

Summary – Independent Civilian Observer’s Report*

Assessment of the integrity and impartiality of SPVM investigations into allegations of criminal acts made by Indigenous persons in Québec against police officers

Phase 2 of the Investigations

Fannie Lafontaine, Attorney and Independent Civilian Observer
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* Translated from the French original and authoritative version

This report is the culmination of five years of work at the intersection of two fundamental societal issues: criminal investigations involving police officers and the resulting fears of bias and impunity, and the broken relationship of trust between Indigenous peoples and police services.

The role of independent civilian observer entrusted to me—a precedent in Québec—had as its starting point the courageous and troubling unveiling of police abuse in 2015 by Indigenous women of Val-d’Or. The revelations of the Indigenous women of Val-d’Or have encouraged Indigenous persons all over Québec to denounce police abuse. Since then, nearly 200 criminal investigation files have been opened concerning allegations made by Indigenous persons in Québec against a police officer (98 files investigated by SPVM (Service de police de la Ville de Montréal) in phases 1 and 2 and 100 files opened by BEI (Bureau des enquêtes indépendantes), not counting “independent investigations”¹). These numerous denunciations, as well as the continuing examples of police abuse reported in the media across the country, demonstrate the extent of the problem of police violence against Indigenous peoples and the urgency of providing guarantees of integrity and impartiality that can give Indigenous peoples confidence in investigations concerning police conduct.

This report presents my findings as an independent civilian observer appointed by the Government of Québec to assess the integrity and impartiality of the investigations conducted by SPVM into allegations of criminal acts allegedly committed by police officers from other police forces against Indigenous persons throughout Québec. It covers Phase 2 of these investigations. The Phase 1 report was made public on November 16, 2016.

This summary briefly discusses my findings on the integrity and impartiality of SPVM’s Phase 2 investigations. It also summarizes the 25 proposals I make in the report with regard to the objectives of my mandate, which are to enhance public and Indigenous confidence in criminal investigations of police officers, to heighten the perception of integrity and transparency of this process, and to promote respect for the rights of victims.

The facts

My mandate was carried out in the midst of a series of distinct events that concerned the relations between Indigenous peoples and police services. This first section sets out these events chronologically so as to clarify the respective mandates of the various actors involved.

On **October 22, 2015**, Radio-Canada’s program *Enquête* broadcast a report on Indigenous women who denounced acts of sexual violence and abuse of power perpetrated by police officers in the regional county municipality (RCM) of Vallée-de-l’Or.² The events described sparked public outrage in both Indigenous communities and the population in general.

¹ The distinction between “criminal investigations” and “independent investigations” and the role of BEI is explained in the introduction of the report.

² Dupuis, Josée, “Abus de la SQ: les femmes brisent le silence,” *Radio-Canada – Enquête* (October 22, 2015), online: <http://ici.radio-canada.ca/tele/enquete/2015-2016/episodes/360817/femmes-autochtones-surete-du-quebec-sq>.

On **October 23, 2015**, Ministère de la Sécurité publique (MSP) entrusted SPVM with the responsibility of investigating criminal offenses allegedly committed against Indigenous persons³ by Sûreté du Québec (SQ) police officers of the Vallée-de-l'Or RCM.

On **November 4, 2015**, the premier announced that the SPVM investigation would be monitored by an independent civilian observer to alleviate public concern and skepticism about police officers being called upon to investigate their peers. I was mandated to do so. My mandate was to examine and evaluate the integrity and impartiality of SPVM's investigations. Its purpose was to build public trust in the impartiality of the police investigations, enhance the perception of the process's integrity and transparency, and strengthen confidence in the respect for victims' rights.

From **October 23, 2015, to April 5, 2016**, a total of 38 complaints were investigated by SPVM. They constituted "Phase 1" of the investigations. The allegations concerned 31 victims,⁴ of whom 24 were women.⁵ The crimes under investigation were mainly sexual offenses (15 files) and allegations of forcible confinement (9 files), referring to "*cures géographiques*" or "starlight tours," which consist of transporting individuals against their will to remote locations and abandoning them there "to sober up." The other cases involved allegations of assault or other types of varying allegations, some of which did not concern police officers or were more of a deontological or disciplinary nature.

On **March 31, 2016**, a second report was broadcast by *Enquête*.⁶ It once again featured women from the Vallée-de-l'Or RCM who reported police abuse, but also Indigenous women from other regions of Québec, including Maniwaki, Sept-Îles, and Schefferville. The report also revealed an inadequate complaints process that promoted a sense of police impunity.

On **April 5, 2016**, MSP expanded SPVM's mandate to include any criminal allegation made by an Indigenous person against a police officer anywhere in Québec.

³ "Indigenous" refers to First Nations, Métis, and Inuit. See Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Lexicon of Terminology*, June 1, 2019, online: <https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/MMIWG_Lexicon_FINAL_ENFR.pdf>. For the purposes of this report, it refers collectively to the First Nations and Inuit. As for the Inuit, we note that "Inuk" refers to an individual (singular) and "Inuit" refers to individuals and the people (plural). Although Office québécois de la langue française recommends that "Inuit" (proper noun) and the adjective "Inuit" (examples: Inuit people, an Inuk, an Inuit, Inuit culture) should agree in gender and number as per the practice in French, I will use the terms "Inuk" and "Inuit" invariably in this report in order to respect the usage and preferences of the Inuit.

⁴ Section 2 of the *Criminal Code*, R.S.C. 1985, c C-46 (hereinafter "Cr.C.") defines "complainant" as "the victim of the alleged offence." For this report I have used "victim" instead of "complainant," as I did for the Phase 1 report. Legally, I agree with Justice Beverly McLachlin that "the term 'complainant' is more consistent with the presumption of innocence of the accused than the term 'victim'" (*R. v. Seaboyer*; *R. v. Gayme*, [1991] 2 SCR 577, p. 633). Assuming that the accused did not commit a crime—that is, in the absence of a crime—there can legally be no victim. However, in a social context, whether or not charges have been laid in court does not diminish the seriousness of the experience or erase the need for support and compassion. Since this report deals simultaneously with social and legal issues, the term "victim" seems more appropriate to me, and still in keeping with the spirit of SPVM's investigations, which were conducted on a "we believe you" basis, regardless of the victim's ability to remember certain details or, for example, her state of intoxication at the time of the events.

⁵ Some victims report more than one event.

⁶ Dupuis, Josée and Anne Panasuk, "Le silence est brisé," *Radio-Canada – Enquête* (March 31, 2016), online: <http://ici.radio-canada.ca/tele/enquete/2015-2016/segments/reportage/6143/enquete-femmes-autochtones-surete-du-quebec-police>.

June 27, 2016 marked the official start of work by BEI, a specialized police force created on May 9, 2013, with adoption of the *Act to amend the Police Act as concerns independent investigations*.⁷ Its primary mandate is to investigate when a person other than a police officer on duty dies, sustains a serious injury, or is injured by a firearm used by a police officer during a police intervention or while in the custody of a police force.⁸

On **August 3, 2016**, the federal government announced the establishment of the National Inquiry into Missing and Murdered Indigenous Women and Girls (NIMMIWG) to examine the systemic causes of all forms of violence against Indigenous women and girls, not only in cases of missing or murdered victims, but also in cases of sexual violence, child abuse, domestic violence, intimidation, harassment, suicide, or self-harm.⁹ The final report was released on June 3, 2019, and contained a large number of Calls for Justice concerning police services.¹⁰ A separate report for Québec also issued important Calls for Justice directed to the police.¹¹

On **October 4, 2016**, MSP used its authority under sections 289.3 and 289.6 of the *Police Act*¹² (hereinafter “PA”) to entrust BEI with responsibility for investigating any alleged sexual offenses committed by on-duty police officers.¹³ This meant that SPVM would no longer investigate complaints of that nature. However, SPVM investigators continued to investigate all other crimes allegedly committed against Indigenous victims by police officers in Québec.

On **November 16, 2016**, my report as an independent civilian observer on Phase 1 of SPVM’s investigations with respect to the integrity and impartiality of the 38 investigation files was made public.¹⁴ The report concluded that the investigations were conducted with integrity and impartiality, but stressed that police investigations are only a partial response in cases of profound social crisis marked by more collective and systemic issues. It also made a number of more general findings on the investigation of criminal allegations against police officers, which will be discussed again and in more detail in this report. Following publication of this report and announcement by the Director of Criminal and Penal Prosecutions (DPCP) that charges would be laid in only 2 of the 37 files (one of the 38 files in Phase 1 was transferred to Phase 2),¹⁵ the Québec government began a series of meetings with Indigenous leaders.

On **December 21, 2016**, the Public Inquiry Commission on Relations Between Indigenous Peoples and Certain Public Services in Québec: Listening, Reconciliation, and Progress (CERP or Viens

⁷ *An Act respecting independent police investigations*, SQ 2013, c 6.

⁸ *Police Act*, CQLR, c P-13.1, Section 287.1, Subsection 1.

⁹ ENFFADA, “Our Mandate, Vision, Mission,” online: <<https://www.mmiwg-ffada.ca/fr/mandate/>>.

¹⁰ Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, vols. 1a and b, Ottawa, 2019, online: <https://www.mmiwg-ffada.ca/final-report/> [ENFFADA, Final Report, vols. 1a and b].

¹¹ Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: A Supplementary Report on the National Inquiry into Missing and Murdered Indigenous Women and Girls (KEPEK-QUÉBEC)*, Vol. 2, Ottawa, 2019, online: <https://www.mmiwg-ffada.ca/final-report/> [ENFFADA, Québec Report].

¹² *Police Act*, *supra* note 8.

¹³ This mandate was officialized on February 14, 2018, with the coming into force of Section 289.1, Subsection. 2 PA

¹⁴ The original report in French, the English translation, and the translation of the executive summary in Anishinabe are available on the MSP website: <<http://www.securitepublique.gouv.qc.ca/index.php?id=994#c104498>>.

¹⁵ Radio-Canada, « Décision du DPCP à Val-d’Or : entre colère et incompréhension » *Radio-Canada* (18 novembre 2016), en ligne : <<https://ici.radio-canada.ca/nouvelle/1000753/decision-du-dpcp-a-val-dor-entre-colere-et-incomprehension>>.

Commission) was created. Chaired by the Honourable Jacques Viens, the Commission was tasked with shedding light on systemic issues that characterize the relationship between Indigenous peoples and certain public services in Québec, including police services. Its report, released on September 30, 2019, made a series of recommendations for concrete and sustainable corrective actions to be implemented by the Government of Québec and Indigenous authorities to prevent or eliminate all forms of violence and discriminatory practices, including in police services.¹⁶

On **September 17, 2018**, MSP used its authority under sections 289.3 and 289.6 PA to entrust BEI with all allegations of a criminal nature made by an Indigenous person against a police officer, thereby officially terminating Phase 2 of the investigations conducted by SPVM. However, in the following months, SPVM would go to complete numerous investigations it had already initiated.

This report contains my observations and conclusions on the impartiality and integrity of the Phase 2 investigations, i.e., those concerning complaints received by SPVM between April 6, 2016, and September 17, 2018, when responsibility for investigations into Indigenous criminal complaints against police officers was entrusted to BEI.

Highlights of Phase 2 Investigations

Phase 2 comprised 61 investigations. The complaints were made by 32 men and 37 women.

Several cases of alleged assault were investigated. There were also many cases of sexual violence. However, there were fewer than in Phase 1 because, as should be recalled, since October 4, 2016, BEI has been the organization responsible for all investigations into alleged sexual offenses by police officers in the course of their duties. However, SPVM would continue to have jurisdiction until September 17, 2018, for crimes of a sexual nature that occurred while police officers were not on duty, as well as for all other types of criminal allegations involving Indigenous persons.

The nature of the other allegations investigated varied, as illustrated below. It should be noted that some investigation files may in fact include various offenses, which is why the count is higher than the total number of files investigated in Phase 2.

- Sexual violence (18 cases)
- Assault (32 cases)
- Forcible confinement (3 cases)
- Intimidation (2 cases)
- Threats (3 cases)
- Harassment (2 cases)
- Obstruction (3 cases)
- Forgery (3 files)
- Mischief (2 cases)
- Other (6 files)

¹⁶ Québec, Public Inquiry Commission on Relations Between Indigenous Peoples and Certain Public Services: Listening, Reconciliation, and Progress. *Final Report*, Government of Québec, 2019 (Commissioner Jacques Viens), on p. 238, online: <https://www.cerp.gouv.qc.ca/fileadmin/Fichiers_clients/Rapport/Rapport_final.pdf> [Viens Report].

The Phase 2 investigations were geographically distributed as follows:

- Côte-Nord (17 files)
- Nord-du-Québec (15 files)
- Abitibi-Témiscamingue (11 files)
- Outaouais (4 files)
- Lanaudière (3 files)
- Montérégie (3 files)
- Mauricie (3 files)
- Gaspésie-Îles-de-la-Madeleine (2 files)
- Capitale-Nationale (2 files)
- Other (1 file outside Québec)

Police officers from various police forces were investigated by the SPVM team:

- Sûreté du Québec (19 cases)
- Eeyou Eenou Police Force (8 cases)
- Kativik Regional Police Force (6 cases)
- Uashat Mak Mani-Utenam Police Force (5 cases)
- Manawan Police Force (4 files)
- Service de police de la ville de Québec (2 cases)
- Listuguj Police Department (2 cases)
- Former Schefferville municipal police force (2 files)
- Lac-Simon Police Force (1 file)
- Pessamit Police Force (1 file)
- Kitigan Zibi Police Department (1 file)
- Wemotaci Police Force (1 file)
- Timiskaming First Nation Police Force (1 file)
- Former Sept-Îles municipal police force (1 file)
- Other: unknown police force, civilians, correctional officers (5 files)

Of the 61 Phase 2 files, criminal charges were laid against 4 individuals (3 police officers and 1 ex-police officer). In two cases, DPCP authorized information laid to obtain a peace bond. The files in question and follow-up with respect to the judicial process are mentioned in Section 2.1 of the report. The decision whether or not to lay criminal charges rests with DPCP, and this decision-making process is outside my mandate of assessing the integrity and impartiality of police investigations, which occur prior to the DPCP decision.

Mandate prerequisites

Never before in Québec has an independent civilian observer been entrusted with monitoring police investigations of police. For their work to be successful and credible, a certain number of essential conditions must be met. For example, I was provided with full access to the evidence at every step of the investigation. I also had the opportunity to meet with anyone able to provide observations and

information on the investigation (subject to restrictions on direct contact with victims, witnesses, police officers involved, and police officer witnesses). I had sufficient resources to complete the mandate. I was greatly assisted by meticulous, dedicated, competent professionals without whom I would not have been able to effectively accomplish the monumental task of independently monitoring this investigation of extraordinary scope and complexity. They are **Christine Santerre**, specializing in criminal and penal law (Phase 2); **Isabelle Picard**, an anthropologist and a member of the Huron-Wendat Nation (Phases 1 and 2); and **Edith-Farah Ellassal**, specializing in criminal law and criminal and administrative investigations (for Phase 1 and the first part of Phase 2). I also benefited from the invaluable assistance of **Catherine Savard**, a Master of Laws student who brilliantly assisted me in the final phase of writing the report. I would also like to warmly thank **Camille Lefebvre** and **Olivier Lacombe**, doctoral and master's students respectively, for their invaluable assistance in finalizing the bibliographical elements of this report, as well as my esteemed colleague **Érick Sullivan** for the layout.

Summary of the evaluations and proposals with regard to the 23 Protocol indicators

The integrity and impartiality of SPVM's investigations are assessed based on a review of 23 indicators compiled in the "Independent Civilian Observer Protocol" (Protocol).¹⁷ These indicators were used to identify and analyze how SPVM practices promote public confidence in police investigations on police, where public confidence has traditionally been low, particularly when the victims are Indigenous. They also reflect the minimum conditions for institutions in charge of investigating the police to be viewed as legitimate and worthy of confidence on the part of the public and Indigenous peoples in particular: transparency, full Indigenous participation, representativeness of Indigenous peoples, and training based on cultural competence and safety.

All the indicators in the Protocol were evaluated separately from one another. They are divided into three categories:

- (A) Consistent application by SPVM of a rigorous established investigation process
- (B) Consideration of the Indigenous context and the sexual nature of the allegations
- (C) Absence of conflict of interest, real or apparent

While assessments were positive in Phase 2 for most indicators in my protocol, some issues critical to public confidence in police-on-police investigations remain problematic. The main concerns expressed with respect to SPVM's work are transparency towards victims and affected communities—which also concerns DPCP—Indigenous representation on the investigation team, and training based on cultural safety. I note, however, that SPVM devoted considerable investigative resources and took into account the unique requirements of its mandate to investigate police in an Indigenous context. Having said that, the lessons learned from this particular mandate entrusted to SPVM and the independent civilian observer point to major shortcomings in the system now in place through the BEI to investigate the police when the victim is Indigenous.

Proposals have thus been made in relation to several critical issues related to the investigation of police officers in an Indigenous context. Reasons and justifications are given in the report for each proposal.

¹⁷ See the Protocol in [Appendix B](#).

A) Consistent application of a rigorous established investigation process

The first category of indicators aims at examining whether SPVM consistently applies an established and rigorous investigative process. It provides a check on the integrity of the process and the impartiality of SPVM's work. My main concern is to ensure that the same procedure is followed no matter who the victim is (in this case an Indigenous person) and no matter who is the subject of the complaints (police force members). Investigators are expected to apply the same investigative process they would if the alleged crimes had been committed by civilians.

Indicator 1: Promptness of the investigations

The promptness of the investigations is a critical issue. Excessively long response times can hinder the resolution of crimes and undermine public confidence in the investigating authorities. For this indicator, I have comments not only on the duration of the SPVM investigation, but also after, when the file is forwarded to DPCP for review. These comments are necessary since, at this stage, SPVM remains involved in the file, albeit in a more partial manner. In some cases, the investigators conduct additional investigations at the request of the prosecutor and, in most cases, they assist the prosecutor in informing the victim of the decision whether or not to lay criminal charges.

On the whole, SPVM investigations are carried out within a reasonable period of time. While some delays between the commission of the alleged acts and the opening of the investigation file are sometimes observed, there are acceptable reasons for these in the case of complex and geographically wide-ranging investigations. SPVM also makes satisfactory efforts to reach the victim when circumstances make contact more difficult. On average, the SPVM investigation is completed in 4.6 months (138 days). The table in Appendix E sets out the timing of the entire process in more detail, from when the complaint is filed to when DPCP's final decision is reached. The duration of each SPVM investigation is indicated. These investigation times are quite reasonable.

Despite this, victims sometimes had to wait many months before being informed of the final outcome of their case due to the time required for analysis by DPCP. The time between when the SPVM investigation file was submitted to DPCP and a decision was reached whether or not to lay criminal charges averaged 9.3 months (279.5 days). 41% of files required more than 365 days for analysis by DPCP. This raises questions about the resources available to victims to be kept informed during this process and the obligations of investigators and DPCP in this regard. I address this issue in my analysis of Indicator 19.

BEI does not keep statistics and makes no commitments regarding the timelines for criminal investigations, i.e., investigations that concern an allegation of a sexual nature against a police officer on duty at the time of the incident and those concerning allegations made by an Indigenous person. Such reluctance is surprising inasmuch as investigation speed is essential, particularly in the case of sexual allegations, since once the victim feels ready to begin the reporting process, it is important to act quickly. In addition, trust in policing is difficult to rebuild with Indigenous peoples, and delays in processing complaints are intrinsically related to this lack of trust.

To improve the promptness of investigations and thereby enhance public confidence:

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- **Proposal 1:** That BEI keep public statistics on investigation times for criminal investigations (allegations of a sexual nature and allegations from Indigenous victims) and commit to completing investigations within a maximum of 6 months, save in exceptional circumstances.

Indicator 2: Courteous and respectful behavior

To measure this indicator I reviewed audio and videotapes of the interviews. All interviews with victims are taped except, of course, when victims withdraw their complaints and no interviews take place. When the police officers involved are met with, the interview is videotaped. This is a practice that should be made systematic in investigations concerning the police. This is in fact a legal requirement in some jurisdictions.

I can confirm that all interviews were conducted in a manner that was courteous and respectful toward the victims. The investigators understood and were sensitive to the sociocultural context and specific reality of the Indigenous victims and witnesses. They didn't seem to have any preconceived ideas about what happened and took the victim seriously. Interviews with accused police officers were conducted with an open and understanding yet firm and uncompromising attitude.

In order to properly assess the attitude adopted towards victims and the police officers involved and to ensure that a thorough investigation is carried out:

- **Proposal 2:** That interviews with victims and police officers involved be videotaped in any criminal investigation involving allegations of criminal acts against police officers.

Indicator 3: Presence of highly qualified investigators

The investigators assigned by SPVM had the training and experience required for this type of investigation. The members who were assigned to the Phase 2 investigations had between 20 and 30 years of experience at SPVM. They were mainly from the Major Crimes Division. Their skills and expertise were obvious in the interviews I had the opportunity to view, particularly in their interactions with the victims.

It should be noted that police investigator qualifications were evaluated here without regard to specific training on Indigenous cultures and realities, and that such training, even today, is not yet very thorough at the police training institute, École nationale de police du Québec (ÉNPO). I address this issue in my analysis of Indicator 13. Suffice it to mention here that at the beginning of Phase 1 investigations, SPVM investigators received customized training on these subjects. The Phase 2 investigators, who are the same as in Phase 1, therefore took this training in the fall of 2015.

Indicator 4: Appropriate intervention commensurate with the gravity of the incidents under investigation

This indicator measures the seriousness with which SPVM treats complaints and ensures that appropriate means are deployed to conduct thorough and rigorous investigations. It refers to the investigative process used to deal with complaints of serious incidents, including sexual incidents, made by people from different Indigenous nations, in a context of very low levels of trust in the police.

In Phase I, the SPVM management team quickly implemented a comprehensive approach that took into account the complexity of the issues in the field. Multidisciplinary resources were called upon, senior management traveled to Val-d'Or and the surrounding area to conduct information campaigns, communications were used to promote transparency, etc. I am of the opinion that such a comprehensive approach should also have been used in Phase 2 in certain regions, particularly in the Côte-Nord and Nord-du-Québec, not only because of the high number of complaints from these regions, but also because of the social and cultural contexts that called for a specific approach. Thus, I am of the opinion that SPVM's intervention was appropriate and commensurate with the seriousness of the events under investigation, but that it could have taken better account of the social and cultural particularities of each nation concerned in order to promote cultural safety and confidence in the community.

In terms of individual investigations, SPVM's response was appropriate and commensurate with the seriousness of the events under investigation. Substantial financial and human resources were used, experienced investigators were deployed in sufficient numbers, the investigative means necessary to establish the truth were employed, necessary travel was undertaken, and a victim-centered approach was adopted. I note, however, that due to remoteness, on certain occasions investigative leads may not have been pursued and methods had to be adapted. While I can confirm that the investigations were no less rigorous when steps had to be skipped or adjusted and that the efforts deployed were appropriate and commensurate with the seriousness of the events, there is no doubt that distance had an impact on the investigative process.

Indicator 5: Investigative methods and approaches similar to those used for crimes of the same gravity committed by civilians

SPVM did not take a different approach in its investigations because the people who were the subjects of the complaints were police officers, except as pertains to specific provisions of the *Police Act* and except for a special procedure for communicating with police officers through their police force's liaison officer in the case of investigative requests and inquiries involving that police force.

My discussions with SPVM officials, local stakeholders, and Indigenous representatives, as well as notes and recordings I consulted of interviews with police officers, whether they were witnesses or involved in the incidents, lead me to conclude that SPVM's investigative methods and approaches were the same as those used for crimes of similar gravity committed by civilians. Existing guidelines were followed and a victim-centered approach was taken.

Indicators 6 and 7: Measures taken to isolate police officers and restrict communication (recent incidents); check on measures taken by other police forces to isolate police officers and restrict communication (past incidents)

These two indicators are both aimed at protecting the integrity of the investigation and minimizing contamination of evidence and collusion between witnesses. While this is important for civilian witnesses, it is even more important for the police officers involved and the police witnesses. These measures are essential to counter the "blue wall of silence," which refers to the perception that police officers are often reluctant to betray a colleague or reveal questionable police actions.

For criminal investigations into recent events, the police force involved must take immediate measures: isolate the police officers involved and the police witnesses, keep them from communicating with each other, and require them to independently prepare accurate, detailed, and complete accountings of the facts. As an independent civilian observer, my role was to verify what actions SPVM took to ensure compliance by the police force involved in the incident, from the outset and for the duration of the investigation. For past events, nothing can be done by investigators to prevent communication between police witnesses and implicated officers that may have occurred several months or years previously. The question that must therefore be asked in the current investigation is what SPVM did to restrict contact and communication between the police officers involved prior to their interviews with SPVM investigators.

For both recent and past incidents, I have concluded that SPVM's approach was satisfactory under the circumstances. SPVM took appropriate measures to restrict communication by police officers prior to their interviews. However, its limited powers in this regard are insufficient to prevent any risk of communication between police officers and witnesses or any risk of contamination of the evidence. This is not unique to SPVM investigations and reflects a more general problem in investigations on police officers, including those conducted by BEI.

I note a major inconsistency in the legal provisions surrounding investigations by BEI. While there are rules regarding non-communication between police officers for independent investigations, there are no rules for criminal investigations, which, it should be recalled, relate to any allegation of a sexual offense committed by a police officer on duty and allegations of a criminal nature against police officers in all cases where the victim or complainant is Indigenous. I find it highly problematic that the *Regulation respecting the conduct of the investigations of the Bureau des enquêtes indépendantes* has not been amended to take account of BEI's broadened mandate in relation to criminal investigations. It is inconceivable that in the case of criminal investigations, no rules on isolation and non-communication regulate BEI's powers, the duties of witnesses and implicated police officers, and the obligations of directors of police forces involved. BEI's mandate must be formalized in the PA to adapt the *Regulation respecting the conduct of the investigations of the Bureau des enquêtes indépendantes* to the criminal investigations now under its responsibility, in particular as regards the obligations of police witnesses and implicated officers. The same holds true for other PA rules that concern BEI.

In order to address legislative inconsistencies and adapt the *Regulation respecting the conduct of the investigations of the Bureau des enquêtes indépendantes* to the criminal investigations now under BEI's responsibility, in particular as regards the obligations of witness and involved police officers:

- **Proposal 3:** That Section 289.1 of the *Police Act* be amended to formalize BEI's mandate regarding allegations of a criminal nature against police officers in all cases where the victim or complainant is a First Nations or Inuit person.
- **Proposal 4:** That Section 289.4 of the *Police Act* be amended so that the *Regulation respecting the conduct of the investigations of the Bureau des enquêtes indépendantes* may apply to criminal investigations falling within the remit of BEI that are not independent investigations as referred to in the first paragraph of Section 289.1.

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- **Proposal 5:** That the *Regulation respecting the conduct of the investigations of the Bureau des enquêtes indépendantes* be amended so that the obligations of non-communication and isolation imposed on police officers implicated in the event, police officers who witnessed the event, and the director of the police force involved in the event apply, adapted as necessary, to criminal investigations.

In addition, I note significant shortcomings in the *Regulation respecting the conduct of the investigations of the Bureau des enquêtes indépendantes* concerning BEI's powers to require compliance with the rules of non-communication and the lack of penalties in the event of failure to comply with the rules. The *Regulation* does not provide for sanctions in case of violation of the rules by the police officers or witnesses involved or by the director of the police force involved.

In view of the importance of compliance with these rules for maintaining public confidence in investigations concerning police officers, criminal sanctions should be provided for in the *Regulation*:

- **Proposal 6:** That the *Regulation respecting the conduct of the investigations of the Bureau des enquêtes indépendantes* be amended to provide for sanctions when police officers or the directors of the police forces involved fail to comply with the obligations set out in the *Regulation* regarding non-communication between witness and involved police officers.

Indicator 8: Rank of investigators who conduct interrogations

In some cases, SPVM detective sergeants interviewed officers of the same or higher rank. No special treatment was given, and difficult or uncomfortable questions were asked. Investigators conducted their search for the truth in their dealings with the police officers involved, without fear or favor, in an objective and uncompromising manner.

Indicator 9: Respect for the fundamental rights and obligations of witness and involved police officers

In all cases where investigators met with involved police officers in Phase 2 of the investigation, Section 263 of the PA was respected: the police officers were informed that they were the subject of a complaint and received the usual warnings (right to remain silent and right to counsel), in addition to being informed that they were not required to make a statement regarding the complaint against them. Each interview in which police officers were questioned as suspects during the investigation was recorded on video, and my analysis after viewing them is shown in the assessment charts in Appendix F. I observed no irregularities in how the questioning was conducted, which was fully compliant with the rules provided for by law.

As for police witnesses, they were fairly quickly notified of their status in the investigation. Some were assisted by a lawyer during the interrogation, while others consulted a lawyer beforehand. All personal notes of police witnesses and all reports relating to the examination of the complaint, if any, were forwarded with the original file. I note, however, that in a number of files, there were no personal notes of police witnesses at all. This is problematic, as the practice of note-taking is vital to the proper administration of criminal justice. Particularly when an investigation concerns police behavior, the absence of contemporaneous notes of events by the police officers who witnessed or were involved is

likely to reinforce the perception of the existence of a law of silence on the part of police officers to protect each other. I would also add that while note-taking and note-keeping are a standard police obligation in some police forces, there do not seem to be any penalties for failing to comply with this obligation. The application of such sanctions by police force directors, when notified of a breach of duty to cooperate, would greatly strengthen police accountability mechanisms and enhance public trust in them.

Indicator 10: Seriousness and thoroughness of the investigation

I confirm that significant efforts were made by the SPVM team to establish the facts and identify those responsible for the alleged acts. Generally speaking, the investigations were carried out seriously and thoroughly. Appropriate methods were adopted by the SPVM team to investigate the facts and identify the person(s) responsible. When the victim was unable to specify the date of the reported event or the identity of the police officer involved, the investigators took all reasonable steps to find out this information and different methods of identification were used, which points to the seriousness of the investigation. I am satisfied with the steps that SPVM investigators took to identify police officers who were the subject of complaints. Suspects could not be identified in only 4 of the 61 files in Phase 2 investigations.

Investigators followed up appropriately on DPCP requests for further investigation. I note, however, that in some cases, the remoteness between Montreal and the location of the alleged incidents meant that investigators did not return to further refine their investigation, including to interview witnesses who could have shed light on events. My role as an independent civilian observer is to assess the integrity and impartiality of the investigation. It is not to perform the investigation in SPVM's stead and I cannot interfere. The evaluation of the sufficiency of the evidence is the responsibility of DPCP, which among other things must decide whether or not it allows for a criminal prosecution to proceed. In cases where further investigation was not requested by DPCP, I am of the view that the integrity of SPVM's investigation was not compromised, and I defer to DPCP as the authority with sole responsibility to assess the sufficiency of the evidence gathered.

With respect to the questioning of the police officers involved, while they were subject to the same guidelines as in Phase 1, I note that a different approach appears to have been taken in Phase 2. In 15 files, SPVM issued no invitation to the police officer involved to meet. According to the explanations provided by SPVM, these files concerned situations where the DPCP team, in assessing the evidence submitted, had concluded that there was no criminal act, or insufficient evidence, and that meeting with the police officer involved would have no bearing on its conclusions. In these cases, the police officer was not asked by SPVM to provide a statement.

By not inviting police officers to comment on facts alleged against them, the SPVM investigators deprived themselves of explanations that might have advanced the investigation or, conversely, confirmed it was impossible to prove the crime beyond a reasonable doubt. I believe that when police officers are investigated, they should be systematically asked to provide a statement to investigators when the evidence raises a reasonable doubt that a crime has been committed.

To ensure that investigations involving police officers are thoroughly conducted:

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- **Proposal 7:** That when police officers are investigated, including by BEI in its criminal investigations, they be systematically invited to provide a statement to investigators when the evidence leaves reasonable doubt that a crime has been committed.

B) Consideration of the Indigenous context and the sexual nature of the allegations

This second set of indicators is intended to determine whether SPVM adequately considered the Indigenous context and the sexual nature of the allegations. The indicators are thus intended to test how SPVM adapted its intervention to take into account the sexual nature of many of the complaints. Most of these indicators point to the importance of using a victim-centered approach to make victims feel safe and at ease cooperating with SPVM investigators. Furthermore, for the investigation to be properly conducted, SPVM had to take into account the Indigenous context within which it was asked to intervene. Indicators are thus aimed at verifying whether SPVM took this into account, particularly by adopting an approach based on cultural competence and safety.¹⁸

Indicator 11: Transparency of the investigative process with Indigenous communities

Unlike in Phase 1, no formal travel was undertaken in Phase 2 to meet with members of the communities affected by the inquiry across Québec. The presence of SPVM management and multidisciplinary team in the affected region was aimed at forging ties with partners and local communities and informing them of the investigative process and its progress, and lack of such contact in Phase 2 could only have a negative impact on the transparency of the investigative process. There is no doubt that SPVM's overall approach in Val-d'Or during Phase 1 was exceptional and that it was not realistic to take an approach of similar scope in all the other regions where investigations took place during Phase 2. That being said, some regions could have benefited from a more sustained and comprehensive approach by SPVM, with tensions between law enforcement and Indigenous peoples continuing and confidence in investigations on police lacking. For these reasons, my conclusions on this indicator are mixed.

Transparency is central to the notion of public confidence in police investigations on police. It is especially important when Indigenous victims are the source of the complaint. This was true for SPVM and it is equally true for BEI. I believe that Indigenous peoples and the general public have very high legitimate expectations of BEI informing them of their investigations into allegations by First Nations and Inuit people. I consider it of crucial importance that changes to increase BEI's transparency be made quickly, in order to improve negative perceptions of its objectivity and impartiality and to strengthen its legitimacy. I believe that BEI's transparency can be increased by keeping more revealing statistics of its investigations and by publishing reports on its criminal investigations when DPCP decides not to lay charges.

To increase BEI's transparency, contribute to the fight against systemic discrimination and racism, and harmonize BEI practice with that of other police forces in the country:

¹⁸ See section 3.2 of the report; Expert Panel on Policing in Indigenous Communities, *Towards Peace, Harmony and Well-being: Policing in Indigenous Communities*, Council of Canadian Academies, Ottawa, 2019, online: <<https://cca-reports.ca/wp-content/uploads/2019/04/FullReport-Toward-Peace-Harmony-and-WellBeing.pdf>>.

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- **Proposal 8:** That BEI collect and make public data on the ethnic origin and Indigenous identity of individuals and police officers involved in their investigations.

An analysis of the transparency obligations of other independent bodies shows one thing: by failing to disclose any information whatsoever on criminal investigations files into allegations of sexual assault or following a complaint by an Indigenous person, BEI has one of the worst records in Canada in terms of transparency. It should be required to report in detail on its investigations when DPCP decides not to lay criminal charges. A detailed summary of the investigations carried out by BEI would allow the public to know the facts surrounding the police intervention and the means used to uncover the truth, judge how thorough and serious the investigation was, and better understand the decision not to lay charges. There is also nothing stopping BEI from collaborating with DPCP to include in its report a summary of the reasons for not pressing charges. The public would then be in a better position to judge how impartially and independently BEI conducted its investigations, which I believe would significantly boost confidence in this investigative procedure, which operates in a context of broad and well-documented distrust on the part of the public in general and of Indigenous peoples in particular.

So that the public knows the facts underlying BEI's investigations, understands the means used to uncover the truth, can judge how thorough and serious the investigation was, and gain a better understanding of the decision not to lay charges:

- **Proposal 9:** That the *Regulation respecting the conduct of the investigations of the Bureau des enquêtes indépendantes* be amended so that the director is required to release a detailed report on any investigation it has conducted, whether an independent or a criminal investigation, when DPCP makes the decision not to lay charges against the police officer(s) involved.

To provide an immediate boost to BEI's transparency at a time of high expectations and low confidence, without waiting for this regulatory change:

- **Proposal 10:** That the BEI director undertake without delay to provide the public with detailed reports on investigations into criminal allegations of a sexual nature or where the victim is Indigenous, in all cases where DPCP does not authorize criminal prosecution.

Indicator 12: Establishment of a climate of trust with the victims

The team of investigators, most of whom were specialized in sexual assault, made considerable effort to establish a climate of trust with the victims. Their training and experience were evident in their approach. They took the time to gather victims' versions of events. They answered victims' questions and conducted interviews in civilian attire. Victims were consulted to ensure that the meeting place was suitable. Where a police station was chosen, it was in all cases a station belonging to a different police force than the one involved in the complaint, and I found no victims who experienced visible discomfort from the location.

Indicator 13: Investigators' training on Indigenous cultures and realities

All SPVM investigators and detective lieutenants assigned to Phase 2 investigations attended a four-hour training session on Indigenous realities. I found the people who provided this training to be

competent and successful at sensitizing investigators to key issues. That being said, this training in itself is insufficient to enhance the cultural competence of SPVM investigators in the broader Phase 2 framework. The syllabus was extremely ambitious in relation to the length of the course, which should have been a few hours longer. And given that Phase 2 covered a variety of geographic areas and victims from different Indigenous nations, I believe that new training should have been provided to address the cultural and social particularities of the different nations with which SPVM was to interact.

More generally, the issue of training police officers (including future police officers) on the sociocultural realities and issues facing Indigenous communities is paramount. Current training, where it exists, is sporadic and insufficient. Thus, I add my voice to the many calling for action and reiterate with them the importance for police forces and ÉNPQ to include in their training programs content developed in collaboration with Indigenous authorities and dealing with the needs and characteristics of First Nations and Inuit and with cultural safety. I applaud certain government initiatives in this regard and hope that the results and changes in police training will be significant and publicized.

While the training of all police officers and police apprentices is essential, increased training is even more necessary for investigators called upon to investigate criminal allegations by Indigenous people against police officers. Thus, I reiterate the finding from my Phase 1 report that any mechanism for dealing with Indigenous complaints against police officers should provide meaningful training on Indigenous realities and cultures to all those involved. This training must be founded on an approach of cultural competence and safety. In my opinion, the training must not only deal with the history and the social and cultural realities of each Indigenous nation in Québec (and not “Indigenous peoples” generically and without distinction), but must also include a component specifically aimed at how to conduct criminal investigations in an Indigenous environment or when the victim is Indigenous.

BEI is now responsible for investigating all allegations of a criminal nature against a police officer in Québec when the victim is an Indigenous person. It must therefore implement the recommendations that have been repeated time and time again, and develop and provide mandatory training programs for all its investigators aimed at fostering cultural sensitivity, competence, and safety while respecting the cultural diversity of the Indigenous nations with which investigators are called upon to work.

Furthermore, I consider it essential that BEI, in collaboration with Indigenous stakeholders, develop a best practices guide on criminal investigations for when the suspect is a police officer and the investigation takes place in Indigenous environments, with a view to cultural safety, that is to say, adapted to the different local realities. Formalizing the process and disclosing it would help to reassure the public and overcome the current perception that investigations involving police officers do not provide the required impartiality, especially when the victim is Indigenous.

To improve training for BEI investigators on Indigenous cultures and realities:

- **Proposal 11:** That, in partnership with Indigenous organizations and experts, a mandatory training program be developed and delivered for all BEI investigators aimed at fostering cultural sensitivity, competence, and safety while respecting the cultural diversity of Indigenous nations.
- **Proposal 12:** That BEI, in collaboration with Indigenous organizations and experts, develop a best practices guide for investigators conducting investigations in Indigenous environments or where the victim is Indigenous.

Indicator 14: Adequate representation of Indigenous community members on the investigation team

In Phase 2, one of the two Indigenous investigators assigned to the SPVM team in Phase 1 was fully reintegrated into the team. She carried out tasks similar to those of SPVM investigators and provided them with the benefit of her investigative expertise and knowledge of Indigenous communities. Her involvement ended in June 2017. Without calling into question the quality and extent of the role played by the external Indigenous investigator, my assessment of this indicator is mixed. SPVM once again missed an opportunity to integrate Indigenous officers from its own ranks, if only in an ad hoc manner as it did with external Indigenous officers. I understand that the immediate response was to involve investigators trained in sexual assault and to put together a multidisciplinary team adapted to the circumstances of fall 2015. Yet it seems essential to me that in investigations in an Indigenous environment, Indigenous investigators should be included to the extent possible.

I would also like to point out that, as of the date of this report, BEI has still not hired an Indigenous investigator. In my opinion, there are three main obstacles that slow the hiring of Indigenous investigators at BEI.

A first obstacle is that BEI has not yet developed an equal access employment program and is not explicitly subject to the *Act respecting equal access to employment in public bodies*. BEI's failure to be included in this act appears to be an oversight. BEI is in fact a specialized police force under the PA, yet it is the only provincial police force not subject to the act. Having an equal access employment program governed by this act and supervised by the Human Rights Commission is, I believe, essential to promoting the recruitment of Indigenous employees at BEI.

So that BEI is subject to the *Act respecting equal access to employment in public bodies* and thus required to have an equal access employment program, thus promoting the representation of members from Indigenous communities on the investigation team:

- **Proposal 13:** That Section 2 of the *Act respecting equal access to employment in public bodies* be amended so that it applies to BEI.

Notwithstanding the above-suggested amendment, given the time it will take to follow through on it, and in accordance with the *Charter of Human Rights*, BEI should implement immediate measures to promote the hiring of Indigenous people. Section 289.10 of the PA provides that “the investigators are appointed

on the recommendation of the director of the Bureau. When making a recommendation, the director must encourage parity between investigators who have never been peace officers and those who have.” Similarly, Section 9 of the *Regulation respecting the selection procedure and the training of investigators of the Bureau des enquêtes indépendantes* provides that the selection committee shall “analyze the candidates’ files and short-list the candidates who, in its opinion, meet the requirements mentioned in the recruitment notice, taking into account in particular the number of vacant positions, the number of candidates, and the requirement to encourage parity between investigators who have never been peace officers and those who have.”

Criteria provided for in an equal access employment program should be added to these selection criteria to address the under-representation at BEI of certain groups who face discrimination in employment, including Indigenous peoples:

- **Proposal 14:** That an equal access employment program be immediately developed and implemented at BEI in consultation with *Commission des droits de la personne et des droits de la jeunesse*. That this program’s measures and objectives for the recruitment of Indigenous persons be taken into account in the application of Section 289.10 of the PA and Section 9 of the *Regulation respecting the selection procedure and the training of investigators of the Bureau des enquêtes indépendantes*.

A second barrier to hiring Indigenous investigators appears to be the low number of candidates who apply. Traditional means of announcing openings at organizations such as BEI are often not enough to encourage and stimulate Indigenous applications. Given this, a proactive approach in collaboration with partners from all First Nations and Inuit communities and adapted to the local realities of these communities is essential to promote the recruitment of Indigenous investigators.

To help publicize openings at BEI to potential First Nations and Inuit applicants:

- **Proposal 15:** That a recruitment and communication strategy be developed at BEI for announcing openings to potential First Nations and Inuit applicants, in collaboration with partners from different communities and adapted to local realities.

A third potential obstacle concerns the procedure and criteria for selecting investigators. I believe these should be interpreted and reviewed to encourage the hiring of Indigenous candidates.

To promote the involvement of First Nations and Inuit people in the hiring process:

- **Proposal 16:** That Section 7 of the *Regulation respecting the selection procedure and the training of investigators of the Bureau des enquêtes indépendantes* be amended to provide for Indigenous representation on the selection committee for BEI investigators, on a permanent or ad hoc basis.

To promote full equality in employment, the selection criteria for investigators must be interpreted and assessed in a way that takes into account the realities of First Nations and Inuit people and recognizes their relevant knowledge and experience. The idea is not to “lower” the selection criteria or disregard the competencies required for the position. On the contrary, the point is to raise awareness that the current

selection criteria, when applied rigidly and from the perspective of the majority, can act as an obstacle to equal opportunity. It is about deconstructing colonial barriers and fully valuing Indigenous values, philosophies, and knowledge systems. This way of doing things differently challenges colonialist institutional perspectives and makes room for marginalized Indigenous perspectives. It is about valuing Indigenous cultures as inherently rich and carriers of competency.

To stimulate the hiring of Indigenous candidates within BEI so as to fully value Indigenous philosophies, values and knowledge systems:

- **Proposal 17:** That the selection criteria in Section 15 of the *Regulation respecting the selection procedure and the training of investigators of the Bureau des enquêtes indépendantes* be assessed with an approach of cultural competency, duly valuing the particular experience and knowledge of the Indigenous candidate, consulting if necessary a trustworthy person from the candidate's Indigenous nation.

That being said, legal constraints for hiring investigators lead to unavoidable delays, which may have a lasting impact on BEI's credibility with Indigenous peoples. Two years have already passed since BEI was first mandated to investigate allegations from Indigenous victims and yet no Indigenous investigator has been hired. Further delays are to be expected. Moreover, even once one or several Indigenous investigators have been hired, it will be difficult to assign them to all investigations involving Indigenous victims. For reasons of legitimacy, when police officers are investigated and the victims are Indigenous, it is crucially important that the investigative team have Indigenous members. My discussions with many Indigenous partners and with BEI indicate that it would be advisable to create specific positions without delay to allow for Indigenous presence and assistance when a BEI case involves an Indigenous victim.

To allow for Indigenous presence and assistance when a BEI case involves an Indigenous victim, for cultural safety reasons and to increase the legitimacy of such investigations :

- **Proposal 18:** That positions of "Indigenous civil advisor" be immediately created to ensure an Indigenous presence in investigations that involve an Indigenous victim. The roles and skills required should be determined in consultation with Indigenous representatives.

Indicator 15: Availability of interpretation and translation services to members of Indigenous communities who are interviewed

SPVM did not systematically offer interpretation or translation services into the victim's native tongue. In Phase 2, however, I did not note any major communication problems. The Indigenous victims spoke either English or French as their mother tongue or as a second language at a level that enabled an interview of this nature to be held. I therefore conclude that SPVM should have systematically offered translation or interpretation services to Indigenous victims and witnesses, but that the failure to do so did not materially affect the integrity of its investigations to determine the truth.

To remove communication barriers between investigators and victims when the victims are Indigenous and to promote cultural safety:

- **Proposal 19:** That BEI systematically offer translation or interpretation services to Indigenous victims and witnesses.

Indicator 16: Support for victims and communication of useful information on psychological support services and assistance and protection services

SPVM's guidelines call for the team to make telephone contact with the victim as soon as possible. This allows support resources to be put in place if necessary, such as social workers or other support professionals as well as immediate family. SPVM has taken the necessary steps to ensure that victims are supported in the investigative process.

However, if there is nothing to prevent a support person from attending interviews with the investigator in which the facts of the complaint are to be discussed, it is customary for this type of interview to take place with the victim alone. Most of the time, the victim could get support before and after the interviews. While I welcome the fact that SPVM has relaxed the usual practice in order to allow some victims to be accompanied during the interview, most of them would have undeniably preferred to be accompanied during the interview, but resigned themselves to accept the usual practice. Some victims asked to have someone with them, while others did not explicitly request so. I note, however, that SPVM did not proactively offer victims the opportunity to be accompanied, except in a few specific cases. After discussing the matter with numerous experts, I have become convinced that justice professionals need to question these procedures so as to ensure that the legal process is adapted to the specific cultural characteristics of Indigenous communities. In cases involving complaints against police officers, the purpose of victims being accompanied is more specifically to reduce Indigenous victims' fears about the police investigative process. A criminal investigation conducted in a culturally safe way when the victim is Indigenous must, in my opinion, allow the victim to be accompanied at all stages, including during the interview with the investigators on the facts that gave rise to the complaint. BEI policies in this regard are not known, and it can only be assumed that investigators follow the regular practice.

To encourage feelings of safety and physical and psychological well-being in victims when a police officer is the subject of the complaint:

- **Proposal 20:** That BEI proactively offer and allow Indigenous victims who file complaints against police officers to be accompanied by a support person of their choice (with the exception of potential witnesses) during the interview with investigators on the facts of the case.

Indicator 17: Interview conducted by a female investigator when the victim expresses such preference (sexual assault allegations)

Unlike in Phase 1 when almost all interviews were conducted by a female investigator when the allegation was of a sexual nature, fewer female investigators conducted such interviews in Phase 2. Many of the investigators were trained to intervene in sexual assault cases, and all acted with seriousness, tact, and sensitivity. In the cases where a female victim was interviewed by a male investigator, I note that no concerns were raised in this regard and that no victims asked to be interviewed by a female investigator.

Given the specialized expertise and experience of SPVM investigators in sexual assault cases, I am satisfied that this indicator is being met. However, I would reiterate that asking the victim whether they prefer a female or male investigator at the first telephone contact is good practice in the context of allegations of a sexual nature and should be applied whenever possible.

Indicator 18: Treating the victim with understanding, empathy, courtesy, and respect for their privacy

I confirm that all interviews were conducted in a manner that was courteous and respectful toward the victims. SPVM investigators did not appear to have any preconceived ideas about the events and took the victims seriously. The socio-cultural context and the particular circumstances of the victims who filed complaints seem to be taken into account by the investigators. They were attentive to any discomfort or emotion that arose during the interviews and took an “I believe you” starting point. Despite the investigators’ respectful, empathetic, and courteous behavior, some victims appeared to experience discomfort during their interviews. Uneasy feelings felt by an Indigenous victim during an interview with a police officer can be explained by a general distrust of police, especially if their complaint involved police officers, but also by cultural differences that could lead to misinterpretation on both sides. These normal and understandable reactions did not appear to be caused by inappropriate behavior by investigators.

Victims also expressed disappointment, bitterness, distress, or anger when DPCP informed them that criminal charges would not be laid against their aggressor due to a lack of evidence or otherwise. Such an outcome can certainly and understandably spur these kinds of feelings, which can also be exacerbated by the long lapse between the initial interview with SPVM investigators and the announcement of the decision by DPCP.

Indicator 19: Explaining to the victim the conduct of the police investigation and the legal process and keeping the victim informed of decisions made in the case

The information provided to victims by SPVM during investigations was satisfactory. The investigators met again with some victims in cases of a sexual nature, with DPCP present, which helped to create a bond of trust with the victim and to clarify the course of the proceedings. When DPCP announced its final decision whether or not to authorize prosecution, DPCP and SPVM teamed up and, where possible, traveled to the victim’s community to inform them of the decision. I am therefore satisfied with how SPVM kept victims informed about the investigations and about decisions whether to prosecute.

Having said that, I do see some gaps in the flow of information to victims between the time the SPVM investigation was completed and the time DPCP made its decision whether or not to lay charges. Victims had sufficient contact with investigators during the investigation, but from the moment SPVM informed them that their files were now in the hands of DPCP, they found themselves in a kind of informational wasteland. And as discussed under Indicator 1, Phase 2 files took on average 9.3 months (279.5 days) after SPVM filed its investigative report for DPCP to announce whether criminal charges would be laid. In fact, 41% of cases took more than 365 days. These long waits can cause great suffering to victims and lastingly undermine their confidence in the justice system, particularly when they have no news on the progress of their case during this period.

The time it took DPCP's committee of three prosecutors to process files in Phase 2 reveal major shortcomings in the respect for the right of victims to be kept informed of the progress of the investigation. While the investigator serves as a point of contact during the police investigation, once the file is in the hands of DPCP, victims are left without word about their cases until DPCP announces its decision about laying charges or not, unless the victims personally contacts CAVAC or generally the DPCP's office. This is likely to be a recurring problem in BEI investigations.

Even when there is an honest, impartial, timely, and transparent police investigation, victims' lack of information and long delays during DPCP analysis process can permanently undermine Indigenous victims' confidence in the justice system as a whole. I therefore believe that DPCP would benefit from clarifying the obligations of prosecutors to provide information to Indigenous victims who make a complaint against a police officer. I have had the opportunity to raise this concern with DPCP. It has indicated to me that it intends to include in its guidelines obligations of information of prosecutors to Indigenous victims who have filed complaints against police officers, from the early stage of analysis of the file, and to review the guidelines to take into account the mandate BEI received on September 17, 2018, with respect to allegations against a police officer involving an Indigenous person. I welcome these intended inclusions.

To clarify prosecutors' obligations of information to Indigenous victims who file complaints against police officers during the analysis stage and to ensure that the applicable guidelines reflect all aspects of the BEI mandate:

- **Proposal 21:** That DPCP guidelines be amended to provide for prosecutors' obligations of information to Indigenous victims in cases involving criminal allegations against police officers from the early stage of analysis as to whether or not to lay criminal charges. The guidelines should provide that each case be handled from start to finish by a single prosecutor to ensure maximum continuity and appropriate follow-up. Cases of this nature should be assigned to a prosecutor who has received meaningful and specific training on Indigenous cultural safety.

Inappropriate behavior by a police officer may contravene various different rules, all of which provide for separate complaint processes and result in different sanctions. The information provided to victims of such behavior on the various remedies available to them is piecemeal and confused, hindering their access to justice.

The *Police Act* imposes a duty on every police officer to report to their director any conduct that may constitute a crime or a breach of ethics.¹⁹ Furthermore, police force directors have an important obligation to inform citizens in writing of their possible recourse in matters of police ethics.²⁰ However, no sanctions are levied on directors who fail to comply with this obligation, which does not seem conducive to me to ensuring victims are aware of the remedies available to them.

In most cases, SPVM failed to formally inform the victim in writing of their recourse in matters of police ethics. SPVM is not the only police force not complying with the obligation under Section 12. The

¹⁹ Sec. 260 PA.

²⁰ *Code of ethics of Québec police officers*, CQLR, c. P-13.1, r. 1, s. 12 (hereinafter "CEQPO").

practice appears to be widespread and the obligation of information is occasionally ignored or misunderstood by police forces.

The failure of SPVM and other police forces to comply with sections 260 PA and 12 CEQPO are evidence of the general lack of knowledge of these provisions and how little heed is paid by police directors to the officers' obligations to condemn breaches and of their own obligation of information to victims. These issues are central to public confidence in the mechanisms put in place to ensure police accountability. In addition to the existing sanctions that must be applied, BEI and other police forces must adopt measures to raise awareness and educate their staff about these crucial obligations.

Under Section 150 of the PA, the limitation period for filing a complaint with the Police Ethics Commissioner is one year from the date of the event or knowledge of the event giving rise to the complaint. This is a short limitation period, as victims of police misconduct may be reluctant to file complaints because of the trauma experienced and fear of reprisals. The problem may also be exacerbated if an Indigenous victim lives in an isolated community with poor communications infrastructure. Furthermore, the time required by DPCP to analyze each file means that by the time the decision is handed down, the one-year time limit for filing a complaint has often expired.

To remedy current failures in the interaction between police investigations and ethics remedies:

- **Proposal 22:** That section 150 PA be amended to extend the limitation period for filing a police ethics complaint to three years.

The issues discussed above are a symptom of a deeper problem regarding access to information for victims of police misconduct. The distinctions between remedies are poorly understood by victims and many stakeholders, who do not always know which door to knock on. Admittedly, BEI has its own hotline for Indigenous victims, and the Ethics Commissioner conducts its own information campaigns, but it is extremely difficult for the public to find their way around. Victims of abusive police behavior should not have to bear the burden of deciding whether it constitutes a criminal offense (and therefore call BEI), ethical misconduct (and make a complaint to the Commissioner), or a disciplinary offense (and make a complaint to the police department of the offending officer). As the year 2020 draws to a close, I again note the lack of joint efforts to clarify and publicize the various complaints mechanisms and to facilitate access to them.

To allow for better information to be passed on to victims and to ensure increased support for them throughout the complaint process against members of police forces:

- **Proposal 23:** That a “single-window” solution, reachable through different technological tools, be created in collaboration with Indigenous representatives for victims to submit complaints against police officers, whether on criminal, ethical, or disciplinary matters, and to be informed of the various forms of recourse available and of the local resources available to provide assistance.
- **Proposal 24:** That Ministère de la Sécurité publique conduct an information and awareness campaign among Indigenous populations regarding the complaint processes against police officers.

C) Absence of conflict of interest, real or apparent

The issue of conflict of interest is central to the notion of impartiality in investigations. These indicators aim to verify whether there are real or apparent conflicts of interest between the members of the SPVM investigation team and the police officers or witnesses involved, the victims, other witnesses, or members of the management team at the station under investigation.

Indicators 20 to 23: Existence of professional, family, or social ties, present or past; presence of investigators who have already been police officers or otherwise employed by SQ; presence of investigators who have already been police officers or otherwise employed by another police force concerned by the investigation; any other factor likely to undermine an investigator's appearance of impartiality

My assessment of the conflict of interest indicators for Phase 2 of the SPVM investigations is favorable. I confirm, on the basis of all the information at my disposal, that there are no conflicts of interest, real or apparent, between the members of the SPVM investigation team and the police officers involved, police witnesses, victims, other witnesses or, more generally, the police forces involved in the investigations. All members of the SPVM team involved in Phase 2 investigations, including members of senior management, signed in front of a witness a *Conflict of Interest Declaration*. No conflict of interest situations were declared with respect to Indicators 20 to 22, and I find no factors that could undermine the appearance of impartiality of an SPVM investigator (Indicator 23). I note, however, that although adequate measures were put in place to ensure that allegations were communicated in the strictest confidence within SPVM and to minimize fears of interference, the appointment of SQ director Martin Prud'homme as interim head of SPVM during Phase 2 created for many an appearance of conflict of interest that may have negatively affected, for a time at least, perceptions as to the impartiality of Phase 2 investigations.

I note that at BEI, the notion of conflict of interest with regard to investigators is more limited, although not restrictive. Knowing that at least half of BEI investigators are ex-police officers, it seems imperative to me that the notion of conflict of interest be clarified to include situations where investigators would be called upon to take part in investigations involving members of police forces of which they were previously members. This is, in my opinion, an essential measure to enhance public confidence in its impartiality.

To increase public confidence in BEI and avoid conflicts of interest arising from situations where police officers are called upon to take part in investigations concerning members of police forces of which they were previously members:

- **Proposal 25:** That Section 8 of the *Regulation respecting the conduct of the investigations of the Bureau des enquêtes indépendantes* be amended to extend the notion of conflict of interest to situations where investigators are called upon to take part in investigations involving members of police forces of which they were previously members.

Conclusion

Accusing police officers requires great courage on the part of Indigenous victims, who have every reason to believe the system will not deal with their complaints with integrity and impartiality. But it is even more difficult when the local context makes them feel intimidated or threatened. This was the case in Val-d'Or in particular, where, while investigations were being conducted by SPVM, actions by SQ police officers or by their union were creating a feeling of fear among many First Nations members.

While investigations on police officers when the victim is Indigenous have undergone positive changes since the “Val-d'Or crisis” of 2015, the system put in place through BEI still suffers from serious shortcomings that are likely to undermine its legitimacy and lastingly affect public confidence in it. BEI is unacceptably opaque and unrepresentative. It is, however, a young institution with the potential to become a leader in Canada in the way investigations on police are conducted when the victim is Indigenous, if there is the political will to effect change.

The targeted proposals in this report are inseparable from the more fundamental objectives they seek to achieve: transparency, full Indigenous participation and representation, and training based on cultural competence and safety. I would further note that while these principles are essential to the conduct of an honest, impartial, and legitimate criminal investigation, they must also guide the work of DPCP, which is the ultimate and discretionary arbiter of whether or not to lay criminal charges. Shortcomings at this critical stage in the justice process can undermine the confidence of Indigenous victims in the justice system as a whole.

It is therefore my hope that this report and the proposals it contains will be taken into account in any legislative review process concerning police forces and BEI, by the *Comité consultatif sur la réalité policière* and by the mechanism established by government and Indigenous representatives for the implementation of the Viens Commission's Calls for Action and NIMMIWG's Calls for Justice. I ask the Deputy Minister of Public Security to ensure follow-up of the study and adoption of the proposals contained in this report.
