The Viens Inquiry: At the Intersection of State Control, Police Sexual Violence and Accountability

Sandrine Ampleman-Tremblay†

This article examines the limitations of the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec in addressing police-perpetrated sexual violence. The analysis argues that, as a state-controlled accountability mechanism, the Viens Inquiry was structurally ill-suited to confront and remedy violence committed by agents of a settler colonial state. The article demonstrates that the inquiry constrained non-state participation by partially excluding an Indigenous women's rights organization due to the high costs of legal representation and by privileging legal formalism over community-based knowledge. The analysis further critiques the breadth of the inquiry's mandate, the Final Report's failure to meaningfully address police sexual violence, and the absence of targeted Calls to Action directed at police accountability. Taken together, these features reveal how the state's role in designing, implementing and following up on the inquiry enabled the state to retain control over its own accountability. Police sexual violence was therefore positioned within a paradoxical framework in which the perpetrator shaped the institutional response to the harm.

† A previous version of this article formed part of the author's DCL thesis at the Faculty of Law, McGill University. The author thanks her doctoral advisory committee, Marie Manikis, Angela Campbell and Victor Muñiz-Fraticelli, for their guidance and support. She also acknowledges the Social Sciences and Humanities Research Council for its financial support. The author is grateful to Susannah Morrison for editorial assistance, to Kent Roach for encouragement to publish this work and to the anonymous reviewers for their thoughtful and constructive feedback. The author also thanks the editors of the *Canadian Journal of Human Rights* for their editorial work and kindness. The research was last updated in July 2024.

Le présent article examine les limites de la Commission d'enquête sur les relations entre les Autochtones et certains services publics au Québec dans le traitement des violences sexuelles commises par la police. En effet, en tant que mécanisme contrôlé par l'État même, la commission Viens aurait été intrinsèquement mal conçue pour s'attaquer de front et remédier aux violences commises par les agents d'un État colonialiste. L'article montre comment la participation des acteurs non étatiques a été limitée au sein de la commission, comme l'illustre l'exclusion partielle d'un groupe de défense des droits des femmes autochtones en raison des coûts élevés liés à la représentation juridique, et comment le formalisme juridique y a été privilégié au détriment des connaissances communautaires. Il critique également le mandat trop vaste de la commission, l'incapacité du rapport final à traiter de manière significative la violence sexuelle policière et l'absence d'appels à l'action ciblés en matière de responsabilité de la police. Enfin, on soutient que le rôle de l'État dans la conception, la mise en œuvre et le suivi de la commission Viens aurait permis à celui-ci de garder le contrôle sur sa propre responsabilité, ce qui a donné lieu, quant à la violence sexuelle policière, à une situation paradoxale où l'auteur des actes est à la fois juge et partie dans le mécanisme de réponse à cette violence.

I. Introduction

This article examines the challenges and limitations of public commissions of inquiry into questions of state systemic violence. While public inquiries can help free voices and are sometimes requested by the population, this article investigates state accountability as opposed to justice for individuals affected by the violence. Focusing on the results of a recent Québec inquiry (2016-2019) on discrimination against Indigenous peoples in certain public services ("Viens Inquiry" or "inquiry"),[1] this article argues that governments often use commissions of inquiry without sufficiently addressing their limitations. This article pays specific attention to how the Viens Inquiry dealt with police sexual violence against Indigenous peoples in order to unpack the contention that this mechanism was limited in its capacity to secure state accountability. The Viens Inquiry's constraints stem from state control over the terms of reference, lack of funding for legal representation, the formality of the inquiry's processes, and the lack of authority regarding the future of its calls to action. In addition to these drawbacks, the Viens Inquiry interpreted its mandate in a way that failed to recognize police sexual violence and its connection to settler colonialism. In other words, when it comes to police sexual violence, the inquiry[2] did not emerge as an investigator of transformative change since it did not articulate the roots and impact of police sexual violence and failed to propose Calls to Action targeting sexual violence by the state.

This article frames police sexual violence as a form of settler colonial violence, which adds a layer of complexity when the state proposes to use a

---

1 The full title of the inquiry is called the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress. See Quebec, Conseil exécutif, *Order Paper*, 1095-2016, No 149 (21 December 2016) at 24-26 [*Décret 1095-2016, 21 décembre 2016*].

2 Of note, throughout the following pages, the terms "commission of inquiry", "public inquiry", and "inquiry" are used interchangeably. This linguistic choice is inspired by Stephen Goudge & Heather MacIvor, *Commissions of Inquiry* (Toronto: LexisNexis, 2019) at 3. Grace Bryson argues commissions of inquiry will not serve deliberative democracy if there is no meaningful public participation: "The Public in Action: The Potential for Public Inquiries to Realize Deliberative Democracy A Case Study of the Mass Casualty Commission" (2024) 33: 1 Dal J Leg Stud 128. While the author acknowledges that this is true — in the context of colonial harm, commissions of inquiry can serve as an additional tool of oppression if they fail to recognize, impose what to heal, and do not offer proper remedies. This article will develop this idea exclusively in the context of the Viens Inquiry.

state-controlled mechanism to address such abuse.[3] This argument builds on feminist and Indigenous critical scholarship and is further unpacked in Section III. The connection between settler colonialism and the Viens Inquiry does not only lie with the nature of the violence investigated. Indeed, this article relies on literature that casts public inquiries as manifestations of settler colonialism, since they allow the state to govern the production of knowledge and language, parameters of deliberation, definitions of unlawfulness, and remedies.[4] The research also leans on prior studies to indicate that public inquiries merely offer a snapshot into the events or language of a crisis, and thus fail to reveal the continuity of settler colonialism.[5]

Since this article conducts an in-depth analysis of one commission of inquiry, it is important to provide some contextual background about the

---

[3] This article operates with Sai Englert's definition of settler colonialism, which represents one possible depiction of this framework: Sai Englert, *Settler Colonialism*, (London: Pluto Press, 2022) at 5–6. Englert explains that the transfer of settlers to Indigenous lands marks settler colonialism. As expressed at pages 5–6: "Settlers settle. They (aim to) make colonized lands their permanent home and in the process enter into continuous and sustained conflict with Indigenous populations, whom they (attempt to) dispossess, exploit and/or eliminate." These continuous conflicts may take various forms and are not limited to the ones examined in this article. Other authors propose similar accounts by focusing on the territorial aspect of settler colonialism which seeks to dispossess and eliminate Indigenous peoples from settler spaces: see e.g. Robyn Bourgeois, "Race, Space, and Prostitution: The Making of Settler Colonial Canada" (2018) 30:3 CJWL 371 at 380–81. Descriptions of settler colonialism as a theoretical framework are outside the scope of this text. Of note, this article relies on literature asserting that the police are agents of settler colonialism and participate in some of these conflicts, including through over policing and underprotection. See e.g. Jaskiran K Dhillon, "Indigenous girls and the violence of settler colonial policing" (2015) 4:2 Decolonization: Indigeneity, Education & Society 1 at 21–22; Human Rights Watch, "Those who take us away: Abusive policing and failures in protection of Indigenous women and girls in Northern British Columbia, Canada", (13 February 2013), online (report): <hrw.org> [perma.cc/4C9F-BP3M][*Those Who Take Us Away*]. The connections between the police, sexual violence and settler colonialism are unpacked in Section III.

[4] Carmela Murdocca, "'A Matter of Time and a Matter of Place': Colonial Inquiries and the Politics of Testimony" (2017) 13:1 L Culture & Humanities 123. See also Trycia Bazinet on the Viens Inquiry as a manifestation of settler colonialism: "Tracing understanding of sovereignty and settler-colonial violence in the Quebec's Viens Commission (2016–2019)" (2022) Settler Colonial Studies 174. On her end, Sherene Razack uses the expression "colonial storyline" to indicate how the settler colonial state can shape the narrative around public inquiries. This storyline often fails to unpack state structural violence: James Wilt, "How inquests into police violence entrench the oppressive institutions of settler colonial society: An interview with feminist critical race scholar Sherene H Razack" *Canadian Dimension* (4 February 2021), online: <canadiandimension.com> [perma.cc/UX4L-DPYL]; Sherene R Razack, *Dying From Improvement: Inquest and Inquiries into Indigenous Deaths in Custody* (Toronto: University of Toronto Press, 2015) at 6–7 [Razack, *Dying From Improvement*].

[5] Murdocca, *supra* note 4 at 126–142; Bazinet, *supra* note 4 at 177–79, 182; Sylvia Rich, "Police Violence as Organizational Crime" (2021) CJLS 135 at 137–138. This is reflected by the timeframe of the Viens inquiry (i.e., 15 years), see *Décret 1095-2016, 21 décembre 2016*, (2017) 149:2 GOQ II at 24.

Viens Inquiry, which submitted its Final Report in September 2019.[6] In 2016, the Government of Québec instructed the inquiry to investigate systemic racism against Indigenous peoples within some public services and entrusted retired judge Jacques Viens to preside over this ambitious fact-finding, analytical and policy-oriented Inquiry.[7]

The implementation of the Viens Inquiry was inherently linked with the Val-d'Or crisis. This "crisis" consisted of a series of allegations of police misconduct, including several allegations of sexual violence against Indigenous women.[8] The story broke on Radio-Canada in October 2015, where journalists broadcasted interviews with Indigenous women of Val-d'Or who claimed they had experienced different forms of abuse at the hands of the police: ranging from assault and "starlight tours" to sexual violence.[9] The October 2015 news story was met with shock and demands for state accountability.[10] Radio-Canada produced a follow-up news story in 2016 that revealed police misconduct against Indigenous women across the province of Québec, and not only in Val-d'Or — hereby depicting a broader picture rather than an isolated crisis narrative.[11] While this context provides background for the rationale behind the commission, it should be noted that the Viens Inquiry was not an automatic initiative of the state. Indeed, the history of the Viens Inquiry is marked by the advocacy of civil society and by the resistance of state representatives. The history of the inquiry

---

6 Public Inquiry Commission on the Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation and Progress, *Final Report*, vol 1 (Québec Government, 2019) at 28 [*Final Report*]. The *Act respecting public inquiry commissions*, CQLR c C-37, s 1, authorizes the creation of commissions of inquiry for investigations into "any matter connected with the good government of Québec, the conduct of any part of the public business, the administration of justice or any matter of importance relating to public health, or to the welfare of the population."

7 *Décret 1095-2016, 21 décembre 2016*, *supra* note 1. Despite the relatively policy-oriented order that created the commission of inquiry, this text argues that the Viens Inquiry was hybrid and thus operated both under the fact-finding and policy frameworks. *Cf* Goudge & MacIvor, *supra* note 2 at 33–35. The title of the Inquiry also foresees 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 inquiry.

8 See e.g. *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'ailleur*s, Phase 1, by Fannie Lafontaine (2016).

9 See e.g. Radio-Canada, "Abus de la SQ : les femmes brisent le silence" (22 October 2015), online (video): *Enquête* <ici.radio-canada.ca> [perma.cc/HC24-M2ML] [*Abus de la SQ : les femmes brisent le silence*].

10 *Ibid*; *Cf* Bazinet, *supra* note 4 at 178.

11 Radio-Canada, "Le silence est brisé" (31 March 2016), online (video): *Enquête* <ici.radio-canada.ca> [perma.cc/A6H6-W3HY].

(including the influence of civil society and resistance from the state) is discussed in Section II.

Although the scope of the inquiry was expanded to cover discrimination in public services beyond the police, police sexual violence (i.e., the phenomenon at the origin of the inquiry) remains vital in assessing this mechanism's success in securing state accountability and understanding the claims brought forward in this article.[12] The mandate of the Viens Inquiry was defined 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.[13]

The ambit of the mandate was daring.[14] However, its ultimate ambition overshadowed the issue of police sexual violence. By focusing on public services and discrimination, the inquiry denied accountability for the specific form of violence that sparked the inquiry's creation. The term "sexual" was mentioned 76 times throughout the voluminous 488-page Final Report.[15] Three of these times were related to the inquiry's findings on Val-d'Or and sexual abuse by police, as opposed to eleven pertaining to Call to Action 86 and two in the title of Call to Action 87.[16] These Calls to Action, both discussed in Section IV, did not target sexual violence by police in Val-d'Or nor police sexual violence more generally.[17] This is taken as a demonstration that commissions of inquiry may be ill-equipped and unable

---

12 *Décret 1095-2016, 21 décembre 2016*, *supra* note 1.

13 English translation of *Décret 1095-2016, 21 décembre 2016*, *supra* note 4, cited in *Living Together, Acting Together*, by Secrétariat aux affaires autochtones (Québec: Publications du Québec, 2018) at 22.

14 *Cf* Inwood & Johns, "Commissions of inquiry and policy change: Comparative analysis and future research frontiers" (2016) 59:3 Can Public Administration 381 at 398 (who argue that sole commissioner commissions that have had direct and transformative impacts on policy change in Canada had narrow mandates).

15 *Final Report*, *supra* note 6.

16 This count excludes mentions in footnotes. The title of one of the sources cited contained "sexual assault" twice: see *Ibid* at 379.

17 *Ibid* at 379–80: "Call 86. Initiate tripartite negotiations with the federal government and Indigenous authorities to sustainably fund projects created by Indigenous nations, communities and organizations that seek to identify, reduce, prevent and eliminate sexual assault" And "Call 87. Raise awareness among the populations of indigenous communities about the nature of sexual assault and promote healthy and respectful sexuality education."

to contribute to transformative change, particularly in cases where state violence is tied to settler colonialism, such as police sexual violence.

The concept of transformative change, referred to in the previous paragraph, is central to this article. "Transformative change" is sometimes used as an operative concept to examine the effectiveness of public inquiries, albeit it is not often defined.[18] This article borrows Danardo S. Jones' definition of "transformative change".[19] While Jones writes outside the context of public inquiries, the definition provided by this author is relevant in other areas. In a paper on the sentencing of Black offenders, Jones argues that recognition of anti-Black racism without structural changes will not allow for the best outcomes.[20] He adds that continued reliance on principles that contribute to racism is counterproductive and contradictory to the recognition of anti-Black racism.[21] This article uses the concept of transformative change similarly: (1) recognition without structural change is not transformative; and (2) transformative change may require stepping away from traditional legal interpretations, or in the case of public inquiries, traditional legal mechanisms.[22] In the context of the Viens Inquiry, "transformative change" thus refers to change within the system and practices that have led to sexual violence by police and its impunity. In other words, while inquiries can recognize a problem, they are "at best hollow" if no structural change results.[23]

The article proceeds in three parts. Section II delves into the creation of the inquiry and its structural limitations. It shows that the inquiry was an example of public participation, but state entities had an easier time conveying their message.[24] This ultimately limited non-state discourses before the inquiry; notably, through the costs associated with legal representation — as well as the reliance on legal and formal processes. This section also addresses the role of public demands in requesting public

---

[18] See e.g. Nathalie Des Rosiers, "Public Inquiries and Law Reform Institutions: "Truth Finding" and "Truth Producing" (2016) 38:2 CJWL 374 at 381–82, 388–90.

[19] Donardo S Jones, "Morris: A Modest Step Forward and a Call to Action", (2022) 75 CR (7th) 29 (Westlaw Canada).

[20] *Ibid*.

[21] *Ibid* at 3.

[22] *Ibid* at 1–6.

[23] *Ibid* at 2.

[24] See e.g. Bazinet, *supra* note 4 at 181–85; Genevieve Fuji Johnson, "Revelatory Protest, Deliberative Exclusion, and the BC Missing Women Commission of Inquiry: Bridging the Micro/Macro Divide" in Leah RE Levac & Sarah Marie Wiebe, "Creating Spaces of Engagement: Policy Justice and the Practical Craft of Deliberative Democracy" (Toronto: University of Toronto Press, 2020) at 32–34.

inquiries. Section III contends that the broad scope of the mandate was counterproductive. The terms of reference mainly set aside police sexual violence against Indigenous women, thus moving the inquiry's scrutiny away from the initial abuse of power reported in Val-d'Or. This article argues that this decision may have been a way to deny a reality essential to enable accountability for specific manifestations of state violence: in this case, sexual violence by police as a form of colonial harm. Section IV reviews Calls to Action relevant to police misconduct and sexual violence, and denounces the lack of meaningful recommendations applicable to the Val-d'Or context.[25]

While this research does not seek to impose choices regarding the future of commissions of inquiry without consulting with Indigenous peoples, it points to serious flaws in the operations of one of the latest commissions in Quebec. Indeed, while communities may desire the implementation of public inquiries, the latter can exclude the voice of part of the public, succumb to political purposes (particularly if neutralized by state control), and fail to provide recommendations that will be acted on. Consequently, they can reproduce harm and exclusion.[26]

II. A Welcomed Truth-Gathering Forum?

This section provides details on the inception of the Viens Inquiry by drawing on two conflicting standpoints: (1) the public interest in a commission of inquiry and (2) the skepticism concerning the ability of that commission to secure state accountability for the Val-d'Or crisis or for discrimination in public services more generally. This section outlines the timeline and unique pressures leading to the inquiry. In doing so, the article contributes to documenting the history of an understudied commission of inquiry. The section then examines criticisms related to implementing an

---

[25] This article does not expand on the argument that commissions of inquiry are unfair to the people investigated, a concern raised by the literature. While this text recognizes this might form part of the public sentiment toward inquiries, the current analysis emphasizes other shortcomings. See e.g. John H Gomery, "The Pros and Cons of Commissions of Inquiry" (2005) 51:4 McGill LJ 783 at 788–89; Kent Roach, "Canadian Public Inquiries and Accountability" in *Accountability for Criminal Justice: Selected Essays*, Philip Stenning, ed (Toronto: University of Toronto Press, 1995) at 269 [Roach, "Canadian Public Inquiries"].

[26] See Fuji Johnson, *supra* note 2 at 36–38; Alana Cattapan et al, "Power, Privilege and Policy Making: Reflections on Changing Public Engagement from the Ground Up" in Leah RE Levac & Sarah Marie Wiebe, in *Creating Spaces of Engagement: Policy Justice and the Practical Craft of Deliberative Democracy* (Toronto: University of Toronto Press, 2020) at 232.

Inquiry in Val-d'Or, namely the use of inquiries to neutralize controversy, the colonial framework and the existence of other inquiries on relations between the state and Indigenous peoples. Together, these views demonstrate some difficulties that commissions of inquiry can experience whenever the state dictates their mandates and norms of participation, even when the public initially pushed for an inquiry.

When allegations of police misconduct surfaced publicly in October 2015, requests for an independent commission of inquiry quickly multiplied.[27] The enthusiasm for an inquiry may be related to the qualities generally attributed to such commissions, namely their aptitude to uncover the truth in an independent and relatively open forum.[28] A commission of inquiry also emerged as a means to investigate the Val-d'Or events outside the confines of criminal investigations, which yielded no charge despite having collected almost 40 allegations of police violence in the Val-d'Or region.[29] While public demands for an inquiry were numerous, the government was the only actor empowered to create one on behalf of the state.[30]

In November 2015, Indigenous leaders from the Assembly of First Nations of Quebec and Labrador met with the then-Premier Minister of Québec, Philippe Couillard.[31] The meeting culminated in funding social initiatives and more police presence.[32] Still, it resulted in no commitment towards a commission of inquiry.[33] The provincial government justified its choice on the basis that the federal government had already set up a public inquiry on related matters in 2015: the National Inquiry into Missing and

---

27 See e.g. *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 52 (Michel); *Final Report*, *supra* note 6 at 14.

28 See e.g. Stanton, *supra* note 7 at 12–16.

29 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).

30 Stanton, *supra* note 7 at 14–16; Gomery, *supra* note 25 at 786; Roach, "Canadian Public Inquiries", *supra* note 25 at 276; Patrick Macklem & Robert Centa "Securing Accountability through Commissions of Inquiry: A Role for the Law Commission of Canada" (2001) 39:1 Osgoode Hall LJ 117 at 153; Raanan Sulitzeanu-Kenan, "Reflection in the shadow of blame: When do politicians appoint commissions of inquiry?" (2010) 40(3) Brit J Pol Sci at 613.

31 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", *Cision* (4 November 2015), online: <newswire.ca> [perma.cc/KK95-UTQU].

32 *Ibid*.

33 *Ibid*; *Final Report*, *supra* note 6 at 14.

Murdered Indigenous Women and Girls ("MMIWG Inquiry").[34] Despite the assertion of then-federal Minister of Indigenous and Northern Affairs, Carolyn Bennett, stating that MMIWG Inquiry would not delve into specific cases like the Val-d'Or allegations, Québec did not change its stance.[35] In December 2015, the Val-d'Or City Council demanded that the province create an independent commission of inquiry into the Val-d'Or crisis.[36] It adopted a unanimous resolution to that effect, notwithstanding the federal commission of inquiry.[37] Since then, local politician and Member of Parliament for the region, Pierre Dufour, publicly criticized the Viens Inquiry, further demonstrating the absence of unanimity in responses to the inquiry within the political community.[38]

In November 2016, a report on the criminal investigations regarding the Val-d'Or events concluded that "[t]he emphasis of a traditional criminal investigation on individual cases leaves little room for collective and systemic considerations. This inherent limitation of criminal investigations demonstrates the need to use other measures to shed light on the issues underlying this wave of denunciations."[39] This statement reinforced the need for an inquiry, as it clearly showed that previous accountability mechanisms had failed to identify and redress systemic causes of police violence against Indigenous peoples. The decision not to lay charges against

---

34 See e.g. *Final Report*, *supra* note 6 at 14; Sarah-Maude Lefebvre, "Québec doit faire sa propre enquête, dit la ministre fédérale", *Journal de Montréal* (10 November 2015), online: <journaldemontreal.com> [perma.cc/ET74-RKPE].

35 *Final Report*, *supra* note 6 at 14. MMIWG Inquiry published a separate supplementary report on Quebec in 2019, which named the Val-d'Or crisis as a source of inspiration for at least one Indigenous woman who decided to report a sexual assault by police: *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 66 (other cases of police sexual violence discussed at 97, 100 and 101).

36 *Ibid* at 15; *Témoignage devant l'honorable Jacques Viens*, 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 34; 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: <ici.radio-canada.ca> [perma.cc/WGF7-L8BU]. 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" (15 December 2015), online (pdf): <ville.valdor.qc.ca> [perma.cc/J329-L4E3].

37 Radio-Canada, *supra* note 36; Le Grand Conseil de la Nation Crie et al, *supra* note 36.

38 Gabriel Poirier, "Appelé à démissionner, Pierre Dufour présente ses excuses" (22 May 2013), online: *Radio-Canada* <ici.radio-canada.ca> [perma.cc/CHT8-T4BC].

39 Lafontaine (2016), *supra* note 8 at 15.

police officers in Val-d'Or, also announced in November 2016, was a novel occasion to ask for a judicial commission of inquiry.[40]

In December 2016, the government met with Indigenous leaders and Édith Cloutier, the director of the Val-d'Or Native Friendship Centre. On this occasion, Indigenous actors demanded a commission of inquiry once again.[41] The same month, the government received a letter from Michèle Moreau, director of the MMIWG Inquiry at the time, reiterating that MMIWG Inquiry *would not* investigate specific events, including the Val-d'Or crisis.[42] Following this communication, the Québec government passed an administrative order creating the Viens Inquiry.[43]

The provincial government instigated the Viens Inquiry after more than a year of public pressure.[44] The fact that the inquiry was rooted in unceasing requests from advocates might, on the surface, contradict the argument that commissions of inquiry are problematic venues to address state accountability.[45] In other words, if the population requests such commissions, how can one recommend abandoning their use? This seems like an *a priori* undemocratic choice. This is an opportunity to remind that this article focuses on public inquiries' capacity to secure *state* accountability. This article suggests that demands for this specific mechanism might simply originate in the absence of alternatives. In an imperfect world, commissions of inquiry might be the best option, but that does not mean that their capacity to secure state accountability should not be questioned. The following paragraphs address the limitations of the Viens Inquiry to demonstrate that public inquiries may remain ineffective accountability mechanisms to deal with state systemic violence without

---

40 *Final Report*, *supra* note 6 at 17; La Presse canadienne, "Val-d'Or: les leaders autochtones réclament une enquête judiciaire", *La Presse* (21 November 2016), online: <lapresse.ca> [perma.cc/QPD6-VS3B]; Stanton, *supra* note 7 at 187.

41 *Final Report*, *supra* note 6 at 18.

42 *Ibid*; Mark, *supra* note 36 at 41.

43 *Final Report*, *supra* note 6 at 18; *Décret 1095-2016, 21 décembre 2016*, *supra* note 1.

44 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 (pdf): <faq-qnw.org> [perma.cc/J4KC-9GY7]; Québec Native Women Inc, "Ka Utshinikanat Utinniunnuau: Celles dont on a pris la vie" (2018) at 21; *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 89–90; Lafontaine (2016), *supra* note 8 at 67.

45 *Cf* Rosemary L Nagy, "The Scope and Bounds of Transitional Justice and the Canadian Truth and Reconciliation Commission" (2013) 7:1 the Intl J Transitional Justice 52 on public demands for the Truth and Reconciliation Commission.

commitments to transformative change. This should not be equated to a judgement or criticism of individuals who requested this Inquiry.

The first limitation arises from the very nature of the Viens Inquiry: it was a top-down mechanism imposing participation norms on those seeking to be heard.[46] The literature has pointed to this problem by expressing (1) that meaningful participation must start at the design of the inquiry to avoid replicating state bias or discrimination and (2) that a legal process of examination and cross-examination may reproduce the adversarial system.[47] For instance, in 1997, Nicholas D'Ombrain commented that judges and lawyers are too dominant in establishing inquiries' framework.[48] This ultimately means that state entities — who are familiar with legal formality — are privileged in matters of adherence to norms that borrow from the legal system. There is a need for caution here. This article does not suggest that norms of participation are not necessarily antithetical to civic engagement. Indeed, some commissions have shown flexibility with regard to their norms and developed strong bonds with communities through enhanced engagement.[49] Nonetheless, strict norms might impede inclusion and tailor participation in a way that prevents the collection of information relevant to transformative approaches to accountability.

While participants had to comply with the Viens Inquiry's norms to partake in its activities,[50] these norms were not the only factor potentially curtailing participation. The literature identifies the need for equal resources as one means to ensure the effectiveness of public inquiries, as resources are tied to effective representation.[51] In the context of the Viens Inquiry, funding for legal representation appeared as a significant difficulty for Québec

---

46 Bazinet, *supra* note 4 at 183.

47 See e.g. Bryson, *supra* note 2. On meaningful participation as requiring the engagement of the public in the design of deliberative processes, see Freya Kristjanson, "Procedural Fairness and Public Inquiries" in Ronda Bessner & Susan Lightstone, *Public Inquiries in Canada: Law and Practice* (Toronto: Thomson Reuters, 2017) at 104–06; Cattapan et al, *supra* note 26 at 239–40. On the connection between the adversarial system and the time and resources required by public inquiries, see Nicholas D'Ombrain, "Public Inquiries in Canada" (1997) 40:1 Can Public Adm 86 at 99.

48 The criticism that public inquiries take too much time to reach conclusions is long-standing: D'Ombrain, *supra* note 47 at 101.

49 See e.g. Stanton, *supra* note 7.

50 Bazinet, *supra* note 4 at 183. See also the rules of procedure for the Viens Inquiry, Commission d'enquête sur les relations entre les Autochtones et certains services publics au Québec : écoute, réconciliation et progrès, *Règles de procédure et de fonctionnement* (2016), online: <cerp.gouv.qc.ca> [perma.cc/3WYP-9A68].

51 Des Rosiers, *supra* note 18 at 390.

Native Women, an organization specializing in Indigenous women's rights.[52] Indeed, insufficient funds caused an interruption of their representation.[53] While Québec Native Women succeeded in coming back before the end of the inquiry's work through private funding, they could not attend all hearings.[54] The organization claimed the government provided minimal funding, rendering access to representativity unequal.[55] This inequality was even more pronounced because the police (or other government entities) did not have to struggle to have their voices heard.[56] The Commissioner recognized this inequality and invited Québec Native Women to communicate with him and his team despite the end of their legal representation.[57] This option was not the equivalent of having a permanent seat at the table; something state entities were guaranteed.[58] There is a comparison to be made here with the British Columbia Missing and Murdered Indigenous Women and Girls Inquiry, where Indigenous organizations and coalitions were denied the right to be represented by counsel.[59] This decision impeded their capacity to cross-examine and participate fully in the inquiry proceedings.[60] Meaningful participation of non-state entities is crucial to achieving transformative change as these entities are more likely to challenge state assumptions through their experiences.

This section began by accounting for diverse requests for a public inquiry. However, even as part of civil society vocally advocated for the creation of the Viens Inquiry, it is impossible to dismiss the lingering

---

52 For more information, see Québec Native Women Inc, "About us", online: <faq-qnw.org> [perma.cc/J4W9-NBQ5].

53 Susan Bell, "Quebec Native Women scale back participation in inquiry into treatment of Indigenous people", *CBC* (25 October 2017), online: <cbc.ca> [perma.cc/XVL7-L4SX].

54 *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 5; Michel & Miller, *supra* note 27 at 79–81 (Michel); *Ibid*.

55 *Ibid*.

56 Michel & Miller, *supra* note 27 at 80.

57 *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), at 118–19.

58 *Ibid* at 79–80.

59 Stanton, *supra* note 7 at 156–59 on the Missing Women Commission of Inquiry in British Columbia.

60 Fuji Johnson, *supra* note 24 at 32–34; Kristjanson, *supra* note 47 at 142–43; Wendee Kubik & Carrie Bourassa, "Stolen Sister: The Politics, Policies and Travesty of Missing and Murdered Women in Canada" in B Anderson, S Pete, W Kubik & M Rucklos-Hampton,*Global Feminicide*: *Indigenous Women and Girls Torn from Our Midst*, 2nd ed, (Regina: University of Regina, 2021); Stanton, *supra* note 7 at 156–59 on the Missing Women Commission of Inquiry in British Columbia.

skepticism of others. For example, Daniel Salée argued that, while truth gathering might be helpful for people who want to have their voices heard, the government already possessed enough knowledge on discrimination in public services in Québec to understand its responsibility.[61] From his perspective, the government could act immediately without spending considerable time and resources initiating new consultative processes.[62] Viviane Michel, president of Quebec Native Women (and the first witness before the inquiry), shared a similar point of view.[63] When she appeared before the inquiry in June 2017, Michel stated, "Je suis comme saturée, qu'on va d'enquête à enquête, à commission d'enquête, à émettre des recommandations, à faire ressortir des faits, discriminations systémiques, des violences structurelles, institutionnelles. Je suis comme saturée. J'ai besoin d'un changement social, pour les nôtres."[64]

These statements are reminiscent of Kim Stanton's insights on public inquiries on violence against Indigenous women.[65] In her book on how to reimagine commissions of inquiry, Stanton commented on public inquiries on Indigenous matters by stating: "It was not that Canada 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."[66] Salée's argument — to which the citation above is tied — is that if the Quebec government wanted to address discrimination, it could have acted on the basis of what it knew and the contingent of research and requests by Indigenous peoples, rather than waiting for a "crisis" and

---

61 *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 159–62.

62 *Ibid*. 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: <ici.radio-canada.ca> [perma.cc/4NG3-AT9T] [Salée (2017)]. On the length and resources dedicated to public inquiries and criticisms related to these factors, see e.g. Gomery, *supra* note 25 at 793–94; D'Ombrain, *supra* note 47 at 95–100.

63 *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 79.

64 *Ibid*. This quote reads as followed: "[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]" (translation by the author). See also *Final Report*, *supra* note 6 at 211–12.

65 Stanton, *supra* note 7 at 156–59.

66 *Ibid* at 147.

attempting to engage in damage control.[67] Michel's argument evokes a plurality of investigations and inquiries that failed to provide transformative change.[68] This concept, defined in the introduction, calls for structural change in addition to recognition.

State control over the inquiry's framework leads to another criticism: remedies granted by commissions of inquiry. For instance, Salée stated that the Viens Inquiry, including its remedial measures, was dominated by the state and the settler society underlying it.[69] Anticipating the Final Report before its release, Salée suggested that the inquiry's remedies were unlikely to be granted if they jeopardized the interests of the settler colonial state.[70] Stanton analogously posited that 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.[71] Section IV further details contentions related to the outcomes of such commissions by contrasting Salée's insights with the Calls to Actions of the Viens Inquiry.

The problems with meaningful participation and state control depicted so far are also reflected in the inquiry's membership. After noting 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."[72] Despite efforts, recruiting Indigenous counsel was challenging. Having an Indigenous commissioner might have countered some criticisms related to representativity within the inquiry's ranks. Justice Viens was not appointed without controversy.[73] For some, appointing a white man with a Western legal education was an unwelcome

---

67 Salée (2017), *supra* note 62 at 159–62. Case law and previous commissions are other areas where information could be gathered, albeit not specifically mentioned by Salée.

68 Michel, *supra* note 63 at 79.

69 *Ibid* at 199.

70 *Ibid*.

71 Stanton, *supra* note 7 at 12. The Law Reform Commission of Canada admitted that some recommendations from commissions of inquiry, 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.

72 Stanton, *supra* note 7 at 187–88.

73 See e.g. Jaela Bernstien, "'White judge, white lawyer': Quebec inquiry into discrimination lacks Indigenous voices, critics say", *CBC* (15 March 2018), online: <cbc.ca> [perma.cc/ZRY9-V3AF].

symbol, notwithstanding eventual results.[74] It also raised doubts about the inquiry's capacity to understand Indigenous communities and their relations with the law.[75] Others, including Rainbow Miller, legal counsel for Québec Native Women, underscored Justice Viens' listening skills and open-mindedness at the closing hearing of the inquiry.[76]

III. The Viens Inquiry's Mandate: A Missed Target?

One of the Inquiry's main weaknesses was its failure to adequately address police sexual misconduct in Val-d'Or and other regions. More broadly, it did not sufficiently examine (sexual) allegations of police misconduct against Indigenous women or the wider context of problematic relations between Indigenous communities and the police. Additionally, state control and lack of representativity further undermined the inquiry's effectiveness. This problem is partly due to the administrative order instating the latter. Police sexual violence in Val-d'Or was referenced in the preamble of the administrative order, but not in the paragraphs defining the inquiry's actual mandate.[77] While this section and article focuses on the lack of accountability for police sexual violence, witnesses in the inquiry have pointed out additional glaring gaps — including, for example, the exclusion of the education sector.[78]

Sylvia Rich aptly criticized the absence of recommendations on police sexual misconduct.[79] However, the inquiry itself cannot be blamed for not making "any pronouncements about responsibility for police officers' violence towards Indigenous women in Val d'Or."[80] Assignments of responsibility were beyond the mandate — a usual trait for commissions of

---

74 *Ibid*.

75 *Ibid*.

76 Michel & Miller, *supra* note 27 at 119–20 (Miller). *Cf* Stanton, *supra* note 7 at 166, listing qualities required to make a good Commissioner.

77 *Décret 1095-2016, 21 décembre 2016*, *supra* note 1. The commissioner closed the commission by recognizing demands of some participants not to forget the women of Val-d'Or: Michel & Miller, *supra* note 27 at 130.

78 See e.g. 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.

79 Rich, *supra* note 5 at 138.

80 *Ibid*.

inquiry.[81] Moreover, the government behind the creation of the Viens Inquiry surely must bear part of the responsibility, since the terms of reference significantly restricted the capacity of the inquiry to investigate police sexual violence. The police were only one of the public services studied (alongside the justice system, the correctional system, health and social services, and youth protection). The scope of the inquiry was also restricted to a 15-year limit.[82] These factors limited the inquiry's capacity to investigate police sexual violence across the province.

The mandate, both too broad and too narrow (too broad in terms of services examined, but too narrow in its time span), was the direct result of state control over the inquiry. As for any research or investigative endeavours, silence carries meaning. The relationship between the women in Val-d'Or and the police became a faint consideration in the Final Report, except for some mention of the events, mostly in introductive comments.[83] Indeed, when the Final Report was published, Quebec Native Women released a statement entitled "Indigenous Women Forgotten by the Public Inquiry Report".[84] The organization denounced that the inquiry did not include recommendations to improve the safety of Indigenous women interacting with police services in the province.[85] The statement also indicated that the mandate shifted the focus away from the initial events and police abuse, leaving women who initially denounced sexual violence without any solutions.[86]

Indeed, the mandate of the Viens Inquiry was so ambitious that it indirectly shielded the police from extensive scrutiny. This fact begs the question: why was the police protected from receiving all the public attention? One hypothesis lies with state control and political pressures, although it cannot be substantiated with much evidence. Inquiries are eminently political, and their terms of reference can be defined in ways that

---

81 *Final Report*, *supra* note 6. See also Gomery, *supra* note 25 at 786; Roach, "Canadian Public Inquiries", *supra* note 24 at 272; B.C. Civil Liberties Association, West Coast Women's Legal Education and Action Fund, Pivot Legal Society, *Blueprint for an Inquiry: Learning from the Failures of the Missing Women Commission of Inquiry* (2012) at 13, positing this is often the case; Gerard Kennedy, "Public Inquiries' Terms of Reference: Lessons from the Past and for the Future" (2018) 41:1 Man LJ 317 at 328, 331 and 333.

82 *Décret 1095-2016, 21 décembre 2016*, *supra* note 1.

83 *Final Report*, *supra* note 6 at 11–13.

84 Québec Native Women, "Indigenous Women Forgotten by the Public Inquiry Report" (30 September 2019), online: <faq-qnw.org> [perma.cc/U969-SGP8].

85 *Ibid*.

86 *Ibid*.

avoid delving into all elements relevant to uncovering state responsibility.[87] As highlighted above, commissions of inquiry are only implemented if the government wishes to go down that route, which may not be the preferred course of action when the government is blind to systemic violence or seeks to avoid blame.[88]

It must also be recalled that a conflict of interest arises when the state orders a commission on its own violence. This conflict is not alleviated by the fact that judges often preside over commissions of inquiry. State control operates at several levels, and judges' expected independence is insufficient to counteract its effects. Canada operates in a tradition of separation of powers, and judicial independence has been elevated to a constitutional principle.[89] However, a commissioner's independence — which, in the Viens Inquiry's case, refers to a judge's independence — will not necessarily suffice to redress dependency on state resources, weak public trust, and inadequate terms of reference. This situation does not mean that Justice Viens did not conduct his work with the independence required as a member of the judiciary. As the principles pertaining to the independence of the judiciary come from the state, and as judges are state representatives, appointing a judge is a state manifestation that adds to the principles outlined above: implementation of the inquiry, control of the terms of reference, and power to follow-up on the calls to action.[90] Grace Bryson also questions whether a judicial role provides commissioners with the proper set of skills as the adversarial role in courts — on which judges rely in their functions — might over-influence the proceedings and cut on the ways in which participants can express themselves.[91] This argument is relevant not

---

87 Macklem & Centa, *supra* note 30 at 120–23, 126–27.

88 Sulitzeanu-Kenan, *supra* note 30.

89 See e.g. *MacKeigan v Hickman*, [1989] 2 SCR 796 at 825–28. Coincidentally, this decision examines the powers of an inquiry to compel a judge to testify.

90 Jeremy Sarkin, "Redesigning the Definition of a Truth Commission, but Also Designing a Forward-Looking Non-Prescription Definition to Make Them Potentially Successful" (2018) 19 Hum Rts Rev 329 at 353, 359–60, argues that independence is not guaranteed when appointing a judge, and that factors personal to the judge can influence independence (e.g., political affiliations, inclusivity and transparency of the appointment process). This was written in the context of international truth commissions. See also Des Rosiers, *supra* note 18, Public Inquiries articulating that independence is required of Inquiries but not expanding on how to assess this independence.

91 Bryson, *supra* note 2, does not question judges' independence but highlights that their traditional role does not include public participation, which may render their transition to public inquiries less effective. Kristjanson, *supra* note 47 at 125–30, who is not questioning the judge's independence – offers a good discussion of independence and impartiality in public inquiries, albeit the focus is on commissioners who have been found to lack independence and impartiality against politicians.

only to the discussion on judicial independence but also to explain the formality of participation norms, which as explained in Section II, may prevent meaningful participation of non-state entities.

Setting aside the issue of judicial independence, the following paragraphs will continue analyzing the Viens Inquiry's mandate and the limitations it imposed on the investigation of police sexual violence. Cyndy Wylde expressed that the Viens Inquiry was restricted in treating police misconduct.[92] This specific argument turns to the "red bracelet phenomenon", which was a marking event of the Val-d'Or crisis.[93] Janet Mark described this event as follows: on October 20, 2016, a libel claim was filed by the police against Radio-Canada and a journalist in reaction to the news story on Val-d'Or.[94] This same day, 2500 provincial police officers started wearing a red bracelet in support of suspended officers in Val-d'Or.[95] While discussing the police use of red bracelets, Wylde claimed that "[t]hose red bracelets were seen as a form of intimidation […] It was a way for people or even the police to deny reality 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."[96] Wylde's insights show the restrictions imposed by the mandate and the 15-year frame of reference. By focusing on contemporary events (and a crisis narrative) and making the police only one of the services investigated, the depth of misconduct and structural issues within this specific public service could not be uncovered. Wylde added that Justice Viens was upset but "powerless to stop the practice" of the red bracelets, demonstrating that despite their qualities, inquiries are only as effective as their mandates allow them to be.[97] While Gerard Kennedy argued that successful Canadian public inquiries usually investigated a narrow mandate within a precise timeframe,[98] the Viens Inquiry shows that when events are still unfolding, strict timeframes can incapacitate the inquiry and also distort violence by failing to account for its continuity.

---

92 Christopher Curtis, "Quebec 'missed a huge opportunity' to address systemic racism", *Ricochet* (16 October 2020), online: <ricochet.media> [perma.cc/D9D2-9Q9T].

93 *Ibid*; See also Radio-Canada, "Bracelets 144 : un obstacle aux bonnes relations entre policiers et Autochtones", *Radio-Canada* (20 September 2018), online: <ici.radio-canada.ca> [perma.cc/99RC-CY8X].

94 Mark, *supra* note 36 at 38.

95 *Ibid*.

96 Christopher Curtis, "Quebec 'missed a huge opportunity' to address systemic racism", *Ricochet* (16 October 2020), online: <ricochet.media> [perma.cc/TU4G-RCFM].

97 *Ibid*.

98 Kennedy, *supra* note 81 at 336–38.

The weaknesses of the inquiry cannot be purely summarized through state control over the mandate. The inquiry was responsible for what it chose to do within the boundaries of its terms of reference. The mandate included discrimination against Indigenous peoples by the police, and the inquiry could have pushed the boundaries of its mandate to investigate the roots of police sexual violence as a form of discrimination by public services.[99] Setting aside all considerations of sexual violence in public services (and in the police, in particular) was an unprincipled decision. While the Viens Inquiry recognized discrimination and prompted state action to address or discuss colonial racism in Québec,[100] given the events from which the Viens Inquiry stems, it should have been an opportunity to understand police sexual violence and assert state accountability for this particular phenomenon. However, the Final Report took the emphasis away from the police and sexual abuse of Indigenous women. One may ask why this text emphasizes sexual violence by police. There are a few reasons, namely that sexual violence by police is a manifestation of settler colonialism that shows structures of power and discrimination within the state, that the nature of that violence makes it difficult for the commission of inquiries to provide transformative change, and that there was public pressure to look into these cases. The remaining part of this section will unpack these contentions.

Yannick Parent-Samuel, Lieutenant-Detective at the Montreal Police,[101] testified before the inquiry that, while only four of the initial 14 criminal files involved sexual violence, they were the most shocking for public imagination.[102] In this author's opinion, the use of "shocking" means to reflect that sexually violent acts that are difficult to connect with the nature of policing work and thus, distressing to hear for the public.[103] This is only one more reason to focus on this matter. The purpose of any inquiry includes

---

99 For instance, Grace Bryson points to the Berger Commission as an example of a public inquiry that interpreted its mandate broadly (and liberally) as to include issues of relevance. See Bryson, *supra* note 2.

100 See e.g. *Final Report*, *supra* note 6 at 216–17.

101 The Montreal Police investigated criminal allegations in relation to the Val-d'Or crisis.

102 *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 112–13 (Parent-Samuel).

103 This comment should be read in combination with the following important caveat: if "shocks" refers to white emotions that dictate state action, this, too, amounts to settler colonialism: Bazinet, *supra* note 4 at 178; Sandrine Ampleman-Tremblay "Media coverage of sexual violence by police in colonial contexts: an explorative study" (26 June 2024), Settler Colonial Studies at 4, 9, online: DOI: 10.1080/2201473X.2024.2367177.

restoring the public's confidence in the rule of law.[104] If public confidence experienced a shift because of sexual violence by police, it should have been embedded within the mandate and the final output.

The Final Report offered several examples of police sexual misconduct cases in a subsection called "Excessive Force, Brutality and Abuse", which appeared within a section entitled "Unadapted police practices".[105] This choice of words was misleading. Sexual violence is never an "unadapted practice", and cannot serve the purpose of delivering police services.[106] Moreover, while all types of police misconduct referred to in this section are important to understand to grasp the scope of police violence, sexual violence should have been a more predominant part of the analysis. The analysis of sexual violence by police stood out on half a page of the 488-page Report.[107] The Final Report included a few testimonies about sexual assault and the exchange of sexual services for money in a policing context.[108] However, the inquiry did not link these problems with the events in Val-d'Or, nor the situated sexual violence and police misconduct, as systemic problems that manifest themselves at the occasion of state interaction with Indigenous communities. The quasi-absence of sexual violence from the Final Report omits to recognize, as posited by Trycia Bazinet, the connection between violence against women's bodies and other types of colonial violence.[109]

The approach of the inquiry also showed a departure from the public concerns that fueled its creation. As Edith Cloutier summarized, some civil society members requested an independent commission of inquiry focusing specifically on the events of Val-d'Or, notably the relations between the police and Indigenous peoples.[110] In contrast, some Indigenous leaders criticized the emphasis on Val-d'Or and requested an inquiry with a broader

---

104 See e.g. Goudge & MacIvor, *supra* note 2 at 8; Angela Hegarty, "The Government of Memory: Public Inquiries and the Limits of Justice in Northern Ireland" (2003) 26:4 Fordham Intl LJ 1148. See also Kristjanson, *supra* note 47 at 111–12, who argues that public inquiries can improve trust and heal communities.

105 *Final Report*, *supra* note 6 at 277, 280–83.

106 Some authors argue that sexual violence by police is a manifestation of colonialism. See e.g. Sarah Deer, "Towards an Indigenous Jurisprudence of Rape" (2004) 14 Kan JL & Pub Pol'y 121; Rich, *supra* note 5 at 150–51. See a more detailed discussion at 22–24 of this article.

107 *Final Report*, *supra* note 6 at 282.

108 *Ibid*.

109 Bazinet, *supra* note 4 at 185–86; Lorien S Jordan, "Belonging and Otherness: The Violability and Complicity of Settler Colonial Sexual Violence" (2021) 44:3–4 Women & Therapy 271.

110 Cloutier, *supra* note 44 at 89–90.

mandate.[111] These two voices point to a discordance in the type of Inquiry desired (one on the Val-d'Or events as opposed to one dealing with the wider issue of discrimination against Indigenous peoples in public services).[112] These divergence of opinion might have provided a rationale for focusing on discrimination outside of the police, but the presence of wider discrimination did not detract from police sexual violence and the need to understand the state's role in leading to abuses. Kennedy proposed that successful inquiries have mandates that are clear and narrow: they define the concepts, time, and geographical location with precision.[113] While this article already addressed issues with the inquiry's temporal scope, this article agrees with Kennedy on the need for a proper definition of the mandate. As previously explained, some individuals advocated against an inquiry focusing on Val-d'Or and would have been disappointed if the terms of reference referred exclusively to Val-d'Or and sexual violence. Nonetheless, there are risks in leaving too much discretion as not every problem can be solved in the short timeframe in which inquiries must operate.[114] It is important to recall here that the timeliness of a report is a factor identified as contributing to effectiveness.[115]

Two arguments could have supported an Inquiry focusing on police sexual violence. First, inquiries with narrower mandates have a better chance of succeeding at securing accountability.[116] Second, police sexual violence against women in Val-d'Or was the basis of the events leading to the inquiry.[117] The Viens Inquiry thus left a core question unanswered: 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: that is, toxic aspects within the police culture as well as sexual violence by police as part of settler colonialism.

---

111 Jean-François Nadeau, "Une rencontre qui laisse les Premières Nations sur leur faim", *Le Devoir* (5 November 2015), online: <ledevoir.com> [perma.cc/PDH8-TV7S].

112 On types of inquiries, see e.g. Goudge & MacIvor, *supra* note 2 at 33–35.

113 Kennedy, *supra* note 81.

114 *Ibid* at 336–38.

115 See e.g. Kennedy, *supra* note 81; Kristjanson, *supra* note 47.

116 Inwood & Johns, *supra* note 14 at 398; Kennedy, *supra* note 81 at 336–38.

117 *Final Report*, *supra* note 6 at 11-13. Although the Report does not refer to sexual violence explicitly, it identifies "abuse by police officers from the Sûreté du Québec (SQ) assigned to Vald'Or between 2002 and 2015" as the triggering event.

Tellingly, 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.[118] In 2013, 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 (around Prince George, Prince Rupert, and Williams Lake) and stated that allegations of rape and sexual assault against Indigenous women were heard in half of these towns.[119] In Newfoundland, as of July 2021, nine women had reported sexual assault by police, and three had disclosed that police officers asked for sex.[120] These events occurred in cases where police officers offered rides home to women leaving bars in St. John's.[121] In 2021, the Pikangikum First Nation expelled the Ontario Provincial Police because of allegations of sexual assault by some officers.[122] A report from the Manitoba Clean Environment Commission disclosed allegations of sexual abuse of Indigenous women by Manitoba Hydro and RCMP officers.[123] Finally, criminal cases against police officers for events dating back to at least 1969 are examples showing the long-lasting state of this violence against Indigenous women (and women in general).[124]

These examples demonstrate that the Val-d'Or allegations are not an isolated phenomenon. They are part of a broader context of ongoing police

---

[118] 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). See also *Rivers v Waterloo Regional Police Services Board*, 2018 ONSC 4307.

[119] *Those Who Take Us Away*, *supra* note 3 at 59–62. The distinction between rape and sexual assault is no longer made in Canadian law but maintained in the HRW report.

[120] Malone Mullin, "7 RNC officers now accused of sexually assaulting women while on duty, lawyer says", *CBC* (21 July 2021), online: <cbc.ca> [perma.cc/8RYB-QPLX].

[121] See e.g. Malone Mullin, "7 RNC officers now accused of sexually assaulting women while on duty, lawyer says", *CBC* (21 July 2021), online: <cbc.ca> [perma.cc/QBH3-45ZR]. See also the *Snelgrove* case, which presents a similar factual matrix: *R v Snelgrove*, 2019 SCC 16, [2019] 2 SCR 98. The case was sent back to trial. See *R v Snelgrove*, 2021 NLSC 149 and *R v Snelgrove*, 2021 NLCA 60 for further history on the case.

[122] Willow Fiddler, "Pikangikum First Nation expel OPP from community over sexual assault allegations, SIU investigating", *The Star* (22 March 2021), online: <thestar.com> [perma.cc/XEF7-6PTS].

[123] See e.g. 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 and 148–53.

[124] See e.g. Sandrine Ampleman-Tremblay, "Comprendre l'inconduite sexuelle policière: une perspective canadienne" (2022) 34:1 CJWL 1. See also *R v Teed*, 2020 ABCA 335; *R c Guay*, 2007 QCCQ 6242; *R c Ducharme*, 2023 QCCQ 4540; Émilie Bilodeau, "Le policier accusé d'agression sexuelle croyait à un « coup de foudre »", *La Presse* (22 March 2023), online: <lapresse.ca> [perma.cc/BS85-ZQWE]; 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: <nationalpost.com> [perma.cc/Y84H-J8T3].

sexual violence in Canada, a context that is notably impacting Indigenous women.[125] The inquiry's report could have contributed to the literature positioning police sexual misconduct as a systemic problem resulting from police culture and the relation of power and domination between the state, the police and Indigenous communities. While the toxicity of police culture referred to by Justice Bastarache accounts for sexual and racial discrimination, the lens of settler colonialism reinforces the depiction of police sexual violence as a form of state violence against Indigenous women.

As explained by Dion Million, the Canadian state is premised on the assimilation of Indigenous people and assertions of power.[126] The literature argues that sexual violence is one way to assert such power. For instance, Sarah Deer explains that sexual violence is a tool of colonial power, as it impacts women and their whole communities.[127] In other words, through sexual violence, it is possible to annihilate communities that also suffer from the trauma caused by sexual violence. In the same line of reasoning, Andrea Smith suggests that sexual violence is a tool of genocide that is premised on white supremacy. She posits that settler colonialism has created the view of Indigenous bodies as violable, promiscuous or associated with sins.[128] This association between Indigenous bodies and violability is essential to the dynamics of powers proper to settler colonialism, which are reflected through sexual violence.[129] Sherene R. Razack makes an analogous point on a different form of violence: the use of an Indigenous woman's body parts as evidence in a murder and sexual violence trial.[130] Razack claims that the violence the victim experienced is "part of a history of sexual brutalization

---

[125] See e.g. *Those Who Take Us Away*, *supra* note 3; Lafontaine (2016), *supra* note 8; Fannie Lafontaine, *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,* Report of the independent civilian observer, Phase 2 (Québec: 2020); Ampleman-Tremblay, *supra* note 124.

[126] Dion Million, "Telling Secrets: Sex, Power and Narratives in Indian Residential School Histories" (2000) 20:2 Can Woman Studies 92 at 95. This must be connected with the definitions of settler colonialism provided in note 3.

[127] Sarah Deer, *The Beginning and End of Rape: Confronting Sexual Violence in Native America* (Minneapolis: University of Minnesota Press, 2015) at 12 (uniformity between her book and paper). See also Rauna Kuokkanen, *Restructuring Relations: Indigenous Self-Determination, Governance, and Gender* (New York, 2019; Oxford Academic) at 182, 189, who makes a similar point about gendered violence.

[128] Andrea Smith, *Conquest: Sexual Violence and American Indian Genocide* (Duke University Press, 2005) at 8–12.

[129] *Ibid*; See also Sherene R Razack, "Gendering Disposibility" (2016) 28:2 CJWL 285 at 292 [Razack, "Gendering Disposibility"]; Kuokkanen, *supra* note 127 at 189–190; Bourgeois, *supra* note 3.

[130] Razack, "Gendering Disposibility", *supra* note 129 at 286.

and attempted annihilation of Indigenous women"[131] and reflects the devaluation of Indigenous women's bodies in settler colonial contexts.[132] Lorien S. Jordan connects the points made heretofore by stating that removing a population's capacity to reproduce is one of the ways settler colonialism pursues elimination.[133] This can be through homicides but also the trauma imposed through sexual violence.

Another manifestation of dynamics of power and violability of Indigenous women's bodies can be found in underprotection within the criminal justice system, and in the context of this article, by the police.[134] For instance, Jaskiran K. Dhillon indicates that the harassment and criminalization of Indigenous women is permitted through alleged community policing.[135] She adds that this situation is a representation of settler colonialism in Canada as it perpetually seeks to dispossess and eradicate Indigenous bodies to maintain settler privileges intact.[136] She concludes that difficult encounters with the police are not isolated but rather "common markers of lived experience."[137] This last statement is similar to how this text positioned the Val-d'Or events as part of a broader narrative touching women across Canada. Such a narrative was not relied on by the inquiry. Dhillon connects police officers and violence against Indigenous women by linking these issues to the destruction of Indigenous communities through sexual violence as portrayed by Deer and Smith.[138] Under this settler colonial lens, sexual violence is one way to eliminate, displace, or assert power over Indigenous peoples.

When combining the plurality of academic comments discussed in the previous paragraphs, a line can be traced between sexual violence against Indigenous women as a form of eradication, the police as a colonial entity, and the use of criminal justice entities to maintain dynamics of power. The fact that police officers perpetrate sexual violence only reinforces the manifestation of settler colonialism. As expressed by Dhillon, "Indigenous

---

131 *Ibid* at 290, 296–98. The fact that some women in Val-d'Or were engaged in sex work might have reinforced the dynamic of disposability and power: *Abus de la SQ : les femmes brisent le silence*, *supra* note 9, at 00:17:53–00:18:13; Razack, "Gendering Disposibility", *supra* note 129 at 299–02.

132 Razack, "Gendering Disposibility", *supra* note 129 at 291.

133 Jordan, *supra* note 109 at 278–79.

134 Kent Roach, *Canadian Policing: Why and How It Must Change* (Toronto: Delve Books, 2022) at 30–32; Dhillon, *supra* note 3 at 21–22.

135 Dhillon, *supra* note 3.

136 *Ibid* at 8–9.

137 *Ibid* at 19.

138 See e.g. *ibid* at 9–14.

peoples […] experience policing itself as a colonial force, an apparatus of capture imposed externally by a government they have not authorized and do not have effective participation within."[139] The police cannot be fully dissociated from the state; this was the case too in the context of the Viens Inquiry. When police officers engage in sexual violence against Indigenous peoples, it is partly because of the state's framework that permits the imbalanced power dynamics and the underprotection of Indigenous women.

IV. The Impact on State Accountability

This last section deals with the outcomes of the Viens Inquiry. It posits that the gaps in the Calls to Action are symptoms of the challenges highlighted until now, namely state control and settler colonialism. It is impossible to expect accountability if the foundations of the chosen mechanisms are unprincipled. While this article does not aim to outline a new mechanism, a principled accountability mechanism should ensure meaningful participation of non-state entities at every stage — including its design — to mitigate the various manifestations of state control. These include the target of the inquiry (focused on public services), the appointment of the inquiry and its commissioner, the drafting of the terms of reference, and the authority responsible for following up on or dismissing the inquiry's Calls to Action.

Understanding the impact of the Viens Inquiry on policing requires scrutinizing the inquiry's Calls to Action as well as their reception by the state. For some proponents of public inquiries, the recommendation power of such inquiries is 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",[140] whereas Le Dain expressed that public inquiries

---

[139] *Ibid* at 8–9, then indicates that part of the colonial harm perpetrated by the police was directly directed by Canadian policies as positions law enforcement agencies as instruments and active participants of coerced assimilation.

[140] See e.g. Goudge & MacIvor, *supra* note 2 at 7; Law Reform Commission of Canada, *supra* note 71 at 11. See also Stanton, *supra* note 7 at 19 on truth commissions.

have a social function since they are "part of an ongoing social process".[141] The Viens Inquiry embraced a policy role that yielded 142 Calls to Action.[142] Chapter 6 of the Final Report dealt with general recommendations for public services, including some that applied to the police.[143] Chapter 7, on its end, was dedicated to Calls to Action pertaining exclusively to the police.[144]

Despite its apparent emphasis on police reform, Chapter 7 exhibited barriers to accountability in two ways.[145] First, consistent with the quasi-omission of police sexual violence from the Final Report, the chapter did not include clear recommendations regarding this form of abuse.[146] Second, it focused on Indigenous police services.[147] The events of Val-d'Or mostly happened in an urban setting under the jurisdiction of the provincial police.[148] While policing by Indigenous police forces, and especially their lack of funding, may have been relevant within the larger scope of the Viens Inquiry, the lack of interest in non-Indigenous police services is another missed opportunity to deal with the Val-d'Or events and its structural causes.[149] To be accurate, the Final Report contained an analysis of urban policing in which the Commissioner recognized over-policing and difficult contacts with police officers,[150] but the challenges of urban policing and non-Indigenous police forces were primarily absent from Calls to Action.

Out of the 13 police-specific Calls to Action, only three (Calls 37 to 39) were directly tied to the Val-d'Or events.[151] Call 37 recommended to "[a]ssess the possibility of setting up mixed intervention patrols (police officers and community workers) for vulnerable persons, both in urban

---

141 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; Roach, "Canadian Public Inquiries", *supra* note 25. See also Stanton, *supra* note 7 at 13–14, 22 and 166–67.

142 See *Final Report*, *supra* note 6.

143 *Ibid*.

144 *Ibid*.

145 *Ibid*.

146 *Ibid*.

147 *Ibid*.

148 Tremblay, *supra* note 103 at 1–2, 7.

149 The *Ligue des droits et libertés* expressed a similar concern. They underlined the (almost) exclusive focus on Indigenous police services and the absence of recommendations targeting police services like the Montreal police or the provincial police in the Final Report: Jacinthe Poisson, "Rapport Viens : genèse, attentes et réactions"(2019) Revue droits et libertés, online: <liguedesdroits.ca> [perma.cc/25ZA-Y5TR].

150 *Final Report*, *supra* note 6 at 258–61.

151 *Ibid* at 280–289.

environments and First Nations communities and Inuit villages".[152] It was the sole Call to Action precisely targeting urban policing. This may not seem relevant at first glance, but when considering that Val-d'Or is an urban area served by a non-Indigenous police force, it demonstrates the inquiry's general departure from police sexual violence and the abuse depicted in Val-d'Or.

Another call for action related to the events in Val-d'Or was the recommendation to extend the limitation period for ethics cases (Call to Action 38).[153] Limitation periods are periods after which the right to complaint is prescribed.[154] At the moment, the limitation period under s. 150 of the *Police Act* is set at one year from the date or knowledge of the event.[155] In Val-d'Or, the Independent Civilian Observer appointed to oversee criminal investigations criticized the short limitation period of ethics cases, as it is often over before the victim has time to deal with the criminal process.[156] Many organizations have discussed reforming the limitation period for police ethics complaints and its ideal length.[157] The *Fédération des policiers et policières municipaux du Québec* (FPMQ) advised a committee on police reform (the "*Comité sur la réalité policière*") that they believed the limitation period should be restricted to a year after the event.[158] The FPMQ

---

[152] *Final Report*, *supra* note 6 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: 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 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 (19h31m) — Vol. 47 N°34 at 1:01:40–1:05:17 and 1:19:04–1:21:24. See also Michel & Miller, *supra* note 27 at 74 who criticized the mixed patrol implemented in Val-d'Or.

[153] *Final Report, supra* note 6 at 289.

[154] *Police Act*, CQLR, c. P-13.1, s 150.

[155] *Ibid*.

[156] Fannie Lafontaine (2020), *supra* note 125 at 153–55. This report also notes that the short limitation delay is often over before criminal procedures end. See also Québec Native Women Inc., *supra* note 44 at 42. The long delays in treating complaints are also critiqued: see e.g. 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).

[157] Bibliothèque Assemblée Nationale du Québec, "Mémoires déposés dans le cadre des consultations publiques du Comité consultatif sur la réalité policière au Québec" no 1270384, online: <bibliotheque.assnat.qc.ca> [perma.cc/LPW9-AX4H].

[158] *Mémoire de la Fédération des policiers et policières municipaux du Québec sur la réalité policière* (2020) at 19–20.

suggested that a short delay prioritizes victims and their loved ones.[159] The *Comité sur la réalité policière* ultimately proposed a 2-year limitation period.[160] The government then introduced Bill 18 and a limitation period of three years.[161] Bill 18 was not enacted before the dissolution of the Parliament. Bill 14, introduced in 2023, replaced Bill 18 and maintained a one-year limitation period.[162]

Call to Action 39 complemented Call to Action 38. The former recommended providing further information on the complaint process.[163] Both calls were meant to facilitate reporting of police misconduct.[164] While this is a laudable objective, contribution to state accountability is at best marginal if Calls to Action are not followed. Call 38 and Bill 14 exemplify this criticism. While the inquiry appeared to be mindful of the risk that its Final Report might not be acted on, notably by disavowing the term "recommendation" as it does not command action, a simple change in terminology did not give authoritative force to the inquiry nor assured that the government would implement the Calls to Action.[165]

As noted in Section III, the limited space dedicated to sexual violence in the Final Report is striking. The same is true of Calls to Action. The only Calls to Action dealing with sexual violence are addressed to Indigenous communities and public services outside the police. Call to Action 27 was meant to deal with the closeness between police officers and the suspects or complainants in Indigenous communities, particularly in the context of crimes that are already difficult to denounce, like sexual assault.[166] Another

---

[159] *Ibid* at 19–20. The Sûreté du Québec 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; *Rapport final: modernité, confiance, efficience* (Québec: Comité consultatif sur la réalité policière, 2021) at 141.

[160] Comité consultatif sur la réalité policière, *supra* note 157 at 141–48. 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: Comité consultatif sur la réalité policière, *supra* note 157 at 147.

[161] 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), s 24.

[162] *Loi modifiant diverses dispositions en matière de sécurité publique et édictant la Loi visant à aider à retrouver des personnes disparues*, *supra* note 152, s 32.

[163] *Final Report*, *supra* note 6 at 289.

[164] *Ibid* at 288–89.

[165] *Ibid* at 200.

[166] 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: *Ibid* at 262–64. The Final Report also connects Call 28 to conflict of interests: *Ibid* at 264.

example is Call to Action 87, a call directed to Indigenous authorities. The latter was the only Call to Action explicitly targeting sexual assault. Call 87, comprised in the "Health and Social Services" chapter, read as follows: "Raise awareness among the populations of Indigenous communities about the nature of sexual assault and promote healthy and respectful sexuality education."[167] The fact that the inquiry formulated no other Calls to Action on sexual violence is disappointing in at least two ways.

Firstly, deliberately omitting sexual violence by the state appeared as an improper 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 colonial tool of domination,[168] the Final Report did not engage meaningfully with sexual violence by the state in its descriptions or Calls to Action. Secondly, Call 87 was directed at Indigenous authorities rather than at the police or any other state actor.[169] While Call 87 may be important in a different context, it raises a concern about police sexual violence: can someone interpret the absence of Call of Action addressed to the state and the presence of Call 87 as a form of victim blaming? It may not be the intention of the Viens Inquiry, but one could perceive the focus on awareness within Indigenous communities as a means to blame Indigenous communities for sexual violence, which, given the context of the inquiry, includes sexual violence by police.[170] Similar victim blaming was reported by critics of an RCMP report on missing and murdered Indigenous women and girls.[171] The scholarship has criticized the almost exclusive emphasis on later violence between Indigenous women and Indigenous men and the depiction of Indigenous women in a way that blamed them for 'high-risk' lives and the violence in their relationships.[172]

Call 86 completed Call 87 by recommending tripartite negotiations to fund Indigenous nations, communities, and organizations wanting to "seek

---

167 *Ibid* at 380.

168 See Section III for further details.

169 *Final Report, supra* note 6 at 380.

170 This is not the first time that an inquiry has focused on a narrative that shifts the issue away from relations between Indigenous peoples and the police: Razack, *Dying From Improvement*, *supra* note 4 at 4–5.

171 Kubik & Bourassa, *supra* note 60; Legal Strategy Coalition on Violence Against Indigenous Women (LSC), *Analyzing the 2014 Royal Canadian Mounted Police (RCMP) Report, Missing and Murdered Aboriginal Women: A National Operational Review*, online <leaf.ca> [perma.cc/ZFW4-REBN].

172 *Ibid*; Bourgeois, *supra* note 3 at 393–94.

to identify, reduce, prevent, and eliminate sexual assault."[173] Again, it paid no specific attention to police sexual violence. The fact that Calls 86 and 87 were standing alone in terms of sexual violence rendered Indigenous authorities, nations, communities, and organizations the sole entities responsible for promoting good sexuality, preventing sexual violence, and raising awareness of such violence.[174] 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?[175] Without denying that sexual violence happens in Indigenous communities, it is problematic to put emphasis on sexual violence in Indigenous communities and omit to discuss sexual violence by police in an Inquiry prompted by the latter. Furthermore, this Call to Action can send the message that the lack of awareness contributes to sexual violence. This can shift the burden on the victim rather than the offender. Taking the example of police sexual violence, the victim should know what sexual violence is, but the offender, if not a member of an Indigenous community targeted by Call 87, is not included in the awareness-raising campaign suggested by the Viens Inquiry. It is also important to recall here that the focus of the inquiry was on discrimination in public services; the police is such a service.[176]

This section centred its discussion on Calls to Action relating to sexual violence, urban policing in urban settings, and policing by non-Indigenous police forces. However, other calls to action were relevant to the general issue of accountability for state violence, which guides this article. For example, the Final Report stressed the ineffectual implementation of previous inquiries' recommendations.[177] It thus suggested Calls to Action requesting a formal follow-up process to prevent the work conducted by the inquiry from falling into oblivion. This initiative might have been an attempt to remedy the perception that commissions are being used to neutralize

---

[173] *Final Report*, *supra* note 6 at 379.

[174] *Cf* Sherry Pictou, "Decolonizing Decolonization: An Indigenous Feminist Perspective on the Recognition and Rights Framework" (2020) 119:1 South Atl Q 371 at 381 in the context of the MMIWG Inquiry. On the topic, see also Kuokkanen, *supra* note 127 at 183, 202.

[175] Amnistie internationale, "Réaction 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 (press release): <amnistie.ca> [perma.cc/Z6X7-8DH6] critiquing the lack of focus on Indigenous women.

[176] *Final Report*, *supra* note 6 at 131–42.

[177] *Ibid* at 463.

controversy and state action.[178] For example, Calls to Action 138 to 140 proposed appointing the Québec Ombudsman to monitor the progress made on Calls to Action. Justice Viens also included additional resources and legislative amendments to facilitate the execution of the Ombudsman's new task in his Calls to Action.[179]

In 2021, a follow-up Committee composed of civil society and academia set itself up before the first report of the Ombudsman. Members of the Committee included lawyers, professors, research professionals, and research assistants from various universities in Quebec and Ontario and from various disciplines (including law, criminology, Indigenous studies, and social work).[180] Through access to information requests, this Committee assessed the responses to the Calls to Action of the Viens Inquiry. In a 2021 report published by the *Observatoire sur les profilages*, the mixed Committee concluded that out of the 140 Calls to Action 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.[181]

When looking at the 2021 results, one must note that some Ministries refused to disclose information.[182] Consequently, the portrait provided by the Committee may not be exhaustive. It is also important to highlight that this is still an ongoing process, which can account for the lack of data on some issues. While protection of privacy and sensitive data could explain why the state refused to provide information, in the absence of data with probative value, it could also suggest state control. It is important to recall

---

178 *Final Report*, *supra* note 6 at 463–64. See also Julie Perreault, "Décoloniser l'État québécois" (2020) 808 Relations 33 at 35.

179 *Final Report*, *supra* note 6 at 464–66 (Calls to Action 139-140).

180 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) online: <uqat.ca> [perma.cc/9ZHQ-HCSC].

181 *Ibid* at 5,8. 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: <ledevoir.com> [perma.cc/Y6JR-3K7R]; Quebec Native Women, "Bilan de la Commission Viens : FAQ Salue les actions entreprises mais s'attend à plus", (17 September 2021), online (pdf): <faq-qnw.org> [perma.cc/X8WZ-P6TA].

182 Comité de suivi des appels à l'action, *supra* note 180 at 7. The government also publishes a table reporting development on the Call to Actions: 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: <cdn-contenu.quebec.ca> [perma.cc/SDS3-9ZTD].

here that when state violence happens, the state is responsible for determining what state-sponsored investigation will be carried out.[183] Bazinet reiterated this point when she criticized the Viens Inquiry for imposing when and what to heal.[184] Moreover, the state is not bound to follow up on recommendations and may choose not to communicate on progress made (or lack thereof) as demonstrated by this section and Call to Action 38.

In June 2021, the Ombudsman announced that after consultation with Indigenous leaders, it would review progress in implementing Calls to Action — thus working actively towards implementing Call to Action 138.[185] The Ombudsman published its first report in October 2023 and expressed that progress is slow and below expectations with less than a third of Calls to Action fully realized or not realized but engaged with in a satisfactory manner.[186] The data on responses to the 142 Calls to Action can be broken down as follows: 11 Calls are realized; 34 are the object of satisfactory action; 56 are the object of unsatisfactory action; 33 have not been started; and 8 are still under analysis.[187]

The Ombudsman attributed deficiencies in implementation to a lack of planned and comprehensive strategy by the government and insufficient consultation with Indigenous peoples.[188] The Ombudsman also decried that talks with Indigenous communities happened too often after the state made a decision.[189] As for Calls to Action directly addressed to the police, one was fully realized; four had some form of satisfactory follow-up; seven had no satisfactory follow-up or no follow-up; and one was still under examination.[190] The only Call to Action realized is Call 31, which requested

---

[183] In the context of public inquiries, for instance, the mandate of the inquiry will be limited by the terms of reference as defined by the state (under the form of the Governor-in-Council or Lieutenant-Governor-in-Council): Ed Ratushny, *The Conduct of Public Inquiries* (Toronto: Irwin Law, 2009) at 261-262; Kennedy, *supra* note 81 at 318.

[184] Bazinet, *supra* note 4. Alana Cattapan et al, similarly criticize that public engagement is often required on a pre-set agenda, which leaves little space for the community to define the boundaries and importance of issues investigation: *supra* note 26 at 229–231.

[185] 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: <protecteurducitoyen.qc.ca> [perma.cc/JG7S-XJEB].

[186] Protecteur du citoyen, *Premier Rapport de suivi de la Commission Biens : appréciation de la mise en œuvre des 142 appels à l'action de la Commission d'enquête sur les relations entre les autochtones et certains services publics au Québec : écoute, réconciliation et* progrès (Quebec: Protecteur du Citoyen, 2023) at 3, 15.

[187] *Ibid* at 15.

[188] *Ibid* at 3.

[189] *Ibid*.

[190] *Ibid* at 25–30.

a status report on infrastructure, equipment, salary and realities of Indigenous police forces.[191] The authorities made satisfactory progress on four Calls to Action, including Call 37 on mixed intervention discussed above.[192] While the Ombudsman did not know the extent of consultation that has been conducted on the implementation of mixed intervention teams, several police organizations now have teams to intervene with vulnerable individuals or work with social services when needed for a specific intervention.[193] Fifteen communities with Indigenous police services also have special interventions in cases of sexual or domestic violence.[194]

Finally, the Ombudsman emphasized that the security of Indigenous women, their bodily integrity, and equality is still a concern that any concerted action on policing should take into account.[195] The Ombudsman noted that, while this was beyond the Calls to Action of the Viens Inquiry, it is imperative to realize Indigenous women's rights.[196] This statement shows how Indigenous women and their safety in police interactions were set aside in the mandate, Final Report, and Calls to Action. However, this statement is also promising as it constitutes an acknowledgment of a need for better policing, particularly when the police enter into contact with Indigenous women, a topic the Viens Inquiry has mostly carved out from its Report. Transformative change is still awaiting.

V. Conclusion

The Viens Inquiry is not the only public inquiry that has been criticized by civil society and legal commentaries.[197] While some criticisms may overlap, this article concentrated exclusively on the Viens Inquiry as a means to provide documentation on an understudied Canadian Inquiry. It concluded that there were serious flaws in the inquiry's design and operations that impeded its capacity to enable state accountability for police

---

191 *Final Report*, *supra* note 6 at 476.
192 Protecteur du Citoyen, *supra* note 186 at 27.
193 *Ibid* at 94–95.
194 *Ibid* at 28, 94–95.
195 *Ibid* at 30.
196 *Ibid*.
197 See e.g. Rosemary L Nagy, "The Scope and Bounds of Transitional Justice and the Canadian Truth and Reconciliation Commission, *supra* note 45; Grace Bryson, "The Public in Action: The Potential for Public Inquiries to Realize Deliberative Democracy: A Case Study of the Mass Casualty Commission", *supra* note 2; Kennedy, *supra* note 81. This is not an exhaustive list.

sexual violence. More precisely, the article criticized state control and manifestations of power between the state and Indigenous peoples, which defined the Viens Inquiry. For instance, state entities and Indigenous organizations did not benefit from the same resources. The norms of participation were also closer to legal processes familiar to state entities. The state was central to every aspect of the inquiry, which raises, at the very least, an appearance of a conflict of interest given that it was also the target of the investigation.

State control must be combined with the phenomenon of police sexual violence, which was central to the inquiry's implementation. This article proposed to assess the inquiry's potential to provide accountability and redress police sexual violence through a settler colonial lens. The latter conceived of this form of sexual violence as a form of state violence, replicating dynamics of power between settlers and Indigenous peoples and taking part in the coerced assimilation or elimination of Indigenous women and their communities. In doing so, it questioned the capacity of the inquiry, instigated by the state, populated with state representatives, and focused on state action to recognize police sexual violence as a form of settler violence and to provide transformative remedies. These concerns are directly deriving from the lack of attention to police sexual violence in the Final Report and the Calls to Action, which at times use a victim-blaming logic that puts the burden of awareness of sexual violence exclusively on Indigenous communities.

Drawing on these findings, this article questioned the Viens Inquiry's ability to provide transformative change and remedy systemic state violence. As such, this article ultimately invites reconsideration of an appropriate accountability mechanism to address state violence, like police sexual violence, by pointing to the gaps in accountability that can be observed in the Final Report and Calls to Action. Nonetheless, further research and consultation with Indigenous peoples and other groups in society is needed prior to proposing an alternative to this mechanism, as dictating the proper way to go without meaningful participation of all parties would be another assertion of power. This is especially true considering this author's identity, a settler woman, who has been interested in the implications of police sexual violence from a purely academic standpoint.