disengagement of the media, revived tensions or caused further harm. Section 2 will also expand on a novel manifestation of wilful blindness: documentation that fails to expose structural components of police sexual violence, thus justifying partial inquiry from the state. As hinted earlier in this Chapter, as the state and the media participate in a common system under our social accountability and infrastructural power framework, they might share some visions of events. This does not mean that the media are not independent or are complicit in causing police sexual violence. They can, however, contribute to forms of impunity. Section 3 will expose harm, whereas section 4 will propose a moral duty to protect victims to reduce harm in case of mediatic coverage of traumatic events. Section 4 reconciles our definition of accountability – which incorporates redress, the opposite of harm – with mediatic coverage as a powerful social accountability strategy.

1. Unveiling Misconduct: Media-Induced State Accountability

This first section unpacks the media's contribution to state accountability in Val-d'Or. Contrary to some legal mechanisms examined heretofore, the media is not bound by the legal conceptions of misconduct or legal liability standards. They can address all police action, including on and off-duty police sexual misconduct on the police violence spectrum, without facing barriers usually imposed by the law (e.g., the employer's benefit criterion within the principal's liability and criminal organizational liability regimes).[669] Is this extensive coverage enough to enable state accountability for social issues as sensitive and complex as police sexual misconduct? In the

[669] For details on this criterion and other obstacles to state liability in Canadian law, see Chapter II.

affirmative, should we pursue this accountability measure at all costs? Using the Val-d'Or crisis as an example, this Chapter proposes a nuanced response to these challenging questions.

The literature outlines several ways the media can contribute to state accountability. Authors have articulated at least four different media-induced forms of accountability: (1) prompting pre-emptive reflection within institutions, (2) ensuring that institutions justify their actions (the 'watchdog function'),[670] (3) reporting on accountability forums, and amplifying accountability processes, as well as (4) informing other accountability forums and trigger processes within these sites.[671] Media coverage can also act as a reputational sanction.[672] The data collected for this study do not provide sufficient evidence to comment on all forms of accountability mentioned above. However, two of them were predominantly highlighted across our interviews and shall benefit from further analysis: the watchdog function and the capacity to report on accountability forums. As for the reputational sanction, participants who commented on this issue did not believe their perception of the police had changed because of the crisis. One interviewee attributed the reputation of the police to a series of events from which we cannot isolate

[670] The 'watchdog function' is widely documented and recognized by the literature, see e.g., Viebach, Gawronski & Hoyle, *supra* note 663; Perry L Moriearty, "Framing Justice: Media, Bias, and Legal Decisionmaking" (2009) 69 Md L Rev 849 at 860; Gavin Millar QC & Andrew Scott, *Newsgathering: Law, Regulation, and the Public Interest* (Oxford: Oxford University Press, 2016) at para 1.11; Lieve Gies, "Anatomy of a troubled relationship" in *Law and the Media: The Future of an Uneasy Relationship* (London: Routledge-Cavendish, 2007) 20 at 3; Gies, *supra* note 664 at 97; Prior, *supra* note 662 at 900. On the watchdog function, see also Menzies argue that the media might be unable to access information and denounce all police crime, hence the need for multiple check and balances and means of redress: Ken Menzies, "State Crime by the Police and Its Control*" in Jeffrey Ian Ross, ed, *Controlling State Crime*, 1st ed (Routledge, 2017) 141 at 153–155. The Supreme Court of Canada also recognized it, see e.g., *Denis v Côté*, 2019 SCC 44, [2019] 3 SCR 482 at para 45.

[671] See, e.g., Sandra Jacobs & Thomas Schillemans, "Media and public accountability: typology and exploration" (2016) 44:1 policy polit 23–40 at 27; Sandra Jacobs et al, "Exploring Media-Covered Accountability of Public Agencies" (2021) Administration & Society 009539972110363 at 6. The United Nations, on their end, recognizes the role of the media in "shaping opinions" in their handbook on police accountability: United Nations, *supra* note 463 at 104. *Cf* Gergana Dimova, "The Media Age and Government Accountability: An Ambiguous Relationship" in *Democracy Beyond Elections* (Cham: Springer International Publishing, 2020) 29 at 40–41.

[672] Jacobs et al, *supra* note 671 at 3.

the Val-d'Or events.[673] Others posited that their perceptions remained the same or confirmed pre-existing beliefs.[674] The Val-d'Or crisis was thus not a turning point regarding the police's reputation, at least in most of our participants' minds. The response could, however, be different with another sample.[675] In what follows, we will underline the two forms of accountability emphasized in the data. Thus, we will unfold how the media acted as watchdogs and reported on accountability mechanisms throughout the Val-d'Or crisis. This section will argue that the media acted as triggers of state accountability at precise moments (i.e., October 2015 and November 2016) and that their contribution to accountability through reporting on accountability forums appears to have eroded over time.

In addition to the positive effects cited above, the literature outlined objections to media-induced accountability. Media can notably reinforce existing biases, exercise selectivity in disclosing wrongdoings, influence the public and the justice system, act based on sensationalist pursuits, be used by politicians to redirect blame to other entities or persons as opposed to justifying the state's misconduct, and overemphasize quantity over quality of information.[676] The drawbacks of media exposure will be unpacked in sections 2 to 4, which primarily build on our participants' discourses. While recognizing that the adverse effects of coverage underscored by the literature are relevant, these sections will speak mostly to selectivity, aggravation of existing biases, and default to protect victims. Sections 3 and 4 highlight harm and call for changes. They also imply pondering whether gathering information for foreseeability and wilful blindness claims

[673] A1, pp. 10-11.
[674] A1, p. 11; B1, p. 8; C2, pp. 5-7.
[675] Participant C1's insight is informative on this distinction in perceptions: "*[w]e should ask this question to [other people] because my perception of the police is that I'm not the one who, who gets stopped in the streets [...] So it's a little hard to answer*" (p. 12).
[676] See, e.g., Dimova, *supra* note 671; Moriearty, *supra* note 670.

should supersede any harm produced throughout the process. We must remind the readers that harm is the direct opposite of 'remedy', one of the three elements defining accountability.

When discussing media-induced state accountability in Val-d'Or, we must begin by underlining the significant role of *Enquête* in triggering state action and directly participating in bringing this issue to the public and the state's attention. Édith Cloutier, Executive Director of the Val-d'Or Native Friendship Centre, testified before the Viens Inquiry, where she explained how the media impacted state responses:

> Following the emotion caused throughout the province of Quebec by the broadcast of this news story, the Ministry of Public Security decided to entrust the investigation to another police force, the SPVM. The SPVM then activated a telephone line for receiving denunciations. At that time, the investigation concerned twelve (12) women who had filed complaints against police officers of the SQ. [Our translation; emphasis added.][677]

The transcription of this testimony extends over several pages. It describes the timeline of the events and state responses, including reunions between First Nations Leaders, governmental funding of the Val-d'Or Friendship Native Centre, concertation between civil society actors, a recommendation from the United Nations,[678] commissions of inquiry, and the appointment of an Independent Civilian Observer to assess the integrity and impartiality of criminal investigations.[679] Cloutier's statement confirms that the broadcasting of *Enquête*'s investigation is inherently connected to state action and the implementation of accountability forums. Many affirmations and documents could be added to this statement. For instance, the Independent Civilian Observer gives

[677] Cloutier, *supra* note 24 at 90.
[678] *Report on the fifteenth session (9-20 May 2016)*, by Permanent Forum on Indigenous Issues, E/2016/43-E/C.19/2016/11 (New York: United Nations (Economic and Social Council), 2016) at para 35. The report states explicitly: "the Forum recommends that States adopt measures aimed at addressing the specific problems of police brutality, systemic police violence and discrimination against indigenous women, as experienced, for example, by indigenous women in Val-d'Or, Canada, Sepur Zarco, Guatemala, and north-east India."
[679] Cloutier, *supra* note 24 at 88–99.

a powerful example of the bourgeoning effect of the *Enquête* documentary: "[t]he revelations of Indigenous women from Val-d'Or have encouraged Indigenous persons all over Québec to report police abuse. Between when the revelations were broadcast on the program *Enquête* in October 2015 and July 2020, nearly 200 criminal investigation cases were opened concerning allegations made by an Indigenous person in Québec against a police officer […]".[680] The massive criminal investigations referred to in this excerpt are undoubtedly a method to enable accountability, but it was not the only response that followed the broadcasting of *Enquête*. Figure 1 below displays a chronology of the events triggered by investigative journalists and serves as a reminder of the case study timeline sketched in the introduction of this thesis.

[680] Lafontaine (2020), *supra* note 4 at 165 [English translation at p. 149]. See also Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 11–13.

Figure 1.
Key Dates: Accountability Forums Throughout the Val-d'Or Crisis[681]

May 2015: Information on the allegations is communicated to the authorities

October 2015: The first episode of *Enquête* airs; the SPVM is entrusted with the investigations

November 2015: Appointment of the Independent Civilian Observer

March 2016: The second episode of *Enquête* airs

April 2016: Criminal investigations are extended to the province

June 2016: The *Bureau des enquêtes indépendantes* starts its operations

August 2016: The federal government announces the creation of the National Inquiry into Missing and Murdered Indigenous Women and Girls ("MMIWG"); an administrative order (711-2016) gives federal commissioners powers to investigate in Québec[682]

October 2016: The Minister extends the BEI's mandate to sexual offences committed by on-duty police officers

November 2016: The Independent Civilian Observer submits her first report (phase I); the Director of Criminal and Penal Prosecutions (DPCP) announces that no charges will be laid against police officers in Val-d'Or

December 2016: The provincial government creates the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress ("Viens Inquiry")[683]

September 2018: The Minister extends the BEI's mandate to complaints filed by Indigenous persons, which puts an end to investigations of the SPVM

June 2019: The MMIWG submits its Final Report

September 2019: The Viens Inquiry submits its Final Report

October 2019: Prime Minister Legault apologizes to First Nations and Inuit Peoples

August 2020: The Independent Civilian Observer submits her second report (phase II)

December 2021: Launch of a class action against the Attorney General of Québec

[681] Inspired mostly by Lafontaine (2020), *supra* note 4 at 6–9 and 32–38; Cloutier, *supra* note 24 at 88–99; *Témoignage devant l'honorable Jacques Viens, 4 juin 2018, vol. 106*, by Janet Mark (Val-d'Or: Commission d'enquête sur les relations entre les Autochtones et certains services publics : écoute, réconciliation et progrès, 2018) at 23–41. This is a simplified version of the timeline only meant to provide some guidance to readers. Sources cited above provide further details. Please note that the timeline is not to scale.
[682] *Décret 711-2016, 9 août 2016*, *supra* note 52.
[683] *Décret 1095-2016, 21 décembre 2016*, *supra* note 48.

The first episode of *Enquête* was, as shown in the figure above, the cause of a long chain of reactions that was still active as of September 2022, the date at which the Québec Court of Appeal authorized a motion to leave for appeal on an issue of parties' identification in the class action launched against the state.[684] We argue that these actions are all connected with the disclosure of the allegations by the media. If the media had not sounded the alarm, the abuses might not have surfaced in the same way, and we cannot be sure of the type of responses that would have been offered. The capacity of the media to alert the population and the state is also a crucial element of foreseeability and wilful blindness claims as investigative journalism can – in addition to exposing abuse – show manifestations of police sexual violence or impunity, and their potential causes, including unintended effects. Nonetheless, as the introduction to this Chapter flagged, wilful blindness, or more precisely, the reproduction of dominant discourses, may mean that the state and the media share some visions. In these cases, they can be blind to lived experience or side-line concerns. If the media is wilfully blind, its capacity to warn the population about state wrongdoings is reduced.

The alerting role taken by the media is not documented exclusively in the literature on the Val-d'Or crisis. It also arises from our interviews. While some individuals were aware of allegations of police misconduct before 2015 (see next paragraph), it was only through pressure from the media that the government and Parliament started to act on police misconduct claims.[685] Moreover, four out of six participants first heard of the allegations through *Enquête*.[686] The latter

[684] *Procureur général du Québec c. Centre d'amitié autochtone de Val-d'Or*, *supra* note 55. The Court of Appeal heard the parties on April 2023, see Cour d'appel du Québec, *Rôle d'audience* (30 January 2023), available online: <https://courdappelduquebec.ca/fileadmin/Fichiers_client/roles_audiences/MTL_AVRIL_2023/semaine_2023-04-17_salle_lamer_V_21_02_2023.pdf>, p.6.
[685] On the role of social media, see Pilote & Hübner, "Femmes autochtones et militantisme en ligne", *supra* note 665 at 186 and 189–190.
[686] A1, A2, C1, C2.

observation allows us to assert that the notification in May 2015 and broadcasting in October 2015 were milestones in the Val-d'Or crisis on two main fronts: (1) prompting state action and (2) diffusing information that later informed social accountability measures, such as citizens' participation to commissions of inquiries, public litigation, and academic work, including this thesis.

The previous paragraph pointed out awareness of the abuse before media coverage. For instance, Edith Cloutier disclosed that she was "half-surprised" by the allegations of sexual abuse by police officers. She stated: "starting in May, some actors from the Indigenous world, but also the non-Indigenous legal world of Val-d'Or, had heard about such events, that Indigenous women were sexually, physically abused by police officers of the *Sûreté du Québec*."[687] Two participants in the study, with closer connections to the community, possessed information on the allegations before October 2015.[688] Knowledge of the allegations even dated back to the 1980s or 1990s for one participant,[689] showing that the media did not uncover per se the allegations but broadly shared a situation privy only to a small group.[690] As explained in Chapter II, our interviewees were not the only ones aware of the situation prior to media disclosure. A police officer, Jean Vicaire, reported having disclosed police abuse to his superior at the SQ in 2013, two years before *Enquête*'s first news story was broadcast.[691] This could reinforce our claim that the state was

[687] Cloutier, *supra* note 24 at 116–117 (free translation).
[688] B1, pp. 3-4; B2, p. 11.
[689] B2, p. 11.
[690] We are not saying that allegations were uncovered by the opposition and then relayed by the media. The media contributed to bringing allegations into the public realm, but it does not mean that the situation was not known to a group of people who had a privileged relationship with the community in Val-d'Or. *Cf* Dimova, *supra* note 671 at 31–32.
[691] Vicaire, *supra* note 439 at 103–106.

wilfully blind (in the legal sense of the term), but would need further confirmation. In other words, there is at least suspicion that the state had enough information to investigate the matter.

Prior cognizance of police misconduct by a privy group of individuals is, however, no obstacle to the media's contribution to state accountability. Before journalists' travels to Val-d'Or and their in-depth fact-finding,[692] the situation never reached the public realm. It remained unaddressed despite signalment by Jean Vicaire and some awareness within the community. A participant provided further details on these circumstances and revealed that civil society organizations were unable to provoke state action:

> **Interview B1:** *[W]e had heard that there had been some […] women who had… there had been inappropriate gestures, et cetera, but there was no evidence. And that's the problem that […] the documentary [solved] […] it's first of all that we had evidence and that we had testimonies so hmm something official.*[693]

While the media might not have disclosed the abuse to everyone, there is no doubt that they allowed for concerted action by the state, pressure from civil society, and information gathering. The media's input on state accountability is one of the most apparent findings in the data set. All participants recognized, albeit to different degrees, the effect of *Enquête* and post-*Enquête*'s media coverage, as shown by these excerpts documenting the role of the media in changing mindsets (see excerpts A1, A2, B2, and C1) and triggering responses from the state and civil society (see excerpts A1, A2, C1, and C2):

> **Interview A1:** Interviewer: *[D]o you think […] the media establish a form of accountability that is, that is not secured otherwise?*

[692] Fact-finding is one of the strengths of the media. See, e.g., Viebach, Gawronski & Hoyle, *supra* note 663.
[693] B1, p. 4.

Ah, I think it does. […] That is clear. […] I think that the more the media will work on Indigenous issues, the more they will put them in headlines […] instead of briefly reporting on these matters, the more they tell the authorities: "Look, we're interested, and it's important. And we'll continue to follow what's going on in these files."

And at the moment, the media do it a lot. Frankly hmm, there has been a lot of Indigenous issues in the media […] over the last years. And it's not just hmm (...) it's not issues where we are badmouthing them [...] like it was before.[694]

Interview A2: *The media, we gave people a voice. […] [B]eyond the crisis that we are living, what is the root of the problem? Because it's when you reach the root that you can make things change. I think that [the media] did that in part because there were competent journalists on site and I think we were able, in any case, to raise awareness. And.. I believe that by the end, non-Indigenous were maybe less camped in their positions.*[695]

Interview B2: *[T]here is this thing that is being set in motion [...]a change of attitude*.[696]

Interview C1: *If we wouldn't have experienced this media spotlight, and if other media wouldn't have got on board to make it hell, you know, if we hadn't seen this reaction that raised awareness, encouraged people to speak out, and made groups raise their hands and say "Hey! It doesn't work!" […] We could have waited for a long time*.[697]

Interview C2: *[W]e choose our files according to [...] the social utility hmm that we perceive in the file hmm. There are other factors also, but it is an important factor of selection of our files [...]*

[L]ike many people in Quebec, when the documentary of Enquête came out, we felt that there was a big problem.[698]

As demonstrated through these interviews, participants described the media as a prevailing actor of state accountability that can prompt state action and provide input for well-informed debates that raise awareness and civil society's resistance. Overall, participants depicted media as

[694] A1, pp. 29-30.
[695] A2, p. 39.
[696] B2, p. 33.
[697] C1, p. 33. The media has been an outlet to disclose not only police abuse as well as dissatisfaction with police accountability mechanism, see e.g., Ligue des droits et libertés & Coalition contre la Répression et les Abus Policiers, *supra* note 597 at 54.
[698] C2, p. 1.

positively impacting state accountability, which may not surprise given that information informs the quality of accountability mechanisms, including social accountability processes.[699] This first section showed that without the media, the state might never have addressed its role in the Val-d'Or crisis or the responsibility of individual officers. While it is true that the action of the media can trigger state action, the media's contribution is not without caveats. Critiques of the media responses in Val-d'Or cannot completely erase their impact on state accountability in Val-d'Or and beyond.[700] Nevertheless, we ought to examine the inadequacies of the media's involvement in Val-d'Or, notably the incompleteness of the narrative (see section 2) and the potential harm resulting from media coverage (see section 3).

2. An Incomplete Narrative?

Whereas the previous section uncovered the capacity of the media to generate state responses, sections 2 and 3 will shed light on concerns bringing some nuances to the portrait depicted above. In this section, we will argue that the media shaped a specific narrative of the Val-d'Or crisis due to their evaluation of 'noteworthy news',[701] the timeframe of media exposure, the lack of collaboration from some institutions, and the exclusion of some cases. The argument on the incompleteness of the narrative is divided into two sub-critiques: the focus on the SQ

[699] See Chapter I for further details. For other examples of cases in which *Enquête* triggered accountability, see Pierre Cayouette & Marc-André Sabourin, *Dans les coulisses d'Enquête* (Montreal: QuébecAmérique, 2014); Jodi Lazare, "After the Berger Blanc: A Comparative Approach to the Utilitarian Regulation of Municipal Animal Control" (2013) 43:1 rgd 131 at 134–135 and 138–148; Sébastien Tanguay, "Le gouvernement lance une enquête publique sur la mort de Norah et de Romy Carpentier", *Le Devoir* (23 March 2022), online: <https://www.ledevoir.com/politique/quebec/690078/le-gouvernement-lance-une-enquete-publique-sur-la-mort-de-noah-et-romy-carpentier>; Kathleen Lavoie, "Affaire Carpentier : Geneviève Guilbault ordonne une enquête publique", *Radio-Canada* (23 March 2022), online: <https://ici.radio-canada.ca/nouvelle/1871122/affaire-carpentier-genenieve-guilbault-enquete-publique-operation-recherche>; *Enquête | Affaire Carpentier : sur la piste des erreurs* (Radio-Canada, 2022); *Denis v Côté*, *supra* note 670; *L'Oratoire Saint-Joseph du Mont-Royal v. J.J.*, *supra* note 341 at paras 27, 28, 37 and 71.

[700] This does not mean that the implication of the media is always positive, *cf* O'Bomsawin, *supra* note 141 at 32 (on the Oka crisis) and 84-85 (on Restigouche).

[701] On this, see Jacobs et al, *supra* note 671.

(subsection 2.1) and the multifactorial assessment of stories deserving coverage (subsection 2.2). This incompleteness relates to the theoretical framework in the following way: lived experiences detached from journalists' lives might not count as "newsworthy." Journalists can also sideline elements relevant to understand a phenomenon like, for Val-d'Or, the historical presence of violence against Indigenous women. The examples of sidelining and detachment alluded to in this paragraph are further developed in subsections 2.1 and 2.2. Finally, as explained in the introduction to this Chapter, the state and the media are part of the same society and can share views and assumptions. If the media replicate power dynamics rather than challenge state perspectives – they can also exhibit wilful blindness. Wilful blindness of the media can lead to a deficit of information on a phenomenon – thus negating claims of foreseeability and wilful blindness. Without evidence, no standard will be met.

2.1. Police Sexual Misconduct and the *Sûreté du Québec*

Prior to delving into the incompleteness of the narrative, we need to stress two elements: (1) we do not purport that any of the sources pinpointed as having disclosed an incomplete narrative did so in bad faith, and (2) we do not deny the importance of analyzing the actions of the SQ. We agree with the pressing need to address the allegations against the SQ, and our analysis should not be interpreted as minimizing the responsibility of this police force. The bulk of the allegations was affirmatively against the SQ. The report from the first phase of the criminal investigations, focusing predominantly on Val-d'Or, reviewed 38 cases. Of these files, 30 involved a member of the SQ, pointing to specific problems within this police force.[702] However, we wish to underline that the media-crafted narrative may not include all police misconduct in Val-d'Or.

[702] Lafontaine (2016), *supra* note 4 at 88–127.

When studying the Val-d'Or crisis, there is no doubt that mediatic, legal, and academic sources have intensively centred on the SQ. The titles of the first *Enquête* episode and the 2016 report of the Independent Civilian Observer notably refer directly to this organization.[703] The name of the SQ also appears in the discourses of politicians,[704] in the scholarly literature,[705] in a declaration from the Director of Penal and Criminal Prosecutions,[706] in the Viens Inquiry Final Report's depiction of the events leading to the Inquiry,[707] and in media coverage.[708] However, data collected for this thesis shed light on alleged abuses that would have been committed before the beginning of the SQ's operation in Val-d'Or, a fact documented more timidly.[709] A participant explained that:

> **Interview A2:** *In the testimonies that young Indigenous women gave to Enquête, one or two of these women who repeated that they were brought to cells situated at the upper level*

[703] See, e.g., note 20; Lafontaine (2016), *supra* note 4. The Independent Civilian Observer nonetheless notes that other police forces were involved in the investigations, p. 26.
[704] See, e.g., *Journal des débats de l'Assemblée 28 octobre 2015 — Vol. 44 N° 120* at 7394–7400.
[705] Rich, *supra* note 5; Pilote & Hübner, "Femmes autochtones et militantisme en ligne", *supra* note 665; Thierry Rodon, "Le Québec et les Autochtones" in *Les apories des politiques autochtones au Canada* (Presses de l'Université du Québec, 2019) at 226–227; Bazinet, *supra* note 21.
[706] Directeur des poursuites criminelles et pénales, *supra* note 38.
[707] See also Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 11 and 255.
[708] See, e.g., these news articles which include the terms 'SQ' or 'Sûreté du Québec' in their titles: Christopher Curtis, "37 complaints of SQ abuse in Val-d'Or lead to zero criminal charges", *Montreal Gazette* (17 November 2016), online: <https://montrealgazette.com/news/quebec/pq-wants-independent-probe-into-val-dor-sq-sex-abuse-allegations>; David Prince, "L'absence d'accusation contre les policiers de la SQ divise Val-d'Or", *Journal de Montréal* (15 November 2016), online: <https://www.journaldemontreal.com/2016/11/15/allegations-de-femmes-autochtones-agressees--val-dor-divisee-face-a-la-decision-du-dpcp>; Caroline Plante, "Des femmes autochtones ont encore peur des policiers de la Sûreté du Québec", *La Voix de l'Est* (17 October 2019), online: <https://www.lavoixdelest.ca/2019/10/17/des-femmes-autochtones-ont-encore-peur-des-policiers-de-la-surete-du-quebec-f0206cf1d1fe42c6b8c13f3ac2cc2a07?nor=true>; Thierry Évrard, "Enquête sur la SQ à Val-d'Or: ma confiance vient de prendre une sérieuse débarque!", *Le Nouvelliste* (25 November 2016), online: <https://www.lenouvelliste.ca/2016/11/26/enquete-sur-la-sq-a-val-dor-ma-confiance-vient-de-prendre-une-serieuse-debarque-874fbf1090b71d9776ba8bbcf6c1436a>; Mirna Djukic, "Val d'Or SQ Abuse Scandal Update: Charges May Actually Be Filed…Against Radio-Canada", *Forget the Box* (7 June 2016), online: <https://forgetthebox.net/val-dor-sq-abuse-scandal-update-charges-may-actually-be-filed-against-radio-canada-201606072/>; Canadian Press, "No charges against SQ officers for alleged sexual abuse", *Global News* (15 November 2016), online: <https://globalnews.ca/news/3069522/charges-dropped-against-sq-officers-for-alleged-sexual-abuse/>.
[709] It does not mean that such allegations were not documented, see, e.g., Vincent Larouche, "Enquête sur la SQ à Val-d'Or: 30 victimes potentielles", *La Presse* (8 April 2016), online: <https://www.lapresse.ca/actualites/justice-et-affaires-criminelles/faits-divers/201604/07/01-4968958-enquete-sur-la-sq-a-val-dor-30-victimes-potentielles.php>.

> *[of the police station], and that they were in the cells before being assaulted or transported. The SQ police station in Val-d'Or has no upper level. The upper level, it's at the SM.*[710]

Assimilating the content of this excerpt requires a comprehension of the chronology of police services in Val-d'Or. The SQ started its operations in 2002. Before that date, the *Sûreté municipale* (SM), to which the interview refers, oversaw law enforcement in the town.[711] The documentary records an interview with a woman who describes a sexual assault at the upper level of a police station. The events would have happened around 1995, which confirms interviewee A2's insight on abuse by the SM.[712] This participant was disconcerted that *Enquête* did not expose the whole truth. They added with disappointment that they knew that a least one member of a former police organization was involved in several cases of sexual misconduct. The participant concluded that former police forces did not receive any of the public blame, the latter being allocated mainly to the SQ:

> **Interview A2:** *So, for me, it tainted my memory a little because I told myself: "S*** we blamed the guys from the SQ, but f*** it was not the guys from the SQ that did that. At least one of them [wasn't.]"*
>
> *[…] But, you understand that this whole news story is a bit, not biased, but it (…) gave me a kind of strange feeling, I said to myself: "Ok we pointed out the [SQ] and it's sure that they are not white as snow." But when it comes to sexual assault, there is this doubt, you know?*[713]

[710] A2, p. 3.
[711] Lacoste & Cormier, *supra* note 499 at 6; Prud'homme, Séguin & Pelletier, *supra* note 440 at 211–213. For more information on the reorganization of police services in the province, see *Loi concernant l'organisation des services policiers*, *supra* note 499.
[712] See note 20 at 00:20:08-00:21:22 these times refer to the version available on Youtube: https://www.youtube.com/watch?v=NqtxZf9rFCU.
[713] A2, pp. 3-4.

These comments raise the question of whether the media sufficiently "*shed light on zones of darkness*", one of the functions of the media, according to a participant.[714] The use of a narrative focusing on misconduct by SQ police officers was not adopted exclusively by the media. A participant evolving outside the media intentionally concentrated on the SQ. They noted that most cases were against the SQ, so they decided to bring these allegations forward in their discourse and advocacy, albeit they had heard of other allegations.[715] This participant is correct when saying that most cases investigated involved the SQ. As a reminder, 30 out of 38 files involved a member of the SQ in the first phase of the investigations.[716] Investigations included one case against the SM, but the suspect was deceased then. In summary, the media can obscure some occurrences of police sexual violence. When counting on the media to alert the state, the public, and civil society, we must accept that the media can shape the narrative by emphasizing some allegations and not others. If the press prioritizes some cases of police sexual violence over others, it can signal to the state that not all police misconduct is worth state accountability. Similarly, by reporting only on "newsworthy events", the media can select which cases of police sexual misconduct should receive public outcry. In other words, if the media does not inform other actors of some allegations of police sexual misconduct, these cases might remain unaddressed by the state and bottom-up initiatives.

Interviewee A2's discomfort reminds us that the media present their version of the truth and that the latter may remain incomplete. We are not saying that journalists in Val-d'Or

[714] A1, p. 1.
[715] C2, p. 8-9.
[716] Lafontaine (2016), *supra* note 4 at 88–127.

purposively distorted the truth,[717] especially as, according to the same participant, journalists did not release the information on pre-SQ abuse due to the impossibility of certifying some details. [718] Media like *Enquête* are held to high professional standards. Their credibility is bound to, at least in part, their adherence to professional etiquette. Journalists might not disclose all narratives relevant to understanding police sexual violence, but it does not imply they do not exist. Like this doctoral project's omissions (see the introduction of this thesis), the silences in media stories must be considered carefully. A lack of reporting does not dictate that something is irrelevant. Just as the law has its own language to assess truth (e.g., standards of evidence), the media have benchmarks to disclose information.[719] To make yet another parallel with the law, the DPCP in Val-d'Or indicated that the absence of charges did not mean that no abuse had ever happened. It just denotes that the evidentiary threshold was not met.[720] The relative gap in documenting police violence beyond the SQ does not mean that no abuse ever happened at the hands of these forces, but rather that investigative journalism yielded credible results against the SQ, which crystalized the dominant narrative around the latter.[721]

[717] By 'truth distortion', we do not refer to the problem of the proliferation of media and the difficulty in assessing their credibility, but rather that media can present facts in a specific for advocacy or sensationalism: see, e.g., Viebach, Gawronski & Hoyle, *supra* note 663. *Cf* Gies, *supra* note 664 at 99–104. This author argues that truth is not necessarily distorted but instead presented according to the norms of this subsystem (i.e., the media). There is no one objective truth.

[718] A2, pp. 2-3. The news story on Val-d'Or did not underscore this caveat, albeit it collected information on abuses that happened prior to the *Sûreté du Québec*'s arrival in Val-d'Or: note 20 at 00:19:14-00:21:20.

[719] Guidelines on journalistic ethics, for instance, emphasize the importance of accuracy, balance, impartiality, completeness, and contextualization of the information. In Québec, see, e.g., Fédération professionnelle des journalistes du Québec, *Code of Ethics* (Fédération professionnelle des journalistes du Québec, 1996) , ss 2, 3a) and 3b); Conseil de presse, *Guide de déontologie journalistique du Conseil de presse du Québec* (Conseil de presse, 2017) , ss 9, 14 and 14.1; CBC/Radio-Canada, "Journalistic Standards and Practices (JSP)", online: <https://cbc.radio-canada.ca/en/vision/governance/journalistic-standards-and-practices> tit "Accuracy", 'Balance', and "Impartiality"; "CANADIAN ASSOCIATION OF BROADCASTERS' CODE OF ETHICS (2002)", online: *Canadian Broadcasting Standards Council* <https://www.cbsc.ca/codes/cab-code-of-ethics/> , ss 5 and 6. These documents are discussed in section 4.

[720] Directeur des poursuites criminelles et pénales, *supra* note 38 at 16.

[721] *Cf* Gies, *supra* note 664 at 99–104. On rationales for under coverage of some human rights violations, see also Noam Schimmel, "Media accountability to investigate human rights violations" (2009) 21:4 Peace Review 442.

Leaving concerns about attributing blame to specific police forces, the proposition that media coverage in Val-d'Or left some parts of the wrongs in the dark manifested itself in another way. *Enquête* was an occasion to connect women's experience to police violence in Canada, violence transcending the allegations against the SQ or the SM.[722] In other words, the news story emerged as a missed opportunity to investigate the connection between police violence and unintended consequences of state action against Indigenous women. Without such information, foreseeability and wilful blindness might be difficult to reach outside Val-d'Or. While necessary for some purposes, the focus on individualized cases did not associate Val-d'Or with broader police sexual violence and state wrongdoings throughout Canadian history. For example, it left no place for the strategic use of the police to control Indigenous peoples in Canada, the use of sexual violence as a colonial tool, and, alternatively, how the tolerance to abuse might have paved the way for police sexual violence. One of our participants proposed to revisit the event in such a historical way by building on the role of the police and indifference to abuse.[723] By relying notably on this interview, we suggest that there was continuity in the crisis – violence by the state took many forms. Indigenous women were targeted throughout this transformation of violence. Focusing on events rather than structural injustice is said to be one feature of criminal justice reporting.[724] However, this characteristic maintains significant blindspots when it comes to state wrongdoings.

[722] For related discussions: Stephanie Patrick, "Uneasy Listening: True Crime and Structural State Violence in Public Podcasting" in Stephanie Patrick & Mythili Rajiva, eds, *The Forgotten Victims of Sexual Violence in Film, Television and New Media* (Springer: Springer, 2022); Neroli Price, "Can true crime podcasts make structural violence audible?" in *The Routledge Companion to Radio and Podcast Studies*, 1st ed (London: Routledge, 2022) 358; Yasmin Jiwani & Mary Lynn Young, "Missing and Murdered Women: Reproducing Marginality in News Discourse" (2006) 31:4 Canadian Journal of Communication 895–918.
[723] See Chapter III and B2, pp. 6-9. On sexual violence as a colonial strategy, see, e.g., Deer, *supra* note 19.
[724] See, e.g., Antolak-Sapar, *supra* note 666 at 89–93.9/16/2023 3:05:00 PM

In all fairness to the team of *Enquête*, they inquired into Indigenous women's disappearances and murders in Canada. As outlined in the introduction, the news story started with the investigation of the disappearance of Sindy Ruperthouse. The reporters stumble upon another narrative, one of police violence, while conducting their investigation. The connection between different forms of violence against Indigenous women lies here. They have not, however, dedicated their episodes to unpacking a conception of state wrongs linking disappearances, police misconduct, and other forms of racialized and gendered state violence.[725]

This subsection exposed the issue of news selectivity by arguing that despite allegations of abuse by at least one other police force in the documentary, the media focused predominantly on the SQ. They impacted the framing of the phenomenon by failing to highlight police violence as a systemic, racialized, and gendered issue extending beyond the SQ and rooted in the Canadian history of colonialism. Why were these perceptions excluded? There are many possibilities. Some of them relate to wilful blindness. Focusing on individual cases instead of broader violence is a form of side-lining. The uncomfortableness required to acknowledge widespread state violence against Indigenous might push the media to treat police sexual misconduct as isolated incidents and focus on individual experiences.[726] The media is part of the society in which these abuses happen which may taint their vision when we allege the state and society causes and tolerates violence. Detachment could also account for an incapacity to understand the 'other' reality (the one where the legal framework is an obstacle to accountability and not a channel to realize rights) and to see "*the full depth of evil*" to which the law and society subject Indigenous women.[727]

[725] On the importance of doing so, see, e.g., Palmater, "Shining Light on the Dark Places", *supra* note 123.
[726] *Cf* Antolak-Sapar, *supra* note 666 proposing that individual events are prioritized as corresponding with news values.
[727] A2, at p. 10. On the framework as an obstacle, see e.g., Matsuda, *supra* note 110.

Consequently, media coverage should not be seen as a panacea without carefully reviewing the narratives that journalists emphasize and the ones they exclude.[728] Just as for our research, silences are relevant to the analysis.[729]

We must note that news selectivity is not a phenomenon proper to Val-d'Or. As posited by Gies, it "is as inevitable as it is problematic".[730] Inevitable as journalists are not held to any standards of scientific precision or exhaustiveness: "They do not guarantee their descriptions are accurate in every respect, only that they have followed a process that allows them to produce a description that is more accurate than any other process allows, and that allows society to move closer to an understanding of the real world."[731] While we declared that this selectivity stemmed from journalistic standards (or forms of blindness), the data shows it also depended on many other factors. The next subsection will suggest that collaboration with third parties, general interest, physical distance, and temporality may also have influenced media exposure in Val-d'Or.

2.2. Variables Impacting Media Coverage

According to participants, some accountability forums (such as the DPCP or the first report of the Independent Civilian Observer) benefited from adequate media coverage throughout the

[728] Viebach, Gawronski & Hoyle, *supra* note 663 at 12–15, 22 and 27. See also Gies, *supra* note 664 at 99–105. As for the carefulness regarding the exclusion of some narratives, the same could be said of this thesis which relies on its participants and hereby excludes other voices. Finally, on the construction of the news in case of police brutality, see "Mediating Realities: The Social Construction of Problems in the Media Arena" in *The Politics of Force : Media and the Construction of Police Brutality*, updated ed (New York: Oxford University Press, 2022).
[729] See 'introduction' for further detail on the place of silence in this research.
[730] Gies, *supra* note 664 at 98.
[731] Michael Ryan, "Journalistic Ethics, Objectivity, Existential Journalism, Standpoint Epistemology, and Public Journalism" (2001) 16:1 Journal of Mass Media Ethics 3 at 5. See also James B Murphy, Stephen J A Ward & Aine Donovan, "Ethical Ideals in Journalism: Civic Uplift or Telling the Truth?" (2006) 21:4 Journal of Mass Media Ethics 322–337 at 325. We are not arguing that other forms of knowledge are necessarily more accurate, only that they do not have the same standards to construct such knowledge: see, e.g., John J Williams, "Towards a critical research methodology in journalism: Interrogating methodological assumptions" (2004) 25:2 Ecquid Novi: African Journalism Studies 257–274.

crisis.[732] However, other sites of accountability would have needed more media attention. Participants reported variability in press and television exposure across state accountability mechanisms. Interviewees noted that once the 'crisis' stage was over, there was a considerable decrease in interest from the media.[733] This interest in a 'crisis' nourishes the argument that the media failed to present the continuity of state violence and did not fully understand the nature of police sexual violence.[734] Nonetheless, the exact moment the media attention started declining is not easily traceable. Participants' answers on this matter were wide-ranging, one pointing to 2017 as a year where Val-d'Or was not "the current mediatic trend",[735] and another one saying that the peak of the media coverage lasted only a few months.[736] State responses and accountability processes were not over in 2017 or a few months after October 2015. The Viens Inquiry's Final Report released in 2019,[737] the Independent Civil Observer's second report published in 2020,[738] and the collective action launched in 2021 (and still active in 2023)[739] all constitute evidence supporting this statement.

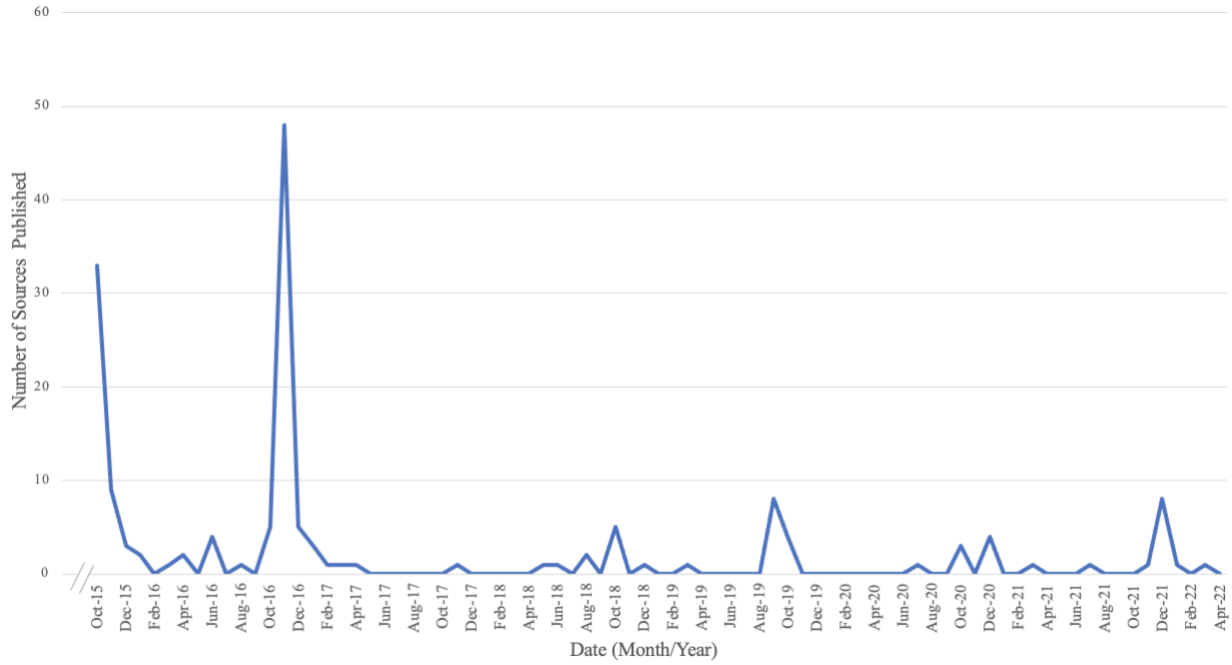
We compiled news articles and media coverage available on Google to confirm, on a preliminary basis, this decline in media exposure alluded to by our participants. Our limited methodology does not allow for a detailed portrait of the situation but provides partial evidence

[732] A1, p. 4; C1, p. 8.
[733] A participant alluded to the interests of the governmentand the public being centred around crises (see C1, pp. 38-39).
[734] For a similar insight on the use of the term crisis, see Rich, *supra* note 5 at 138. See also B2, at pp. 6-9. *Cf* Antolak-Sapar, *supra* note 666 at 89–93.
[735] A2, p. 15.
[736] A1, pp. 7-8.
[737] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23. *Cf* Stephen Sedley, "Public Inquiries: A Cure or a Disease?" (1989) 52:4 Mod L Rev 469 at 476 pointing out that journalists tend to stop covering after a few hearings.
[738] Lafontaine (2020), *supra* note 4.
[739] Of note, some participants were interviewed before December 2021 and consequently had no knowledge of this legal proceeding.

confirming our interviewees' discourses. The methodology can be described in a few words: we entered four sets of keywords[740] and compiled the first five pages of results. This technique generated written media articles, podcasts, blog posts, radio shows, and news videos. We then removed results that came up more than once (except for the publication of the same text by two different sources), without dates of publication, that bore no connection to the Val-d'Or crisis, or that were not produced by Canadian media (e.g., communications from civil society organizations, international news article). Academic papers, policy briefs, government websites, or reports were excluded. Two individuals conducted this research to ensure maximum results and avoid mistakes. While most results were similar, the second person brought 19 additional data. This whole process led to the compilation of 103 sources. To the initial sample, we added media sources that we came across throughout our drafting and recruitment processes (61). This two-step method engendered a total of 164 results, shown in Figure 2 below. They are relevant to contrast with Figure 1 (in subsection 1.1) to visualize best the events benefiting from the highest volume of coverage.

[740] I.e., (1) *Val-d'Or*, *Surêté du Québec*, *abus*; (2) Val-d'Or, abuse, police; (3) *Crise de Val-d'or*, *autochtone*; and (4) *Commission Viens*, *abus sexuels*, *femmes autochtones*.

Figure 2.
Graph on Media Coverage of the Val-d'Or Crisis from October 2015 to March 2022



While a few articles came out in September 2019, just before the release of the Viens Inquiry's Final Report, and in December 2021, after the filing of a class action against the Attorney General of Québec, a high quantity of sources collected corresponds to two timeframes: the first episode of *Enquête* in October 2015 and November 2016. November 2016 was an especially busy month, as demonstrated by the graph. While most of the data compiled for November 2016 focused on the absence of charges, the first report of the Independent Civilian Observer, a libel claim against Radio-Canada (*Enquête*), calls for a public inquiry, and broader reflections on systemic racism also made their way to this month's headlines.[741] Of the 164 sources we included in this quick study, 33 were published in October 2015 (22,3%) and 48 in November 2016 (32,4%), thus representing more than half of the sample (54,7%). In light of these results, participants' discourses suggesting that, as of 2017, the exposure decreased is not farfetched. Nonetheless, since this study

[741] See Appendix I.

has a limited methodology, it should be considered with reservations.[742] We should also note that despite the addition of "*Commission Viens* ('Viens Inquiry')" as a keyword, the amount of data published in the period the Inquiry was sitting does not come close to either October 2015 or November 2016, which could indicate some lack of interest in engaging with the Val-d'Or crisis on a long-term basis and report on structural forms of discrimination by the state.[743]

Participants offered many hypotheses for the focus on October 2015 and November 2016. The following discussion is devoted to inquiring into these potential causes. A participant identified time constraints as a factor preventing the media from writing more about women in Val-d'Or. They were adamant that more could have been told. For instance, they argued that actions taken by individual police officers to contact Indigenous women after the allegations' disclosure could have been the topic of a news report.[744] The reflection on the deficit of mediatic attention expands beyond the Val-d'Or crisis. As highlighted by one participant, the media only cover the tip of the iceberg when it comes to the situation of Indigenous peoples in Canada. Drawing analogies with the mediatized case of a police officer shot by an Indigenous man in Lac-Simon, Québec – a case some participants pointed out as an instance of misunderstanding between the police and the community they protect –[745] a participant observed:

> **Interview A2:** *[I]n 2016 […] a [Nunavik] police officer's radio was shattered* […] *by a gunshot from a large calibre rifle coming from someone locked up in their house. The guy*

[742] We also wish to stress that this research does not measure the impact of the video, radio show or newspaper articles. It only looked at quantity.
[743] This comment should not be interpreted in a way conflicting with Chapter V positing that the Inquiry should have delved more extensively into police sexual violence. Both discrimination in public services and police sexual violence are topics requiring unpacking.
[744] A1, p. 8.
[745] See B2, p. 22; A1, p. 6. In this case, a young Indigenous man shot on a police officer before taking his life. For more information, see, e.g., Caroline Touzin, "Policier tué à Lac-Simon: «On peut faire en sorte que Thierry ne soit pas mort pour rien»", (24 May 2017), online: *La Presse* <https://www.lapresse.ca/actualites/justice-et-faits-divers/actualites-judiciaires/201705/24/01-5100856-policier-tue-a-lac-simon-on-peut-faire-en-sorte-que-thierry-ne-soit-pas-mort-pour-rien.php>.

> *shot toward the police officer, and it broke the radio, the police's CB*[746] *(…) Imagine this situation happening at Saint-Michel-des-Saints or Saint-Jean-de-Matha. You'd have the satellite truck from CTV, RDI, LCN, and Global on site, and CNN would come too. A case like this [happens] in Nunavik, no one ever speaks about it, but it happens every week.* […]
>
> *There is currently, in Nunavik, a crisis that has no comparison with what you can imagine. It's, it's what you see in Lac-Simon, times a hundred.* […] *We don't speak about it.*[747]

The example of Nunavik touches on variables other than time constraints to explain the gaps in media attention: physical distance is one of them. The regional disparity was recognized by a 2010 report on Québec journalism that critiqued uneven coverage and the 'Montréalization' of news.[748] Distance from urban centres is a shared hypothesis between participants and part of the literature. Indeed, when discussing the exposure of the Viens Inquiry in the media, a participant suggested that physical remoteness was connected to a lack of media coverage:

> **Interview A1:** *Hmm you know, for, most likely, very good reasons, the Viens Inquiry was often in Val-d'Or, but it really (…) experienced a deficit of media attention because of it hmm. Because journalists are principally located in, in Montréal.*[749]

Geographical distance and time are not the only rationales for decreasing media exposure. A participant flagged the difficulty of obtaining the state's collaboration as another obstacle. This situation prevented offering a full narrative and continuous media coverage of the Val-d'Or crisis.

[746] 'CB' stands for citizen band radio.
[747] A2, pp. 49-50. *Cf* with the Viens Final Report documenting the situation in Nunavik, notably on family issues, financial gaps, food insecurity, drug and alcohol abuse, housing and suicide, Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 103, 105–106, 115–116, 124, 230–232, 269–270 and 279.
[748] *L'information au Québec: un intérêt public*, by Dominique Payette (Groupe de travail sur le journalisme et l'avenir de l'information au Québec, 2010) at 34. Outside of Québec, see Antolak-Sapar, *supra* note 666 at 102.
[749] A1, p. 18.

The critique regarding the lack of cooperation of state actors emphasized the SPVM's refusal to collaborate in media stories.[750] A participant disclosed:

> **Interview A1:** *[I] asked the SPVM to participate in our file. Hmm, because some of the police officers from the SPVM went to the Viens Inquiry and explained the work they did there* (…) *And they declined to participate. And, I found it very disappointing because I believe that hmm they could have explained their approach and the fact that it must not be easy for a police officer to conduct this type of investigation on another police officer. Hmm (…) so I don't know. I don't know. In fact, I find it difficult to explain their lack of transparency because [collaborating with the media] would make them look good as an organization from a communication point of view.*[751]

We should add to this discussion on the media and narrativity that news selection does not rest solely with journalists but also with processes and people approving topics.[752] Managerial input shapes the news we hear at a given moment. The relatively lower coverage shown by the graph between 2017 and 2022 may not exclusively result from a decline of interest by journalists. We could explain the decrease in media attention by a combination of factors, including distance, refusal to collaborate, and the inner workings of the media world. Indeed, a participant indicated that the media's quest for a vast readership or audience impedes the promotion of complete narratives or, at least, diversified ones:

> **Interview A2:** *[I]'ll tell you something. I was proposing stories on Indigenous topics to [major Canadian media]. We were in 2016-2017 at [major Canadian media]. I was suggesting Indigenous topics, and I was told by my assignment editor – who is the person*

[750] On the collaboration of the state and journalism in Québec, the access to information regime has also been identified out as a threat to collaboration: see Payette, *supra* note 748 at 42, 43, 99 and 100 citing inter alia; *Hydro-Québec c WL*, 2009 QCCAI 287.
[751] A1, p. 14.
[752] For instance, CBC's task descriptions explain the Executive producers and assignment editors participate to the news selection process: CBC News, "Who's who on the news team?", online: <https://www.cbc.ca/bc/newsday/newsteam.html>. See also Kathy English, "English: Who decides what's news", *The Star* (1 May 2010), online: <https://www.thestar.com/opinion/public_editor/2010/05/01/english_who_decides_whats_news.html>; Brian R Sheridan, "Finding Stories" in Vincent Filak, ed, *Convergent Journalism: An Introduction Writing and Producing Across Media*, 3rd ed (New York: Routledge, 2019). News selection may be influenced by journalism values, see e.g., Antolak-Sapar, *supra* note 666; Perry Parks, "The Ultimate News Value: Journalism Textbooks, the U.S. Presidency, and the Normalization of Donald Trump" (2020) 21:4 Journalism Studies 512–529.

> *who guides you with your subjects before offering them to the news bulletin (…) "Look," that person says, "stop proposing Indigenous issues, nobody is interested." I'm not making this up! […]*
>
> *It's verbatim what I was told by my assignment editor. So at some point we stopped talking about it.*[753] [Emphasis added.]

Another participant believed that the interest in Indigenous topics in the media has grown over the last ten years, showing that selectiveness in journalism can evolve.[754] The Viens Inquiry, on its end, has reported distortion in media stories on Indigenous peoples. Recognizing the potential of this tool to raise awareness, the Final Report of the Inquiry stated that much still needs to be done to ensure that media are representing Indigenous peoples without stereotype-based assumptions and that Indigenous peoples can make their voices heard through this accountability mechanism.[755] Settling the statistical question of the representativity of Indigenous matters in Canadian media or examining the question of the interest of each Canadian media to consider Indigenous topics require additional research. Our simplified overview cannot speak to these challenging issues despite flagging some potential causes for concern. However, our analysis points to at least one more evident outcome linking theory and practice. The graph indicates a difference in the media coverage of the Val-d'Or crisis in October 2015 and November 2016 versus periods outside these specific timeframes. Therefore, accountability forums beyond the criminal

[753] A2, p. 20.
[754] A1, pp. 27-29.
[755] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 209–211 and 249. *Cf* Myrlande Pierre & Pierre Bosset, "Racisme et discrimination systémiques dans le Québec contemporain: Présentation du dossier" (2020) 31:2 Nouvelles pratiques sociales 23 at 30.

process ending in 2016 did not appear to have benefited from as much amplification of their discourses through press publications, radio shows, news stories, etc.[756]

Moreover, emerging from these various experiences documented in this section is the need to recognize that media can shape news, influence public opinion, and even replicate discourses of power.[757] We should be cautious when accepting any media coverage, even if it can eventually strengthen the documentation of foreseeability, wilful blindness, and, thus, state accountability claims. As the state and the media are tied to the same society, they can share discourses and be blind to lived experiences. Journalism can sideline concerns or reproduce power structures permitting detachment between authorities and some subset of the populations.[758] As we explained in this Chapter's introduction, the media and the state are connected through infrastructural power and social accountability. Bottom-up mechanisms interacting with the state, including the media, are part of the same accountability system. This remains true even if the media can be independent in their broadcasting capacity (see section 4). Consequently, some limitations within media-induced forms of accountability might be similar to the restrictions in state accountability mechanisms. If journalists side-line concerns, this may translate into the blindness of the state that relies on media to evaluate accountability requests. In addition to failing to recognize the systemic, gendered, and racialized nature of police sexual violence by side-lining some information or explanation for police misconduct, the media also exhibit detachment. For instance, they can report

[756] Incompleteness does not mean that the coverage is biased. No evidence supports the latter. We must be careful with such statements as allegations of journalistic bias are serious and may discredit the profession. They should not be thrown lightly, see, e.g., Gies, *supra* note 664 at 97.
[757] For a compelling example in the Canadian context, see Jiwani & Young, "Missing and Murdered Women", *supra* note 722.
[758] *Cf* Sandrine Boudana, "Impartiality is not fair: Toward an alternative approach to the evaluation of content bias in news stories" (2016) 17:5 Journalism 600–618 at 606–607; Antolak-Sapar, *supra* note 666.

about individuals without considering the personal experience and will of people going through police violence.[759]

In summary what we should retain from this Chapter is that the media acted as (1) a watchdog by disclosing the abuse and relaying the news in October 2015 and (2) an amplifier of accountability forums mainly, in November 2016. These outcomes are overall very positive despite the limitations noted in subsections 2.1 (i.e., the focus on the SQ) and 2.2. (i.e., a disparity coverage) that can be labelled as forms of wilful blindness. Heretofore, this Chapter has shown that we can use media to gather information on police sexual violence, push the state to react, justify its action, and, in some cases, take responsibility. They can also share the results or discourse of state accountability forums with the public by ensuring constant reporting. These abilities speak to two out of three elements of the state accountability definition provided in the first Chapter: justification and responsibility. They also touch on the significant influence of disseminating information otherwise undisclosed on state accountability. The following section will move on to the third component of the definition – redress or responsiveness – and dress a less optimistic portrait of the media's contribution to state accountability for police sexual misconduct in Val-d'Or. Our diagnosis remains true even if one could argue that remedies granted in other forums originated at least partially from the media input on the Val-d'Or crisis. If the media created harm – their input is unprincipled with our accountability definition.

[759] *Cf* Matsuda, *supra* note 110; Jiwani & Young, "Missing and Murdered Women", *supra* note 722.

3. The Mediatic Harm

> *"Today, you opened a wound again, but who will stitch those wounds?"* [Our translation.][760]

This third section will concentrate on the harm created in Val-d'Or due to the media's presence. It will thus revolve around the epigraph of this section: a question posed by the mother of an Indigenous woman interviewed by *Enquête* in 2015. As explained in Chapter I, state accountability relies on a tripartite definition, which encompasses 'redress'. Furthering harm is the opposite of this idea. This section contends that despite the possibilities of alerting the population, triggering state action, and amplifying accountability forums, the media can also generate a harmful process.[761] By 'mediatic wound' we refer to the grievance caused by selecting the media as a venue of state accountability. When disclosing abuse to journalists, individuals risk experiencing a broad range of consequences. This section unpacks media coverage's adverse effects and uses the Val-d'Or crisis to embody this affirmation. We wish to stress that we did not speak with victims of police sexual misconduct and do not intend to speak in their names. The data presented in what follows emanates from individuals who have been in contact with victims of police sexual misconduct and is, thus, in pure legal jargon, hearsay. Further studies on media-induced harm in cases of police sexual misconduct are needed to integrate victims' voices and confirm this preliminary and indirect data.[762]

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[760] *Supra* note 20 00:30:17-00:30:24, these times refer to the version available on Youtube: https://www.youtube.com/watch?v=NqtxZf9rFCU.

[761] See, e.g., Annette Van de Merwe, "Victims and the Media" in Cliff Roberson, ed, *Routledge Handbook on Victims' Issues in Criminal Justice*, 1st ed (Routledge, 2017) 263 at 267 and 270.

[762] We can make the same claim with regard to the empowerment of Indigenous women, a hypothesis advanced by three participants: A1, p. 31; A2, pp. 32-35; C1, pp. 34-35. A1, on their end, argued that the events also led to the empowerment of Indigenous communities, pp. 25-26.

We recognize that the creation of harm is not the only critique that can be directed to media coverage. For instance, Bazinet identified the role of emotions of the white population in reaction to *Enquête* and non-Indigenous documentation (including media coverage) as the trigger of state responses, hereby criticizing the fact that settlers' emotions can be another way to exercise power by dictating when and how to deal with violence against Indigenous peoples.[763] The shock also implied that this type of event was a first in Québec, a contention opposed to by the literature indicating continuity and years of abuse.[764] White sensitivity (including ours) can also divert attention away from what Indigenous peoples wish to address. It can be another manifestation of the loss of control over the narrative and detachment from lived experiences. While fleshing out the dynamic between the settlers' population and emotions would have been an option to dissect the media's input, our data do not refer to white sensitivities and, instead, strongly highlight harm. Therefore, we decided to emphasize the latter while briefly flagging the issue of emotions.

The reception of the first episode from *Enquête* created a shockwave for part of the population. *Enquête*'s journalists were not only cited as a source of state accountability by influential individuals involved in the Val-d'Or crisis, [765] but their peers also acclaimed them. They won the Mitchener Prize, a prestigious Canadian award meant to recognize "journalism that makes a significant impact on the public good."[766] A participant critiqued the hype surrounding the news story and conveyed considerable criticism of journalism as a discipline:

[763] Bazinet, *supra* note 21 at 5.
[764] See, e.g., Sarah Henzi, "'And Whom We Have Become': Indigenous Women's Narratives of Redress in Quebec" (2021) 26:2 Indigenous Literary Arts of Truth and Redress 186.
[765] See section 1.
[766] Michener Awards Foundation, "Michener Honours go to Société Radio-Canada's Enquête, Freelancer Paul Webster and New York Times's Patti Sonntag", (17 June 2016), online: *Cision* <https://www.newswire.ca/news-releases/michener-honours-go-to-societe-radio-canadas-enquete-freelancer-paul-webster-and-new-york-timess-patti-sonntag-583475881.html>.

> **Interview A1:** *[I] questioned myself on the approach, the journalistic approach, because Enquête did this story, hmm, and it's nothing against the journalists who were there, but it's a broader thought on journalism. We investigate, we get the story out, we win prizes (…) And in the meanwhile, the actors, they are stuck, they keep their problems, they are intimidated. Hmm, you see, I believe there is sometimes something very extractive in our profession. We take what we need, and after, pfft…*[767]

When asked whether they agreed with the statement that the media harmed the community and offered no solution to heal the latter, a second interviewee shared their thoughts:

> **Interview B1:** *Yes. […]*
>
> *The news documentary when it was, when the story came out, there was a big debate, […] about "Okay, what do we, do we do it, do we not do it?" […] about whether women were comfortable doing it or not... I know it was a long discussion. […] [T]he majority [of the women] felt comfortable, […] After that, […] it was all out in the open and it, did it get out of hand? I don't know. […] [W]ere the women aware of what it would become? I don't think so either. Hmm, but, it was definitely exploited and, and I think that's what made the effects of testifying maybe a little bit negated by the […] the mediatic pressure.*[768]

Similar discourses emerged outside of civil society. A social inquiry conducted in Val-d'Or by the SPVM concluded that the episode from *Enquête* was "very clumsy and caus[ed] harm to the participants who denounced on camera".[769] Although we do not have evidence beyond interview B1 regarding the extent of consultation with women or their desire for anonymity, the Val-d'Or class action launched in December 2021 demonstrated the value of protecting one's identity in cases of police misconduct. A judgment rendered in this file in June 2022 cites case law and statements from an alleged victim's and Edith Cloutier's, all purporting that retaliation or

[767] A1, p. 17. An interesting aspect of this excerpt is that this participant embraces a collective notion of responsibility. They target journalism and the way it operates rather than blaming individual journalists.
[768] B1, p. 20.
[769] Rosa, Courville & Côté, *supra* note 29 at 23 (free translation).

withdrawal from the action might occur without anonymity.[770] As of September 2022, the Québec Court of Appeal authorized leave to appeal this decision.[771]

The social inquiry mentioned above also criticized the lack of support towards the dealing with the consequences of participation in the documentary.[772] Participant B1 delved deeper into the effects of this interaction with journalists.[773] This interviewee suggested that women were not only harmed by the mediatic pressure and the lack of control over the narrative but also that they were not heard or believed by society, which led to revictimization. This participant concluded by calling for greater caution in the future:

> **Interview B1:** *There was such a backlash against these women. The fact that some said […], that they were ugly, they were on drugs, et cetera.*
>
> *[…]*
>
> *And I think if they, they felt listened to hmm, they really took a lot of slaps in the face. And it takes so much courage to go and say what happened and to go through a trauma in your BODY […] that the slaps that they got afterward, by the fact that […] their testimonies were questioned, et cetera. It was a hard experience. So, I think that if it helped them, for example, in relation to their loved ones, to testify and, and other women to show their solidarity, other Indigenous women or allies, for example, I think that that […] there are some women who said: "I would have preferred not to speak. I wish I had kept quiet," because it was, it was hard. So, it's like, […] because the effects, the positive effects I think, were kind of erased by the negative effects* […] *and what we said about these women, and we should not have said about them and, and I think that hmm, we should have been much more vigilant and not let a certain number of statements get out in relation to that...*[774]

[770] *Centre d'amitié autochtone de Val-d'Or c. Procureur général du Québec*, *supra* note 54.
[771] *Procureur général du Québec c. Centre d'amitié autochtone de Val-d'Or*, *supra* note 55.
[772] Rosa, Courville & Côté, *supra* note 29 at 23–24.
[773] Part of the literature agrees that mediatic coverage can be negative and, on occasion, traumatic: *Privacy & Dignity A Guide to Interacting with the Media*, by National Center for Victims of Crime (Arlington, VA: National Center for Victims of Crime, 2016); Megan Reidy, "The Impact of Media Coverage on Rape Shield Laws in High-Profile Cases: Is the Victim Receiving a Fair Trial?" (2004) 54 Catholic University Law Review 39. In an American study of mediatic coverage, Reidy concludes that the media may create a 'third rape' (pp. 319-320).
[774] B1, pp. 18-19.

The harm created by the media calls for a mechanism where the people wronged by the events can be involved in structuring the accountability measure and thus limit the loss of control of the narrative. As Chapter V will unpack, this objective was not accomplished by the public commission of inquiry set up in Val-d'Or, albeit it was the closest attempt at a state-led mechanism shaped by civilians. The harm created by the media is also one of the reasons we continue to highlight the importance of multiple means of redress, even when proposing accountability strategies outside state-based mechanisms. While it is true that the media's role is not to provide legal remedies,[775] we should combine media exposure with other types of social accountability mechanisms promoting responsiveness.[776] This is needed to counter damage caused by the media. Recognizing the need to respond to harm, the Independent Civilian Observer called for protection against retaliation and media harassment of women involved in Val-d'Or events.[777] On this matter, a participant noted – when arguing that the media are a forum to share one's truth – that press coverage might trigger public shame, harassment, or retaliation:

> **Interview A2:** *The media, we gave the floor. […]*
>
> *We put the microphone under people's noses, but at one point, hmm, I remember trying to do interviews with Indigenous women who had been victims, […] who had said they were victims, and then, when it came time to do the interview, oops, they changed their mind. There are many reasons for this, but (…) maybe intimidation, maybe the, the fear of something or the fear of being victimized or ostracized by the public […]*[778]

[775] They can, however, monitor institutions, guide public opinion, raise awareness, and entertain the public. On the role of the media. see, e.g., Gies, *supra* note 664; Ayesha Adnan, "Public Perception of Medial Role" (2011) 1:5 International Journal of Humanities and Social Science 228 at 228–230; van Dijk, *supra* note 666; Antolak-Sapar, *supra* note 666. On the role of the media in transitional justice, see, e.g., Viebach, Gawronski & Hoyle, *supra* note 663 at 38–40.
[776] This theoretical framework is laid out in Chapter I.
[777] Lafontaine (2016), *supra* note 4 at 65. We use here the language of 'events' or 'crisis' to reflect the literature, although we argue, as accounted for before, that the Val-d'Or events can be understood through continuity. On the issues with the 'crisis' language, see Rich, *supra* note 5 at 138; Arbel, *supra* note 121.
[778] A2, pp. 38-39.

In another part of the interview, the participant also explained how, in a different event than the Val-d'Or crisis, an off-record police informant stopped collaborating with them since that person feared someone would "*beat the crap out of them*" if their involvement with the media became known by their peers.[779] Both excerpts show the media has the power to put informants in delicate positions and to foster victimization. To counteract such backlash, section 4 will recommend reimagining journalistic ethics by emphasizing the consequences of the mediatization of human tragedies, including but not limited to police sexual misconduct, which could ultimately provide state accountability in a way compatible with our responsiveness element.

We cannot omit the tension resulting from the public disclosure of police misconduct by *Enquête*. For instance, a study documented that a civil society organization in Val-d'Or received a considerable quantity of heinous messages following the broadcasting of *Enquête*'s news story.[780] The Independent Civilian Observer, on her end, denoted that civil society actors reported the harassment of some women by the media, pressure from these women's communities, and insults.[781] Likewise, a social investigation conducted by the SPVM revealed that the episode of *Enquête* exacerbated antagonisms. This social inquiry gave the example of an individual deciding to stop wearing a jacket featuring the logo of the Native Centre, fearing stigmatization linked with the growing tensions in the city.[782] This social disturbance also affected police officers.[783] Finally, a document on the judicialization of homelessness in Val-d'Or observed that the events of October 2015 inflamed conflicts between the police and homeless individuals.[784] We must underline this

[779] A2, p. 30.
[780] Pilote & Hübner, "Femmes autochtones et militantisme en ligne", *supra* note 665 at 190.
[781] Lafontaine (2016), *supra* note 4 at 48.
[782] Rosa, Courville & Côté, *supra* note 29 at 25.
[783] Janet Mark – Aboriginal Relations Coordinator at the Viens Inquiry – nevertheless argued that police officers could remove their uniforms at the end of their shift and escape part of this tension: Mark, *supra* note 681 at 46–47.
[784] Bellot & Sylvestre, *supra* note 141 at 46–47. *Cf Ibid* at 46 para 4.

fact as many alleged victims were in a situation of vulnerability, including homelessness, as explained by this participant:

> **Interview C1:** *People in authority who abuse vulnerable people […] in a racist perspective, it's really... So, hmm, and when I say vulnerable, it's because there were people who were obviously in a situation of vulnerability, homelessness or substance abuse, and so on. And that's part of the cliché, but it's true in the sense that […] it's in part […] the vulnerability that allows the abuse. You know, it's true that there are homeless people just about everywhere, but in Val-d'Or, there was already a whole particular context, which meant that, hmm, […] Indigenous peoples were much more present in a situation of homelessness, etc. Then, as time went by, some allegations came up... So, it's like absolute horror...*[785]

While the media certainly increased tension, a discussion on the situation in Val-d'Or would not be complete without adding to the literature and previous excerpts a reflection on the situation between Indigenous Peoples and settlers in Val-d'Or. A participant reported that the events of 2015 brought biases and distrust between Indigenous and non-Indigenous groups in Val-d'Or a step forward:

> **Interview A2:** *[I] was doing a vox pop in the street in Val-d'Or. People didn't believe the Indigenous persons: "They're very drunk all the time, and then, then, they criticize, [but] they come back […]". There were immense prejudices [...] among non-Indigenous towards Indigenous, and there was a frustration.*[786]

The local disbelief reported in this interview reminds us of the news documentary itself, in which Édith Cloutier asserted that allegations by Indigenous women were not credible for many. In a specific segment, Cloutier claimed the difference was that now a collective of women alleged abuses.[787] While most likely made in good faith, this statement is concerning. We can only fear that this implies Indigenous women need corroboration to be believed by a larger part of society.

[785] C1, p. 20.
[786] A2, p. 12.
[787] See note 20 at 00:27:44-00:28:01.

The requisite for a collective narrative in itself indicates discrimination against Indigenous women.[788] While collective narratives allow for specific mechanisms, such as class actions or robust media coverage, we should refrain from equating multiple allegations to truth and single allegation to stories needing corroboration. An Indigenous woman disclosing abuse only on her behalf should receive the same care and consideration. We must avoid assessing credibility based on the number of people reporting abuses. Credibility, just as a phenomenon's systemic nature, does not depend on the multiplicity of allegations. The fact that only one case is examined should not divert attention from state accountability.

The excerpt from Interview A2 on public ostracization is reminiscent of the testimony of Édith Cloutier before the Viens Inquiry. She expressed that once the first episode aired in October 2015, traditional media and social media fired up and brought forward discrimination, racial slurs, and polarization of positions. Cloutier claimed two sides emerged: "Those in favour of Indigenous women and those in favour of police officers."[789] In other words, you were either for or against Indigenous women – for or against the police. Québec City radio stations exemplify this polarization, as they depicted women as liars and attacked their reputations and credibility.[790] These assertions are unsettling, given that tension preceded the period known as the Val-d'Or crisis. Some participants described their experiences in Val-d'Or and its surroundings as evidence

[788] On collective narration of sexual violence, *cf* Kimberly Kessler Ferzan, *#WeToo* (Public Law and Legal Theory Research Paper Series Research Paper No. 21-21, 2021) (quoted with permission). Ferzan argues that the narrative often put forward throughout the #metoo movement of one aggressor and multiple victims can backfire and render single victims' narratives less plausible. The danger here is different as the need for collective narration stems from the identity of the victims.

[789] Cloutier, *supra* note 24 at 90–91 (free translation). *Cf* Viebach, Gawronski & Hoyle, *supra* note 663 at 9 arguing that media can either demonize or victimize groups through their discourses.

[790] See, e.g, Mark, *supra* note 681 at 38; Bazinet, *supra* note 21 at 6. See also literature on the solidarity movement for police officers: Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 13 and 16; Bazinet, *supra* note 21 at 6–7.

of this statement. We should note that the excerpts cited below, commenting on the social climate, come from interviewees who had a close relationship with the region either through their work, social engagement, family connections, or history:

> **Interview B2 (excerpt 1):** *I live in Val-d'Or* […]
>
> *I experienced […] systemic racism in Val-d'Or […] when hmm I started living in Val-d'Or, I wasn't allowed in all public places […]*[791]
>
> **Interview B2 (excerpt 2):** *I want to improve the relations between the city's Indigenous peoples and the city's Quebecers. [...] Because they are always quarrelling. […] It doesn't make any f******* sense. And the other day I was coming out of the drug store, what time was it? 8:30 a.m.? I went there early. I met […] a guy, a Quebecer, who was coming out of the tavern. He asked me for money: "I don't have any." And then, at one point, he got angry: "Yo, f******* Indian! F******* Indian!" He repeated this for five minutes on the street by himself. [...] F****. That's Val-d'Or*.[792]
>
> **Interview A2 (excerpt 1):** *It seems to me that in Abitibi-Témiscamingue, we should have been (…) more aware, closer, […] more responsible, […] more sensitive to these things, but the divisions were established. [...]*[793]
>
> **Interview A2 (excerpt 2)** *[Y]ou have two incredible solitudes that are side by side, and there are tensions, and [then] you add accusations of sexual assault, harassment, or behaviour such as walking barefoot* [the participant is here referring to starlight tours].[794]

In light of the pressure exerted by the media, we must agree with the Independent Civilian Observer that victims require protection, especially when media exacerbates pre-existing animosities. Unfortunately, the media cannot offer this protection. Does this show yet another role that should rest on the state's shoulders? The issue of safety in Val-d'Or met significant challenges: Who would protect women against intimidation and retaliation resulting from mediatic coverage?

[791] B2, p. 4.
[792] B2, pp. 38-39
[793] A2, pp. 12.
[794] A2, pp. 11. Interviewees A1 (pp. 9-10), B1 (pp. 7-9), and C2 (p. 5) reported having witnessed ignorance and contempt. They also heard stories of discrimination, although they did not always witness discriminatory practices.

The state? The police? This seems like a highly unsatisfactory response in the context of Val-d'Or. This remains true despite provisions explicitly protecting victims of crime within the judicial process in federal legislation.[795] This situation creates a moral and legal dilemma: on the one hand, the media cannot fully secure state accountability as their involvement might further existing harm. They stand in contradiction with the redress principle of state accountability. On the other hand, the state might be unable to offer accountability measures or protection to people who experienced state violence. Whether top-down or bottom-up, state accountability processes should not be an occasion to revictimize people. The next section will thus look at interpretations of journalistic ethics. More precisely, it will contend that a moral duty informed by the minimization of harm would reinforce media coverage as a social accountability mechanism.

4. Promoting Unharmful Media Coverage Through Ethical Practices

This Chapter mainly stressed one element; we cannot hastily dismiss the media's contribution to state accountability for police sexual misconduct in Val-d'Or. Despite this generally positive assessment, when examining the interviews and the literature, we concluded that the media also perpetrated harm in a few ways, namely through (1) timid references to the SM misconduct and, more importantly, to how police sexual violence in Val-d'Or was a manifestation of a more profound systemic phenomenon; (2) inconsistency in coverage; and (3) revictimization of women in Val-d'Or. This incompleteness was framed as side-lining of historical power dynamics and detachment from Indigenous women's lived experiences. We posited that these forms of wilful blindness averted the media from understanding police sexual violence as systemic, racialized, and gendered. The Chapter proposed that when the media reproduce discourses of

[795] See, e.g., *Canadian Victims Bill of Rights*, *supra* note 624, ss 9–11.

power blind to systemic causes of violence, it helps the state justify an accountability approach that does not deal with such sources. The Chapter also described the conflict between our theoretical framework and the role of the media in Val-d'Or. Revictimization by the media stood in direct contradiction to accountability. This section will suggest introducing a moral duty to minimize harm to prevent the reoccurrence of hurtful coverage and reconcile our accountability framework and the media.

While freedom of expression denies a strict regulation of expressive content as well as methods and locations of expression, we contend that duties related to victims' protection would not go against this freedom articulated in s. 2b) of the *Canadian Charter of Rights and Freedoms*.[796] We do not mean to unfold an extensive constitutional analysis of freedom of expression but rather to provide guidelines to reform journalism ethics in a way we believe compatible with such freedom: autoregulation, or in other words, absence of state intervention.[797] In Québec, journalists have regulated the practice of journalism through at least two different Codes of ethics and one set of Journalistic Standards and Practices (JSP). The following section will overview the content of these documents and how they can be complemented to enhance public protection. The next paragraph will propose incorporating a moral duty into the media's autoregulation. This duty will build on the principle of minimization of harm, a principle put forward by the literature as a fundamental concern of any journalistic endeavour.[798] This moral

[796] *Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK)*, *supra* note 53, s 2b).
[797] *Ibid*, s 32. The connection of Radio-Canada to the state and the potential application of the *Charter* will be discussed later.
[798] See, e.g., Stephen J A Ward, "Philosophical Foundations for Global Journalism Ethics" (2005) 20:1 Journal of Mass Media Ethics 3–21. See also Society of Professional Journalists, *SPJ Code of Ethics* (Society of Professional Journalists, 2014). *Cf* Parks, "The Ultimate News Value", *supra* note 752 at 525–526; Perry Parks, "It's Time Journalists Take 'Minimize Harm' Seriously" in *The Future of the Presidency, Journalism, and Democracy*, 1st ed (London: Routledge, 2022) 314 arguing this duty should be expanded.

duty will require collaboration with civil society as well as pondering public interest, dignity, and consent to participate in news stories differently. More precisely, the duty will assert that media should assess newsworthiness in a way that considers the consequences of broadcasting in some communities and that ensures victims' protection. This moral duty to minimize harm will thus be divided into two components: disclosing consequences and offering external assistance to victims.

There is no state-enacted Code of Ethics for journalists in Québec.[799] However, associations and organizations dealing with journalism, such as the *Fédération professionnelle des journalistes du Québec* (FPJQ) and the Press Council, have dictated their own Codes. These documents promote values at the core of journalism ethics, such as public interest, the public nature of information, independence, credibility, privacy, and equality.[800] They supply guidelines to orient journalists' practices in the province. While these Codes could theoretically apply to the same persons, they were developed with a distinct target population in mind. The FPJQ's Code applies to members of the FPJQ, whereas the Press Council's guide notably provides rationales for the Council's decisions.[801] Recently, the Superior Court of Quebec ruled that the Council can hear complaints against press organizations that are not or are no longer members of the Council, confirming a form of central authority to this autoregulation mechanism.[802] The Council acts as a

[799] A report from 2010 in Québec argued in favour of creating such an order Payette, *supra* note 748 at 58, 59, 73, 74, 80 and ff. *Cf* Fédération professionnelle des journalistes du Québec, *supra* note 719 at preamble; Marc-François Bernier, "UN CODE COMMUN DE DÉONTOLOGIE JOURNALISTIQUE, C'EST TROP DEMANDER AU GOUVERNEMENT DU QUÉBEC", (2012), online: *J Source* <https://j-source.ca/un-code-commun-de-deontologie-journalistique-cest-trop-demander-au-gouvernement-du-quebec/>.

[800] See notably Fédération professionnelle des journalistes du Québec, *supra* note 719 at preamble and ss. 3–8; Conseil de presse, *supra* note 719, s preamble, ss. 6, 9, 11, 17–19, 22, 26, and 27. See also Ward, *supra* note 798.

[801] Fédération professionnelle des journalistes du Québec, *supra* note 719 at preamble. See also *Journal de Montréal, une division de MédiaQMI c Conseil de presse du Québec*, 2023 Superior Court (500-17-104542-181, Jolin J) at para 121.

[802] See *Journal de Montréal, une division de MédiaQMI c Conseil de presse du Québec*, *supra* note 801. Quebecor challenged the Council's claim that it can adjudicate on matters involving non-members: see Simon Thibault, Colette Brin & Pierre Trudel, "Canada: Fragile consolidation efforts in media accountability" in Susanne Fengler, Tobias Eberwein & Matthias Karmasin, eds, *The Global Handbook of Media Accountability* (London: Routledge, 2021) at

reputational adjudicator, and its sanctions are moral. It is not a tribunal.[803] As a sanction (or remedy under our framework), press organizations are requested to publish or broadcast decisions of the Council. Radio-Canada, the broadcaster involved in Val-d'Or, also has a set of JSP, a Code of Conduct, and an ombudsperson who receives complaints for allegations of misconduct.[804] We shall also note that the Canadian Broadcast Standards Council (CBSC) notably enacted a Journalistic Code of Independence in 2008 and a Code of Ethics in 2002.[805] Public broadcasters, like *Radio-Canada*, are not associates of the CBSC.[806] These forms of autoregulation show ways of overseeing the media without involving the state and breaching s. 2b).

The next paragraphs will analyze three documents that might apply in Québec (i.e., the FPQJ's Code, the Press Council's Code, and the JSP) and propose interpretations compatible with a moral duty to minimize harm. Before examining the autoregulation of journalism in Québec, we must stress that we are not suggesting that *Enquête*'s work was unethical. We do not have access to all the facts surrounding the news story's production and, thus, cannot adjudicate this case. The content of the interviews nevertheless calls for a close analysis of the media's capacity to create further harm (see section 3) and the methods to reduce such prejudice.

86 and 89–90; Annabelle Caillou, "Faut-il repenser le Conseil de presse?", *Le Devoir* (3 October 2022), online: <https://www.ledevoir.com/culture/medias/760869/faut-il-repenser-le-conseil-de-presse>.

[803] Conseil de presse, "Mission", online: <https://conseildepresse.qc.ca/le-conseil/mission/>.See also, Thibault, Brin & Trudel, *supra* note 802 at 86 and 89–90.

[804] Thibault, Brin & Trudel, *supra* note 802 at 90; CBC/Radio-Canada, *supra* note 719; CBC/Radio-Canada, *Code de conduite: TRAVAILLER ENSEMBLE : INTRODUCTION, VALEURS, PRINCIPES ÉTHIQUES ET COMPORTEMENTS ATTENDUS* (CBC/Radio-Canada, 2017).

[805] "JOURNALISTIC INDEPENDENCE CODE (2008)", online: *Canadian Broadcasting Standards Council* <https://www.cbsc.ca/codes/journalistic-independence-code/>; note 719.

[806] "ASSOCIATES", online: *Canadian Broadcasting Standards Council* <https://www.cbsc.ca/associates/>.

The first point to analyze under the duty to minimize harm is the treatment of informants who may exhibit some forms of vulnerability, including inexperience with the press. A parallel can be made here with custodial interviews where the Supreme Court of Canada has recognized that lack of experience with this type of encounter, and individual factors such as race, youth, and gender, might require a more robust right to counsel. Similarly, individuals who have never collaborated with journalists or are vulnerable for personal reasons might need additional protection against harm.[807] Such buttressed requirements should be reflected in journalism ethics. The FPJQ and Council's Codes offer protection with regards to the protection of victims of crime (see, e.g., s. 5g) FPJQ; and ss. 21 Council) and people who are vulnerable because of circumstances or their unfamiliarity with the media (FPJQ, s. 4b)). Protection of victims of human tragedies also is found in non-harassment clauses (see, e.g., FPJQ, s. 2c); Council, 18.1; and JSP, 'Respect for the Suffering of Victims and their Family'). In addition to non-harassment of victims of human tragedies, the Council's Code recognizes that "journalists must exercise special caution when reporting on those in vulnerable situations" [our translation.][808] We advise the analysis of vulnerability be infused with social context. In Val-d'Or, we may posit that lack of familiarity with TV broadcasting was only one part of the vulnerability. Media coverage must consider victimization, intersectionality, and tension beyond the existing non-harassment clauses.

Such a perspective on protection would call for an in-depth inquiry into the social context and investigation of consequences beyond initial contact in cases of human tragedies. Incorporating social context into a moral duty to minimize harm is an interpretation compatible with obligations such as the one proclaimed under s. 8 of the FPJQ's Code to be "particularly

[807] *R v Lafrance*, *supra* note 344.
[808] Conseil de presse, *supra* note 719, s 26.

attentive to anything that could provoke reactions that are racist, sexist, homophobic, etc."[809] The gendered and racialized nature of police sexual violence and the situation in Val-d'Or could have triggered this provision. We must note that heightened obligations to some individuals are already entrenched in the Codes. For instance, the Council's and FPJQ's Codes are requesting to ponder the privacy and dignity of sexual violence survivors (see FPJQ, s. 5g); and Council, s. 21(2)).[810] We are merely proposing to expand stronger protections to more individuals. The considerations put forward here should inform the two components of the duty: disclosing consequences and providing support. Minimization of harm cannot rely on a one-size-fits-all approach.

As aforementioned, protecting vulnerable individuals through minimizing harm could take the form of disclosing anticipated outcomes of media coverage. Situations like the Val-d'Or crisis make us question the impact of journalism because of the intimidation and trauma that resulted. This calls for pondering public interest, individual rights, intersectionality, and consent to participate in mediatic endeavours. Not all stories should be broadcast without taking precautions. Assessment of public interest and the impacts on individual rights, already put forward by guides existing in Québec (see, in addition to provisions on the protection of victims: preamble, ss. 2, 6, 7 and 8 FPJQ; Council, preamble, ss. 13, 17-20, 23; JSP, 'Fairness' and 'Privacy principles'), can be conceived as ways to ensure caution before publication or broadcasting. We nevertheless contend these sections should be complemented with one specific duty: assessing the

[809] Fédération professionnelle des journalistes du Québec, *supra* note 719, s 8. See also *Ibid*, s 2; CBC/Radio-Canada, *supra* note 719 tit fairness on fairness, respect, and compassion.
[810] In contrast, the JSP cover the right to rehabilitation of sex offenders as well as restraint and audience notification when using sexual or violent content but do not offer specific protection to victims of sexual violence: CBC/Radio-Canada, *supra* note 719 tit Court reporting and investigative journalism. This being said, it contains a title on 'Parties to a case' stipulating that if the law prevents from disclosing identities, they will not, and that in the absence of such order, vulnerability can be a reason for not revealing identity. We may posit that vulnerability may stem from sexual violence cases.

consequences of broadcasting or publishing when deciding whether to run a story. Here again, consequences should be evaluated in a way accounting for vulnerabilities. The fact that media are not required to get approval from their sources might be seen as a potential threat to this duty.[811] However, they can be reconciled. An obligation to explain the expected effects of broadcasting or publication before gathering any information does not mean that the informants have the final say over the content. However, ideally, especially in sensitive cases, the media should show the investigation results to the informants first to help them better prepare for the outcomes. To meaningfully consider the impacts of the media on dignity and privacy, both guaranteed in the Codes, we must factor in all possible results stemming from interaction with journalists.

Therefore, the duty to mitigate harm passes by explaining the consequences of broadcasting, such as intimidation and insults, but also by ensuring that people who participated in the news stories have sufficient resources to overcome or mitigate the effects of the broadcasting. This duty should be applied more restrictively (1) when the media are the people bringing the story in the public realm and (2) when dealing with victims of state wrongs[812] who risk revictimization and backlash from disclosure. This does not mean, as Annette Van de Merwe appositely stated, that media should be conflated with victims' friends or support persons.[813] However, journalists should make sure – when contacting victims of state wrongs but also all victims, more generally – that they know their rights and are referred to victims' service providers that can accompany them throughout the legal process and the effects of mediatization. A victim

[811] Fédération professionnelle des journalistes du Québec, *supra* note 719, s 5b); Conseil de presse, *supra* note 719, s 13.1; CBC/Radio-Canada, *supra* note 719 tit 'Request non-publication'.
[812] The United Nations recognized the distinct status of victims of abuse of power by devoting them part of the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. This part of the declaration does not extend to protection from harmful mediatic coverage: *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, A/RES/40/34 1985.
[813] Van de Merwe, *supra* note 761 at 266.

that has no support can still be interviewed. We do not mean to impose strict conditions dictating content but to ensure a conscious effort to minimize harm.[814] This second suggestion to refer informants to resources and help find external support, if need be, constitutes the last prong of our moral duty. Again, such duty is connected to Codes of Ethics provisions, which show concern for protecting the public and individuals in their provisions on non-harassment, equality, respect, and restraint in the case of human tragedies.[815] The Codes, however, focus on vulnerability at the pre-broadcasting or pre-publication stage, do not provide guarantees against harm resulting from extractive processes once the information has been obtained, and fail to assess intersectionality. In the case of Val-d'Or, outcomes would have needed to be evaluated by understanding the gendered and racialized context of police sexual violence. The Codes are thus incomplete. We propose to expand the protection beyond the initial stages and request positive action to ensure that informants find support in the aftermath of broadcasting or publication should the media decide to go ahead with a story. This support should be personalized and adapted to the victims' needs, when possible.

Ensuring that victim service providers are involved and can guide victims might mitigate the harm caused by lack of preparation or insufficient accompaniment. While inserting the proposed duty might put more pressure on the media, it would embrace more meaningfully the media's desire to minimize damage in case of human tragedies. It would also be a way to put into practice the principle that media are responsible for what they publish. Both Codes of Ethics and

[814] We shall also note that centralized autoregulation such as the Conseil de presse does not infringe freedom of association as recently ruled by the Superior Court: *Journal de Montréal, une division de MédiaQMI c Conseil de presse du Québec*, *supra* note 801; *Charter of Human Rights and Freedoms*, *supra* note 53, s 3.
[815] See, e.g., Fédération professionnelle des journalistes du Québec, *supra* note 719, ss 2, 4b, 4c, 5g and 8; Conseil de presse, *supra* note 719 at 17–23 and 26. See also CBC/Radio-Canada, *supra* note 719 tit "Fairness", "Privacy principles", and 'Respect for the Suffering of Victims and their Family'.

the JSP acknowledge this responsibility. The suggested duty is aligned with conscience clauses[816] and principles already entrenched in the Codes and JSP. It promotes ethical journalism that respects victims when broadcasting or publishing information relevant to the public interest without restricting what to publish. Implementing this duty would be advisable for press organizations. It would also be feasible without restraining rights guaranteed by s. 2b) of the *Canadian Charter of Rights and Freedoms*, as no state intervention is implied by autoregulation.[817] Our suggestion is a mere extension of the current system.

In the case of Val-d'Or, we must discuss this two-prong duty of minimizing harm through monitoring consequences and providing external support from a specific angle: the status of *Radio-Canada* (Canadian Broadcasting Corporation). *Radio-Canada* – the broadcaster of *Enquête* – is a Crown corporation. This situation may blur the line between state and non-state actors. Should this media be held to a higher standard due to this status? The distinct position of *Radio-Canada* means the latter can act as a state agent in some capacities, a fact recognized by the case law and the legislation.[818] However, in its broadcasting capacity, *Radio-Canada* is independent of the state, just as any other private broadcast network. Broadcasting is thus not governmental action to which the *Canadian Charter of Rights and Freedoms* can apply, and employees are not servants of the Crown.[819] *Trieger v Canadian Broadcasting Corp.* summarized the situation: "Whatever the

[816] Conseil de presse, *supra* note 719, s 4; Fédération professionnelle des journalistes du Québec, *supra* note 719, s 10 (see s 11 in the French version); CBC/Radio-Canada, *supra* note 719 tit To act responsibly and to be accountable.
[817] *Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK)*, *supra* note 53, s 2b) and 32.
[818] See, e.g., *Broadcasting Act*, SC 1991, c 11, ss 40, 46(3) and 47(1); *Canadian Broadcasting Corp v Attorney General (Ontario)*, [1959] SCR 188.
[819] *Broadcasting Act*, *supra* note 818, s 44(3); *National Party of Canada v Canadian Broadcasting Corp (CBC) (1993)*, 13 Alta LR (3d) 20 at para 20. The status of Radio-Canada and CBC nevertheless raised debates recently: Radio-Canada, "CBC/Radio-Canada dénonce l'étiquetage de CBC comme média financé par l'État sur Twitter", (16 April 2023), online: <https://ici.radio-canada.ca/nouvelle/1972139/reseau-social-etiquetage-media-public-musk>; Radio-Canada, "Radio-Canada et CBC suspendent leurs activités sur Twitter", (17 April 2023), online: <https://ici.radio-

application of the Charter may be to other aspects of the [Canadian Broadcasting Corporation], its independence from government in respect of its editorial decisions in its broadcast operations suggests to me that it should perhaps not, in respect of those editorial broadcasting decisions, be treated as if it were a governmental organization subject to government control and subject to the *Charter*".[820] This ruling shows the distinctive status of the broadcaster by admitting that it can be treated as a governmental organization in some contexts and as a private broadcaster in others.

This dual status strengthens the argument presented in this Chapter's introduction that the media participates in the same accountability system as the state. On some occasions, media organizations can be affiliated with the state. While *Radio-Canada* is independent in its broadcasting capacity, it is still engrained in the same accountability system. As this Chapter's introduction described, the media and the state are connected through infrastructural power and social accountability. Some restrictions of media-induced accountability are thus similar to other state accountability mechanisms. As they are all part of the same system, the state and journalists can share some discourses and side-line the impact of power dynamics or historical relations. Moreover, if journalists side-line concerns, this may translate into the blindness of the state that relies on media to evaluate accountability requests. This closeness must be surveyed more closely in the case of media who are state agents in some capacities. They must be especially cautious not to turn a blind eye to state wrongdoings or too hastily adopt state discourses. While organizations like *Radio-Canada* must protect their broadcasting independence and distance themselves from

canada.ca/nouvelle/1972182/reax-trudeau-poilievre-twitter-cbc-radio-canada>; Luce Julien, "Mot de l'info | Pourquoi nous reprenons nos publications sur Twitter", *Radio-Canada* (9 May 2023), online: <https://ici.radio-canada.ca/nouvelle/1978063/mot-info-radio-canada-twitter-musk-desinformation>.

[820] *Trieger et al v Canadian Broadcasting Corp (1988)*, 66 OR (2d) 273 at para 18. See also *Natural Law Party of Canada v Canadian Broadcasting Corp (TD)*, [1994] 1 FC 580 at paras 11 and ff; *National Party of Canada v. Canadian Broadcasting Corp. (CBC) (1993)*, *supra* note 819 at paras 9–28. The special status of this broadcaster is also recognized in Patrick, *supra* note 722.

the state, journalists from *Radio-Canada* should not be held to higher standards. They are not servants of the Crown and benefit from independence concerning broadcasting and news selection. While in this case, *Radio-Canada* was involved, in other cases, private broadcasters could be. They should all follow similar ethical guidelines, as all people entering contact with journalists should benefit from the same protection.

The proposed duty need not be contained in a statute because the media's ethics already strongly rely on autoregulation. As mentioned above, this would preclude the application of the *Charter*. Autoregulation does not result from state intervention. We would, however, have to rely on the media's good faith and trust in non-state regulation mechanisms. Fairness to the public requires a uniform Code of Ethics regulating all members of the media world rather than the juxtaposition of rules of the current system.[821] This Code should incorporate the bipartite duty to minimize harm and apply to media like *Radio-Canada* and entities without any affiliation with the state.[822] While both types of media can be blind to power dynamics and reproduce state discourses, special attention must be given to media that are Crown corporations for some capacities.

Conclusion

This Chapter examined the media's work in Val-d'Or and its contribution to securing state accountability for police sexual misconduct. The data collected in the interviews allowed us to analyze narratives on the role taken by the press in Val-d'Or. We can elaborate on this function

[821] Revisiting the limitation period of one month might also be helpful: Conseil de presse, "Porter plainte", online: <https://conseildepresse.qc.ca/porter-plainte/processus-de-plainte/>.
[822] Regulation through a unique Code of Ethics and professional status for journalists have been recommended in a 2010 report, but these changes have never seen the light of day. The 2010 document saw a unique Code of ethics as the solution to numerous problems but did not delve into the harm caused by investigative journalism. See, e.g., Payette, *supra* note 748 at 58, 59, 73, 74, 80 and ff. *Cf* Fédération professionnelle des journalistes du Québec, *supra* note 719 at preamble; Bernier, *supra* note 799.

through different components. Acting as a watchdog for state misconduct, *Enquête* compellingly exposed the situation in Val-d'Or, which led to several state responses ranging notably from criminal investigations (see Chapter III), public inquiries (see Chapter V), and class action litigation (see Chapter II). The media also succeeded in amplifying discourses from accountability forums to different degrees. We may think, in that respect, of the DPCP's decision as an example of high mediatic coverage. Overall, the media appeared as an effective bottom-up mechanism informing the population and challenging state action. The label of bottom-up is still applicable in the case of Radio-Canada – the leading mediatic actor in Val-d'Or – despite its affiliation with the state since it is independent in its broadcasting capacity. Independence does not mean the media and the state do not participate in the same accountability system. This connection is essential to ponder when looking at manifestations of wilful blindness, which we will summarize in the next paragraph.

The successes noted above are not without any downfalls. In the last sections of this Chapter, we displayed some of the adverse effects of media involvement in the Val-d'Or crisis. As time passed, a critical stance emerged. The media coverage failed to go beyond the cases against the SQ and to frame the issue of police sexual violence as a gendered, racialized, and systemic problem. The framing of the issue by the media directly impacts the state's approach (see, e.g., Chapter V). They both replicated the state's wilful blindness and failed to document foreseeability and wilful blindness outside the Val-d'Or events by not linking the crisis to broader phenomena. If the media side-line concerns or are detached in a way that prevents from reporting the depth of an issue, this ignorance might very well be reproduced in state mechanisms. State and media all interact within the same system and cannot be studied in isolation.

Aside from forms of wilful blindness, participants contended that the pressure of the media created harm and that the partial coverage of the crisis impeded state accountability processes. The drawbacks highlighted throughout interviews and unpacked in our analysis call for a moral duty to minimize harm. The latter takes the form of providing support and pondering the consequences of mediatic coverage. Harm minimization should erect as a guiding principle without interfering with journalists' freedom of expression. The harm documented in this Chapter and the incompleteness of current autoregulation mechanisms mean that caution must be exercised when relying on the media as a source of accountability. It also means that multiple means of redress are likely required to secure state accountability.

The drawbacks of media coverage, namely the blindness to the systemic, gendered, and racialized nature of police sexual violence, and the reproduction of dominant discourses, are especially relevant to connect to our next Chapter on the Viens Inquiry. This Chapter will examine the effect of the Viens Inquiry on state accountability through available data, namely interviews, testimonies before the Inquiry, scholarly literature, and documentation produced for (and by) the Inquiry. More precisely, Chapter V will argue that the Viens Inquiry, although longed for, was a source of deception for many actors who believed it remained wilfully blind to the very matter of the Val-d'Or crisis: sexual misconduct, gendered and racialized violence, and other forms of abuse by the police in Val-d'Or. Connecting Chapters IV and V is thus the best way to grasp the implication of wilful blindness. Suppose the media had reported continuity in state violence instead of a crisis. In that case, it might have altered the entire narrative of the Val-d'Or events and the accountability strategies implemented by the state.

CHAPTER V – THE VIENS INQUIRY: A PUBLIC PARTICIPATION MECHANISM SHYING AWAY FROM SEXUAL VIOLENCE BY POLICE

In absolute terms, public commissions of inquiry are perfectly aligned with the theoretical underpinnings underlying this project. Nevertheless, this Chapter argues that the *Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress* (the "Viens Inquiry" or the "Inquiry") exhibited substantial limitations in terms of state accountability. These restrictions are not tied to the theoretical model but rather to the narrow mandate, which excluded police sexual violence, and the Inquiry's operations, which were not inclusive enough of non-state discourses. Before fleshing out further detail on the Viens Inquiry and its limitations, we will present three ways commissions of inquiry generally fit within our theoretical framework of state accountability. Of note, throughout the following pages, we will use the terms "commission of inquiry", "public inquiry", and "inquiry" interchangeably.[823]

First, whereas social accountability can be found in bottom-up mechanisms challenging the state, it also includes "efforts to improve the effectiveness of 'internal' accountability mechanisms, for example, through citizen involvement in public commissions and hearings, citizen advisory boards and oversight committees."[824] Social accountability is not the dismissal of top-down mechanisms. It is the promotion or improvement of top-down mechanisms through civic engagement and their combination with bottom-up accountability mechanisms when required. When reflecting on this description, a public inquiry that allows for and stems from public

[823] Inspired by Stephen Goudge & Heather MacIvor, *Commissions of Inquiry* (Toronto: LexisNexis, 2019) at 3.
[824] Malena, Forster & Singh, *supra* note 206 at 3–4. See also Brinkerhoff & Wetterberg, *supra* note 188; Malena, Forster & Singh, *supra* note 206 at 7.

participation is congruent with our theoretical framework. The commitment to listening to make progress, entrenched in the title of the Viens Inquiry, is *a priori* additional evidence of the connection between civic engagement and this specific public commission of inquiry.[825] Therefore, a thesis on state accountability in Val-d'Or must devote a substantial part of its analysis to the Viens Inquiry. Civic engagement was conducive to an inquiry in Val-d'Or and informed its results. The Inquiry was the only state-based allowing for civil society participation, including victims. This does not mean there is no limitation to using public commissions of inquiry. However, as this Chapter will propose, the shortcomings are not due to public participation but rather to the mandate of the Viens Inquiry and the imposition of state norms narrowing down society's potential contribution. An assessment of the Viens Inquiry should thus focus not only on its operations but also on its mandate, the receptivity and inclusion of the people involved, the minimization of harm, and its remedial capacity.

Second, by documenting state practices, discrimination, and drawbacks in the state response, this Chapter will contend that the state can no longer plead ignorance regarding discrimination in public services. Knowledge of systemic racism[826] is not necessarily the same as knowledge of systemic police sexual misconduct. However, in Chapter I, we argued that wilful blindness to police sexual misconduct should be enough to hold the state accountable. We must

[825] *Décret 1095-2016, 21 décembre 2016*, *supra* note 48; Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 21–22.

[826] We must note here that the Viens Inquiry, inter alia, has recognized systemic racism and systemic discrimination in Québec: Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23. An acknowledgment that the government has not endorsed: see, e.g., Curtis, *supra* note 579; René Bruemmer, "After Echaquan report, Legault repeats there is no systemic racism in Quebec", *Montreal Gazette* (5 October 2021), online: <https://montrealgazette.com/news/quebec/after-echaquan-report-legault-repeats-there-is-no-systemic-racism-in-quebec>. For an overview of studies on racism in Québec, see Pierre & Bosset, "Racisme et discrimination systémiques dans le Québec contemporain", *supra* note 755.

recall here that wilful blindness is an expanded version of its criminal law counterpart, including detachment from reality and side-lining of concerns (see Chapter I). We suggest that the Inquiry's mandate and Final Report show the state was wilfully blind to police sexual misconduct and maintained a harmful status quo.

Finally, the outcomes of the Viens Inquiry correspond to forms of justification and redress (or response), respectively, the second and third components of accountability as defined in Chapter I. This last connection to the theoretical framework will be introduced in the following paragraphs and thoroughly explored in section 3.

Now that we explained how the Viens Inquiry could be inserted within our theoretical framework, it is imperative to provide more detail about the Inquiry itself. The Viens Inquiry started in December 2016 and ended with the submission of its Final Report in September 2019.[827] The Government of Québec instructed the Inquiry to investigate systemic racism against Indigenous peoples within some public institutions. The Government appointed the retired Superior Court judge Jacques Viens as Commissioner of this fact-finding, analytical, and policy-oriented Inquiry.[828] The Viens Inquiry is inherently linked with the Val-d'Or crisis. This remains valid, albeit its scope expanded beyond police services to other public services, namely the justice

[827] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 28.
[828] *Décret 1095-2016, 21 décembre 2016*, *supra* note 48 at 10. Despite the relatively policy-oriented order that created the commission of inquiry, we would argue that the Viens Inquiry was hybrid and thus operated both under the fact-finding and policy frameworks: see, *Décret 1095-2016, 21 décembre 2016*, *supra* note 48; cf Goudge & MacIvor, *supra* note 823 at 33–35. The title of the Inquiry also lets foresee its reconciliation role: see Simon Ruel, *The Law of Public Inquiries in Canada* (Toronto: Carswell, 2010) at 8–9. *Cf* Kim Stanton, *Reconciling truths: reimagining public inquiries in Canada* (Vancouver: UBC Press, 2022) at 23–27 on the differences between Truth Commissions and public commissions of inquiries.

system, the correctional system, health and social services, and youth protection.[829] Indeed, the mandate of the Inquiry was phrased as follows:

> […] to make recommendations concerning concrete, effective, lasting remedial measures to be implemented by the Government of Québec and indigenous officials to prevent or eliminate, regardless of their origin or cause, all forms of violence, discriminatory practices and differential treatment in the delivery of the following public services to Québec's indigenous people: police, correctional, legal, health and social services, as well as youth protection services.[830]

Consequently, and contrary to mechanisms studied in Chapters II (liability regimes) and III (criminal investigations), the Viens Inquiry did not aim to find organizational or individual liability. Instead, it was focused on remedies developed from hundreds of testimonies and lengthy documentation.[831] In this way, it was well-equipped to engage with facets of our state accountability framework, including justification, redress, and public participation. We mean here that a public inquiry connects with our definition of accountability and symbolizes social accountability. Gerald E. Le Dain expressed this last thought slightly differently by stating that public inquiries have a social function since they are "part of an ongoing social process".[832]

Despite the connections between our theoretical framework and the Viens Inquiry, we will demonstrate that exhibiting characteristics proper to social accountability is insufficient to secure state accountability for police sexual misconduct. For example, if public participation is delineated in a way that precludes addressing the roots of the state wrongs, state accountability will not be

[829] *Décret 1095-2016, 21 décembre 2016*, *supra* note 48.
[830] English translation of Decree 1095-2016 cited in Secrétariat aux affaires autochtones, *supra* note 352 at 1.
[831] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 199; *Décret 1095-2016, 21 décembre 2016*, *supra* note 48.
[832] Gerald E Le Dain, "The Role of the Public Inquiry in Our Constitutional System" in *Law & Social Change - Osgoode Hall Law School Annual Lecture Series 1971-1972* (Osgoode Hall Law School, York University, 1973) at 85. See also Stanton, *supra* note 828 at 13–14, 22 and 166–167.

achieved. The literature proposes complementary contentions when stating that public inquiries can undermine public trust if they result in blame deflection or crystallization of the state's narrative through exclusive reliance on state-approved discourses.[833] In addition, and similarly to the media, inquiries can harm individuals they rely on by putting pressure to share traumatic events through "extractive" processes.[834] There are thus caveats to using this mechanism, even if it can be connected to our theoretical framework in various ways.

This Chapter will shed light on the benefits and shortcomings of such a social accountability mechanism. An effective state accountability mechanism in Val-d'Or should have assessed the allegations of police misconduct that surfaced in 2015 and unpacked the social structures and unintended consequences of state actions permitting such abuse. By analyzing this Inquiry and combining this Chapter with existing understandings of the Val-d'Or crisis, the following pages assist us in demonstrating the wilful blindness of the state when it comes to connecting the state to police sexual violence. The socio-historic review conducted by the Inquiry, the compilation of testimonies, and the calls to action (which will all be discussed in this Chapter) support the claim that the state is failing to stop injurious processes because it denies part of reality accounting for police sexual violence. The Chapter will also conclude that although the Viens Inquiry favoured knowledge production, it was rooted in state law and settlers' imposition of norms. Social accountability would have been better served by greater collaboration between state and non-state actors; and, more precisely, by a partnership challenging the operative framework

[833] See, e.g., Angela Hegarty, "The Government of Memory: Public Inquiries and the Limits of Justice in Northern Ireland" (2003) 26:4 Fordham Int'l LJ 1148. See also Stanton, *supra* note 828 at 9.
[834] See, e.g., Bazinet, *supra* note 21 at 11; Patrick, *supra* note 722 at 213. *Cf* Chapter IV on the media.

of the Inquiry. Again, ensuring a proper mandate, minimization of harm, receptivity, inclusion, and remedial capacity is crucial to any inquiry.

This examination of the Viens Inquiry will be three-fold. Section 1 will delve into responses to the Val-d'Or crisis and the Viens Inquiry. Subsection 1.1 will show that the Inquiry resulted from a long process of requests by Indigenous communities and civil society. We will describe this state accountability mechanism as an example of broad public participation. However, we will argue that the parameters of this implication deterred broad consultation, notably because of the costs associated with legal representation and the formality of the Inquiry. Subsection 1.2 will suggest that public participation is insufficient to dissipate doubts about the capacity of the state to address injustices, especially in a colonialization context. This contention will rely on various critiques, including that numerous Canadian commissions of inquiry followed each other without generating a clear shift in legal narratives nor putting a stop to the discrimination of Indigenous peoples. Then, section 2 will argue that the Viens Inquiry did not tackle sexual violence, police misconduct, and the Val-d'Or crisis *per se*. It will also posit that the Inquiry's mandate extended so broadly that it mainly excluded women of Val-d'Or. Section 3 will conclude the Chapter and outline the outcomes of the Viens Inquiry. More precisely, subsection 3.1 will contend that the Viens Inquiry contributed to creating a whole of literature through its research and fact-gathering functions. Subsection 3.2 will then move on to calls to action dealing with police sexual misconduct. Both subsections will suggest that despite knowledge dissemination, cynicism may remain if recommendations are not followed through. It will also show how the scope of the Inquiry impacted the calls to action, which do not specifically target

Val-d'Or. The absence of police sexual violence from the mandate and the Final Report reflected in the calls to action is framed as a form of wilful blindness.

1. A Welcomed Truth-Gathering Forum?

This first section will provide details on the inception of the Inquiry by drawing on two conflicting views: (1) the need for a commission of Inquiry and (2) the skepticism concerning the ability of the Inquiry to remedy discrimination in public services or the Val-d'Or crisis. For this purpose, the first subsection will outline the timeline and the pressure leading to the Inquiry. The second subsection will put forward critiques stemming from the implementation of an Inquiry in Val-d'Or, namely the use of this mechanism to neutralize controversy rather than addressing matters at hand, the colonialist framework of the Inquiry, and the existence of other commissions of inquiry on relations of the state with Indigenous peoples. The argument on other inquiries will contribute to showing knowledge of discrimination against Indigenous peoples, an essential element to fully grasp the Val-d'Or crisis, police sexual misconduct in Canada, and wilful blindness. Together, these subsections will demonstrate the importance of public participation, the hardship social accountability mechanisms can experience when the state dictates their mandates and norms of participation, and knowledge of discrimination. This will reinforce our claim that social accountability can secure state accountability but must emphasize receptivity, inclusion, the minimization of harm, and effective remedies (on the latter, see section 3).

1.1. Pressure to Create a Commission of Inquiry

When allegations of police misconduct surfaced publicly in October 2015, requests for an independent commission of inquiry into the Val-d'Or events multiplied.[835] This may very be well related to the qualities generally attributed to such commissions, namely their aptitude to uncover the truth in an independent and relatively open forum.[836] A commission of inquiry allowed for investigating the Val-d'Or events outside the criminal justice system. However, the road to an inquiry was dotted with obstacles. As noted by Kim Stanton, while commissions of inquiry may serve truth-gathering and policy functions, only the government is empowered to create one.[837] In the case of Val-d'Or, the government decided to implement a commission of inquiry more than a year after the beginning of unceasing requests. The following discussion will analyze civil society's role in pushing the state to act. It will suggest that civic engagement can trigger state action and force a departure from the status quo. In this sense, civil society advocacy exemplified a form of social accountability. The next sections will then raise issues with public participation. As these sections will display, pressure can trigger state action but, in Val-d'Or, it was insufficient to secure state accountability.

In November 2015, Indigenous leaders met with the then-Premier Minister of Québec, Philippe Couillard. The meeting was directly connected with new measures in Val-d'Or but resulted in no commission of inquiry.[838] The government explained its reluctance through the existence of another commission of inquiry set up by the federal government in 2015 (i.e., the

[835] See, e.g., Michel, *supra* note 83 at 52; Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 14.
[836] See, e.g., Stanton, *supra* note 828.
[837] *Ibid* at 14–16.
[838] Cabinet du premier ministre, *supra* note 36; Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 14.

National Inquiry into Missing and Murdered Indigenous Women and Girls ("MMIWG")).[839] Despite the answer of the then-Federal Minister of Indigenous and Northern Affairs, Carolyn Bennett, stating that MMIWG would not delve into specific cases, Québec did not change its stance.[840] In December 2015, the Val-d'Or city council demanded an independent commission of inquiry and adopted a unanimous resolution to that effect, notwithstanding the Federal commission of inquiry.[841]

In November 2016, the Independent Civilian Observer overseeing the investigation of the *Service de police de la Ville de Montréal* ("SPVM") submitted her report. She concluded: "The emphasis of a traditional criminal investigation on individual cases leaves little room for collective and systemic considerations. This inherent limitation of criminal investigations points to the need to use other measures to shed light on the issues underlying this wave of denunciations".[842] A commission of inquiry – albeit state-led – was one of the methods available to examine collective and systemic aspects of the Val-d'Or allegations. The decision not to lay charges against police officers in Val-d'Or, also announced in November 2016, was a novel occasion to request a judicial commission of inquiry.[843]

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[839] See, e.g., Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 14; Sarah-Maude Lefebvre, "Québec doit faire sa propre enquête, dit la ministre fédérale", *Journal de Montréal* (10 November 2015), online: <https://www.journaldemontreal.com/2015/11/10/quebec-doit-faire-sa-propre-enquete-dit-la-ministre-federale>.

[840] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 14. We must note here that MMIWG is mostly absent from this Chapter due to our chosen methodology. While our first interview guide did not delve specifically into the role of this National Inquiry and privileged the Viens Inquiry, we rapidly saw the importance of discussing MMIWG through our readings. Wanting to fill the gap in the data, we targeted potential participants who could discuss this accountability mechanism more thoroughly. One responded positively but dropped in the week preceding the interview after a few attempts at scheduling a meeting.

[841] *Ibid* at 15; Mark, *supra* note 681 at 34; Radio-Canada, *supra* note 37.

[842] Lafontaine (2016), *supra* note 4 at 15.

[843] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 17; La Presse canadienne, "Val-d'Or: les leaders autochtones réclament une enquête judiciaire", *La Presse* (21 November 2016), online:

In December 2016, the government met with Indigenous leaders and Edith Cloutier, the Val-d'Or Native Friendship Centre director. There were still demands for commission of inquiry.[844] The government later received a letter from an executive of the MMIWG reiterating the statement of the Federal Minister that the National inquiry *would not* investigate specific events, including the Val-d'Or crisis.[845] Following this communication, the Quebec government passed an administrative order creating the *Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress*, which we referred to, throughout this thesis, as the Viens Inquiry.[846]

As this brief timeline demonstrated, the Viens Inquiry resulted from constant pressure from civil society. The fact that the government instigated the Inquiry was a victory after more than a year of resistance from provincial authorities. Indeed, as accounted for in the last paragraph, Indigenous leaders and individuals from diverse fields expressed the urgent need for a commission of inquiry.[847] Some participants in our research echoed this sentiment:

> **Interview C1:** *[T]he communities I was in contact with, obviously [an independent commission of inquiry] is what they had wanted for a long time (...) and the government resisted and well [...] It seemed to me that it was obvious.*[848]

<https://www.lapresse.ca/actualites/justice-et-affaires-criminelles/201611/21/01-5043666-val-dor-les-leaders-autochtones-reclament-une-enquete-judiciaire.php>; Stanton, *supra* note 828 at 187.

[844] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 18.

[845] *Ibid*; Mark, *supra* note 681 at 41. *Ibid*; Mark, *supra* note 682 at 41.

[846] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 18; *Décret 1095-2016, 21 décembre 2016*, *supra* note 48.

[847] See, e.g., Quebec Native Women & Amnistie internationale, "Why demand an Independent Provincial Judicial Inquiry on the Relationship Between Indigenous Women and Police Institutions in Quebec?", (2016), online: <http://www.faq-qnw.org/wp-content/uploads/2016/12/11raisons_EN.pdf>; Québec Native Women Inc., *supra* note 451 at 21; Cloutier, *supra* note 24 at 89–90; Lafontaine (2016), *supra* note 4 at 67.

[848] C1, at 21.

> **Interview B2:** … *the majority of my […] colleagues and sisters were in favour of [an independent commission of inquiry]*.[849]

Participants in our study added that an Inquiry created a dedicated space to share experiences and report injustices.[850] Indeed, the Viens Inquiry heard 765 witnesses, including 277 citizens, over 38 weeks.[851] Interviewee C1 explained the importance of the Viens Inquiry in these words:

> **Interview C1:** *You know, […] the formal system [of] criminal justice, so the police […] it's not the best way for people who have experienced violence […] are victims, survivors of violence […] to share their truth [...] I think it can be steps that (inaudible) important, but talking to an investigator who's looking to establish responsibility, it's not the same as talking to a shrink or establishing a whole truth in front of a commission of inquiry. So that's why the commission of inquiry was important. Because there are people who didn't want to file a criminal complaint, who had experienced violence, and hoped that [speaking] would free up their voices, all that*.[852]

Another participant in our project agreed with this assessment and argued that the Viens Inquiry provided a forum for many to be heard and find justice.[853] A third interviewee underscored that victims and interveners with whom they worked saw benefits in the Inquiry despite an insufficient focus on the Val-d'Or events. This latter element will be unpacked in section 2.[854] The excerpts above show the importance of public participation in accountability, mostly absent from mechanisms presented in Chapters II (liability regimes) and III (criminal investigations).

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[849] B2, at 12.
[850] See also Michel & Miller, *supra* note 83 at 70 and 117 (Michel). Bazinet, *supra* note 21 at 11.
[851] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 23.
[852] C1, at 27-28. *Cf* Bazinet, *supra* note 21 at 11 who rather conceive the Inquiry as an extractive practice; see also Patrick, *supra* note 722 at 213.
[853] A1, at 23-24.
[854] C2, at 12-13.

Although rooted in civic engagement, the Inquiry was a formal mechanism imposing participation norms. While norms for participation are not necessarily antithetical to civic engagement, we argue that norms elaborated in closer collaboration with society would have achieved greater social accountability by gathering narratives in different formats. Strict norms might impede inclusion. Participants in the Inquiry had to comply with the Inquiry's unilateral imposition of normativity to have their discourses heard,[855] and some of our interviews identified this formalism as a barrier to accountability. For instance, one participant from our study claimed that civil society permitted public participation in a way that was more inclusive than the Inquiry:

> **Interview C1:** *The commission of inquiry allowed for [collecting narratives], but it remained quite formal […] People spoke out at, for instance, the Native Friendship Centre in Val-d'Or, where women gathered. So, there was some support from civil society, and it might more be there that [narratives truly emerged].*[856]

Another participant in our research shared this perception of the Inquiry. They suggested that the exercise before the Inquiry was not trivial but remained too strictly controlled by legal norms.[857] This being said, norms were not the only factor restraining meaningful participation. Funding for legal representation also appeared as a significant difficulty for Québec Native Women, an organization specializing in Indigenous women's rights.[858] Insufficient funds caused an interruption of their representation. The organization claimed the government provided minimal funding, rendering access to representativity unequal. Québec Native Women succeeded in coming back before the end of the Inquiry's work through private funding.[859]

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[855] Bazinet, *supra* note 21 at 9–10.
[856] C1, p. 28.
[857] B1, pp. 14-15.
[858] For more information, see Québec Native Women Inc, "About us", online: <https://faq-qnw.org/en/about-us/>.
[859] Québec Native Women Inc., *supra* note 126 at 5; Michel & Miller, *supra* note 83 at 79-81 (Viviane Michel); Susan Bell, "Quebec Native Women scale back participation in inquiry into treatment of Indigenous people", *CBC* (25 October 2017), online: <https://www.cbc.ca/news/canada/north/quebec-native-women-indigenous-inquiry-1.4371991>. The Viens Inquiry is not the only public inquiry in which Indigenous organizations struggled to get

State entities were in a better position from the adherence to rules and funds standpoints. For example, the police and prosecution, as state entities, had a good chance of agreeing (or at least being familiar) with the Inquiry's way of proceeding. Their representation and the existence of their discourses were not threatened either by lack of funds. The state possessed the power to shape the Commission's core through normativity and costs. The government, the police, and the prosecution did not have to struggle with having their voices heard. However, Québec Native Women were temporarily silenced as not represented for part of the Inquiry. Not benefiting from their input could be conceptualized as side-lining of specific perspectives. The Commissioner recognized this inequality and invited Québec Native Women to communicate with him and his team despite the end of their legal representation. However, this is not the same as a permanent seat at the table.[860] Social accountability would have been better served by a commission relying more profoundly on equal representation and collaboration with civil society. The next subsection will unveil the Viens Inquiry's shortcomings by drawing on narratives provided by the interviewees and civil society. Consequently, it will pursue our argument that social accountability alone might not be enough to guarantee state accountability.

1.2. Another Commission of Inquiry on Indigenous Peoples' Relations with the State

This subsection will present an argument contradicting the need for a commission of inquiry. The literature depicts inquiries as a social accountability mechanism. This finding applies to the Viens Inquiry, as demonstrated heretofore. Nevertheless, there was a sense in the literature and our interviews that the Viens Inquiry was rooted in a state-colonial mentality and thus failed

funding from the state for legal counsels, see e.g., Stanton, *supra* note 828 at 156–159 on the Missing Women Commission of Inquiry in British Columbia.

[860] Michel & Miller, *supra* note 83 at 136-237 (Jacques Viens).

to achieve state accountability. While part of civil society advocated for the creation of the Viens Inquiry, we cannot omit the lingering skepticism expressed in the literature, by our participants, and some witnesses to the Inquiry. This subsection will contend that state power and colonialism caused the events at the origin of the Inquiry and infused the latter. This subsection will also suggest that the state possessed knowledge of discrimination against Indigenous people yet did not shift its legal narrative. This will be positioned as a detachment from the reality of Indigenous peoples, one that caused the state to maintain a harmful status quo. This subsection will lastly argue that knowledge of discrimination against Indigenous people is tied to state policies leading to abuse, including police sexual misconduct and impunity.

Daniel Salée argued that, while truth gathering might be helpful for people who want to have their voices heard, we had enough knowledge of the issues covered by the Inquiry to act on them without spending time initiating new consultative processes.[861] Viviane Michel, president of Quebec Native Women and first witness before the Inquiry, shared this point of view. When she appeared before the Inquiry in June 2017, Michel stated, "I am like saturated, that we go from investigation to investigation, to commission of inquiry, to issue recommendations, to bring out facts, systemic discriminations, structural, and institutional violence. I am like saturated. I need a social change, for our people." [Our translation.][862] These statements are reminiscent of Stanton's insight on public inquiries regarding violence against Indigenous women: "It was not that Canada

[861] *Témoignage devant l'honorable Jacques Viens, 12 juin 2017, vol. 5*, by Daniel Salée (Val-d'Or: Commission d'enquête sur les relations entre les Autochtones et certains services publics : écoute, réconciliation et progrès, 2017) at 159–162. See also Daniel Salée, "Que faut-il espérer de la Commission d'enquête du gouvernement Couillard sur les peuples autochtones?", *Radio-Canada (Espaces autochtones)* (27 December 2016), online: <https://ici.radio-canada.ca/nouvelle/1008075/commission-enquete-gouvernement-couillard-peuples-autochtones-daniel-salee>.
[862] Michel, *supra* note 83 at 79. See also Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 211–212.

did not know the root causes or what to do about them. The stark truth was that most Canadians were not interested in doing what they knew needed to be done." [Emphasis added.][863]

Combining these authors' insights leads to a disconcerting conclusion: not only do we know about violations of Indigenous peoples' rights, but also we keep using the same legal mechanism without successfully attending to the matters at the source of public inquiries. It casts doubt on the state's capacity to address violence against Indigenous peoples meaningfully. This is not a judgment of people involved in the Viens Inquiry. The argument can be put shortly as: the state knows of the discrimination against Indigenous people and should be held accountable for the maintenance of the status quo. If we have created commissions of inquiries on Indigenous matters since 1828, and many have covered similar issues and reached comparable conclusions, perhaps it is time to do more than investigate abuse.[864] The state (and society) should have learned from these inquiries. If it did not, it might be because it did not want to shift the narrative of Canadian law and history, [865] or in other words, the inquiries were unsuccessful in fostering "a new climate of opinion". [866] It is time for a mechanism imposing change and recognizing that the state's paradigm is part of the problem.

In Canada, we can hardly dissociate police sexual violence from abuse against Indigenous women.[867] Consequently, the issues highlighted in the previous paragraph are relevant to ponder

[863] Stanton, *supra* note 828 at 147.
[864] *Ibid* at 31–38 fleshing out commissions of inquiries dealing with Indigenous matters in Canada since 1828. *Cf* A1, at 18.
[865] *Cf Ibid* at 147–148 arguing that further inquiries can be the source of change. We instead suggest that without real political will, commissions of inquiry will not be the catalyst of change hoped for by Stanton.
[866] E. Le Dain, *supra* note 832 at 81. Here Le Dain argues that such a change is needed "before the contemplation of serious legislative change." We agree with the need for a new climate of opinion, although we doubt that everything can be resolved through legislative changes.
[867] Human Rights Watch, *supra* note 4 at 59–62; Ampleman-Tremblay, *supra* note 8 at 19–22.

in the context of Val-d'Or. In a similar vein, Salée stated that the Viens Inquiry, including its remedial measures, was dominated by the state and the settler society underlying it. Anticipating the Final Report, Salée suggested that the Inquiry's remedies were unlikely to be granted if they jeopardized the interests of the colonizing state.[868] Stanton analogously posited that colonial governments have often implemented commissions of inquiry on the relations between Indigenous peoples and the state without genuinely considering their results and working toward preventing reoccurrence.[869] We can think of this attitude as maintaining the status quo despite knowledge of past abuse and unsatisfactory results from commissions of inquiry or as a detachment to the situation of Indigenous people in Canada. This contention connects to the Viens Inquiry in the following way: while the latter was posed as a novel remedial accountability mechanism, it was not. The inquiry relied on the same liberal and colonial framework as state institutions and processes.[870] The state continued past practices of accountability known to be ineffective in creating social change. Bazinet laid out an argument that also draws on the state colonial framework, although it does not focus on knowledge (or wilful blindness). Indeed, she vehemently critiqued the Viens Inquiry for its settler way of imposing how and what to heal.[871]

Participants in our research did not put their concerns in these exact words nor specifically target the colonialist framework of the Inquiry. However, participants commented on a similar element: the appointment of Justice Viens as a Commissioner, or more precisely, his identity as a

[868] Salée, *supra* note 861 at 199.
[869] Stanton, *supra* note 828 at 12. The Law Reform of Canada admitted that some commissions of inquiry's recommendations, not specifically on Indigenous matters, have been widely ignored: Law Reform Commission of Canada, *Administrative Law - Commissions of Inquiry: A New Act*, Working Paper 17 (Law Reform Commission of Canada, 1977) at 11.
[870] See, e.g, Bazinet, *supra* note 21; Salée, *supra* note 861; Salée, *supra* note 861.
[871] Bazinet, *supra* note 21 at 5–6; Cree Women of Eeyou Istchee Association, *supra* note 91 at 3.

male settler. We should nevertheless note that initial disappointment was partially mitigated by the presence of Indigenous staff, as shown by the following excerpts:

> **Interview B1:** *When they appointed Judge Viens, quite honestly, we said to ourselves, "But why is a white male judge coming in when we're talking about an issue like this?" Well, after that we saw […] how Judge Viens had surrounded himself. We said to ourselves, "Okay." […] It was already a bit better […]*[872]

> **Interview C1:** *[D]espite the appointment of […] a non-Indigenous Commissioner, [there was] a very, very present, very active [Indigenous] staff. People […] very respected in […] the community […]*[873]

The literature replicated these participants' sentiments on the topic. After having noted the lack of Indigenous leadership within the Viens Inquiry, Stanton discussed counsel representativity: "[the Inquiry] made unsuccessful effort to hire Reconciling Truths Indigenous counsel but tried to ensure that counsel who were hired did have experience working in Indigenous communities or on Indigenous issues. The inquiry did hire Indigenous staff in a range of roles, in total about a fifth of the staff."[874] Beyond the issue of Justice Viens' identity, some documents and participants' discourses spoke to his personality. When commenting on Justice Viens' appointment, an interviewee depicted the Commissioner as sensitive, genuinely listening to people, and proposing germane and thoughtful calls to action.[875] Maître Rainbow Miller, legal counsel for Québec Native Women, also underscored Justice Viens's listening skills and open-mindedness at the closing hearing of the Inquiry.[876] From these comments, we can infer that Justice Viens exhibited openness, thoughtfulness, and compassion.[877] However, this optimism was not unanimous. For

[872] B1, at 14.
[873] C1, at 22.
[874] Stanton, *supra* note 828 at 187–188.
[875] A1, at 23-24. Calls to action are discussed in section 3.
[876] Michel & Miller, *supra* note 83 at 119-120 (Miller).
[877] *Cf* Stanton, *supra* note 828 at 166 listing qualities require to make a good Commissioner.

some, appointing a white man with Western education was not only an unwelcome symbol but also raised doubts about the Inquiry's capacity to understand Indigenous communities and their relations with the law.[878] In other words, it was a sign that the state was unwilling to depart from past approaches and was wilfully blind to the impact of symbols of colonialism.

The fact that the Commissioner was an empathetic and devoted listener cannot counteract the issues listed heretofore, including, most notoriously, the colonialist framework of the Inquiry. We cannot omit that interviewees participating in our study and scholars shared their disenchantment with the Inquiry's capacity to address the Val-d'Or events or provide effective remedies precisely because of the paradigm in which it operated. Statements collected throughout our research in response to the question, "*How did you respond to the decision of the government to implement a commission of inquiry?*" displayed this sense of disillusionment, albeit it took distinct forms for each respondent:

> **Interview A1:** *I don't remember how I reacted at that exact moment, but most likely with a bit of cynicism.* […] *Because honestly hmm, commissions of inquiry on Indigenous matters follow one another and hmm conclusions are almost always the same, there are horror stories documented, but nobody is truly interested.*[879]

> **Interview B2:** *Everything we've known for 40 years will be updated on paper, but will it be taken into account? Hmm… Small steps, small steps, very small steps, and it seems that we don't know our history. You know Quebec's license plate, it says "Je me souviens".*
>
> *Interviewer: Yeah.*

[878] See, e.g., Jaela Bernstien, "'White judge, white lawyer': Quebec inquiry into discrimination lacks Indigenous voices, critics say", *CBC* (15 March 2018), online: <https://www.cbc.ca/news/canada/montreal/indigenous-representation-quebec-inquiry-1.4575750>.

[879] A1, at 17-18. See also Michel & Miller, *supra* note 83 at 78 (Michel) pleading for a follow-up committee to ensure that recommendations lead to action; Michel, *supra* note 83 at 74 and 79; Amnistie internationale, *supra* note 125 at 27. *Cf* Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 211–212 speaking of past actions failing notably because of lack of resources and the use of pilot programs.

Well, we do not remember anything.[880]

Interview A2: *[I]t quickly falls into the cracks, and then, before it becomes, you see before the government decides on something or enacts a statute or create a proper framework, it lacks teeth*.[881]

Participant A2 completed their answer by contending: "*I mean, the Viens Inquiry, it didn't hurt, but bringing justice [is a leap]*".[882] We must, however, note that discourses critiquing public inquiries are not novel nor exclusive to the Viens Inquiry. In 1989, Stephen Sedley wrote that public inquiries are a way to "absorb and still controversy" outside of the public debate in a forum less organized than litigation but still dominated by judges, lawyers, and a form of strict normativity.[883] This type of argument, born way before the implementation of the Inquiry in 2016, resonates with contentions laid out heretofore as well as with our participants' responses and the literature on commissions of inquiry in Canada:

Interview B1: *It's that hmm often [commissions of inquiry], especially on Indigenous matters, [are implemented] to buy peace [...] and to buy time.*[884]

Interview B2: *That's why I was so skeptical when, [...] I was made aware that they were going to create an inquiry, a commission of inquiry [...] Well, that was completely ridiculous […] It didn't make sense; we're going to waste a lot of time for another four years*.[885]

Going one step further than these excerpts, a participant in our study stressed that the Inquiry was not a mechanism aimed at 'listening', despite the inclusion of this word in its official

[880] B2, at 13. See also Stanton, *supra* note 828 at 14.
[881] A2, at 20.
[882] A2, at 37.
[883] Sedley, *supra* note 737 quoted at 478; Bazinet, *supra* note 21 at 2. Participants also commented on the formality of the Viens Inquiry: B1, at 14-15; C1, at 28.
[884] B1, at 13-14. See also: Salée, *supra* note 861 at 160–161; Salée, *supra* note 861.
[885] B2, at 12. *Cf* Stanton, *supra* note 828 at 14.

name. This individual underscored the difference between hearing a problem and genuinely listening, a distinction they believe was not implemented in Val-d'Or:

> **Interview B2:** *They don't listen to us. They hardly hear us (...) It's an exercise that hmm, that society in general doesn't do: listening. […]*
>
> *[Society] hears, fakes understanding, but it doesn't listen.*[886]

Wanting to confirm that this diagnosis expanded to the Viens Inquiry, we asked: *"[So] for you this applies to the Viens Inquiry, it operated on a 'we will hear you, but we will not listen on the long run' basis*?", to which the participant exclaimed: "*That's it! Exactly!*"[887] The insights shared in these quotations are closely aligned with the literature cited in the introduction of this section purporting that commissions of inquiries may not lead to transformative societal change if we keep implementing them without simultaneously operating a genuine shift in our legal framework and narratives.

This section accounted for the inception of the Viens Inquiry and showed that this public participation mechanism faced skepticism and other barriers to state accountability. Nevertheless, we must underscore that the problem did not lie with public participation but rather with the framework in which the Inquiry operated. As eloquently put by Vicki Chartrand in the context of incarceration: "Without changing the underlying colonial relationship, we not only ignore the ways that colonialism continues to exist today; we also continue to offer colonizing arrangements as part of the remedy."[888] The Inquiry was a colonizing arrangement despite all its efforts to include diverse voices. The following pages will build on the contentions highlighted in this first section.

[886] B2, at 12-13.
[887] B2, at 12-13.
[888] Chartrand, *supra* note 122 at 79.

While the Viens Inquiry was part of a colonialist and formal infrastructure, this state-based mechanism gave more space to civil society discourses than criminal investigations and liability regimes. This does not mean that the Inquiry did not have severe gaps in its capacity to engage with non-state discourses and secure state accountability. For instance, the following section will argue that the lack of focus on sexual violence and the relationship between Indigenous women and the police cast a significant shadow on the Inquiry's contribution to state accountability.

2. The Viens Inquiry's Mandate: A Missed Target?

In addition to the difference in paradigm between the state and other actors, one of the critical findings from the interviews is that the Inquiry did not sufficiently address the question of police sexual misconduct in Val-d'Or. This remark draws on one of the main arguments in this Chapter: the state must meaningfully include civil society when designing social accountability mechanisms; if not, it may miss the point by imposing its conception of the problem or redirecting the analysis away from the initial issue. The allegations of police (sexual) misconduct against Indigenous women and the troubled relations with the police were not sufficiently studied by the Inquiry. This is partly due to the order instating the latter, which referred to police violence in Val-d'Or in its preamble but did not explicitly mention investigating these events in the paragraphs outlining the Inquiry's mandate.[889] We will focus on this criticism in this section, but we must note that witnesses have pointed out additional concerns about the Inquiry's mandate.[890]

Authors like Sylvia Rich appositely criticized the absence of recommendations on police sexual misconduct. However, her argument is incomplete when blaming the Inquiry for not delving

[889] *Décret 1095-2016, 21 décembre 2016*, *supra* note 48.
[890] See, e.g., Cree Women of Eeyou Istchee Association, *supra* note 91 at 3 on the exclusion of education.

into "any pronouncements about responsibility for police officers' violence towards Indigenous women in Val d'Or."[891] While the decision not to deal with responsibility contrasts with our three-fold conception of state accountability, if we want to point fingers at someone – we should first look at the government behind the creation of the Viens Inquiry. The police were only one of the public services studied (other services included the justice system, the correctional system, health and social services, and youth protection),[892] and the scope was restricted to 15 years. The time restriction and broad scope considerably limited the Inquiry's influence. The relationship between the women in Val-d'Or and the police thus became a faint consideration in the Final Report except for some mention of the events, mostly in introductive comments. The Inquiry was not habilitated to rule on liability either.[893] We can critique the Inquiry itself, but part of its incapacity in addressing the situation in Val-d'Or was the mandate dictated by the government. The mandate insufficiently emphasized the Val-d'Or events, the police, sexual violence, and Indigenous women. Why? A participant in our study suggested that the Inquiry's scope resulted from negotiations with different entities:

> **Interview C1:** *On the government side, and then on the Indigenous side, they did not want the same thing. […]*
>
> *And the police didn't want it to be just the police...*[894]

This section will build on this excerpt and the literature[895] to unpack one of the deficits in state accountability: the lack of focus on the Val-d'Or crisis (and thus police sexual misconduct

[891] Rich, *supra* note 5 at 138. We, however, agree that the assignment of responsibility is a crucial component of state accountability defined as justification, responsibility, and redress (see Chapter I).
[892] *Décret 1095-2016, 21 décembre 2016*, *supra* note 48.
[893] *Ibid*; Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23.
[894] C1, at 21.
[895] See, e.g., Jacinthe Poisson, "Rapport Viens : genèse, attentes et réactions" (2019) Revue droits et libertés, online: <https://liguedesdroits.ca/rapport-viens-genese-attentes-et-reactions/>; Amnistie internationale, "Réaction

and abuse against Indigenous women) within the Viens Inquiry. This section will then connect this gap to (1) a failure to act upon discovering that state action was harmful and (2) a refusal to understand some aspects of reality.

Despite the nuance of the government's role in imposing the mandate, the Inquiry should have dealt with police sexual violence. Police services were explicitly included within its scope. The issues with the Inquiry cannot be fully summarized through its mandate. The Inquiry did not have *carte blanche* and had to examine the police. Despite this imposition, results were unsatisfactory on the role of the police in causing the Val-d'Or events. Setting aside sexual violence in public services and the conduct of the police was an unprincipled choice that missed an occasion to address state accountability. It can also be equated to a decision to wilfully remain blind to police sexual misconduct (1) by refusing to shed light on a specific aspect of the reality of Indigenous women and (2) by side-lining the fact that state wrongs may include sexual violence. This section will unpack these arguments.

A participant in our research clearly stated their frustration about the Inquiry's analysis of police services in Val-d'Or:

> **Interview C1:** *The Viens Inquiry did not really delve into the police, right? Very, very, very timidly. They did so extremely timidly. Very disappointing on my opinion hmm (…) And, you know, no one except for Québec Native Women strongly expressed how*

d'Amnistie internationale au dépôt du rapport d'enquête de la commission sur les relations enter les autochtones et certains services publics du Québec", (1 October 2019), online: <https://amnistie.ca/sinformer/communiques/local/2019/canada/reaction-damnistie-internationale-depot-rapport-denquete> critiquing the lack of focus on Indigenous women. See also Québec Native Women Inc, "Les femmes autochtones: grandes oubliées du rapport de la commission Viens", (30 September 2019), online: <https://faq-qnw.org/news/les-femmes-autochtones-grandes-oubliees-du-rapport-de-la-commission-viens/>; Michel & Miller, *supra* note 83 at 72 (Michel).

> *underwhelming it was. We created this [Inquiry] for the women of Val-d'Or and, finally, there is nothing…* […] *It's UN-believable!*[896]

This participant suggested that political considerations sizably enlarged the mandate, which raised doubt on the Inquiry's capacity to tackle all the angles required by the administrative order.[897] If such contentions were proven, this would be evidence that the government and the Inquiry engaged in wilful blindness: the decision to let some aspect of reality remain invisible. However, we must avoid hastily concluding wilful blindness based on one excerpt.

While understanding how different scales of violence across public services participated in the situation in Val-d'Or is imperative,[898] omitting to unpack the allegations of police sexual violence demonstrated disregard for the women of Val-d'Or. It can also be equated to a decision to remain ignorant of police sexual misconduct by side-lining this aspect of state violence. There should have been two separate venues: one specifically on the Val-d'Or events and another more broadly addressing discrimination in public services. The Viens Inquiry did not stand as an effective accountability forum for the Val-d'Or crisis precisely because the state chose to push aside the underpinnings of sexual violence by police. Several participants in our research shared the opinion that the Viens Inquiry did not centre enough on the police and the situation of the women in Val-d'Or:

> **Interview C2:** *The Viens Inquiry for all good it did (…) There is still a feeling of injustice. […] [A]nd (…) I mean, many factors contributed to this feeling, but for sure (…) it was clear […] that the mandate of the Inquiry was not […] to investigate thoroughly on the specific problem of abuse of Indigenous peoples in Val-d'Or nor to identify abusers and responsible individuals.* […]

[896] C1, at 14-15. *Cf* Québec Native Women Inc., *supra* note 895; Michel & Miller, *supra* note 83 at 72 (Michel).
[897] C1, at 21-22. See also Rodon, *supra* note 705 at 227.
[898] See, e.g., Bazinet's analysis on interconnected settler violence: Bazinet, *supra* note 21. See also Julie Perreault, "Décoloniser l'État québécois" (2020) 808 Relations 33 at 33–34.

> *[W]e saw a lot of positive outcomes, but because there was not […] a focus on the Val-d'Or events, there was a feeling that injustice was not rendered.*[899]

> **Interview B1:** *If I get back to the Viens Inquiry, one of the things that bothered us was the pseudo mandate of the Inquiry that did not focus at all on the relation with police officers.* […] *I forgot to tell you that. It stemmed from the relation with police officers, it […] started from the system […]. And, when we are aware of* <u>*the kind of blindness, namely, of the government regarding issues related to the system*</u> *– we are still seeing […] refusal to recognize […] systemic racism, it's a problem that made us say "Okay. This Inquiry, it will allow for individuals to […] speak. It will allow women to express themselves." But will it fix anything?" No, because it wasn't dealing with the problem with the police* […]. [our emphasis][900]

Just before this statement, participant B1 expressed that the withdrawal of the SQ and the police from the mandate's core was a mistake and the crux of the matter. It failed to recognize the nature of the Val-d'Or crisis. It also dismissed any intersectional lens necessary to delve into sexual violence by the police against Indigenous women in Val-d'Or.[901]

Similarly, Professor Cyndy Wylde expressed that the Viens Inquiry was limited in treating police misconduct. While discussing the red bracelets phenomenon, she claimed:[902] "Those red bracelets were seen as a form of intimidation […] It was a way for people or even the police <u>to deny reality</u> itself. It was a way for them to tell the women they either didn't believe them or they simply sided with the police regardless of what the facts were." [Our emphasis.][903] While this

[899] C2, at 12-13.
[900] B1, at 17.
[901] B1, at 16-17.
[902] Janet Mark described these events as follows: on October 20, 2016, the day on which a libel claim was filed against Radio-Canada and Josée Dupuis, 2500 SQ police officers started wearing a red bracelet in support of suspended officers in Val-d'Or: Mark, *supra* note 681 at 37–38. See also Radio-Canada, "Bracelets 144 : un obstacle aux bonnes relations entre policiers et Autochtones", (20 September 2018), online: <https://ici.radio-canada.ca/espaces-autochtones/1125145/sq-144-policiers-femmes-autochtones-val-dor-ghislain-picard-viviane-michel-juge-viens>.
[903] Curtis, *supra* note 579.

statement used language similar to the argument that detachment from lived experiences can leave part of reality to remain in ignorance, Wylde's insights also show the restrictions imposed by the mandate. Indeed, she added that Justice Viens was upset but "powerless to stop the practice" of the red bracelets.[904] The Inquiry was not empowered to look at all facets of the Val-d'Or crisis (notably because of its focus on the past 15 years) and had limited power beyond making recommendations. These restrictions denied investigation into the social tension in Val-d'Or, which was inherently connected to allegations of police sexual violence.

When reading the Final Report, we can observe that the emphasis was taken away both from the women in Val-d'Or and from the SQ, or the police, more generally. The Viens Inquiry should have been an occasion to offer justice to people affected by the Val-d'Or crisis and understand police sexal violence. Yannick Parent-Samuel, lieutenant-detective at the SPVM, testified before the Inquiry that while only 4 of the initial 14 files involved sexual violence, they were the most shocking for public imagination.[905] This is only one more reason to focus on this matter. Inquiries are meant to restore the public's confidence in the rule of law.[906] Naming and unfolding an issue is imperative to enhance public trust in the future. If public confidence experienced a shift because of sexual violence, it should have been embedded within the scope of the Inquiry.[907] Instead, the state selected an approach drifting away from understanding police sexual misconduct and its connection to state action.

[904] *Ibid*. See also Curtis, *supra* note 63; Radio-Canada, *supra* note 902.
[905] Parent-Samuel & Côté, *supra* note 31 at 112-113 (Parent-Samuel).
[906] See, e.g., Goudge & MacIvor, *supra* note 823 at 8; Hegarty, *supra* note 833.
[907] *Cf* Bazinet, *supra* note 21 at 5. We value Bazinet's argumentation on the role of white sensitivity but still posit that restoring public confidence should at least include sexual violence along with other preoccupations.

While we could argue that this choice stems from the MMIWG's scope of inquiry, which included but was not limited to: "systemic causes of all forms of violence – including sexual violence – against Indigenous women and girls in Canada, including underlying social, economic, cultural, institutional and historical causes contributing to the ongoing violence and particular vulnerabilities of Indigenous women and girls in Canada",[908] we must recall MMIWG explicitly stated it would not investigate the Val-d'Or events.[909] Excluding police sexual violence against Indigenous women cannot be justified by complementarity with the MMIWG, as it had no jurisdiction over specific events.[910] The Viens Inquiry was a missed opportunity to recognize not only the prevalence of police violence and its structural roots but also to connect sexual violence, colonialism, and the relationship of Val-d'Or's victims with the police. In other words, the Inquiry was an occasion to see how broader considerations of abuse of power and colonialism across Québec and Canada could explain the Val-d'Or events.

The Viens Inquiry was the only state-driven mechanism concentrating on state accountability. This makes the fact that the Final Report left police sexual misconduct by the SQ and other police forces almost untouched even more concerning. The Report offered a few examples of police sexual misconduct cases in a subsection called "Excessive Force, Brutality and Abuse". All types of misconduct discussed in this section, including assaults and starlight tours,

[908] Government of Canada, *supra* note 51. Québec gave power to the National Inquiry to investigate its territory through an administrative order which specifically mentioned the need to examine public services, including the police, participating in forms of violence against Indigenous women and girls, notably through their practices and policies: *Décret 711-2016, 9 août 2016*, *supra* note 52.
[909] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 14.
[910] We should also note that MMIWG received its share of critiques, see, e.g., Henzi, *supra* note 764 at 188; Stanton, *supra* note 828 at 167–185. These documents notably emphasize the lack of an effective communication strategy, the turnover in the inquiry's staff, the absence of an Inuk Commissioner, poor choices with regard to the report delivery, the request for a two-year extension, the negative experiences of some families, cancelled hearings, and a Westernized vocabulary in their analysis of the Inquiry.

are essential to analyze. However, an Inquiry prompted by the Val-d'Or events, which included several allegations of sexual assault by police, should have delved more fully into the roots of and solutions to sexual violence. The "Excessive Force, Brutality and Abuse" subsection appeared in a section entitled "Unadapted police practises".[911] This choice of words was misleading, and the section failed to name the problem that is sexual violence by police. It did not shed light on a core aspect of reality. Sexual violence is never an "unadapted practise", and cannot serve the purpose of delivering police services. The whole analysis of sexual violence by police stood on half a page of the voluminous Report. While the Report included a few testimonies about sexual assault and sexual services in exchange for money, the Inquiry did not link this with the events leading to the Inquiry nor situated sexual violence and police misconduct as systemic problems. In defence of the Inquiry, all victims did not necessarily testify. We nevertheless contend that given the breadth of witnesses, including some victims, police officers, and members of civil society, the Inquiry gathered enough data to examine police sexual violence.

The Final Report contained one chapter on calls to action for the police. However, as we will unpack in section 3, it did not emphasize relations between the police and Indigenous women or policing in urban settings like Val-d'Or. Even in this chapter, the Report did not link sexual abuse to the troubled relationship of the police with Indigenous peoples. This would have provided more insight into this issue, given that police sexual misconduct against Indigenous people not only happened in Val-d'Or, but has been reported across Canada in the literature, advocacy reports, governmental organization documents, and the case law of various provinces.[912] Unfortunately,

[911] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 277 and 280–283.
[912] See, e.g., Palmater, "Shining Light on the Dark Places", *supra* note 123; Lindberg, Campeau & Campbell, *supra* note 144; Human Rights Watch, *supra* note 4; *R v Ramsay*, *supra* note 224; Manitoba Clean Environment

the Viens Inquiry's focus drifted away from police misconduct as a structural phenomenon and from women in Val-d'Or. It resulted, on the first hand, in a missed opportunity to examine the relationship between Indigenous peoples, the police, and sexual violence and, on the other hand, in a somewhat ineffective state accountability tool for direct victims in Val-d'Or.[913]

The Inquiry also showed a departure from part of civil society's concerns. As summarized by Edith Cloutier, a portion of civil society requested an independent commission of inquiry focalizing specifically on the events of Val-d'Or, notably the relations between the police and Indigenous peoples.[914] In contrast, some Indigenous leaders had criticized from the onset of the crisis that the government response put too much emphasis on Val-d'Or and the police and not enough on other services and other Indigenous communities experiencing challenges.[915] This points to a discordance in the type of Inquiry desired (one on the Val-d'Or events as opposed to one on dealing with the more broad issue of discrimination against Indigenous peoples in public services).[916] This might have provided a rationale for focusing on more issues than the Val-d'Or crisis, but it did not detract from police sexual violence and the need to understand the state's role in leading to abuses. We recognize the need to investigate discrimination in other services than the

Commission, *supra* note 4 at 22, 70–71, 74, 82–83, 148 and 153 available at http://www.cecmanitoba.ca/cecm/hearings/pubs/Regional_Cumulative_Effects_Assessment/Transcripts/Transcript_webredactCECFOXLAKE.pdf.

[913] See, e.g., Ligue des droits et libertés, "Commission Viens: Le gouvernement doit assumer ses responsabilités", (30 September 2019), online: <https://liguedesdroits.ca/wp-content/fichiers/2019/09/communique_commission_viens_ldl_20190930.pdf>; Québec Native Women Inc., *supra* note 895; Isabelle Picard, "Rapport de la commission Viens : et les femmes ?", *La Presse* (2 October 2019), online: <https://www.lapresse.ca/debats/opinions/2019-10-02/rapport-de-la-commission-viens-et-les-femmes>. These sources are cited in Lafontaine (2020), *supra* note 4 at 34.

[914] Cloutier, *supra* note 24 at 89–90.

[915] Jean-François Nadeau, "Une rencontre qui laisse les Premières Nations sur leur faim", *Le Devoir* (5 November 2015), online: <https://www.ledevoir.com/politique/quebec/454348/crise-autochtone-une-rencontre-qui-laisse-les-premieres-nation-sur-leur-faim-genre>.

[916] On types of inquiries, see, e.g., Goudge & MacIvor, *supra* note 823 at 33–35.

police and outside of Val-d'Or, and do not want to dismiss the overall contribution of the Viens Inquiry.[917] Both deserved close attention from the state. However, one eclipsed the other.

An Inquiry examining sexual violence as a manifestation of police misconduct and colonialism was the only way to secure accountability for the events. Why did sexual violence occur in Val-d'Or? What is more than unrelated events committed by rogue officers? To answer these queries, one must analyze Val-d'Or as deriving from structural social phenomena of domination: police culture and colonialism.[918] Former Supreme Court of Canada Justice Michel Bastarache noted that sexual violence by police is part of a culture that tolerates bullying, abuses of power, and discrimination. Justice Bastarache made this observation in the context of a settlement for sexual assault and sexual harassment with the RCMP.[919] To the numbers presented in this report, we can add multiple allegations of sexual violence by police against Indigenous women in Val-d'Or but also across the country and in different periods. For instance, Human Rights Watch (HRW) documented allegations of sexual abuse of Indigenous women in British Columbia. HRW visited ten towns in the North of British Columbia and stated that allegations of rape and sexual assault – a distinction no longer made in Canadian law but maintained in the HRW report – were heard in half of these towns.[920] Some cases shared common features with allegations revealed by Enquête, notably sexual assault in detention or remote locations. HRW also noted that a community worker kept clean underwear to distribute because of a practice of confiscation of underwear after sexual assault by police. The seizure of underwear is not only a way to humiliate

[917] See, for example, Perreault 33
[918] See, e.g., Deer, *supra* note 19; Lorien S Jordan, "Belonging and Otherness: The Violability and Complicity of Settler Colonial Sexual Violence" (2021) 44:3–4 Women & Therapy 271–291.
[919] See, e.g., Bastarache, *supra* note 4 at 103–105.*Cf Rivers v. Waterloo Regional Police Services Board*, *supra* note 4.
[920] Human Rights Watch, *supra* note 4 at 59–62.

and exercise power but also raises the issue of destruction of evidence by police, which increases the chance of immunity in the few cases in which a woman would complain against the police.[921] The abuse of intoxicated women in British Columbia was also reminiscent of abuse by police in Newfoundland. In this province, as of July 2021, nine women had reported sexual assault by police, and three had disclosed that a police officer asked for sex. These events occurred in cases where police officers offered rides home to women leaving the bars of St-Johns.[922] In 2021, the Pikangikum First Nation expelled the Ontario Provincial Police because of allegations of sexual assault by some officers.[923] Sexual assault of Indigenous women by police is not a new issue despite the contemporaneity of the examples provided above. We can also think of the Manitoba Clean Environment Commission that disclosed allegations of sexual abuse by Manitoba Hydro and RCMP officers. The Commission also observed under protection from the police between the 1960s and 1990s.[924] Several cases before criminal courts for events dating back to 1969 (*R v Ramsay*) [925] up to the last few years add to the examples of police sexual violence cited in this pargraph.[926] These examples show that Val-d'Or is not an isolated phenomenon and that the Inquiry's Report could have contributed to the literature positing police sexual misconduct as a

[921] *Ibid*.
[922] See, e.g., Malone Mullin, "7 RNC officers now accused of sexually assaulting women while on duty, lawyer says", *CBC* (21 July 2021), online: <https://www.cbc.ca/news/canada/newfoundland-labrador/rnc-response-sex-assault-allegations-1.6110888>.See also the *Snelgrove* case, which presents a similar factual matrix: *R v Snelgrove*, *supra* note 224. The case was sent back to trial. Snelgrove was found guilty and sentenced: *R. v. Snelgrove*, 2021 NLSC 149; *R v Snelgrove*, *supra* note 224. There is, however, an ongoing appeal in this case: *R. v. Snelgrove*, 2021 NLCA 60.
[923] Fiddler, *supra* note 4.
[924] See, e.g., Manitoba Clean Environment Commission, *supra* note 4 at 22, 70–71, 74, 82–83 and 148–153. On overpolicing and underprotection, see Roach, *supra* note 16 at 25–50.
[925] See, e.g., *R v Ramsay*, *supra* note 224.
[926] Many of these cases are documented in Ampleman-Tremblay, *supra* note 8. See also *R v Teed*, *supra* note 224; *R c Guay*, 2007 QCCQ 6242; Human Rights Watch, *supra* note 4 at 60–61; Émilie Bilodeau, "Le policier accusé d'agression sexuelle croyait à un « coup de foudre »", *La Presse* (22 March 2023), online: <https://www.lapresse.ca/actualites/justice-et-faits-divers/2023-03-22/le-policier-accuse-d-agression-sexuelle-croyait-a-un-coup-de-foudre.php>; Sabrina Bedford, "OPP officer guilty of sexual assault on unconscious woman and recording it to 'teach her a lesson'", *National Post* (29 March 2023), online: <https://nationalpost.com/news/canada/opp-officer-guilty-of-sexual-assault-with-unconscious-woman-and-recording-it-to-teach-her-a-lesson>.

systemic problem resulting from police culture and the relation of power and domination between the state, the police, and Indigenous communities.[927] Delving into sexual violence could have shown that Val-d'Or was a symptom and not only an isolated event. Refusing to do so can be assimilated as a decision to remain ignorant in the face of systemic wrongs.

While criticizing the Inquiry for its scope is legitimate, we must note that the Final Report was not the only site where the absence of discourse on sexual violence and policing exposes a significant gap in accountability. There has also been a timid focus on these matters in the participants' discourses.[928] While every participant recognized that police misconduct had happened, the reference to sexual violence was, however, much more discrete (23 occurrences of the words "*sexuel(les)*/sexual", and its variations "*sexuellement*/sexually"). In comparison, "*autochtone(s)*/Indigenous" came up 210 times, "*policier(ère)s*/police officer(s)", 149 times, "*femme(s)*/woman/women", 136 times, and "police" 88 times. The quasi-absence of sexual violence from discourses omits recognizing, as posited by Bazinet, the connection between violence against women's bodies and other types of colonialist violence. Sexual violence and control of women's bodies by police officers are part of a scheme containing "other scales [of violence that] are not unrelated or disconnected."[929] Recognizing that police sexual violence occurs by bringing it into the public sphere is the first step to handling this subset of police violence. We must inquire into this phenomenon, and we must name it. Naming it is the first step to engaging in justification, assignment of responsibility, and response.

[927] See, e.g., Bazinet, *supra* note 21 at 12–13.
[928] See also Ritchie, *supra* note 7 at 104–105 on the invisibility of sexual violence in police studies.
[929] Bazinet, *supra* note 21 at 12–13; Jordan, "Belonging and Otherness", *supra* note 918 at 274–275.

3. The Impact on State Accountability

Sections I and II analyzed the impact of the Viens Inquiry on state accountability by indicating its bonds to two core elements of our theoretical framework: social accountability and wilful blindness. This last section will deal with the outcomes of the Viens Inquiry and its contribution, or lack thereof, to providing remedies for police sexual misconduct in Canada. The first subsection will unfold the research function of the Viens Inquiry by building on previous parts of this Chapter. In contrast, the second subsection will delve into calls to action that were germane to the issue of police sexual violence. It will also follow their implementation by the Québec government. Chapter I defined accountability in three components, including 'response' or 'redress'. Consequently, we will investigate this aspect to grasp state accountability resulting from the Viens Inquiry.

3.1. The Viens Inquiry's Research Role

The dark diagnosis in the first and second sections could suggest that the Viens Inquiry was not an effective tool of state accountability beyond its generation of public participation and exposition of truth. However, prior to concluding in such a pessimistic way, one must look at the actual outcomes of the Viens Inquiry. For instance, the latter permitted to document and expose discriminatory frameworks, structures, and events that impede relations with Indigenous communities. Echoing Interviewee C1's words, the Viens Inquiry "*did well in laying the groundwork […] on social inequalities*",[930] notably through its chapters 3 and 4, which respectively mapped the history of the relations between Indigenous peoples and the state and provided demographic data on Indigenous peoples in Québec. Chapter 4, for instance, stated that

[930] C1, at 26. *Cf* Stanton, *supra* note 828 at 24 detailing that providing historical accounts is a typical function of commission of inquiries. *ibid* at 24.

it "reflects the desire, expressed by several stakeholders, to foster a better understanding of Indigenous peoples. Although it is far from comprehensive, it lays the foundation for what [the Commissioner] hope[s] to be the beginnings of reconciliation and a path to progress in the relations established with First Nations and Inuit."[931] Chapter 5, then, offered a detailed account of public services investigated by the Inquiry and depicted a portrait of the legal framework regulating police services in Québec.

While part of the literature and some participants in our study contended there was already sufficient documentation on the relations between Indigenous peoples and the state, we must stress that the Inquiry showed openness to social accountability and dialogue between state actors and civil society. This Chapter highlighted several gaps in the Inquiry's work and its capacity to engage meaningfully with non-state discourses. However, we cannot dismiss the Inquiry or the evidence it collected. The Viens Inquiry recognized systemic racism in public services, a loaded statement given the government's resistance to acknowledging such racism.[932] The discriminatory context brushed up by the Final Report is an element to ponder in cases of police violence. The knowledge gained can thus help grasp the circumstances in which state wrongs occur and the effect of interrelated policies. It can also contribute to creating knowledge on state wrongs, making accountability claims easier in the future.

Agreeing with participant C1, who praised the capacity of the Inquiry to reunite documents on social inequalities,[933] we must note the high volume of reports and evidence submitted to the

[931] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 99.
[932] See, e.g., *Ibid* at 203. See also Bruemmer, *supra* note 826; Curtis, *supra* note 579.
[933] C1, at 26.

Inquiry. It now consists of wide-ranging literature informed by state actors and civil society. Considerable expertise and experiences were laid down on paper and helped launch other social accountability initiatives, such as academic writings, including this doctoral project. The latter relied, for instance, on civil society and police reports presented to the Inquiry and several testimonies.[934] This project is one of many social accountability initiatives tied to the Viens Inquiry. Two participants in our research confirmed that the Inquiry convinced them to act and participate in other accountability mechanisms:

> **Interview A1:** *You know, we must let time pass. [The Viens Inquiry] fueled a lot of news stories, including another file I did […] on racism […].*[935]

> **Interview C2:** *[A] lawyer who was working hmm hmm not for the Viens Inquiry, but they were involved in the whole process, and I know them well, so they called me and said hmm: "Look at the evidence before the Inquiry and the documents submitted. I think there is enough to initiate [legal proceedings]." […] [T]he Viens Inquiry was still, I think they were hearing oral submissions […] [I] was already aware of the issue, and […] when I considered everything that had been said before the Inquiry, I was like, I agreed […] that we should instate [legal proceedings].*[936]

The Inquiry thus served as a launching platform for accountability initiatives. It also shed light on cases of police abuse that might not have been unveiled without the enhanced scrutiny of

[934] See, e.g., Mark, *supra* note 681; Cloutier, *supra* note 24; Prud'homme, Séguin & Pelletier, *supra* note 440; Vicaire, *supra* note 439; Anichinapéo, *supra* note 439; Michel & Miller, *supra* note 83; Michel, *supra* note 83; *Témoignage devant l'honorable Jacques Viens, 14 septembre 2018, vol. 137*, by Viviane Michel & Rainbow Miller (Val-d'Or: Commission d'enquête sur les relations entre les Autochtones et certains services publics : écoute, réconciliation et progrès, 2018); Michel & Brassard, *supra* note 471; Salée, *supra* note 861; Alain, *supra* note 126; Parent-Samuel & Côté, *supra* note 31; Kistabish, *supra* note 91; *Témoignage devant l'honorable Jacques Viens, 20 octobre 2017, vol. 28*, by Linda L Shecapio, Manon Richmond & Irene Bearskin House (Val-d'Or: Commission d'enquête sur les relations entre les Autochtones et certains services publics : écoute, réconciliation et progrès, 2017); *Témoignage devant l'honorable Jacques Viens, 2 octobre 2018, vol. 144*, by Jean-Raphaël Drolet, Jean-Pierre Pelletier & Ginette Séguin (Val-d'Or: Commission d'enquête sur les relations entre les Autochtones et certains services publics : écoute, réconciliation et progrès, 2018); Giauque, *supra* note 454.

[935] A1, at 18.

[936] C2, at 2.

the police commanded by the Inquiry.[937] In addition to documents submitted to the Inquiry, the Inquiry benefited from a research function that produced 30 summary sheets on topics related to the Inquiry's mandate.[938] These sheets notably covered policing in Nunavik,[939] alternatives measures and non-judicialization,[940] police violence against Indigenous women,[941] the pre-trial criminal procedure for Indigenous accused,[942] and the *Gladue* principles.[943] The fact that the Inquiry inspired other mechanisms, published literature, and revealed abuse are all elements pointing to the beneficial effects of the Inquiry on state accountability. It allowed for uncovering the truth of a discriminatory reality through different voices and prompted several initiatives.

Apart from the advantages listed heretofore, the outcome of the Viens Inquiry might only be measurable in the future, as the documents and reflections it generated will inform society for years to come.[944] In this sense, the Viens Inquiry will hopefully live up to the standard that "[o]nce an inquiry is over, its research studies become an important part of its legacy."[945] A participant

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[937] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 277; Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government & Cree Board of Health and Social Services of James Bay, *supra* note 510 at paras 127–136.
[938] *Cf* Goudge & MacIvor, *supra* note 823 at 215–220.
[939] Mylène Jaccoud, Marie-Claude Barbeau-Leduc & Myriam Spielvogel, *La police au Nunavik* (Commission d'enquête sur les relations entre les Autochtones et certains services publics).
[940] Marie-Ève Sylvestre & Julie Perreault, *La non-judiciarisation, la déjudiciarisation et les programmes de mesures de rechange pour adultes en milieu autochtone au Québec* (Commission d'enquête sur les relations entre les Autochtones et certains services publics).
[941] Jaccoud, Barbeau-Leduc & Spielvogel, *supra* note 123.
[942] Marie-Ève Sylvestre & Julie Perreault, *La procédure criminelle avant procès chez les Autochtones : effets pervers et discriminatoire liés à l'arrestation, la comparution et la mise en liberté provisoire* (Commission d'enquête sur les relations entre les Autochtones et certains services publics).
[943] Marie-Ève Sylvestre & Julie Perreault, *L'obligation judiciaire de tenir compte du statut autochtone et les principes Gladue* (Commission d'enquête sur les relations entre les Autochtones et certains services publics). We notably used this summary sheet as part of our teaching material in a first-year criminal justice class, showing some of the potential ramifications of the Viens Inquiry. Summary sheets extended to topics outside policing and the law, but we will not investigate the impact of these other sheets as they are outside the scope of this thesis.
[944] *Cf* A1, See also Benjamin Shingler & Kamila Hinkson, "Quebec should apologize for systemic discrimination in treatment of Indigenous people, Viens report says", *CBC* (30 September 2019), online: <https://www.cbc.ca/news/canada/montreal/quebec-treatment-indigenous-viens-commission-report-1.5297888> referring to a research gap and the Inquiry's potential to fuel activism (Cloutier).
[945] Goudge & MacIvor, *supra* note 823 at 216.

shared a similar insight when emphasizing that the role of such a mechanism might lie in education more than reforms:

> **Interview B1:** *[A]s civil society, we tell ourselves "Okay, it's important to talk about this." But, at the same time, we are absolutely aware of the limitations of this exercise, and that the reports produced serve more of an educative purpose […]*
>
> *We were telling ourselves that it is an exercise that is necessary for the state to become aware of its responsibility. It's also a pedagogical exercise for the population, but the results, after all, are a bit limited.*[946]

Nonetheless, this documentation and research function will remain positive only if we learn from the Viens Inquiry's consultative process and follow through. This means not only consulting its Final Report but also the testimonies that were gathered. No less than 765 witnesses testified. These individuals all possessed crucial knowledge of our institutions and Indigenous relations with public services. These testimonies can help identify unintended consequences of state action leading to police abuse and prevent reoccurrence if taken seriously. They also gathered knowledge rendering the denial of systemic racism much more challenging. As we alluded to in this thesis, racism (and intersectionality) are relevant to assess within many cases of police sexual violence, including the Val-d'Or crisis.

In summary, the outcomes of the Viens Inquiry might emerge in future years and should not be bound exclusively to the Final Report. This may mean crafting solutions that do not stem from the liberal normative framework in which the Canadian state operates.[947] Here again, we wish to stress that multiple means of redress are needed and that relying solely on the state will always show substantial deficits in accountability.

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[946] B1, at 14. See also Stanton, *supra* note 828 at 27, 30 and 147 (these pages are not exhaustive).
[947] See, e.g., Salée, *supra* note 861; Bazinet, *supra* note 21; Henzi, *supra* note 764.

3.2. Calls to Action

Understanding the impact of the Viens Inquiry on policing requires scrutinizing – in addition to the participants' perspectives – the Inquiry's calls to action as well as their reception by the state. We could not omit the recommendation power of commissions of inquiry, as they are intimately linked to policy change in Canada. Goudge and MacIvor go as far as to suggest that by engaging in policy work and making recommendations, commissions of inquiry "can influence behaviour and attitudes".[948] In continuity with this statement, the Viens Inquiry had more than a fact-finding mission. It also embraced a policy role manifesting itself through 142 calls to action.[949] Chapter 6 of the Final Report dealt with general recommendations for public services, including some that apply to the police. Chapter 7, on its end, was dedicated to calls to action for the police. The latter exhibited some barriers to accountability not only because of the absence of a detailed section on sexual violence but also because of its focus on Indigenous police services and not other police services. The events of Val-d'Or happened in an urban setting policed by the SQ. While policing by Indigenous police forces was relevant within the larger scope of the Viens Inquiry, the lack of interest in policing non-Indigenous police services is another missed occasion to deal with the Val-d'Or events. The following paragraphs will present some calls to action germane to address police sexual violence and the government's response to these calls, when applicable.

[948] See, e.g., Goudge & MacIvor, *supra* note 823 at 7; Law Reform Commission of Canada, *supra* note 869 at 11. See also Stanton, *supra* note 828 at 19 on truth commissions.
[949] See Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23.

While we see value in the Viens Inquiry's plea for a united and comprehensive action instead of fragmented changes,[950] this thesis' scope requires examining calls to action about police services and their implementation instead of the global state response. We will mainly comment on police-focused calls to action as they are immediately connected with the issue of police sexual violence. The emphasis on the calls to action relating to policing does not mean that recommendations in other sections bear no implication for police misconduct.[951] However, given the ambit of this thesis, we believe an emphasis on police-specific calls to action allows us to highlight the contributions of the Viens Inquiry to state accountability for police sexual misconduct in Val-d'Or and the gaps contained in the Inquiry's inputs. The following table presents the calls to action on police services.

Figure 3.
Viens Inquiry's Calls to Action: Police Services

CALL FOR ACTION No. 27 – To Indigenous police forces	Adopt and implement a conflict of interest policy for the handling of investigative and intervention matters.
CALL FOR ACTION No. 28 – To Indigenous authorities	Explore the possibility of setting up regional Indigenous police forces.
CALL FOR ACTION No. 29	Revise how the training of recruits hired by Indigenous police officers is financed to reduce the cost difference between the various categories of candidates.
CALL FOR ACTION No. 30	Inject the funds required to ensure that the offering of regular and continuing education at the *École nationale de police du Québec* is fully accessible in English and French.

[950] *Ibid* at 211–214. See also Secrétariat aux affaires autochtones, *supra* note 352 at 14; Perreault, *supra* note 898 at 33–34 commanding the Inquiry's approach to examine the interaction between different policies and services rather than understanding them in a vacuum. *Cf* Henzi, *supra* note 764 at 187–188.
[951] The Viens Inquiry disavowed the term 'recommendation' as it does not command action. We use it here to avoid repetitions of the term 'call to action'.

CALL FOR ACTION No. 31	In collaboration with Indigenous authorities, establish a complete status report on the state of the infrastructure and equipment available to Indigenous police forces, the wages and the geographic (distance, road access, etc.) and social (criminality, poverty, etc.) realities of the communities they serve.
CALL FOR ACTION No. 32	Initiate negotiations with the federal government and Indigenous authorities to agree on a budgetary envelope for upgrading Indigenous police force wages, infrastructure and equipment.
CALL FOR ACTION No. 33 – To Indigenous authorities	Assess the possibility of implementing joint purchasing policies for all Indigenous police forces in Québec.
CALL FOR ACTION No. 34	Amend Section 90 of the *Police Act* to readily acknowledge the existence and status of Indigenous police forces as being similar to those of other police organizations in Québec.
CALL FOR ACTION No. 35	Undertake negotiations with the federal government and Indigenous authorities to ensure recurring and sustainable funding for all Indigenous policing.
CALL FOR ACTION No. 36	Modify the process for allocating budget resources to police forces to reflect the needs identified by Indigenous authorities in terms of infrastructure, human, financial and logistical resources and the individual realities of the communities or territories.
CALL FOR ACTION No. 37	Assess the possibility of setting up mixed intervention patrols (police officers and community workers) for vulnerable persons, both in urban environments and in First Nations communities and Inuit villages.
CALL FOR ACTION No. 38	Amend the *Police Act* to extend the time limit for filing police ethics complaints to three years.

CALL FOR ACTION No. 39	Conduct information campaigns among Indigenous populations concerning the existing complaints processes.

As previously flagged, we think that in addition to these calls to action, the Inquiry should have addressed in more depth urban policing, policing by non-Indigenous police forces, sexual violence, and, specifically, policing in Val-d'Or. The *Ligue des droits et libertés* highlighted a similar concern. They underlined the almost exclusive focus on Indigenous police services and the absence of recommendations targeting police services like the SPVM in the Final Report.[952] To be accurate, the Final Report did contain an analysis of urban policing in which the Commissioner recognized over-policing and difficult contacts with police officers,[953] but the challenges of urban policing and non-Indigenous police forces were almost absent from calls to action.

In other words, Chapter 7 was dedicated exclusively to calls to action for the police. It comprised relevant insights to improving policing services, but a few directly related to misconduct in Val-d'Or and sexual violence.[954] This situation is not inconsistent with the scope of the Inquiry, which focused on a broader range of issues. This remains true even though Judge Viens, in the opening words of Chapter 7, admitted to the impact of the Val-d'Or crisis on his Inquiry. He also recalled that his mandate called for highlighting systemic patterns and not individual facts.[955] While testimonies focusing on the Val-d'Or crisis can underscore personal experiences, they also put forward a problem that expands far beyond individual concerns, as

[952] Poisson, *supra* note 895.
[953] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 258–261. On overpolicing and underprotection in the Canadian context, see, e.g., Roach, *supra* note 16 at 25–50.
[954] Stanton, *supra* note 828 at 190.
[955] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 255.

section 2 already demonstrated. The absence of police sexual misconduct from the calls to action was a symptom of its invisibility resulting from a lack of investigation into the matter, or, in other words, wilful blindness to the phenomenon.

We do not want to dismiss the need to understand better policing in Indigenous communities, which seemed to be the Chapter's focal point. While underfunding was relevant to understand the struggles of Indigenous police forces, it had little to do with the Val-d'Or crisis.[956] The Report does not explore the self-governance of Indigenous peoples in urban settings. Given its scope, the Inquiry should have discussed how to realize self-governance in policing best, and that is not exclusively relevant to territories served by Indigenous police service.[957] We acknowledge it is more challenging to think of Indigenous governance when traditional police services are present, but the Inquiry was the occasion to shift narratives and propose creative remedies. Improving funding to Indigenous police forces so they can safely provide police services was a laudable goal, but how could this improve the relationship between the women in Val-d'Or and the police serving their territory?

Out of the 13 police-specific calls to action, Calls 37 to 39 were the only ones tied to the Val-d'Or events. Call 37 was the sole Call precisely targeting urban policing, even though Val-d'Or is an urban area served by the SQ. The problem with the police-specific calls to action did not end here. Call 37 used a vocabulary that was suggestive rather than imperative. It stated:

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[956] *Ibid*. Here the Commissioner recognizes that Val-d'Or is in an urban setting but noted that he observed several concerns with the relations between Indigenous peoples and the police outside of this setting.

[957] We must note here that Bill 14 gives the possibility for Indigenous communities to enter into an agreement with the government to set up an Indigenous police force in a way that recognizes self-governance: *Loi modifiant diverses dispositions en matière de sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, *supra* note 373, s 10. However, just like the Final Report of the Inquiry, the Bill does not elaborate on police services and self-governance in settings where Indigenous peoples reside outside of Indigenous territories.

"Assess the possibility of setting up mixed intervention patrols (police officers and community workers) for vulnerable persons, both in urban environments and First Nations communities and Inuit villages." [Our emphasis.][958] Without paternalistically imposing this type of police service in Indigenous communities, we believe the Viens Inquiry should have taken a clearer position (in consultation with Indigenous communities) and raised flags, if any. After the testimonies and years of hearings the Inquiry went through, we expected more than 'assessing possibilities'. The Inquiry had the occasion to meet with Indigenous peoples and the police. However, it failed to find a straightforward remedy and to address the concerns that, in Val-d'Or, this approach had been decried as an overall invasive and political gesture to help the police's reputation.[959]

The Final Report nevertheless saluted the program instituted in Val-d'Or after 2015: the Val-d'Or First Nations Community Mixed Police Station. The Mixed Police Station hires mixed teams of police officers and social workers offering services and follow-ups to vulnerable individuals, including people in situations of homelessness. The Mixed Police Station operates in addition to the traditional police station, which acts as the first line of police services.[960] Ginette

[958] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 280. Of note, Bill 14 proposes to modify the mission of the police within the *Police Act* to include collaboration with social workers, for instance. Parliament might thus see value in this option: *Loi modifiant diverses dispositions en matière de sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, *supra* note 373, s 4. See also *Étude détaillée du projet de loi n°14, Loi modifiant diverses dispositions relatives à la sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, 31 May 2023 (19h31) —Vol. 47 N°34 at 1:01:40-1:05:17 and 1:19:04-1:21:24. Bill 14 refers to different social actors on a few occasions, see e.g., *Loi modifiant diverses dispositions en matière de sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, *supra* note 373, s 98.

[959] Michel & Miller, *supra* note 934 at 74.

[960] Sûreté du Québec, Centre intégré de santé et des services sociaux de l'Abitibi-Témiscamingue & PPCMA, *P-879 Redéfinir l'approche communautaire dans les interventions policières* (Commission d'enquête sur les relations entre les Autochtones et certains services publics, 2018); Sûreté du Québec, Centre intégré de santé et des services sociaux de l'Abitibi-Témiscamingue & PPCMA, *P-880 Travailler tous ensemble* (Commission d'enquête sur les relations entre les Autochtones et certains services publics, 2018); Sûreté du Québec & PPCMA, *P-881 PPCMA : Mamowi* (Commission d'enquête sur les relations entre les Autochtones et certains services publics, 2018). The mixed station obtained so far more promising result that the previous program *Escouade centre-ville*. *Escouade centre-ville* was a reaction to the insecurity experienced by business owners. They reported problems with a group of homeless individuals who notably disturbed the peace and consumed alcohol. See Public Inquiry Commission on the Relations

Séguin from the SQ provided a detailed account of these policing strategies, including the impact on calls to 911, statements of offence, and incarceration.[961] Again, given the testimonies and evidence before the Inquiry, we believe the Final Report should have had a better grasp of this approach. This does not mean that authorities should refrain from consultation with Indigenous groups prior to implementing a new policy or strategy in urban settings. However, the Inquiry was the occasion to make evidence-based recommendations. A potential explanation for the shy engagement with the mixed police station could be that this program started in 2015 and that the Inquiry only had jurisdiction over the 15 years prior to its implementation rather than to the future.

Another call for action related to the events in Val-d'Or was the recommendation to extend the limitation period for deontology cases (Call to action 38). This sort of action is not preventive. However, it could remove some obstacles for individuals attempting to get redress once misconduct has occurred. As already remarked in Chapter III on criminal investigations, the Independent Civilian Observer critiqued the short limitation period of deontological cases, as it is often over before the victim has time to deal with the criminal process.[962] At the moment, the limitation period under s. 150 of the *Police Act* is for one year from the date or knowledge of the event.[963]

Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 261; Drolet, Pelletier & Séguin, *supra* note 934 at 73–200 (Drolet). For an historic of SQ initiatives, see, e.g., Secrétariat aux affaires autochtones, *supra* note 352 at 25–26.

[961] Drolet, Pelletier & Séguin, *supra* note 934 at 201–273 and 239-240 on statistics (Séguin). See also Sûreté du Québec & PPCMA, *supra* note 960.

[962] Lafontaine (2020), *supra* note 4 at 153–155. This report also notes that the short limitation delay is often over before criminal procedures end. See also Québec Native Women Inc., *supra* note 451 at 42. The long delays in treating complaints are also critiqued: see, e.g., Jaccoud, Barbeau-Leduc & Spielvogel, *supra* note 939 at 3.

[963] *Police Act, CQLR, c. P-13.1*, *supra* note 45, s 150.

Many organizations have discussed reforming the limitation period and its ideal length. The *Fédération des policiers et policières municipaux* du Québec (FPMQ) submitted a memorandum to a committee on police reform (the '*Comité sur la réalité policière*') in October 2020 stating that the delay should not be extended beyond one year after the event. The FPMQ suggested that a short delay allows prioritizing victims and their loved ones.[964] The *Comité sur la réalité policière* instead proposed a 2-year limitation period.[965] The government then introduced Bill 18 and a limitation period of three years.[966] Under this Bill, the limitation period applied differently to complaints and *signalements* (translated as notification or reporting) – a new mechanism allowing a third party to report potential breaches of the *Code of Ethics*.[967] Bill 18 was not enacted before the dissolution of the Parliament. Bill 14, introduced in 2023, replaces Bill 18 and takes a different approach on a few aspects. One of these elements is that the limitation period remains one year.[968] Despite the Inquiry's recommendation and the endorsement of the *Comité de la réalité policière,* the government side-lined the need for a longer limitation period.

Nevertheless, Bill 14 and Bill 18 embrace similar perspectives on police accountability in other matters. For instance, just as Bill 18 suggested before, Bill 14 allows for oral complaints, modifies sanctions and remedial measures in the *Police Act*, and relies on the new mechanism of

[964] *Mémoire de la Fédération des policiers et policières municipaux du Québec sur la réalité policière* (2020) at 19–20. The SQ and other police forces also expressed discomfort with third-party claims, see *Mémoire de la Sûreté du Québec dans le cadre des travaux sur la réalité policière au Québec*, by Sûreté du Québec (2020) at 19–21; note 507 at 141.
[965] note 507 at 141–148. See also the presentation of the police ethics commissioner : Marc-André Dowd, *LE RÉGIME DE DÉONTOLOGIE POLICIÈRE ET SES ENJEUX ACTUELS- Présentation aux membres du Comité consultatif sur la réalité policière* (Commissaire à la déontologie policière). The initial limitation period was a 2-year timeframe but that was amended in 1997 to reduce delays: *note 507 at 147.*
[966] *Loi modifiant diverses dispositions en matière de sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, *supra* note 372, s 24.
[967] *Ibid*, s 19.
[968] *Loi modifiant diverses dispositions en matière de sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, *supra* note 373, s 32.

'*signalement*'. Oral complaints can improve accountability by ensuring greater flexibility within the reporting process. Written complaints are seen as an obstacle to justice, notably for Indigenous complainants.[969] The first version of Bill 14 also included new measures in addition to sanctions in the *Police Act* (which the current Bill modifies too by removing the warning and the rebuke), including training, therapy, medical assessment, supervision plan, and social immersion internship, thus demonstrating a new conception of remedy for police misconduct.[970] Despite these new perspectives on accountability, the government introduced an amendment to Bill 14 to reduce the remedial measures and limit them to training and internship. The amendment was passed on May 31st, 2023.[971] Moreover, the mechanism of '*signalement*' alluded to at the onset of this

[969] *Ibid*, s 25; *Loi modifiant diverses dispositions en matière de sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, *supra* note 372, s 19; on the relevance of oral complaints and "signalements", see Lafontaine (2020), *supra* note 4 at 158–159; *CONSULTATIONS PARTICULIÈRES CONCERNANT LE PROJET DE LOI 14- LOI MODIFIANT DIVERSESDISPOSITIONS RELATIVES À LA SÉCURITÉ PUBLIQUE ET ÉDICTANT LA LOI VISANT À AIDER À RETROUVER DESPERSONNES DISPARUES*, by Commissaire à la déontologie policière (Mémoire présenté à la Commission des institutions de l'Assemblée nationale du Québec, 2023) at 22.

[970] *Loi modifiant diverses dispositions en matière de sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, *supra* note 373, s 65; *Mémoire du Service de police de la Ville de Montréal: Présenté dans le cadre du projet de loi n° 14 Loi modifiant diverses dispositions relatives à la sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, by Service de police de la Ville de Montréal (Mémoire présenté à la Commission des institutions de l'Assemblée nationale du Québec, 2023) at 3, 4, 8 and 9; *Loi modifiant diverses dispositions en matière de sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, *supra* note 372, s 46. SPVM believes it might be more difficult to recruit or maintain enthusiasm for the profession because of such changes and that the sanctioning power should rest on the Director, not an administrative tribunal. See also *MÉMOIRE Projet de loi no 14 Loi modifiant diverses dispositions relatives à la Sécurité publique et édictant la loi visant à aider à retrouver des personnes disparues*, by Association des directeurs de police du Québec (Mémoire présenté à la Commission des institutions de l'Assemblée nationale du Québec, 2023) at 17–18; *Mémoire du Service de police de la Ville de Québec*, by Service de police de la ville de Québec (Mémoire présenté à la Commission des institutions de l'Assemblée nationale du Québec, 2023) at 8; *MÉMOIRE PORTANT SUR LE PROJET DE LOI NO 14 LOI MODIFIANT DIVERSES DISPOSITIONS RELATIVES À LA SÉCURITÉ PUBLIQUE ET ÉDICTANT LA LOI VISANT À AIDER À RETROUVER DES PERSONNES DISPARUES*, by Fraternité des policiers et policières de la ville de Montréal (Mémoire présenté à la Commission des institutions de l'Assemblée nationale du Québec, 2023) at 5–12 and 24; *MÉMOIRE PRÉSENTÉ PAR LA FRATERNITÉ DES POLICIERS ET POLICIÈRES DE LA VILLE DE QUÉBEC SUR LE PROJET DE LOI NUMÉRO 14 MODIFIANT DIVERSES DISPOSITIONS RELATIVES À LA SÉCURITÉ PUBLIQUE ET ÉDICTANT LA LOI VISANT À RETROUVER DES PERSONNES*, by Fraternité des policiers et policières de la ville de Québec (Mémoire présenté à la Commission des institutions de l'Assemblée nationale du Québec, 2023) at 8–9, 11 and 12; *PROJET DE LOI N° 14 Loi modifiant diverses dispositions relatives à la sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, by Sûreté du Québec (Mémoire présenté à la Commission des institutions de l'Assemblée nationale du Québec, 2023) at 10 and 11.

[971] *Amendement : Loi modifiant diverses dispositions relatives à la sécurité publique et édictant la loi visant à aider à retrouver les personnes disparues article 65 (article 234 de la Loi sur la police)*, 31 May 2023 — Vol. 47 N° 34, available online:

paragraph means that fewer persons may file complaints in cases of police misconduct. Third parties can *signal* misconduct, whereas complaints are reserved exclusively for people directly involved in the events.[972] Civil society has decried this new system which deprives third parties of the right to complaint and replaces the latter with the vague process of '*signalement*'.[973]

Before we conclude on remedies and police accountability within recent Bills, we must note that Bill 14 provides a guideline on street checks and makes it mandatory, for the first time, for police forces to share data on street checks with the government. The report will offer more information to understand and improve police work across the province, especially in practices known to be discriminatory. However, it will not be public (or summarized) as explained by the Minister of Public Security François Bonnardel in a Parliamentary Commission. At the time of writing, there were also considerable debates around whether the report will identify the race or origin of the people interacting with the police.[974] Bill 14 also introduces the possibility for the

<https://www.assnat.qc.ca/Media/Process.aspx?MediaId=ANQ.Vigie.Bll.DocumentGenerique_189495&process=Default&token=ZyMoxNwUn8ikQ+TRKYwPCjWrKwg+vIv9rjij7p3xLGTZDmLVSmJLoqe/vG7/YWzz>. Hansard not published at time of writing.

[972] *Loi modifiant diverses dispositions en matière de sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, *supra* note 373, s 25. See critiques of 'signalements', especially if anonymous: Service de police de la Ville de Montréal, *supra* note 970 at 3,7,and 8; *ibid* at 5–6; Fraternité des policiers et policières de la ville de Québec, *supra* note 970 at 4; Sûreté du Québec, *supra* note 970 at 10.

[973] *Consultations particulières sur le projet de loi n° 14 Loi modifiant diverses dispositions relatives à la sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, by Coalition contre la Répression et les Abus Policiers (Mémoire présenté à la Commission des institutions de l'Assemblée nationale du Québec, 2023); see also Ligue des droits et libertés, *supra* note 373 at 11–13.

[974] *Loi modifiant diverses dispositions en matière de sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, *supra* note 373, ss 88 and 97. This provision was added after recent discussions on racial profiling in Québec, see, e.g., Armony, Hassaoui & Mulone, *supra* note 16; *Luamba c Procureur général du Québec*, 2022 QCCS 3866. On the privacy and content of the report: see *Étude détaillée du projet de loi n°14, Loi modifiant diverses dispositions relatives à la sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, 31 May 2023 (15h02) —Vol. 47 N°34 at 00:57:10ff; *Étude détaillée du projet de loi n° 14, Loi modifiant diverses dispositions relatives à la sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues* (19h31), *supra* note 958 at 0:00-00:25:03. The Hansard was not available at the time of writing. Of note, the Minister stated that the data could be given to researchers in the future with the consent of police organizations.

Minister to request data on criminality and police efficiency from police directors.[975] While not directly connected to police sexual violence in Val-d'Or and presenting several caveats, this Bill is a small step towards more accountability for police practices. For our purposes, we must note that the Bill offers new perspectives of accountability but denies the Call to action 38 on extending the limitation period for ethics cases. The Inquiry researched and endorsed this matter as an adequate remedy – the government dismissed this demand.

As noted above, Bill 14 (and former Bill 18) offers a novel take on police accountability, including significant changes in remedies. However, we might not get to remedies if the government keeps the one-year limitation period year from the date or knowledge of the event is enough time. Given that cases filed under the *Code of Ethics* can include sexual violence,[976] the time needed for criminal proceedings, and the general distrust of the police in some communities, extending the limitation period would be a proper response to increase accountability. Having a longer limitation period for sexual violence cases might fit better within social narratives and ensure consistency of the law. Indeed, art. 2926.1 of the *Civil Code of Québec* (CCQ) states, "[a]n action for damages for bodily injury resulting from an act which could constitute a criminal offence is prescribed by 10 years from the date the person who is a victim becomes aware that the injury suffered is attributable to that act. Nevertheless, such an action cannot be prescribed if the injury results from violent behaviour suffered during childhood, sexual violence or spousal violence."[977]

[975] *Loi modifiant diverses dispositions en matière de sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, *supra* note 373, s 89.
[976] Cases that can potentially amount to sexual assault if the facts were to be believed by a judge sitting in a criminal court See further explanation in Ampleman-Tremblay, *supra* note 8 at 11–12.
[977] *Cf Civil Code of Québec*, *supra* note 293, art 2926.1.

Sexual violence involves specific traumas and consequences that may delay complaints.[978] This must be recognized across all legal areas.

Another issue rightfully noted by the *Commission des droits de la personne et des droits de la jeunesse* ("CDPDJ") is the effect of ss. 585(5) and 586 of the *Cities and Towns Act*. In the absence of bodily injury, this act has concise limitation periods of six months for actions against municipalities and their agents.[979] In these cases, the limitation periods of the CCQ do not apply.[980] We thus agree with the CDPDJ when it advocates for amending the CCQ to ensure actions founded on violations of human rights covered by the *Quebec Charter of Human Rights and Freedoms* cannot fall under the *Cities and Towns Act*.[981] This amendment would ultimately benefit plaintiffs in ethics proceedings, including in sexual misconduct cases not amounting to bodily injury (e.g., gender profiling, inappropriate sexual comments).

Despite not elaborating on all limitation periods preventing accountability for police misconduct within the Final Report, we must command the inclusion of Call to action 39, which complements Call to action 38. The former concentrated on providing further information on the complaint process. This awareness and new limitation period aimed to facilitate complaint mechanisms, but they will be truly successful if they are accompanied by changes fostering greater

[978] Statistics Canada, for instance, documented that post #Metoo, 16% of sexual assaults were reported over a year after the incident (in contrast with 12% before #Metoo): *Police-reported sexual assaults in Canada before and after #MeToo, 2016 and 2017*, by Cristine Rotenberg & Adam Cotter (The Canadian Centre for Justice Statistics, 2018) at 6–7.
[979] These provisions have been applied to police officers when a municipality is the principal, see e.g., *Montréal (City) v. Dorval*, *supra* note 261. *Cf Hayes v City of Saint John*, *supra* note 127 at paras 81–87.
[980] *Cities and Towns Act, CQLR, c. 19*, *supra* note 261, s 585(5) and s 586; *Mémoire sur le Projet de loi n° 18, Loi modifiant diverses dispositions en matière de sécurité publique*, by Evelyne Pedneault (Commission des droits de la personne et des droits de la jeunesse, 2020) at 53–55 Cat. 2.412.62.5. See also *Doré v Verdun (Ville)*, [1997] 2 SCR 862.
[981] Pedneault, *supra* note 980 at 53–55.

trust in the police, including in urban centers and by non-Indigenous police forces. We can tie the legal restrictions noted in this paragraph to Chapter I, which argued that the state's decisions may have unintended consequences. The short limitation periods in ethics cases or municipal law were not meant to promote police misconduct; however, they might have rendered access to remedies much more difficult.[982]

When consulting the voluminous Viens Inquiry's Report, one striking observation is the limited space dedicated to sexual violence. Nonetheless, sexual violence made its way to a few calls to action. For instance, Call to action 27, addressing conflict of interests in police investigations – while *a priori* is not tackling sexual violence – was meant to deal with the closeness between police officers and the suspects or complainants. In some communities, the suspect or the complainant is either known or related to the police officer, rendering the reporting process much more challenging under a legal and emotional lens.[983] Another example is Call to action 87. The latter was the only call to action explicitly targeting sexual assault. Call 87, comprised in the Health and Social Services section, read as follows: "Raise awareness among the populations of indigenous communities about the nature of sexual assault and promote healthy and respectful sexuality education."[984] The fact that the Inquiry formulated no other Call on sexual violence is disappointing in at least two ways: (1) it left sexual violence by the state unaddressed; (2) Call 87 was directed to Indigenous authorities and not the police.

[982] We must note here that the short limitation period in municipal law does not apply in case of bodily injury: *Civil Code of Québec*, *supra* note 293, arts 2925 and 2930; *Doré v. Verdun (Ville)*, *supra* note 980 at 886–889.
[983] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 262–264. The Final Report also connects Call 28 to conflict of interests: *Ibid* at 264.
[984] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 380.

We do not want to diminish the importance of expanding consciousness of sexual assault in Indigenous communities or dismiss the hardship of reporting sexual violence in these communities. However, deliberately omitting sexual violence by the state and the responsibility of the latter to prevent such violence appeared as an unprincipled choice for an Inquiry that stemmed from allegations of sexual misconduct by police and intended to secure state accountability. While the literature points to sexual violence as a colonialist tool of domination, the Report made no references to sexual violence by the state.[985] It did not suggest any call dealing with police sexual misconduct, more generally. The fact that Call 87 was standing alone in terms of sexual violence rendered Indigenous authorities the sole entities responsible for promoting good sexuality and raising awareness of violence. Why did we not see a call to action directed at the police? Why should we raise awareness in Indigenous communities but not in police organizations?[986] Perhaps this was another manifestation of the state's will to maintain ignorance of how police sexual misconduct is related to state action. Another aspect of sexual violence remained untouched by the Inquiry: the reporting stage. Reporting sexual violence to the police is challenging for many complainants, including Indigenous women, who often distrust the police and the state.[987] The Inquiry could not rely exclusively on the new specialized tribunal on sexual violence.[988] While this tribunal has generated literature before its inception and will continue to do so in the upcoming years, it was not explicitly habilitated to discuss the state's role in police sexual misconduct. As for the BEI, it was outside the scope of the Viens Inquiry. The absence of focus on the reporting

[985] See, e.g., Deer, *supra* note 19; Jordan, "Belonging and Otherness", *supra* note 918.
[986] Amnistie internationale, *supra* note 895.
[987] Jaccoud, Barbeau-Leduc & Spielvogel, *supra* note 123.
[988] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 263.

stage, perhaps tied to the mandate of the Inquiry that did not cover the period of action of the BEI, left a gap in the study of police practices and police sexual misconduct.

For reasons related to the scope of this thesis, we concentrated on the calls to action relating to policing in urban settings and communities policed by non-Indigenous police forces, as well as sexual violence. However, we should consider the impact of the Viens Inquiry more broadly, including by analyzing its calls to action for public services beyond the police. We must note that some calls to action requested a formal follow-up process, which was an excellent way to prevent the work conducted by the Inquiry from gathering dust on the state's shelves. Indeed, the Final Report stressed the ineffectual implementation of previous commissions of inquiry's recommendations before proposing solutions to improve follow-up and accountability.[989] In its calls to action 138 to 140, the Inquiry recommended that the Québec Ombudsman took over reporting and evaluating the government's progress on calls to action. Justice Viens decided to rely on this structure notably because of its reputation. He also recommended granting the latter the means to accomplish its new mission through resources and legislative amendments.[990] In 2021, information supporting the advancement of calls 139 and 140 had not yet been gathered.[991] In June 2021, the Ombudsman announced that after consultation with Indigenous leaders, it would

[989] *Ibid* at 463–464. See also Perreault, *supra* note 898 at 35.
[990] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 464–466 (calls to action 139-140).
[991] Comité de suivi des appels à l'action, "État de la mise en oeuvre du rapport de la Commission d'enquête sur les relations entre les autochtones et certains services publics: écoute, réconciliation, progrès (Commission Viens) depuis sa parution en septembre 2019" (2021) 16 at 8; Secrétariat aux affaires autochtones, "Tableau de suivi des réponses aux appels à l'action de la Commission d'enquête sur les relations entre les autochtones et certains services publics", (September 2021), online: <https://cdn-contenu.quebec.ca/cdn-contenu/adm/min/conseil-executif/publications-adm/saa/commission_viens/CommissionViens_2ans.pdf?1631887087>.

review progress in implementing calls to action.[992] At the time of writing, the first report of the Ombudsman had yet to be published. In the meantime, a follow-up Committee composed of civil society and academia set itself up. Through access to information demands, this Committee computed the responses to the calls to action of the Viens Inquiry.

Reporting on progress made is crucial. As put by a participant, the Final Report is full of solutions, but the government "*miserably flopped the first year*".[993] We must keep track of the calls' implementation to ensure positive outcomes materializes themselves. In 2021, the mixed Committee from academia and civil society concluded that out of the 140 calls targeting the government, 5 calls had been dealt with satisfactorily, 62 had been partially responded to (with variability ranging from a minimal answer to almost reaching completion), and 75 had no data on the government's response.[994] Some Ministries refused to disclose information, which may distort the portrait provided by the Committee.[995]

Finally, we must stress the importance of following up on calls to action and sharing the results of the Inquiry, which Justice Viens both included in its Final Report. Indeed, in addition to recommending instating the Ombudsman as an official entity reporting on the Viens Inquiry, calls

[992] Protecteur du citoyen, "Commission Viens : le Protecteur du citoyen veillera au suivi de la mise en œuvre des appels à l'action", (23 June 2021), online: <https://protecteurducitoyen.qc.ca/fr/nouvelles/communiques/commission-viens-suivi-appels-action>.
[993] A1, at 18 and 26.
[994] Comité de suivi des appels à l'action, *supra* note 991 at 5 and 8. See also Marie-Michèle Sioui, "Deux ans après son dépôt, 68 des 142 recommandations du rapport Viens en cours de réalisation", *Le Devoir* (21 September 2021), online: <https://www.ledevoir.com/societe/633243/rapport-viens-68-des-142-recommandations-en-cours-de-realisation>; Quebec Native Women, "Bilan de la Commission Viens : FAQ Salue les actions entreprises mais s'attend à plus", (17 September 2021), online: <https://faq-qnw.org/wp-content/uploads/2021/10/FAQ-Communiqué-Commission-Viens-.pdf>.
[995] Comité de suivi des appels à l'action, *supra* note 991 at 7. The government also publishes a table reporting development on the call to actions: Secrétariat aux affaires autochtones, *supra* note 991.

141 to 142 requested translation of the executive summary in Indigenous languages spoken in Québec and audio versions "by means of alternative oral distribution methods identified by the Indigenous authorities themselves based on their peoples' needs and realities".[996] Despite these calls to action ensuring the Final Report was understood and not forgotten, it did not counteract the lack of consideration of sexual violence by the state and abuses against women in Val-d'Or. Consequently, we conclude this Chapter with a contention that surfaced many times now: while the Viens Inquiry provided literature, calls to action, and educative material on discrimination in public services – it failed to secure accountability for the allegations of police misconduct that surfaced in 2015 and to unpack the unintended consequences and social structures that permitted for such violation of rights. Greater inclusion of civil society throughout the process, monitoring of receptivity, and flexibility within norms (see sections 1 and 2) might have helped to overcome such limitations.

Conclusion

This Chapter covered the Viens Inquiry from its pre-implementation stage to the years following the Final Report's submission. According to the participants in our study and the literature, the Inquiry filled educative and investigative functions by documenting past injustices and proposing public service delivery policies in Québec. Our participants' insights highlighted the many obstacles the Viens Inquiry faced and the limitations of the latter. These hurdles included cynicism, apprehension about the choice of the commissioner, lack of resources to non-state entities, and the Inquiry's foundation in a Western narrative. Given that the Val-d'Or crisis triggered the Viens Inquiry, another concern often identified in the interviews was the disregard

[996] Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *supra* note 23 at 466–467. Saluted by Stanton, *supra* note 828 at 189–190.

for police sexual violence against Indigenous women in Val-d'Or, which we connected to a form of wilful blindness. The latter was at the core of our critique against the Viens Inquiry, as it significantly impacted its outcomes. The Final Report and the calls to action touched extremely lightly on sexual violence, the relationship between Indigenous women and the police, as well as urban policing and alternatives (including self-governance) outside territories served by Indigenous police services. While the mandate was vast, it was up to the Viens Inquiry to interpret it in a way that allowed for the inclusion of sexual violence by police and abuse of Indigenous women's rights. The Inquiry fleshed out several structural problems across Québec public services. However, we doubt it brought justice to the women in Val-d'Or or secured state accountability for the Val-d'Or crisis.

Chapters II to IV turned to specific mechanisms deployed throughout the Val-d'Or crisis. Civil litigation, criminal justice, and media coverage at times overlapped and, at others, stood as the only avenue to secure state accountability. These chapters underlined considerable drawbacks in state accountability, including the individualized nature of legal remedies; the lack of alignment of the law with social narratives; deficits in accessibility, independence, transparency, and impartiality of independent criminal investigations; and the selectivity and potential revictimization stemming from media coverage. Chapter V on the Viens Inquiry added to the list of limitations mainly by showing how the state remained wilfully blind to sexual violence by police through the definition of the mandate and the operations of the Inquiry. The Inquiry was unsuccessful in altering legal narratives because it operated in a colonial and very formal setting but also because it deliberately ignored police sexual violence. This remains true despite its work in building literature and liberating some voices.

It was imperative to highlight the hardships created by each state accountability mechanisms so that we can learn from their mistakes. Indicating failures of these attempts constitutes a first step to documenting the foreseeability of impunity for police sexual misconduct and wilful blindness to sexual violence by the state. Only by understanding how state accountability mechanisms foster impunity for police sexual misconduct can we claim foreseeability and wilful blindness successfully.

CONCLUSION

This thesis has centred on the importance of state accountability, focusing particularly on the issue of police misconduct tied to sexual violence. If we fail to indicate the link between police sexual misconduct, impunity, and consequences of state action, then there is no rationale for inquiring into state accountability. We first suggested that the system through which state power is diffused can become sites of police misconduct due to the combined outcomes of state actions that are *a priori* distanced from police sexual violence and impunity for the latter. At the onset of this thesis, we named a few state actions to that effect, including but not limited to police powers allowing for isolated contact with vulnerable civilians, the central place of the police in criminal law, the absence of an enforceable duty to report fellow officer's misconduct under Québec's law, a police culture tolerating discrimination and abuse, and the practice of officers shuffling or retirement upon misconduct rather than engaging into accountability measures. Responsibility for police sexual violence might be hard to attribute to the state solely based on these actions. We thus proposed to assign responsibility based on two standards: foreseeability and wilful blindness to police sexual violence and its impunity. Indeed, we did not argue that the state purposively requested its police forces to sexually abuse, discriminate, or otherwise sexually harm civilians and fellow officers. We neither stipulated that the state intended to design legal mechanisms that would grant impunity for such behaviours. However, we contended that when the state can foresee or is wilfully blind to the effects of state action, responsibility should follow. Focusing on the state was crucial to address the systemic nature of police sexual violence. By attributing responsibility to the state, we developed a state accountability framework for police sexual violence emphasizing justification, responsibility, and remedies.

According to Michael Mann's theory of state infrastructural power, state power is exercised through civil society. State actions such as those cited above can thus be carried out through diffusion of power and negotiation within civil society. This connection between state and civil society accounted for our choice to investigate responses and perceptions to state accountability mechanisms in the context of police sexual violence. We must recollect here that the thesis did not cover initiatives stemming from grassroots action that had no interaction with the state. This does not mean that they could not be helpful in cases of police sexual violence, only that we did not include them within the ambit of this study. Given our reliance on Mann's theory of infrastructural power and the significative interaction between the state, the media, and civil society throughout the Val-d'Or crisis, this project aimed to answer the following question: 'How did civil society and the media perceive and respond to state accountability mechanisms for police sexual misconduct in Val-d'Or?" This question was combined with three research objectives to expand the outcomes of the thesis: (1) develop a state accountability framework for police sexual misconduct, (2) analyze the limitations of current state accountability mechanisms for police sexual misconduct, and (3) apply the theoretical framework to the Val-d'Or crisis. The thesis did not apply the theoretical framework outside Val-d'Or but paved the way to rethink state accountability, notably by examining the failures within the legal system.

The first step to answer our research question was to interview individuals who had connections to the Val-d'Or crisis, thereby documenting responses and perceptions from civil society members (either advocates, members of the Val-d'Or community, or experts with specialized knowledge and journalists). These insights allowed us to compile data on various mechanisms: state law (i.e., extracontractual liability in Québec, tort law, class actions, and some

forms of public law liability), investigations of police crimes, media coverage, and public commissions of inquiry. This data was crucial to provide a compelling answer to our question and reach our research objectives. Indeed, the interviews and the existing literature on police sexual violence allowed us to indicate limitations in the current system (see Chapters II to V), build a theoretical framework of state accountability responding to these limitations (see Chapter I), and apply this theoretical framework to Val-d'Or (see Chapters II to V).

The thesis and its theoretical framework targeted two audiences: legal actors and civil society (including the media). This project presented a new conceptualization of state wrongs and proposed ways to rethink accountability by using the example of police sexual violence. Legal actors like prosecutors could benefit from embracing broader perspectives on state wrongdoings and accountability. Indeed, the Val-d'Or crisis showed how limited our accountability mechanisms for state abuse currently are. The restrictions experienced in Val-d'Or are partly due to the mechanisms themselves but also from the application of the law by prosecutors and other legal actors. Rethinking accountability for state wrongs in law might be the only way to secure satisfactory results in the future. Reorganizing law also rests with the legislator, another legal actor within the thesis' audience. Reviewing causality and responsibility for systemic wrongs in our statutes would provide more effective avenues to secure state accountability. Consequently, if the thesis conveyed the importance for the state to recognize the harm it causes and convinced legal actors of this significance, we will consider it a success. The thesis also aimed to educate civil society and the media on the consequences of their involvement with state wrongs like police sexual violence. As some chapters contended, civil society and the media can contribute positively and negatively to state accountability. If they create further harm, their participation is unprincipled

as opposed to our framework's redress component. Chapters IV and V provided civil society and the media with precise methods to improve the effects of their engagement with state accountability mechanisms.

Now that we have summarized the thesis' aim and audience, the following pages will briefly cover how each chapter integrated our theoretical conception of state accountability. More precisely, we will outline the main contributions of this project to two theoretical contentions: (1) state accountability for police sexual misconduct can be based on foreseeability and wilful blindness, and (2) social accountability – a theory focusing on public participation to complement top-down state accountability mechanisms – is the best way to conceive of state accountability for police sexual misconduct. Each chapter showed applications of either one or both propositions. This conclusion will highlight the link between these arguments and the inputs collected through interviews and doctrinal research. The two contentions will be treated separately for clarity.

The Thesis' Contribution to Foreseeability and Wilful Blindness

At the outset of this thesis, in Chapter I, we highlighted that systemic wrongs are hardly compatible with a legal causation analysis. The multiplicity and, at times, indirect causes of systemic wrongs render any causation analysis difficult. As legal causation usually requires a cause and an effect, systemic wrongs like police sexual violence are often at odds with traditional causation analysis. We thus proposed a way to attribute responsibility for police sexual violence. This assignment of responsibility rests on one question: 'Who is the person/entity in the best position to prevent police sexual violence and its impunity?' Inspired by Mari Matsuda's work,[997]

[997] Matsuda, *supra* note 129.

this perspective calls for grounding responsibility in the state and eventually implementing state accountability mechanisms. The individual officer committing misconduct is not well-equipped to prevent police sexual violence and its impunity in their globality and should thus not be the primary source of accountability.

Based on the insight that the state is in the best position to prevent police sexual violence, we suggested two standards familiar to Canadian law to trigger the state's responsibility in law: foreseeability and a form of wilful blindness infused by social anthropology. These standards act as thresholds to recognize the state's responsibility, a step necessary to hold the latter accountable for police sexual violence. By founding responsibility (and thus accountability) claims in these two options, we contended we would reach greater receptivity from the law (as these concepts partly emanate from it) and, thus, have better chances at securing accountability within the state framework. This suggestion introduced at the beginning of the thesis was trodden in each chapter to guide our analysis of state accountability for police sexual misconduct in Val-d'Or. Foreseeability and wilful blindness were illustrated through analyses of the literature and excerpts from interviews commenting on mechanisms implemented in Val-d'Or. Despite the fact that wilful blindness originates in the law, we bridged this standard with understandings from social anthropology, which allowed for adapting it to state systemic wrongs like police sexual misconduct. This combination of disciplines was required as a strict application of the legal standard showed significant gaps in accountability, an argument discussed in Chapters I and II.[998]

[998] Notably by relying on the work of Rich, *supra* note 5.

In this thesis, wilful blindness has constantly referred to a spectrum of ignorance normalized through the legal system. According to the literature, the normalization of wilful blindness does not need to be part of a state's intentional plan. It can be unconscious, an insight aligned with our unintended consequences proposition. Such blindness can manifest itself in at least two ways – first, the invisibility of part of reality due to detachment. In other words, the state's vision may contrast with what people, including those affected by police sexual violence, see and experience daily. When one does not understand or is not attentive to someone else's reality, it is easier to remain blind to their situation and how the system produces harmful outcomes. Second, blindness can take the form of a side-lining of uncomfortable knowledge, which includes knowledge that police officers sexually harm the people they swore to protect. Legal processes mandating specific ways to envision a problem (thus pushing away other explanations) might also contribute to blindness.[999] We argued that both side-lining and invisibility took part in normalizing wilful blindness to police sexual violence and impunity in Val-d'Or. At times, they were present in the same situation as some chapters have demonstrated. We will now unpack the summary of each chapter, hereby outlining specific applications of the foreseeability and wilful blindness standards. The method to attribute responsibility described above was crucial to reach our goal of developing a state accountability framework for police sexual violence. Indeed, our accountability framework rested on the assignment of responsibility, justification by the state, and remedies for police sexual violence. Chapter I built on these insights to finalize the state accountability framework. Subsequent chapters applied the theoretical framework of state accountability to mechanisms implemented in Val-d'Or. They also highlighted limitations within existing mechanisms, thus demonstrating the need to revisit how we conceptualize state wrongs.

[999] See Chapter I for further details. This argument stems mainly from a combination of the following work: Bovensiepen, "On the banality of wilful blindness", *supra* note 11; Scott, *supra* note 177; Backhouse, *supra* note 176.

Chapter II delved into police sexual misconduct and litigation through extracontractual liability in Québec, torts, class actions, the *Canadian Charter of Rights and Freedoms*, and the criminal liability of organizations. It highlighted that legal mechanisms were not designed in a way capable of policing the connection between state action and sexual violence, thus leading to impunity. In addition, these options are mostly centred on individual remedies and individual wrongs. They are thus ill-equipped to handle systemic wrongs with a plurality of interrelated causes, such as police sexual violence. The Chapter argued that despite the successes of some class actions and the theoretical flexibility of the Canadian *Charter*, victims of police sexual misconduct continue to face many obstacles because of the law's structure. For instance, one of the more challenging legal technicalities in state law is the benefit of the employer criterion, present in Québec's extracontractual liability and the criminal liability of organizations. Its interpretations deny a relationship between sexual violence and policing. While foreseeability and wilful blindness cannot be relied on just because a mechanism does not provide the desired result – we hope our analysis, which pinpointed the substantial limitations of each type of litigation, will serve as a first step in showing that the state mechanisms examined in this Chapter require amendments to respond to police sexual misconduct and prevent impunity.

At the moment, we can foresee impunity in most cases. The Chapter also contended that the systematization of liability regimes caused wilful blindness. By producing a legal system, the state became blind to some aspects of reality. Indeed, the gaps between the regimes, the disconnect between liability regimes and social narratives, as well as the incapacity of the state to work out

exhaustive and coherent liability regimes that transcend federal and provincial laws were presented as forms of wilful blindness.

Chapter III pursued the analysis of limitations in the current system and the application of our framework to the Val-d'Or crisis. It posited that there has been a lack of accessibility, transparency, independence, and impartiality in the investigation of police crimes in Québec. These drawbacks were presented as obstacles to state accountability in cases of police sexual violence. While examining the contribution of different actors to investigating police misconduct in Val-d'Or (i.e., DPCP, BEI, Independent Civilian Observer, and the SVPM), the Chapter accounted for the gaps in each actor's initiatives through the standards of foreseeability and wilful blindness. For instance, the reporting mechanism that operated throughout the Val-d'Or crisis was examined through a historical prism. By relying on participants' comments, we suggested that in light of the distrust between Indigenous peoples and the state – the state could either foresee or was blind to the limitations of a criminal justice system driven mainly by police officers. Similarly, we depicted current practices in police interviews about witness compellability as detachment from lived experiences and as a method of side-lining concerns beyond traditions in evidence law. This Chapter thus used – among other things – the continuation of such practices to conclude that the state might have been wilfully blind to the limitations of the criminal justice system when creating the BEI. The Chapter cited other examples of blindness, such as transparency and communication deficits replicated throughout the different reforms of the investigations of police crimes in Québec.

Chapter IV contended that media coverage could gather data on state abuse and outlined how to use this knowledge to prompt accountability mechanisms. By examining the media's involvement throughout the Val-d'Or crisis, the Chapter also reached conclusions much more negative than knowledge gathering, such as creating harm and exploiting the vulnerability of media informants. The following section on social accountability will examine these limitations more specifically. For the moment, we wish to reiterate the link between the media and the standards of foreseeability and wilful blindness. Chapter IV argued that the allegations were known to some people before media coverage, including Jean Vicaire, a police officer who testified he reported them to a superior. Hence, journalists uncovered a privately yet not publicly known phenomenon. The state *could* have been aware of police sexual violence if it had inquired more seriously into allegations surfacing before *Enquête*'s news story. In the absence of sufficient data with probative value, we left aside the argument of whether the state was aware but chose not to act. This is not to say that we found no potential applications of foreseeability or wilful blindness. Chapter IV suggested that the media and the state are part of the same system. This proximity means that some state discourses might be replicated in media coverage. The state can then rely on media coverage to justify the insufficient scope of its accountability mechanism. In other words, when the media reproduce state discourses and are blind to the connection between state power and sexual violence, it can shape state accountability mechanisms that will remain blind to some aspect of reality. This interaction between the state and the media can amplify blindness to systemic causes of police sexual violence. For example, in the case of Val-d'Or, we suggested the media were blind to the continuity of state wrongs implied by the crisis and the intersectionality of the abuse. This might have helped justify the aim of the Viens Inquiry. The latter was analyzed in Chapter V, summarized in the next paragraph. We thus proposed that the media are in a peculiar

position where they can gather documentation that will serve accountability claims but also contribute to the wilful blindness of the state.

Chapter V was the final strand of our argument on state accountability. It articulated that the Viens Inquiry and the ones that preceded it were adamant that the state had operated in ways that discriminated against Indigenous peoples. Knowledge of discrimination against Indigenous peoples is essential to police sexual misconduct in Canada, given the victimization of Indigenous women by police officers.[1000] However, this knowledge has not been used to shift our legal understandings. The Government and the Viens Inquiry contributed to setting aside part of the problem by carving out police sexual violence from the mandate and the Final Report. The fact that many commissions of inquiry were implemented without sufficient changes, that we embraced a state law framework to inquire into Indigenous matters, that some saw the Viens Inquiry as a political way to gain time, and that the Final Report only touched timidly on sexual violence against Indigenous women, were all presented as examples of wilful blindness. The lack of engagement with sexual violence and intersectional analysis is connected to Chapter IV. The Inquiry is not the only mechanism that failed to engage with such considerations, and that might result from the narrative disseminated by the media, which did not connect police sexual violence to state power across Canada. Indeed, Chapter V incidentally noted that participants' discourses too rarely focused on sexual violence.

Once tied together, these chapters demonstrated the value of relying on the foreseeability and wilful blindness standards for state accountability claims related to sexual misconduct by

[1000] See, e.g., Ampleman-Tremblay, *supra* note 8.

police and impunity in Val-d'Or. Nevertheless, the fact that the analysis of Val-d'Or showed some grounds for foreseeability and wilful blindness does not mean that we can export these arguments to out-of-the-province cases or even to Québec cases originating from different situations. While some state actions or arguments – such as the narrow understanding of the employer's benefit in criminal law – can be applied across Canada, this thesis solely focused on Val-d'Or. This is not meant to distract from the systemic nature of police sexual violence but rather to insist on limitations inherent to emphasizing only one case study.

We must end this overview of the foreseeability and wilful blindness arguments with two critical remarks. First, for any future application, the wilful blindness and foreseeability standards should apply to the abuse and gaps in accountability. If the state is deliberately ignorant or can foresee unsatisfactory accountability mechanisms but continues to use them, it perpetrates harm. Impunity is a threat to accountability, and it should be examined as much as the misconducts themselves if we hope for a legal framework well-equipped to address state accountability for police sexual violence. Second, documenting abuses is essential, but it burdens victims. The price of collecting information has emerged in top-down and bottom-up accountability mechanisms. This harm is a relevant angle to analyze the contribution of social accountability to this thesis. The next section of this conclusion will accomplish that task.

Social Accountability in Val-d'Or: the Verdict

Our research question invited us to delve into civil society and the media's responses and perceptions to state accountability mechanisms in Val-d'Or. This orientation called for an approach to state accountability that is inclusive and receptive to society's input. Social

accountability, contending that bottom-up action (e.g., citizen initiatives, media coverage, advocacy strategies) can complement top-down accountability mechanisms when the formal system is unsatisfactory,[1001] was such a perspective. We must recall here that we only examined mechanisms interacting with the state and thus that purely grassroots actions were excluded. Nonetheless, a question remains at the conclusion of this thesis: 'Does social accountability, understood as a theory making a greater place to society's input in state accountability processes, allow for effectively securing state accountability for police sexual violence?', or in other words, 'Can we produce successful results only by thinking through the lens that is social accountability?' Social accountability took part in every mechanism examined in this thesis and was subject to a thorough examination if only for its extensive presence in Val-d'Or. Chapters II and III considered how top-down mechanisms can contribute to state accountability for police sexual misconduct and pointed notably to a good example of collaboration between the legal framework and civil society in the context of the Val-d'Or class action. The media was another example, but we must be careful as they can be harmful and cause further victimization if not guided by strict moral safeguards. The Viens Inquiry was equally a manifestation of social accountability, but the mandate was restricted in a way that prevented it from unpacking police sexual violence. The problem with the Inquiry or the media was not public participation *per se* but the state or the media's control of such civic engagement.

By applying the social accountability framework to Val-d'Or, we reached the following conclusion: social accountability is not enough to secure state accountability without proper precautions. A mechanism aligned with public participation is not necessarily principled because

[1001] See, e.g., Malena, Forster & Singh, *supra* note 206; Joshi & Houtzager, "Widgets or Watchdogs?", *supra* note 189.

it permits engagement with society. It must embrace additional features, such as minimization of harm, effective remedial capacity, and satisfactory reception and inclusion of the target population. Satisfactory reception of the population is tied to consultation and proper communication. The theoretical framework of social accountability should thus be adjusted to reflect this conclusion prior to applying it to other state wrongs. On a final note, the thesis mentioned on a few occasions that this project could also be conceived as a social accountability initiative by collaborating with civil society and the media and creating a space of dialogue. Nevertheless, as flagged in the previous paragraph, adopting social accountability will not necessarily yield desired results and might even create opposite outcomes. While we attempted to control the adverse effects of this project by adhering to an ethics protocol, we cannot guarantee that our research was not extractive and caused no harm.

Concluding Remarks

This conclusion reviewed the thesis' content by emphasizing responsibility standards (i.e., foreseeability and wilful blindness) and social accountability, both essential to our theoretical framework. In doing so, we showed how the state accountability framework developed in this thesis applied to Val-d'Or and responded to limitations within existing mechanisms. It thus touched on all research goals set in the introduction to this thesis. Our insights on accountability standards and social accountability, summarized in this conclusion, were also connected on two central issues: (1) no mechanism in Val-d'Or allowed for state accountability in its globality as described in the first Chapter, and (2) all mechanisms have the potential to create harm in their quest for state accountability. These two statements were key to all interviews and significant to civil society's responses and perspectives. Given these findings, we posited on several occasions

throughout the thesis that multiple means of redress were the best option to optimize state accountability. Val-d'Or was the perfect illustration for this. Victims underwent a combination of the criminal process, media coverage, testimonies before a commission of inquiry, and class action. Since we did not interview victims, we do not want to speak for them on whether this combination succeeded in securing state accountability in their eyes. Nevertheless, the interviews raised some severe doubts about the satisfaction of civil society with the state's response to the Val-d'Or crisis, especially when state accountability mechanisms are considered in isolation.

Finally, we must end this thesis by recommending caution when using or designing future state accountability instruments, even those that would embrace our foreseeability and wilful blindness standards. A mechanism incorporating our insights must be mindful of the minimization of harm. Quests for state accountability can open wounds that no actor is in a position to heal, as Val-d'Or illustrated rather unequivocally.

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Interview A1, 16 September 2021, 00:44:48, (33 pp.)

Interview A2, 20 December 2021, 01:11:18 (51 pp.)

Interview B1, 4 October 2021, 00:44:01 (25 pp.)

Interview B2, 28 January 2022, 00:59:49 (41 pp.)

Interview C1, 18 November 2021, 00:44:25 (41 pp.)

Interview C2, 4 February, 00:38:27 (25 pp.)

APPENDIX I

Figure 4.
Compilation of Newspaper Articles, Podcast, Blog Posts, News Video, and Other Media Sources

#	Author	Title	Date (M/Y)	Source
1	Radio-Canada	Quand la police est une menace pour les femmes autochtones de Val-d'Or	Oct-15	https://ici.radio-canada.ca/nouvelles/special/2015/10/femmes-autochtones-val-dor/
2	Stéphanie Marin (Le Devoir)	Des Autochtones veulent intenter une action collective contre la SQ de Val-d'Or	Dec-21	https://www.ledevoir.com/societe/654507/des-autochtones-demandent-l-autorisation-d-une-action-collective-contre-la-sq-de-val-d-or
3	Gabrielle Duchaine et Daniel Renaud (La Presse)	Allégations d'abus sur des femmes à Val-d'Or : un ex-policier de la SQ pourrait être poursuivi au criminel	Jun-16	https://www.lapresse.ca/actualites/201606/07/01-4989206-allegations-dabus-sur-des-femmes-a-val-dor-un-ex-policier-de-la-sq-pourrait-etre-poursuivi-au-criminel.php
4	Martin Croteau (La Presse)	Reportage à Val-d'Or : 41 policiers poursuivent Radio-Canada	Oct-16	https://www.lapresse.ca/actualites/justice-et-affaires-criminelles/actualites-judiciaires/201610/20/01-5032333-reportage-a-val-dor-41-policiers-poursuivent-radio-canada.php
5	Radio-Canada	Val-d'Or : l'observatrice conclut à une enquête impartiale mais insuffisante	Nov-16	https://curio.ca/fr/video/val-dor-lobservatrice-conclut-a-une-enquete-impartiale-mais-insuffisante-12254/
6	RDI Matin	Val-d'Or : le DPCP va s'expliquer	Nov-16	https://curio.ca/fr/video/val-dor-le-dpcp-va-sexpliquer-12269/
7	Radio-Canada	Abus de la SQ : les femmes autochtones brisent le silence	Oct-15	https://curio.ca/fr/video/abus-de-la-sq-les-femmes-autochtones-brisent-le-silence-7582/

8	Radio-Canada	Allégations de violence contre des femmes autochtones : pas d'enquête québécoise	Aug-16	https://curio.ca/fr/video/allegations-de-violence-contre-des-femmes-autochtones-pas-denquete-quebecoise-10172/
9	Radio-Canada	Crise de confiance entre Autochtones et policiers de Val-d'Or : entrevue avec Roméo Saganash	Nov-15	https://curio.ca/fr/video/crise-de-confiance-entre-autochtones-et-policiers-de-val-dor-entrevue-avec-romeo-saganash-7628/
10	Radio-Canada	La crise de Val-d'Or	Sep-19	https://curio.ca/fr/video/la-crise-de-val-dor-22606/
11	Radio-Canada	Le cercle vicieux	Feb-17	https://curio.ca/fr/video/le-cercle-vicieux-13171/
12	Radio-Canada	Les femmes autochtones de Val-d'Or intenteront d'autres recours juridiques	Nov-16	https://curio.ca/fr/video/les-femmes-autochtones-de-val-dor-intenteront-dautres-recours-juridiques-12264/
13	Radio-Canada	Notre ami Sam / Le silence est brisé	Apr-16	https://curio.ca/fr/video/notre-ami-sam-le-silence-est-brise-8586/
14	Radio-Canada	Revoir la Loi sur les Indiens ?	Oct-15	https://curio.ca/fr/video/revoir-la-loi-sur-les-indiens-7610/
15	Le Citoyen (Rouyn-Noranda)	Action collective du CAAVD contre Québec et la SQ : «Une démarche de vérité, de justice, de réparation et de guérison»	Dec-21	https://www.lecitoyenrouynlasarre.com/article/2021/12/14/action-collective-du-caavd-contre-quebec-et-la-sq-une-demarche-de-verite-de-justice-de-reparation-et-de-guerison
16	Samuel Deschênes (Noovo)	Demande d'action collective contre la SQ de Val-d'Or	Dec-21	https://www.noovo.info/nouvelle/demande-daction-collective-contre-la-sq-de-val-dor.html
17	Agence QMI (Journal de Montréal)	Les policiers de la SQ ne porteront plus le bracelet 144	Oct-18	https://www.journaldemontreal.com/2018/10/20/les-policiers-de-la-sq-ne-porteront-plus-le-bracelet-144
18	Joshua Grant (The Nation)	Val-d'Or SQ officers sue Radio-Canada as abuse investigation drags on	Nov-16	http://formersite.nationnewsarchives.ca/val-dor-sq-officers-sue-radio-canada-abuse-investigation-drags/

19	La Presse canadienne (CTV News)	Indigenous women say they're still afraid of the Sûreté du Québec	Oct-19	https://montreal.ctvnews.ca/indigenous-women-say-they-re-still-afraid-of-the-sûreté-du-québec-1.4642629
20	Fanny Lévesque (le Soleil)	Abus policiers envers des Autochtones : beaucoup d'appels, mais peu de plaintes	Oct-16	https://www.lesoleil.com/2016/10/20/abus-policiers-envers-des-autochtones-beaucoup-dappels-mais-peu-de-plaintes-720bb31199d1646fcdd7f099a55c8abc
21	Jane Lytvynenko (Canadaland)	Police in Quebec Sue CBC Radio-Canada for Defamation After Sexual Abuse Report	Oct-16	https://www.canadaland.com/police-quebec-sue-radio-canada-defamation-sexual-abuse-report/
22	Ingrid Peretz (the Globe and Mail)	Aboriginal women 'feel anger' no charges laid against Val-d'Or officers	Nov-16	https://www.theglobeandmail.com/news/national/two-retired-quebec-police-officers-charged-after-val-dor-assault-investigations/article32928990/
23	Louis Gagné (Journal de Québec)	Femmes autochtones : une nouvelle ligne téléphonique pour dénoncer les abus de policiers	Apr-16	https://www.journaldequebec.com/2016/04/05/femmes-autochtones-une-nouvelle-ligne-telephonique-pour-denoncer-les-abus-de-policiers
24	TVA Nouvelles	EXCLUSIF | Crise à Val-d'Or : des policiers brisent le silence	Nov-16	https://www.tvanouvelles.ca/2016/11/21/crise-a-val-dor--des-policiers-brisent-le-silence
25	JAllore (Who killed Theresa)	Val d'Or WKT3 #17	Sep-19	https://theresaallore.com/2019/09/01/val-dor-wkt3-17/
26	Thierry Evrard (Le Nouvelliste - Opinions)	Enquête sur la SQ à Val-d'Or : ma confiance vient de prendre une sérieuse débarque !	Nov-16	https://www.lenouvelliste.ca/2016/11/26/enquete-sur-la-sq-a-val-dor-ma-confiance-vient-de-prendre-une-serieuse-debarque-874fbf1090b71d9776ba8bbcf6c1436a
27	Nouvelles hebdo	SQ à Val-d'Or : caméras et travailleurs sociaux dans les autos	Oct-15	https://www.nouvelleshebdo.com/national/sq-a-val-dor-cameras-et-travailleurs-sociaux-dans-les-autos/

28	Denis Lessard et Martin Croteau (La Presse)	Enquête sur les allégations d'agressions commises par des policiers à Val-d'Or : Québec choisit une spécialiste du droit international comme observatrice	Nov-15	https://plus.lapresse.ca/screens/b7401dd6-1528-4b14-ab39-a9867c8ce1e2%7CqYTpsPqLYvAx.html
29	Alice Chantal Tchandem Kamgang (Radio-Canada International)	Québec : comprendre les délais dans le traitement des plaintes pour abus sexuels contre les femmes autochtones	Jun-16	https://www.rcinet.ca/fr/2016/06/03/analyse-rapports-e-enquete-aabus-sexuels-policesurete-quebec-service-police-ville-de-montreal-delais-longs-directeur-poursuites-criminelles-et-penales/
30	Andrew Russels (Global News)	Allegations police abused First Nations women in Val d'Or part of a national problem, observers say	Oct-15	https://globalnews.ca/news/2304898/allegations-police-abused-first-nations-women-in-val-dor-part-of-a-national-problem-observers-say/
31	HuffPost (Radio-Canada)	Après Val-d'Or, d'autres femmes autochtones brisent le silence (VIDÉOS)	Mar-16	https://www.huffpost.com/archive/qc/entry/femmes-autochtones-abus-sexuels-policiers_n_9580344
32	HuffPost (Radio-Canada)	Violence sexuelle : Quand la police est une menace pour les femmes autochtones de Val-d'Or (VIDÉO)	Oct-15	https://www.huffpost.com/archive/qc/entry/police-femmes-autochones-violence_n_8355726
33	Canadian Press (The Star)	Protests hit Val d'Or as six police officers not charged for alleged abuse	Nov-16	https://www.thestar.com/news/canada/2016/11/18/protests-hit-val-dor-as-six-police-not-charged-for-alleged-abuse.html
34	Agence QMI (TVA nouvelles)	Des accusations déposées dans 2 des 37 dossiers soumis	Nov-16	https://www.tvanouvelles.ca/2016/11/18/agressions-sexuelles-les-resultats-de-lenquete-tres-attendus-a-val-dor
35	Agence QMI (TVA nouvelles)	Il y a « urgence d'agir », dit le ministre Kelley	Nov-16	https://www.tvanouvelles.ca/2016/11/18/deception-et-colere-a-val-dor
36	TVA Nouvelles	Val-d'Or oscille entre déception et soulagement	Nov-16	https://www.tvanouvelles.ca/2016/11/17/val-dor-oscille-entre-deception-et-soulagement

37	Julia Page (CBC News)	Reports Indigenous women were abused by retired police officer never led to charges, Viens Commission hears	Aug-18	https://www.cbc.ca/news/canada/montreal/alleged-sexual-assault-police-val-d-or-viens-commission-1.4788002
38	Benjamin Shingler (CBC News)	37 cases of alleged police abuse in Val-d'Or handed over to Crown	Nov-16	https://www.cbc.ca/news/canada/montreal/val-dor-abuse-surete-du-quebec-montreal-police-1.3849786
39	Christopher Curtis (Ricochet)	Indigenous women have 'unfinished business' years after Val d'Or police abuse scandal	Oct-20	https://ricochet.media/en/3316/indigenous-women-have-unfinished-business-years-after-val-dor-police-abuse-scandal
40	Michel Ducas (The Gazette)	Five years later, Val-d'Or's long road to reconciliation with Indigenous neighbours	Dec-20	https://montrealgazette.com/news/quebec/five-years-later-val-dors-long-road-to-reconciliation-with-indigenous-neighbours
41	APTN National News	Investigation into police abuse result in 2 charges, but not in Val d'Or	Nov-16	https://www.aptnnews.ca/national-news/investigation-into-police-abuse-result-in-2-charges-but-not-in-val-dor/
42	CTV News	Commission into police misconduct against Indigenous women wraps up in Val d'Or	Dec-18	https://montreal.ctvnews.ca/commission-into-police-misconduct-against-indigenous-women-wraps-up-in-val-d-or-1.4218426
43	James Pashagumskum (The Nation)	Grand Chief denounces the SQ's handling of Val-d'Or solidarity bracelets	Oct-18	http://formersite.nationnewsarchives.ca/grand-chief-denounces-sqs-handling-val-dor-solidarity-bracelets/
44	Rick Harp (Media Indigena: Indigenous Current Affairs)	Ep. 37: Val d'Or police abuse probe; Suing over smudging	Nov-16	https://mediaindigena.libsyn.com/ep-37-val-d-or-police-abuse-probe-suing-over-smudging
45	CBC News	Val-d'Or police cruisers to get cameras after sex abuse allegations	Oct-15	https://appq-sq.com/wp-content/uploads/2019/02/CBCnews_cameras.pdf
46	Tom Fennario	Head of Quebec's provincial police testifies at Val d'Or inquiry	Oct-18	https://www.aptnnews.ca/national-news/head-of-

	(ATPN News)			quebecs-provincial-police-testifies-at-val-dor-inquiry/
47	benjamin Shingler (CBC News)	Val d'Or, Indigenous Women and Police Sexual Abuse: 37 Cases and No Justice	Jan-17	https://leveller.ca/2017/01/val-dor/
48	Canadian Press (Macleans)	No charges against Quebec police for alleged abuse of indigenous women	Nov-16	https://www.macleans.ca/news/canada/quebec-police-alleged-abuse-indigenous-women/
49	Red Lake Nation News	No charges against Quebec provincial police in Val-d'Or abuse scandal	Nov-16	https://www.redlakenationnews.com/story/2016/11/16/news/no-charges-against-quebec-provincial-police-in-val-dor-abuse-scandal/54179.html
50	Frank Larue (First Nations Drum)	No Charges Against Val-d'Or Police For Sexual Harassment of Native Women	Nov-16	http://www.firstnationsdrum.com/2016/11/no-charges-against-val-dor-police-for-sexual-harassment-of-native-women/
51	Toula Drimonis (Dailyhive opinions)	Opinion: March in solidarity with Val d'Or police officers only adds insult to injury	Dec-16	https://dailyhive.com/montreal/solidarity-march-val-dor-police
52	Canadian Press (City News - Kitchener)	Quebec police watchdog lacks transparency when investigating officers: report	Oct-20	https://kitchener.citynews.ca/national-news/quebec-police-watchdog-lacks-transparency-when-investigating-officers-report-2799051
53	CBC News - The National	Aboriginal women allege abuse by police in Val-d'Or, Quebec	Oct-15	https://www.youtube.com/watch?v=qwk1kHren68
54	Brigitte Noel (Vice)	Anger and hope in Val-d'Or	Apr-17	https://www.vice.com/en/article/3kpmp9/anger-and-hope-in-val-dor
55	Yahoo (CBC)	Val d'Or Native Friendship Centre files class-action lawsuit	Dec-21	https://ca.style.yahoo.com/val-dor-native-friendship-centre-090000603.html
56	Mirna Djukic (Forget the Box)	Val d'Or SQ Abuse Scandal Update: Charges May Actually Be Filed…Against Radio-Canada	Jun-16	https://forgetthebox.net/val-dor-sq-abuse-scandal-update-charges-may-actually-be-filed-against-radio-canada-201606072/

57	Canadian Press (Blue Line)	Quebec police begin removing red bands deemed provocative by Indigenous groups	Oct-18	https://www.blueline.ca/quebec-police-begin-removing-red-bands-deemed-provocative-by-indigenous-groups-5874/
58	DW	Canada suspends police over aboriginal sexual abuse allegations	Oct-15	https://www.dw.com/en/canada-suspends-police-over-aboriginal-sexual-abuse-allegations/a-18802895
59	Canadian Press (Battlefords Now)	Crown to announce Friday whether charges will be laid against Quebec police	Nov-16	https://battlefordsnow.com/2016/11/14/crown-to-announce-friday-whether-charges-will-be-laid-against-quebec-police/
60	Radio-Canada	Crise de Val-d'Or : la suite à Enquête sur la Commission Viens	Sep-19	https://ici.radio-canada.ca/ohdio/premiere/emissions/des-matins-en-or/segments/entrevue/132812/enquete-femmes-autochtones-val-dor-commission-rapport
61	Radio-Canada	Enquête | La crise de Val-d'Or	Sep-19	https://www.youtube.com/watch?v=uwazZCYnpZ8
62	Josée Legault (Journal de Montréal)	Derrière la crise de Val-d'Or	Oct-15	https://www.journaldemontreal.com/2015/10/27/derriere-la-crise-de-val-dor
63	Magdaline Boutros (la Presse)	Il n'y a pas de crise à Val-d'Or, selon le DG de la SQ	Oct-15	https://www.lapresse.ca/actualites/201510/27/01-4914394-il-ny-a-pas-de-crise-a-val-dor-selon-le-dg-de-la-sq.php
64	Sophie Côté (Journal de Québec)	Crise à Val-d'Or : « Et si c'était une fabrication ? », dit André Arthur	Oct-15	https://www.journaldequebec.com/2015/10/28/crise-a-val-dor--et-si-cetait-une-fabrication-dit-andre-arthur
65	Magdaline Boutros et Stéphanie Marin (La Presse pour Journal Métro)	Il y a une crise à Val-d'Or dit un chef autochtone	Oct-15	https://journalmetro.com/actualites/national/864140/il-y-a-une-crise-a-val-dor-dit-un-chef-autochtone/
66	Huffpost (Radio-Canada)	Crise à Val-d'Or : des Autochtones se disent encouragés par les changements (VIDÉO)	Jan-16	https://www.huffpost.com/archive/qc/entry/crise-val-dor-autochtones-

				encourages-par-changement_n_8921160
67	Magdaline Boutros (le Devoir)	Il n'y a pas de crise à Val-d'Or, selon le DG de la SQ	Oct-15	https://www.ledevoir.com/societe/453652/femmes-autochtones-il-n-y-a-pas-de-crise-a-val-d-or-selon-le-directeur-general-de-la-sq
68	Noémi Mercier (l'Actualité)	Val-d'Or : les chiffres d'une crise annoncée	Nov-15	https://lactualite.com/societe/val-dor-les-chiffres-dune-crise-annoncee/
69	Julie Marceau (Radio-Canada)	Pressions et intimidation contre des centres d'amitiés autochtones	Mar-21	https://ici.radio-canada.ca/recit-numerique/2131/centres-amitie-autochtones-femmes-politique-chefs-apnql?fbclid=IwAR2chsqtrOld0AILvLBsIY8URNwPsIHtmeAnig07DR1gWXwX9rt2kCeJi3U
70	Émilie Rivard-Boudreau (Gazette des femmes)	Mieux protéger les femmes autochtones	Nov-21	https://gazettedesfemmes.ca/21677/mieux-proteger-les-femmes-autochtones/
71	Danielle Arsenault (98.5)	« C'est un projet de société »	Jan-22	https://www.985fm.ca/nouvelles/politique/452706/c-est-un-projet-de-societe
72	Fanny Levesque (Le Soleil)	Femmes autochtones de Val-d'Or : Picard a « le sentiment de parler dans le vide »	Nov-16	https://www.lesoleil.com/2016/11/17/femmes-autochtones-de-val-dor-picard-a-le-sentiment-de-parler-dans-le-vide-a00e6d2072fefd40938f97ba5a2373a9
73	Mathieu Ferland (Journal le Joliette)	Crise autochtone à Val-d'Or : Jean-Roch Ottawa blâme le gouvernement pour son inaction	Oct-15	https://www.lejournaldejolietteca/actualites/societe/278187/crise-autochtones-a-val-dor-jean-roch-ottawa-blame-le-gouvernement-pour-son-inaction
74	François Oliver Dénommé (Iheart)	Les policiers de Val-d'Or mal traités ?	Oct-16	https://www.iheartradio.ca/energie/energie-rouyn/nouvelles/les-policiers-de-val-d-or-mal-traites-1.2041633

75	Droit inc (Radio-Canada)	Les femmes autochtones de Val-d'Or intenteront d'autres recours juridiques	Nov-16	https://www.droit-inc.com/article19159-Les-femmes-autochtones-de-Val-d-Or-intenteront-d-autres-recours-juridiques
76	Dominic Chamberland (La Sentinelle)	Autochtones : Québec injecte 6,1 M $ à Val-d'Or	Nov-15	https://www.lasentinelle.ca/autochtones-quebec-injecte-61-m-a-val-dor/
77	David Prince (Journal de Montréal)	Certaines femmes autochtones pourraient ne pas témoigner	Jun-18	https://www.journaldemontreal.com/2018/06/07/certaines-femmes-autochtones-pourraient-ne-pas-temoigner
78	Jean-François Nadeau et Magdaline Boutros (le Devoir)	Autochtones et services publics : paroles de la commission Viens	Sep-19	https://www.ledevoir.com/politique/quebec/563066/paroles-de-la-commission-viens
79	Droit inc (Radio-Canada)	Demande d'action collective d'Autochtones contre la SQ de Val-d'Or	Dec-21	https://www.droit-inc.com/article31121-Demande-d-action-collective-d-Autochtones-contre-la-SQ-de-Val-d-Or
80	Kristy Kirkup (la Presse)	Les agressions sexuelles, un fléau chez les autochtones	Nov-16	https://www.lapresse.ca/actualites/justice-et-affaires-criminelles/201611/13/01-5040814-les-agressions-sexuelles-un-fleau-chez-les-autochtones.php
81	Frédérick Jolicoeur Tétreault (le Nord côtier)	La Commission Viens à Sept-Îles : un passage chargé d'émotions	Nov-17	https://lenord-cotier.com/2017/11/09/la-commission-viens-a-sept-iles-un-passage-charge-demotions/
82	Émilie Rivard-Boudreau (Gazette des femmes)	Femmes autochtones et justice sociale : le combat d'Édith Cloutier	Mar-22	https://gazettedesfemmes.ca/21959/femmes-autochtones-et-justice-sociale-le-combat-dedith-cloutier/
83	Caroline Plante (La Voix de l'Est)	Des femmes autochtones ont encore peur des policiers de la Sûreté du Québec	Oct-19	https://www.lavoixdelest.ca/2019/10/17/des-femmes-autochtones-ont-encore-peur-des-policiers-de-la-surete-du-quebec-

				f0206cf1d1fe42c6b8c13f3ac2cc2a07?nor=true
84	Émilie Rivard-Boudreau (Journal de Montréal/TVA nouvelles)	Discrimination systémique envers les autochtones dans les services publics québécois	Sep-19	https://www.tvanouvelles.ca/2019/09/30/discrimination-systemique-envers-les-autochtones-dans-les-services-publics-quebecois
85	Katia Gagnon (La Presse)	Demande d'action collective des femmes autochtones contre la SQ de Val-d'Or	Dec-21	https://www.lapresse.ca/actualites/justice-et-faits-divers/2021-12-14/demande-d-action-collective-des-femmes-autochtones-contre-la-sq-de-val-d-or.php
86	La Presse Canadienne	Chronologie des moments-clés du dossier des femmes autochtones à Val-d'Or	Nov-16	https://lactualite.com/actualites/chronologie-des-moments-cles-du-dossier-des-femmes-autochtones-a-val-dor/
87	Marie-Michèle Sioui (le Devoir)	Autochtones de Val-d'Or : brisées mais toujours solidaires	Nov-16	https://www.ledevoir.com/societe/484995/les-femmes-autochtones-de-val-d-or-profondement-decues
88	Typhaine Leclerc-Sobry (Droit de parole)	Veillée en appui aux femmes autochtones de Val d'or	Dec-16	http://www.droitdeparole.org/2016/12/vigile-appui-aux-femmes-autochtones-de-val-dor/
89	David Prince (Journal de Montréal)	L'absence d'accusation contre les policiers de la SQ divise Val-d'Or : Aucun agent ne sera accusé concernant les allégations d'abus de femmes autochtones	Nov-16	https://www.journaldemontreal.com/2016/11/15/allegations-de-femmes-autochtones-agressees--val-dor-divisee-face-a-la-decision-du-dpcp
90	Patrick Bellerose (Huffington Post)	Observatrice sur les enquêtes du SPVM à Val-d'Or : Une enquête « impartiale », mais « insuffisante », écrit Me Fannie Lafontaine	Nov-16	https://www.huffpost.com/archive/qc/entry/observatrice-sur-les-enquetes-du-spvm-a-val-dor--une-enquete-criminelle-est-necessaire-mais-elle-est-insuffisante-ecrit-me-fannie-lafontaine_n_13025584

91	Clara Loiseau (Huffington Post)	Trudeau est-il en train de redonner du corps à la justice ?	Mar-17	https://www.huffpost.com/archive/qc/entry/femmes-autochtones-disparues-assassinees-commission-enquete_b_9480870
92	Christopher Curtis (Montreal Gazette)	Val-d'Or abuse scandal: aboriginal women 'living in fear'	Nov-16	https://montrealgazette.com/news/val-dor-abuse-scandal-system-failed-aboriginal-women-advocate-says
93	Radio-Canada	Allégations d'abus policiers sur des femmes autochtones : le DPCP rendra ses décisions vendredi	Nov-16	https://ici.radio-canada.ca/nouvelle/814472/dpcp-val-dor-allegations-abus-policiers-surete-quebec-femmes-autochtones
94	CBC	Police union defends Val-d'Or officers, warns stories of abuse are only allegations	Oct-15	https://www.cbc.ca/news/canada/montreal/union-defends-val-d-or-police-aborignal-women-abuse-1.3289641
95	Yves Boisvert (the Globe and Mail)	Val-d'Or abuse allegations a sign of justice system in crisis	Oct-15	https://www.theglobeandmail.com/opinion/val-dor-abuse-allegations-a-sign-of-justice-system-in-crisis/article27023050/
96	Cecilia Valdebenito, Pierre Mouterde (Journal mobi)	Tout un tissu social pour renforcer la parole des femmes	Nov-15	https://journalmobiles.com/societe/tout-un-tissu-social-pour-renforcer-la-parole-des-femmes-autochtones
97	Daphnee Hacker-Bousquet (Huffington Post)	Les cas d'abus à Val-d'Or n'ont rien de surprenant et se produisent ailleurs, selon l'ex-ministre des Affaires autochtones John Ciaccia	Oct-15	https://www.huffpost.com/archive/qc/entry/abus-autochtones-partout-selon-ex-ministre-john-ciaccia_n_8414210
98	Bryant Miles (L'Actualité)	Les leçons de Val-d'Or	Oct-15	https://lactualite.com/politique/les-lecons-de-val-dor/
99	David Prince (Journal de Montréal)	La police tente en vain d'éviter la diffusion d'un reportage	Nov-16	https://www.journaldequebec.com/2016/11/17/les-policiers-veulent-empecher-la-diffusion-dienquete-i
100	Canadian Press (Global)	No charges against SQ officers for alleged sexual abuse	Nov-16	https://globalnews.ca/news/3069522/charges-dropped-against-sq-officers-for-alleged-sexual-abuse/

101	Magdaline Boutros (le Soleil)	Il n'y a pas de crise à Val-d'Or, selon le dg de la SQ	Oct-15	https://www.lesoleil.com/89d6a88a93c3ae56580973ef3471f9c7
102	Dominique Cambron-Goulet avec Myriam Grenier (Journal Métro)	Radio-Canada rejette les accusations des policiers de Val-d'Or	Oct-16	https://journalmetro.com/actualites/national/1038485/radio-canada-rejette-les-accusations-des-policiers-de-val-dor/
103	Caroline Plante (Soleil)	Des femmes autochtones ont encore peur des policiers de la Sûreté du Québec	Oct-19	https://www.lesoleil.com/2019/10/17/des-femmes-autochtones-ont-encore-peur-des-policiers-de-la-surete-du-quebec-f0206cf1d1fe42c6b8c13f3ac2cc2a07?nor=true
104	Graeme Hamilton (National Post)	'Shocking' claims of police sex abuse on aboriginal women have tensions rising in Quebec city	Oct-15	https://nationalpost.com/news/canada/shocking-claims-of-police-sex-abuse-on-aboriginal-women-have-tensions-rising-in-quebec-city
105	David Prince (Journal de Montréal)	Du racisme systémique des policiers contre les Autochtones	Nov-16	https://www.journaldequebec.com/2016/11/16/allegations-de-femmes-autochtones-lenquete-etait-integre-selon-lobservatrice
106	Allan Woods (the Hamilton)	Quebec native women 'betrayed, humiliated' after just two officers charged in abuse allegations	Nov-16	https://www.thespec.com/news/canada/2016/11/18/quebec-native-women-betrayed-humiliated-after-just-two-officers-charged-in-abuse-allegations.html
107	Christopher Curtis (Montreal Gazette)	Indigenous leaders demand sit-down with Couillard over Val-d'Or crisis	Jul-20	https://montrealgazette.com/news/local-news/chiefs-to-ask-for-independent-inquiry-into-val-dor-abuse-allegations-sources
108	Graeme Hamilton (Montreal Gazette)	Tension rises in Val-d'Or over sex report	Oct-15	https://www.pressreader.com/canada/montreal-gazette/20151027/281487865209422
109	Jessica Cassell (Fightback)	Sexual Abuse of Aboriginal Women by Police: We Demand Justice!	Nov-15	https://www.marxist.ca/article/sexual-abuse-of-

				aboriginal-women-by-police-we-demand-justice
110	Melyssa Gagnon (le Quotidien)	Agressions : Val-d'Or n'est pas un cas isolé	Oct-15	https://www.lequotidien.com/2015/10/24/agressions-val-dor-nest-pas-un-cas-isole-b963e63a23f59edc5e81675a95542904
111	The journal	Vaudreuil-Dorion SQ Captain transferred to Val d'Or	Oct-15	https://www.yourlocaljournal.ca/single-post/2015/10/29/vaudreuild orion-sq-captain-transferred-to-val-d-or
112	Presse Canadienne (Nouvelliste)	Agressions sexuelles alléguées à Val-d'Or : pas d'accusation contre les policiers	Nov-16	https://www.lenouvelliste.ca/2016/11/16/agressions-sexuelles-alleguees-a-val-dor-pas-daccusationcontre-les-policiers-ff52adc946e2e7e7e69c3d7188bbddd4
113	Presse Canadienne (Le Devoir)	Agressions sexuelles alléguées à Val-d'Or : pas d'accusation contre les policiers	Nov-16	https://www.ledevoir.com/societe/484767/agressions-sexuelles-alleguees-a-val-d-or-pas-d-accusation-contre-les-policiers
114	Brigitte Noel (Vice)	Damning Claims of Abuse Against Aboriginal People Take Center Stage in Quebec	Oct-15	https://www.vice.com/en/article/wjax9x/damning-claims-of-abuse-against-aboriginal-people-take-center-stage-in-quebec
115	Dominic Chamberland (La Sentinelle)	Fernand Trahan: « Val-d'Or ne méritait pas de se faire cracher dessus »	Oct-15	https://www.lasentinelle.ca/fernand-trahan-val-dor-ne-meritait-pas-de-se-faire-cracher-dessus/
116	Jonathan Montpetit (CBC)	What's next for the Indigenous women of Val-d'Or?	Nov-16	https://www.cbc.ca/news/canada/montreal/val-dor-indigenous-women-1.3858658
117	La Presse Canadienne (La Tribune)	Femmes autochtones : huit policiers suspendus et une enquête du SPVM	Oct-15	https://www.latribune.ca/2015/10/23/femmes-autochtones-huit-policiers-suspendus-et-une-enquete-du-spvm-ecc8e9cfcee1f275b4cb227a0e422e34

118	La Presse Canadienne (Voix de l'Est)	L'ex-policier Alain Juneau, accusé d'agressions sexuelles, est mort	Jan-17	https://www.lavoixdelest.ca/2017/01/05/lex-policier-alain-juneau-accuse-dagressions-sexuelles-est-mort-acb803d6c47f71f1b86a70dfddab2101
119	Brigitte Guay (BLVD 102.1)	Agressions à l'égard d'autochtones 2 des 37 dossiers mènes à des accusations criminelles	Nov-16	https://www.blvd.fm/actualites/721-agressions-a-l-egard-d-autochtones-2-des-37-dossiers-menent-a-des-accusations-criminelles#.YiYg4y_b1QI
120	David Prince (Journal de Québec)	Un policier suspendu se vide le cœur	Oct-15	https://www.pressreader.com/canada/le-journal-de-quebec/20151025/281496455140632
121	Elishink (actupolice)	Ouverture d'un poste mixte à Val-d'Or les raisons derrière ce choix	Jan-17	https://actupolicing.com/2017/01/25/ouverture-dun-poste-de-police-mixte-a-val-dor-les-raisons-derrieres-ce-choix/
122	Jewel Beaujoli (generation nouvelles.net)	Demande d'action collective des Autochtones contre la SQ de Val-d'Or	Dec-21	https://generationsnouvelles.net/demande-daction-collective-des-autochtones-contre-la-sq-de-val-dor/
123	CTV Montreal	Fallout from Val d'Or accusations could go far beyond Quebec town	Oct-15	https://montreal.ctvnews.ca/fallout-from-val-d-or-accusations-could-go-far-beyond-quebec-town-1.2636990
124	Jessica Nadeau & Marie-Michèle Sioui (le Devoir)	Dénonciations autochtones : 213 plaintes, 17 policiers accusés	Dec-20	https://www.ledevoir.com/societe/591020/denonciations-autochtones-215-plaintes-17-policiers-accuses
125	Fanny Levesque (le Nord côtier)	Autochtones : Québec donne le feu vert à une enquête publique	Dec-16	https://lenord-cotier.com/2016/12/21/autochtones-quebec-donne-le-feu-vert-a-une-enquete-publique/

126	Pierre St-Arnaud (le Droit)	Val-d'Or : les leaders autochtones réclament une enquête judiciaire	Nov-16	https://www.ledroit.com/2016/11/22/val-dor-les-leaders-autochtones-reclament-une-enquete-judiciaire-260e17d0d95c44cb5d667a31b0b9b1ce?nor=true
127	Dominique Cambron-Goulet (Journal Métro)	L'enquête sur les policiers de Val-d'Or a été bien menée, juge l'observatrice externe	Nov-16	https://journalmetro.com/actualites/national/1051774/lenquete-sur-les-policiers-de-val-dor-a-ete-bien-menee-juge-lobservatrice-externe/
128	HuffPost (Radio-Canada)	Femmes autochtones : pas d'enquête fédérale approfondie sur Val-d'Or	Dec-16	https://www.huffpost.com/archive/qc/entry/femmes-autochtones-pas-enquete-approfondie-sur-val-dor_n_13658950
129	David Prince (Journal de montréal)	Une femme autochtone qui a dénoncé un policier affirme avoir toujours peur	Jun-16	https://www.journaldequebec.com/2016/06/07/une-femme-autochtone-qui-a-denonce-un-policier-affirme-avoir-toujours-peur
130	Fanny Levesque (Le Nord Cotier)	Val-D'Or : Deux ex-policiers de Schefferville accusés	Nov-16	https://lenord-cotier.com/2016/11/18/val-dor-deux-ex-policiers-de-schefferville-accuses/
131	Morgan Lowrie (Vancouver Sun)	Quebec police watchdog lacks transparency when investigating officers: report	Oct-20	https://www.vancouverisawesome.com/national-news/quebec-police-watchdog-lacks-transparency-when-investigating-officers-report-2799051
132	CNW Telbec (le Lézard)	Commission d'enquête et situation à Val-D'Or - « Le traitement des autochtones dans notre système de justice doit être examiné » - Mathieu Lemay	Oct-15	https://www.lelezard.com/communique-8493422.html
133	Marc-André Bonneau (Impact Campus)	Femmes autochtones : se mobiliser pour éclairer les abus	Nov-15	http://impactcampus.ca/international/se-mobiliser-pour-eclairer-les-abus-envers-les-femmes-autochtones/
134	Ikram Mecheri (le Délit)	Personne n'aime les femmes autochtones	Nov-16	https://www.delitfrancais.com/2016/11/17/personne-

				naime-les-femmes-autochtones/
135	Brennan Neil (CBC News)	Betrayed, humiliated' Val-d'Or women speak out after no charges against police accused of abuse	Nov-16	https://www.cbc.ca/news/canada/montreal/val-d-or-women-speak-out-abuse-1.3856422
136	Ruby Irene Pratka (Ricochet)	Val-d'Or : et maintenant?	Dec-16	https://ricochet.media/fr/1590/val-dor-et-maintenant
137	Christopher Curtis (Montreal Gazette)	37 complaints of SQ abuse in Val-d'Or lead to zero criminal charges	Nov-16	https://montrealgazette.com/news/quebec/pq-wants-independent-probe-into-val-dor-sq-sex-abuse-allegations
138	Canadian Press (Battlefords Now)	Native women's group wants public inquiry on police assault claims in Quebec	Nov-16	https://battlefordsnow.com/2016/11/17/native-womens-group-wants-public-inquiry-on-police-assault-claims-in-quebec/
139	Jessee B Stanifort (the Nation)	Val-d'Or allegations Throw Quebec Into a Crisis	Nov-15	http://www.nationnewsarchives.ca/article/tensions-boil-over-val-dor-allegations-throw-quebec-into-a-crisis/
140	Energie Iheart radio	Allégations d'abus des policiers de la Sureté du Québec : des détails vendredi	Nov-16	https://www.iheartradio.ca/energie/energie-rouyn/nouvelles/allegations-d-abus-des-policiers-de-la-surete-du-quebec-des-details-vendredi-1.2185005
141	Yahoo (CBC)	SQ knew about misconduct allegations in Val-d'Or 2 years before Enquête report, retired officer testifies	Aug-18	https://ca.movies.yahoo.com/sq-knew-misconduct-allegations-val-232837495.html
142	CTV News	Crown doesn't think it can prove cases of sexual assault in Val d'Or	Nov-16	https://montreal.ctvnews.ca/crown-doesn-t-think-it-can-prove-cases-of-sexual-assault-in-val-d-or-1.3167317
143	Francis Labbé (Radio-Canada)	Femmes autochtones : comment les choses ont changé à Val-d'Or	Dec-15	https://ici.radio-canada.ca/nouvelle/755382/val-dor-reagit-a-la-crise
144	Francis Labbé (Radio-Canada)	Crise à Val-d'Or : trois mois plus tard, des Autochtones se disent encouragés par les changements	Jan-16	https://ici.radio-canada.ca/nouvelle/758120/val-dor-crise-femmes-autochtones-retour-2015

145	Francis Labbé (Radio-Canada)	Val-d'Or : deux mois après « Enquête »	Dec-15	https://www.youtube.com/watch?v=jwZAClk91I8
146	Marie-Laure Josselin (Radio-Canada)	Demande d'action collective d'Autochtones contre la SQ de Val-d'Or	Dec-21	https://ici.radio-canada.ca/espaces-autochtones/1847409/action-collective-gouvernement-quebec-police-amitie-autochtone
147	TVA nouvelles	Les policiers de la SQ ne porteront plus le bracelet 144	Oct-18	https://www.tvanouvelles.ca/2018/10/20/les-policiers-de-la-sq-ne-porteront-plus-le-bracelet-144-1
148	Greg McArthur (The Globe and Mail)	Val-d'Or abuse allegations against Quebec officers spark protest	Oct-15	https://www.theglobeandmail.com/news/national/val-dor-abuse-allegations-against-quebec-officers-spark-protest/article26969212/
149	Premières nations	Réaction du Centre d'amitié autochtone de Val d'Or« C'est assez! », le cri du coeur de femmes autochtones qui brisent le silence	Oct-15	https://premieresnations.ca/articles/reaction-du-centre-damitie-autochtone-de-val-dor-cest-assez-le-cri-du-coeur-de-femmes-autochtones-qui-brisent-le-silence
150	Radio-Canada	Briser le silence : allégations d'abus policiers envers des femmes autochtones au Québec	Oct-15	https://curio.ca/fr/collection/briser-le-silence-allegations-dabus-policiers-envers-des-femmes-autochtones-au-quebec-2356/
151	Brennan Neill (CBC News)	No charges against Quebec provincial police in Val-d'Or abuse scandal	Nov-16	https://www.cbc.ca/news/canada/montreal/police-abuse-charges-val-d-or-1.3852390
152	Le Droit	Val-d'Or : pas d'accusation contre les policiers, confirme le DPCP	Nov-16	https://www.ledroit.com/2016/11/19/val-dor-pas-daccusation-contre-les-policiers-confirme-le-dpcp-3ec424fc45655d8e69d95dcbad7bb6d0
153	L'Actualité	Couillard remarque « avec intérêt » le projet de poste de police mixte à Val-d'Or	Nov-16	https://lactualite.com/actualites/couillard-remarque-avec-interet-le-projet-de-poste-de-police-mixte-a-val-dor/

154	The Monitor	The media hasn't even begun to reckon with sexual violence and neither have we	Jul-21	https://monitormag.ca/articles/the-media-hasnt-even-begun-to-reckon-with-sexual-violence-and-neither-have-we
155	Samuel Deschênes (Énergie 102.7)	Le projet du poste de police mixte de Val-d'Or se poursuit	May-18	https://www.iheartradio.ca/energie/energie-val-d-or/nouvelles/le-projet-du-poste-de-police-mixte-de-val-d-or-se-poursuit-1.3811667
156	Nouveaux cahiers du socialisme	Entrevue avec Édith Cloutier, directrice du Centre d'amitié autochtone de Val-d'Or	Mar-19	https://www.cahiersdusocialisme.org/entrevue-avec-edith-cloutier-directrice-du-centre-damitie-autochtone-de-val-dor/
157	Huffpost	Femmes autochtones : comment les choses ont changé à Val-d'Or (VIDÉO)	Dec-15	https://www.huffpost.com/archive/qc/entry/femmes-autochtones-vie-val-dor_n_8813462
158	Christopher Curtis (Ricochet)	Une crise de l'itinérance frappe Val-d'Or	Dec-20	https://ricochet.media/fr/3415/une-crise-de-litinerance-frappe-val-dor
159	Thomas Deshaies (Journal Métro)	Crise à Val-d'Or : les dénonciatrices ont peur pour leur sécurité	Nov-16	https://journalmetro.com/actualites/national/1052405/crise-a-val-dor-les-denonciatrices-ont-peur-pour-leur-securite/
160	Ici tou.tv	Saison 13 |Le vaisseau dort / La crise de Val d'Or	Sep-19	https://ici.tou.tv/enquete/S13E01
161	L'Actualité	Relations avec les autochtones : la Déclaration de Val-d'Or a cinq ans	Dec-20	https://lactualite.com/actualites/relations-avec-les-autochtones-la-declaration-de-val-dor-a-cinq-ans/
162	Radio-Canada	Enquête | Abus de la SQ : des femmes brisent le silence	Nov-15	https://www.youtube.com/watch?v=NqtxZf9rFCU
163	Jocelyne Richer (la tribune)	Rapport Viens : les autochtones victimes de discrimination systémique	Sep-19	https://www.latribune.ca/2019/09/30/rapport-viens-les-autochtones-victimes-de-discrimination-systemique-cfa522881c302df0ec3f08402c3f2354

164	L'Actualité	Legault demande pardon : Le Québec présente ses excuses aux Autochtones	Oct-19	https://lactualite.com/actualites/legault-demande-pardon-le-quebec-presente-ses-excuses-aux-autochtones/