Police Violence as Organizational Crime

Sylvia Rich

Abstract

This paper argues that patterns of pervasive police violence can and should be treated as organizational crime in Canada. It uses the documented events of police violence in Val d'Or, Quebec, that emerged in 2015 to show how a similar fact pattern might fit all of the elements of organizational crime as defined in the *Criminal Code*. The article also suggests that this is an example where legal imagination is important, in order to shift our collective understanding of what organizational crime is and where it occurs.

Keywords: Indigenous people and the police, corporate crime, criminal law, policing

Résumé

Cet article soutient que les schémas de violence policière répandue peuvent et devraient être traités comme des crimes d'organisation au Canada. Il utilise les événements documentés de violence policière à Val-d'Or, une ville située au Québec, qui ont émergé en 2015 pour illustrer comment un schéma d'actions similaires pourrait correspondre à tous les éléments du crime d'organisation tels que définis dans le *Code criminel*. Cet article suggère également qu'il s'agit d'un exemple où l'imagination juridique est importante afin de modifier notre compréhension collective de ce que constitue le crime d'organisation et dans quels endroits il peut se produire.

Mots-clés : Crime d'organisation, peuples autochtones et police, criminalité des entreprises, droit criminel, maintien de l'ordre

I. Introduction

This paper is about the possibility of holding police organizations criminally accountable under Canadian law for pervasive patterns of crime among their member officers. Before laying out my argument, I start with a story set in the town of Val d'Or, which is situated on the Canadian Shield in northern Quebec.

In 2015, journalists working for an investigative news show called *Enquête* decided to look into the disappearance of Sindy Ruperthouse, a forty-four-year-old

Canadian Journal of Law and Society / Revue Canadienne Droit et Société, 2022, Volume 37, no. 1, pp. 135–153. doi:10.1017/cls.2021.27

Algonquin woman from Val d'Or, who had last been seen in 2014. This was in the context of mounting demands across Canada for an inquiry into the many cases of murdered and missing Indigenous women in this country.[1] In the course of their investigation, the *Enquête* journalists uncovered a story they hadn't been looking for.[2] They gathered together some of Ms. Ruperthouse's friends and acquaintances, a group of Indigenous women also living in or near Val d'Or, to ask them questions about her. In this conversation, the women told the reporters stories of police officers forcing them into police cruisers and driving them far out of town, then making the women exit the cars to walk home along the highway, often in dangerously cold weather. One of them described being dropped at the airport, which is around six kilometres away from the town centre. Other women, not in the original interview, then came forward to say that police officers had done the same sort of thing to them. The police would do this especially when they thought that the women were intoxicated. It appeared to be a widespread practice. There is a term for police driving intoxicated people out of town and dumping them to walk home: they call them "starlight tours." This is not the first time this police tactic has received media attention in Canada. Obviously this term is disturbingly euphemistic, erasing the violence of the practice, but this is the term in common use across Canada for these acts of violence.

The women also told reporters about police officers coercing them to have sex and violently assaulting them if they refused. The reporters realized there was a different story here than the one they had been looking for, and they asked follow-up questions. Women described being paid for sex and paid to keep quiet about it having happened. At least twice, a victim complained to the ethics bureau, with no result. One woman described being picked up by two officers in a car and told she had to go to the precinct. One of them brought her into an interrogation room and raped her, then brought her back downstairs and let her go.

Shortly after the *Enquête* episode on this story aired (and five months after journalists told provincial authorities about the allegations), the province tasked the Montreal municipal police force with investigating crime that members of the provincial police force, the Sûreté du Québec (SQ), might have committed in Val d'Or and surrounding areas. The province also appointed an independent observer, Professor Fannie Lafontaine of Université Laval. No individual liability was attributed for these events, though the stories appeared to be well founded. At the same time, there was no mention of considering an investigation that would treat the stories as an organizational crime. Yet there are features of these descriptions that indicate a pervasive pattern within an organization: these crimes were committed by members of a police force, over a number of years, while the officers were in uniform and on the job. The social status and the weapons that their job provided these officers helped them in the commission of these crimes, and it is plausible that

[1] A federal inquiry was eventually called on August 3, 2016: "Timeline of Key Milestones," *National Inquiry into Missing and Murdered Indigenous Women and Girls,* 1 July 2019, https://www.mmiwg-ffada.ca/timeline/ [perma.cc/AF7C-G2E6].

[2] Radio-Canada, "Les femmes autochtones brisent le silence," *Radio-Canada,* 22 October 2015, https://ici.radio-canada.ca [perma.cc/453Y-V72H].

https://doi.org/10.1017/cls.2021.27 Published online by Cambridge University Press

their membership in the police corps encouraged them to commit at least some of these crimes. This article considers a new way of using existing legal tools to properly attribute responsibility for these events: the route of organizational criminal responsibility for acts carried out by employees.[3] After the Val d'Or revelations, Crown prosecutors considered thirty-seven different cases[4] that came out of the SPVM's investigation, thirty-two of which related to events that occurred in Val d'Or.[5]

The Crown prosecutors declined to go forward with charges on any of the thirty-two cases from Val d'Or. Of the thirty-seven files, the Crown elected to go forward with two prosecutions against two retired officers for sexual assaults committed in the 1980s and early 1990s in Schefferville.[6] In a public statement, a Quebec Crown prosecutor stated that in nineteen of the cases, identification of the individual officers was the main barrier to proceeding with the case.[7] The Crown prosecutor cited instances in which complainants weren't able to pick out their assailant in a photo array. The complaint that a police officer had committed criminal acts was credible, but the prosecutor's office did not feel they could identify the specific officer who had committed the crime beyond reasonable doubt. There was insufficient evidence, the Crown concluded, to charge any individual officer in the Val d'Or area with a crime.

There was no more discussion of pursuing the Val d'Or cases criminally. Lafontaine, the independent observer, issued a 154-page report in which she stated her opinion that the investigation into the allegations had been fair and impartial.[8] While Lafontaine did call the situation between the police and the Indigenous women in Val d'Or a "social crisis,"[9] having the independent observer seemed to legitimize the resulting inaction, especially given her exhaustive report approving the actions of the investigators. The attitude appeared to be that while it was regrettable that these women had been victimized, there was little that the Crown could do to redress these criminal wrongs.

The epilogue to this story, as far as official action is concerned, is that the province struck a commission, the Viens Commission, to study relations between government and Indigenous people in Quebec.[10] The Premier cited the events of

---

3 *Criminal Code* RSC 1985, c C-46, ss. 22.1 and 22.2

4 Thirty-eight cases were opened but one was put aside on a technicality—it wasn't within the time period that they were supposed to be investigating.

5 Brennan Neill, "Independent Observer in Val-d'Or Abuse Scandal Says Police Investigation 'Fair, Impartial,'" *CBC News,* 16 November 2016, www.cbc.ca [perma.cc/4763-RN74].

6 The Canadian Press, "Protests Hit Val d'Or as Six Police Officers Not Charged for Alleged Abuse," *The Star,* 18 November 2018, thestar.com [perma.cc/4UE4-QNF2].

7 Lafontaine put this number at twenty-one. For a quote by the Quebec Crown prosecutor Alexandre Dalmau, see Phillipe Teisceira-Lessard, "Pas d'accusations à Val-d'Or : nombreux problèmes d'identification," *La Presse,* 18 November 2016, lapresse.ca [https://perma.cc/5DGV-HVDS].

8 Fannie Lafontaine, Independent Civilian's Report, *Evaluation of the integrity and impartiality of SPVM's investigations of allegations of criminal acts committed by SQ police officers against Indigenous women in Val-d'Or and elsewhere*, phase 1 (Quebec City: Government of Québec, 2016), at 10.

9 Ibid., 11.

10 *Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Quebec: listening, reconciliation and progress Final Report* (Government of Québec, 2016) (Viens Report), 18.

https://doi.org/10.1017/cls.2021.27 Published online by Cambridge University Press

Val d'Or in explaining the reason behind this inquiry,[11] but the Viens Commission had a mandate to study relationships between all public services in Quebec and discrimination against Indigenous people throughout the province. In keeping with its mandate, the report, released in the fall of 2019, had a chapter on policing in Quebec that found shortcomings and made recommendations, but it did not make any pronouncements about responsibility for police officers' violence towards Indigenous women in Val d'Or or suggest any follow-up actions in relation to these crimes. It did use some horrifying stories as "illustrations," including some new information such as a witness's testimony that she was raped by on-duty officers in a police station's garage.[12] This section of the Report ends by reminding readers that Lafontaine found that the investigation into cases of police brutality and sexual assault were conducted fairly and impartially.

In her report as an independent observer of the investigation into police wrongdoing in Québec, Lafontaine found no investigative wrongdoing but wrote that, more generally, relations between police and Indigenous women in Val d'Or constituted a "social crisis."[13] I do not dispute the truthfulness of that description, but I object to its incompleteness. This is not just a social crisis. It is also a story of many different acts of criminality whose common thread is that they were performed by employees, all belonging to one organization, in the course of their employment. What do we do with that feature of this particular social crisis, the fact that this is not just isolated acts, but a history of widespread violence, enabled by the state, against a specific population?

In what follows, I will argue that Canadian criminal law as written in the *Criminal Code* could lead to a criminal conviction of the SQ for the "starlight tours" described above. It is somewhat less likely that the sex crimes would be found to be organizational crime under current law, because of a section of the Canadian doctrine that requires proof of "intent at least in part to benefit the organization,"[14] but there is a case to be made here as well, as I will discuss below. Because the factual record of the circumstances surrounding the crimes in Val d'Or isn't full enough to make factual assertions about evidence, I instead delineate the shape of a legal argument that uses many of the facts that are publicly known, and I posit, for the sake of this sketch, some further facts, all of which are certainly plausible. I add these facts to a hypothetical town that I call Golden Vale throughout the rest of this article. I make no claim that these further facts are true of Val d'Or, as a further investigation would be needed to determine whether the elements of organizational liability were present there.

II. Legal Imagination and the Structure of Corporate Crime

The public imagination generally construes corporate crime as a category of financially motivated crimes[15] that is quite unlike the story about the police abuses

[11] Ibid., 22.
[12] Ibid., 282–83.
[13] Lafontaine, *supra* note 7, 10–11.
[14] *Criminal Code* s 22.2.
[15] Jasmine Hébert, Steven Bittle, and Steve Tombs, "Obscuring Corporate Violence: Corporate Manslaughter in Action," *Howard Journal of Crime and Justice* 59, no. 4 (2019): 554, 563;

https://doi.org/10.1017/cls.2021.27 Published online by Cambridge University Press

of power in the hypothetical town of Golden Vale. In Canada, "corporate crime" is actually an obsolete term, having been replaced with the broader term of organizational crime in 2004. The term organizational crime fits better here for two reasons: firstly, it emphasizes that organizations can be parties to crimes that are not related to finance or workplace health and safety and, secondly, it highlights that businesses or incorporated entities are not the only group entities (i.e. organizations) that can be brought up on criminal charges.[16] Organizational crime, especially under the name of corporate crime, is often associated with white-collar crime or profit-motivated crime.[17] But in reality the term refers to any case in which an organization is a party to an offence.

The central idea in this article is that the pattern of police criminality in Golden Vale fits the definition of organizational crime in the Canadian *Criminal Code*. Structurally, the crimes of Golden Vale bear a meaningful similarity to the more paradigmatic cases of organizational crime, such as widespread corporate fraud or price-fixing. The two types of crimes share at least the following features: they are committed by employees while those employees are at work rather than in their private time; the employer, whether bank or police force, is providing means to commit the crime, means without which it might be either much more difficult or impossible for the offender to successfully commit these crimes; and in both types of cases, the employer has a clear and accepted responsibility to guide its employees to perform their jobs in law-abiding ways. This organizational crime is different from the more common picture of profit-motivated corporate crime but it bears a family resemblance to other cases of workplace crime, albeit in a different context.

Kidnapping and sexual assault are both *mens rea* crimes, meaning that the Crown must prove that the accused had a subjective mental state (recklessness, willful blindness, or knowledge) in order to convict them of these crimes. Where the accused is an organization, the *mens rea* for the crime has to belong to the organization itself. Attributing *mens rea* to organizations has been controversial, because the very idea of group entities having minds is controversial.[18] But organizations have a social reality and acting power that makes them separate entities from the individuals who work within them, and the law recognizes the social reality that organizations make decisions that are organizational and not purely individual, and the law attributes knowledge, intention, or recklessness to organizations under certain circumstances. The method of deciding when to attribute a criminal mental state to an organization has evolved, notably through

"Developments in the Law: Corporate Crime: Regulating Corporate Behavior through Criminal Sanctions," *Harvard Law Review* 92, no. 6 (1979): 1227, 1356; Steven Bittle, "Cracking down on corporate crime? The disappearance of corporate criminal liability legislation in Canada," *Policy and Practice in Health and Safety* 11, no. 2 (2013): 45, 57. These sources cover the concept in relation to Australia, the United States, and Canada, showing this to be a global understanding.

16 *Criminal Code* ss 2, 22.1 and 22.2.

17 For example see Nicole Leeper Piquero, "White Collar Crime is Crime: Victims Hurt Just the Same," *Criminology & Public Policy* 17 (2018): 595.

18 On group agency and group minds, see Peter A. French, "The Corporation as a Moral Person," *American Philosophical Quarterly* 16 (1979): 207; Christian List and Philip Pettit, *Group Agency: The Possibility, Design and Status of Corporate Agents* (Oxford: Oxford University Press 2011); Sylvia Rich, "Corporate Criminals and Punishment Theory," *Canadian Journal of Law and Jurisprudence* 19 (2016): 97.

https://doi.org/10.1017/cls.2021.27 Published online by Cambridge University Press

legislative amendment in the early twenty-first century. Until 2004, the doctrine for applying *mens rea* to corporations in Canada was the directing minds doctrine.[19] Judges attributed *mens rea* to the organization if they could identify the *mens rea* in the mind of someone with a policy-setting role for the organization as a whole (which could then be coupled with the actions of any employee, so long as the directing mind knew the crime was occurring or going to occur). The rationale for this doctrine is that it is legitimate to attribute these high-ranking individuals' knowledge to the organization, since they perform the function of its mind, with other employees collectively being, in terms of the analogy, the organization's arms and legs. While "directing minds" of an organization will often be more than one person, they will often only comprise a small number of people at the top of the organizational structure.

In 2004, the government of Canada modernized its law on attributing fault to organizations. This was part of a response to the Westray mining disaster of 1992, when a Nova Scotia mine that wasn't following proper safety protocols collapsed, killing twenty-six coal miners. It was clear that the company in charge of the mine had not followed safety procedures and that whoever was in charge of safety at the mine had been reckless as to the safety of the miners.[20] But it was not possible to implicate the company criminally under the directing minds doctrine, as there was no evidence that the senior executives had any involvement in the safety of the mine structure. This tragedy and its aftermath exposed a serious flaw in the directing minds doctrine: in large modern companies, the most senior executives do not get involved in matters of local implementation such as how to secure a particular mine's walls.[21] In order to respond to the realities of how organizations operate, the Canadian parliament created a new and somewhat broader doctrine, called senior officer doctrine. These amendments mainly changed the law on *mens rea* and negligence crimes, crimes generally seen as more serious than regulatory offences. While regulatory offences did make up the vast bulk of enforcement against organizations,[22] and continue to do so, these provisions of the *Criminal Code* allow for the attribution of criminal liability to organizations for *mens rea* and negligence-based criminal offences to properly impute responsibility in egregious cases like the Westray mine disaster.

There is not a significant amount of caselaw on the organizational crime provisions that are now nearly twenty years old. The lack of prosecutions under these rules has a variety of causes: Jennifer Quaid has argued that some of the fault lies with the fact that the doctrine is still too rooted in an individualistic framework,[23] unlike the Australian doctrine of finding corporate *mens rea* through

[19] *Canadian Dredge & Dock Co v The Queen* [1985] 1 SCR 662.

[20] On the story of Westray and the subsequent political discussions, see Steven Bittle and Laureen Snider, "From Manslaughter to Preventable Accident: Shaping Corporate Criminal Liability," *Law and Policy* 28 (2006): 470.

[21] Todd Archibald, Kenneth Jull, and Kent Roach, "The Changed Face of Corporate Criminal Liability," *Criminal Law Quarterly* 48 (2004): 367, 368.

[22] Harry Glasbeek, "More Criminalisation in Canada: More of the Same," *Flinders Journal of Law Reform* 8, no. 1 (2005): 39 at 46.

[23] Jennifer Quaid, "What's Good for the Goose is Good for the Gander: Considering the Merits of a Presumption of Organizational Capacity in Canadian Criminal Law," in *Criminal Law Reform in*

https://doi.org/10.1017/cls.2021.27 Published online by Cambridge University Press

corporate culture (though the Australian system has also seen little to no prosecution under its more progressive regime).[24] Another explanation for the paucity of prosecutions is that Crowns often prefer responding to corporate malfeasance through provincial regulatory mechanisms rather than prosecuting criminal offences, even where the conduct is likely to meet the elements of a criminal offence, because investigations under provincial statutes are less demanding.[25] A further reason is that many corporations choose to settle once it is clear that there is a solid case against them.[26] For instance, in *SNC-Lavalin,*[27] a judge of the Court of Quebec found, in a preliminary hearing, that there was sufficient proof for a jury to conclude that three senior employees of SNC-Lavalin were senior officers under the law. Following this, the parties settled the case through a plea agreement.[28] The small number of convictions so far under the Westray amendments could lead one to pessimism about the use of these provisions to pursue a matter of organizational liability that is even further removed from the original health and safety offence that prompted the reform. Some pessimism is no doubt warranted, but there is value in detailed consideration of the senior officer doctrine specifically because it has not been widely considered so far in courts, and because there is reason to believe that, as prosecutors become more conversant with the workings of the amendments, they will rely on them more.

In advocating for the law to be used in a new way, one wants the result to be supported both in law and in principle: the result should accord with the existing legal rules *and* be a morally correct attribution of responsibility. Sometimes a situation might be tragic but not be wrong in law.[29] Alternately, sometimes we have a result where law will attribute responsibility, but where it seems like overreach to say that the organization was responsible for the actions of its agents, so that the result is not properly morally grounded.[30] If either one of these were true, then the event would not present a compelling reason to extend the doctrine to a situation where it has not been contemplated in the past. A persuasive argument that the law

Canada: Challenges and Possibilities, ed. Julie Desrosiers, Margardia Garcia, and Marie-Ève Sylvestre (Québec: Éditions Yvon Blais, 2017), 93 at 100–103.

24 Meaghan Wilkinson, "Corporate Criminal Liability—The Move towards Recognising Genuine Corporate Fault," *Canterbury Law Review* 9, no. 1 (2003): 142, 176; Roman Tomasic, "Corporate Crime and Corporate Culture in Financial Institutions: An Australian Perspective," in *White Collar Crime and Risk: Financial Crime, Corruption and the Financial Crisis*, ed. Nic Ryder (London: Palgrave Macmillan UK, 2018), 283, 300–305.

25 Glasbeek, "More Criminalisation," 46; see also Bittle, "Cracking Down on Corporate Crime?" 46.

26 Glasbeek, "More Criminalisation," 46. Convictions that result from plea bargains are part of the public record, but see, e.g., *R v Stave Lake*, BCPC 377 2016, at para 41: judges tend not to analyze reasons for guilt when there is a guilty plea. The judge in this case remarked that there were only two reported cases of a corporation being convicted of criminal negligence causing death in the 12 years since the new provisions arrived. Unreported cases may exist but are harder to discover.

27 *R v SNC-Lavalin International Inc*, 2019 QCCQ 7778.

28 Kamila Hinkson, "SNC-Lavalin pleads guilty to fraud for past work in Libya, will pay $280M fine," *CBC,* 18 December 2019, https://www.cbc.ca/news/canada/montreal/snc-lavalin-trading-court-libya-charges-1.5400542 [https://perma.cc/X6R5-RLPY].

29 Jennifer Quaid, "At Cross Purposes: The Responsible Subject, Organizational Reality and the Criminal Law," in *Collectivity: Ontology, Ethics, and Social Justice*, ed. Kendy Hess, Violetta Ignesk, and Tracy Lynn Isaacs (New York: Rowman & Littlefield International, 2018), 81, 85.

30 Archibald, Jull, and Roach discuss examples that they consider to be overreach in Archibald, Jull, and Roach, "The Changed Face," 367–96.

https://doi.org/10.1017/cls.2021.27 Published online by Cambridge University Press

should hold organizations responsible for crimes their employees commit should include an argument that this is the correct result vis-à-vis the organization's causal role in the commission of the crime, and that the law can deliver this result without bending its own organizing principles. This is what the Golden Vale police hypothetical scenario raises: a situation in which the acts of the police officers satisfy the technical elements of the criminal doctrine, as well as showing moral responsibility that forms the rationale for the existence of organizational criminal law. Kidnapping and sexual assault are not what criminologists typify as white-collar crimes (though of course these crimes can take place in white-collar environments), and there is a perceived convergence between white-collar crime and corporate or organizational crime. But the series of events in Golden Vale fits the technical definition of organizational crime in Canadian law, even though it falls outside of a common intuition about what organizational crime comprises.

This organization armed its officers, gave them a set of work objectives that included controlling and dissuading public drunkenness and other forms of nuisance in these towns, and also gave them the authority to compel people to get inside their vehicles. On its own, this is insufficient to show that the organization bears moral responsibility for the officers' abuse of these powers to commit crimes. Some additional facts (that are unknown in the case of Val d'Or, but plausible there) must be present for the organization to be responsible. Posit these further plausible facts to our hypothetical town: in Golden Vale, over the course of ten years or more, officers of the Golden Vale Provincial Police (GVPP) engaged in at least nine instances of kidnapping and fifteen sexual assaults; in that ten years, rumours occasionally went through the station about these activities, and these rumours sometimes reached the ears of management-level personnel. These rumours, along with the reports of the incidents filed with the ethics bureau, were sufficient to alert managers that they should start asking questions if they were really keen to ensure that this sort of thing wasn't going to continue in their police station. And they didn't ask those questions. In other words, the Golden Vale police management was willfully blind.[31] It also didn't take positive steps to prevent its officers from continuing to engage in these activities.

It was their membership in the organization that allowed these individuals to carry out their crimes. They obtained tools of coercive power as part of the state's law-and-order mechanism. Because the officers belonged to the GVPP, it was also much more difficult for their victims to have recourse against them. If a stranger tries to force you into his car, you can do various things, such as call out to a passerby or phone the police. If an officer is forcing you into a police car, no passersby will have a good chance of standing up to the aggressors even if they think they should (which is in itself much less likely than if they weren't uniformed officers), and calling 9-1-1 becomes an even worse option. If you defend yourself, you also risk spurious charges of resisting arrest or other reprisals.[32] At the very

[31] On willful blindness, see below at section III.2.

[32] Pamela Palmater, "Shining Light on the Dark Places: Addressing Police Racism and Sexualized Violence against Indigenous Women and Girls in the National Inquiry," *Canadian Journal of Women and the Law* 28, no. 2 (2016): 253, 267. For similar occurrences in the US context, see

https://doi.org/10.1017/cls.2021.27 Published online by Cambridge University Press

least, the organization's structure and public image made it easier for these individuals to commit these crimes, notably by making it harder for victims to fight back or for anyone to intervene on their behalf. One does not need to be an advocate for the expansion of criminal law to see that, structurally, this fact pattern bears enough similarity to the essential features of organizational crime to be considered within that category.

Current Canadian law on the criminal responsibility of organizations strongly suggests that the GVPP would be a suitable target for prosecution, and that the crimes of its employees could be considered organizational crimes. In the next section, I show that incorporating this conclusion into Canadian criminal law does not require any kind of legislative amendment. The legislative changes that Canada made to organizational criminal law in 2004, along with the interpretations of that law in the courts, have rendered the current law sufficient to pursue a case of organizational crime in Golden Vale.

III. Applying the Senior Officer Doctrine to Golden Vale

The most relevant paragraph for pursuing the Golden Vale Provincial Police for these crimes is at s. 22.2(c) of the *Criminal Code.* It reads:

> In respect of an offence that requires the prosecution to prove fault—other than negligence—an organization is a party to the offence if, with the intent at least in part to benefit the organization, one of its senior officers … (c) knowing that a representative of the organization is or is about to be a party to the offence, does not take all reasonable measures to stop them from being a party to the offence.

In order for this section to be applicable to the GVPP, one would need to establish that (1) the GVPP is an organization as defined in s. 2 of the *Criminal Code*, (2) there was at least one senior officer of the GVPP who had enough information about these events and knew that they were an ongoing problem, (3) one or more senior officers had knowledge that an employee or employees were going to be a party to a future repetition of this offence and failed to take reasonable steps to stop them, and (4) at least some part of their failure to take steps stemmed from an intention to benefit the organization itself. I will consider these four criteria in turn, looking at the wording of the provisions, available commentary, and caselaw to determine whether the Golden Vale police crimes would count as organizational crimes in Canada.

1. An Organization

Is a policing body an organization under the law? The *Criminal Code* at s. 2 defines an organization broadly, so as to capture any "association of persons that (i) is created for a common purpose, (ii) has an operational structure, and (iii) holds itself out to the public as an association of persons."[33] In the hearings for Bill C-45,

Joseph Tanfani, "In Baltimore and other cities, police have used 'rough rides' as payback in the past," *Los Angeles Times,* 1 May 2015, www.latimes.com [perma.cc/UMF9-ETSB].

[33] *Criminal Code* s 2.

https://doi.org/10.1017/cls.2021.27 Published online by Cambridge University Press

Senior General Counsel for the Department of Justice explained that the intention was to define organization broadly so as to capture "any type of collective activity involving individuals who are bound by a common objective they strive to meet through a structure which they present to the public as an association."[34] Additionally, in an article published shortly after the amendments came in, Archibald, Jull, and Roach highlighted that the new wording explicitly sent a signal to policing bodies, among others, that they were now potential targets.[35] The purpose of bringing in a broad definition of organization is specifically to circumvent the need for a technical inquiry into the structure of an organization such as this one, and to allow for the more substantive inquiry as to its role in the crime to continue. Though the question has not come before the courts yet, it seems fairly clear that a policing body would qualify as an organization.

2. *A Senior Officer*

The next threshold issue for the applicability of s. 22.2 is that there must be a senior officer involved. The *Criminal Code* defines a senior officer as being either someone "who plays an important role" in setting corporate policy or someone who "is responsible for managing an important aspect of the organization's activities."[36] Essentially this is a modified form of vicarious liability: the liability occurs in one person and flows from that person to the organization.[37] The set of persons is more restricted than in the US model of corporate criminal liability, where any employee's *mens rea* can be attributed to the entire corporation,[38] and less restricted than in the directing minds model.

The caselaw tends towards the conclusion that the managers in charge of running a branch of the provincial police would be senior officers. In *R v Pétroles Global*, several territorial managers and a regional manager of gas stations in Quebec's Eastern Townships coordinated the price of gas at the pump, in violation of price-fixing legislation. The question was whether the company, which operated in a broader territory not all of which was price-fixing, was also criminally responsible. A preliminary inquiry judge found that a company's regional and territorial managers were senior officers since they had discretion in setting the prices for gas at the stations under their management.[39] In the final decision in *Pétroles Global*, the judge took a more restrained approach.[40] He found that the regional manager, who knew about the price-fixing, was certainly a senior officer, and expressly declined to decide whether the territorial managers, who had less decision-making authority, were also senior officers. In determining senior officer

[34] "Bill C-45, An Act to amend the Criminal Code (criminal liability of organizations)," 2nd reading, House of Commons, Standing Committee on Justice and Human Rights, *Evidence*, 37-2, No 72 (22 October 2003), at 1535 (Mr Donald Piragoff).
[35] Archibald, Jull, and Roach, "The Changed Face," 375.
[36] *Criminal Code* s 2.
[37] Archibald, Jull, and Roach, "The Changed Face," 375.
[38] Jennifer Arlen, "The Failure of the Organizational Sentencing Guidelines," *University of Miami Law Review* 66 (2012): 321, 358; though, as Arlen explains, since the 1990s, US prosecutors have only pursued organizations when the wrongdoing was more pervasive.
[39] *R v Pétroles Global*, 2012 QCCQ 5749, at paras 113–116.
[40] *R v Pétroles Global Inc*, 2013 QCCS 4262 at para 211.

https://doi.org/10.1017/cls.2021.27 Published online by Cambridge University Press

status, the judge focused on the types of decisions a manager had discretion over. Mid-level managers with no discretion over issues such as hiring, employee discipline, or a budget for any portion of the company's activities are less likely to be found to be senior officers based on this precedent.

In 2019, a judge came to a more expansive reading of senior officer. In *R v CFG Construction*, the head mechanic of a construction company was found to be a senior officer, since he was responsible for deciding what repairs were required on company trucks before they could be sent out on the road.[41] This mechanic also had a company credit card to pay for expenses related to the trucks, but the judge noted that the head mechanic did have to consult with his supervisor to spend more than the fairly modest sum of $1000.[42] This may extend the law further even than it was intended to go. While it seems to be true that he was in charge of the garage for the company, it is questionable whether decisions about whether to repair trucks or let them be driven in their current condition really amounts to management of an important part of the construction company's operations.

These two cases, both trial-level judgments from the province of Quebec, go in two different directions. The extension of liability in the more recent *CFG Construction*, if it becomes the norm, would have many agents and employees of a company counted as senior officers, putting senior officer doctrine very close to a doctrine of vicarious criminal liability for the acts of employees. As Archibald, Jull, and Roach note, Parliament did explicitly reject a total vicarious liability model.[43] Still, these authors note that the senior officer doctrine "clearly extends the attribution of criminal corporate liability to the actions of mid-level managers."[44] The caselaw overall indicates that judges are quite willing to find that people with some discretion and authority within an organization are senior officers under the *Criminal Code*. For a policing organization, a court would likely look at factors such as authority over spending in that office, including for things like overtime or extra training to remediate officer problems, and control over discipline, for instance whether the regional managers have the discretion to suspend officers. While the caselaw is not yet clear enough to allow for very precise predictions as to what future judges will decide, it seems that regional management level is exactly where parliament intended to pitch the doctrine, given the context that these reforms were intended to ensure that organizations would be responsible for another Westray mine tragedy. The law clearly aims at assigning organizational responsibility when there is a manager with a meaningful amount of discretionary authority over regional operations who has the *mens rea* for the offence.

The GVPP has several regional offices, and its headquarters is some five hours' drive from Golden Vale. It is possible that, depending on the amount of authority a director of the regional police precinct has, they would not be found to be a senior

41 *R v CFG Construction inc.,* 2019 QCCQ 1244, at para 280.
42 Ibid., para 40.
43 Todd Archibald, Ken Jull, and Kent Roach, "Critical Developments in Corporate Criminal Liability: Senior Officers, Wilful Blindness, and Agents in Foreign Jurisdictions," *Criminal Law Quarterly* 60, no. 1 (2013): 92, 96.
44 Ibid., 109.

https://doi.org/10.1017/cls.2021.27 Published online by Cambridge University Press

officer. In that case, one would have to look for a senior officer at Golden Vale Provincial Police Headquarters who knew about or was willfully blind to the events in Golden Vale, which would make a prosecution more difficult. It does, on balance, seem likely that the managers running the Golden Vale precinct are senior officers.

3. *Knowledge of the Crimes Being Committed*

One challenge with respect to this element of the crime is that, while senior management in Golden Vale knew about crimes occurring, they might well not have specific knowledge about a crime that was about to occur. Here, the analysis should come back to a question of willful blindness. When a person suspects that there might be knowledge available that would render them complicit in a crime, and specifically looks away in order to be able to continue in their course of action without having that knowledge, this is willful blindness, and in Canada it is equivalent to knowledge.[45] While the *Criminal Code* states that the senior officer must know that one of the organization's representatives "is or is about to be a party to the offence," the established doctrine that willful blindness is equivalent to knowledge would apply here as well.[46] If senior management knew that they should inquire into credible reports of ongoing criminal activity in their organization, and they deliberately did not inquire in order to shield themselves or their organization from criminal liability, the law treats them as though they had this knowledge.

For these reasons, I conclude that the Golden Vale hypothetical satisfies the first two conditions: there were senior officers with knowledge, and they failed to take any steps to prevent these crimes. That leaves the more complex issue of "with intent at least in part to benefit the organization."

4. *Intent in Part to Benefit the Organization*

The intent in part to benefit criterion precludes any attribution of responsibility to the organization where the individual actors committed the crime purely for their own individual benefit. In the 2017 case of *R. v. Hydrobec*, the judge made an interesting finding that we may relate to the criterion of "with the intent at least in part to benefit." He wrote that, since the senior officer's actions were not contrary to the interests of the companies charged, the senior officer test was met.[47] On this judge's reading, a senior officer's actions would have to aim to harm the company in order to defeat the requirement that the actions be "with the intent at least in part to benefit." This may seem like an overly restrictive interpretation, but it is in line with US cases using the same language in the same context of corporate criminality: cases there have found that so long as the company is not the victim of the crime,

[45] Archibald, Jull, and Roach have noted that recent developments in the doctrine of wilful blindness increase the likelihood of wilful blindness being a sufficient criterion for "intent in part to benefit," "Critical developments," 118–20.

[46] Ibid., 95.

[47] "Comme l'acte criminel commis par l'accusé Belley n'est pas contraire aux intérêts des compagnies Hydrobec et Hydro Rive Sud, puisqu'il ne vise pas leur destruction, il en découle que ces deux personnes morales engagent leur responsabilité criminelle," *Hydrobec*, *supra* note 15 at para 172.

https://doi.org/10.1017/cls.2021.27 Published online by Cambridge University Press

the "intent at least in part to benefit" criterion is met.[48] The doctrine's purpose, as developed in the United States, is to avoid situations in which a company would itself be criminally liable when its employees steal from it, rendering the organization both perpetrator and main victim.[49] A restrictive reading of the "intent at least in part to benefit" requirement is likely the one that is most in line with its purpose.

Whether or not future cases adapt the requirement to be slightly more in line with the textual meaning of the word "benefit," *Hydrobec* signals that courts will not insist on finding that a significant benefit would have accrued to the company. In other words, as long as the senior officer's actions are harmonious with the company's goals, then this criterion is likely to be met, at least based on available caselaw. Still, just in case, this article considers the intent to benefit in a more restrictive light, looking for something that would stack up as a real positive for the organization's goals.

The various crimes in question in the Golden Vale hypothetical break down differently when it comes to whether they benefited (or were harmonious with the goals of) the organization. For this reason, one must consider two categories of the crimes of the Golden Vale police separately: first the forcible confinements, then the sexual assaults and assaults for refusing to engage in sex. I will show that while there are reasons to look for evidence to prove that there was an "intent at least in part to benefit" in both types of crimes, the likelihood of proving the case beyond reasonable doubt is stronger in the case of the kidnappings. At the end of this section, I will draw some conclusions from that fact about what could be done instead to attribute responsibility in relation to the sexual assaults.

4.1. Intent to Benefit and the Kidnappings

The strongest argument for organizational responsibility is that the kidnappings fit the intent to benefit criterion because they were part of the police business of controlling the nuisance of public intoxication. Minimizing the nuisance effect of public drunkenness is a policing goal with a long history. In England and Wales in the nineteenth century, there were 200,000 prosecutions per year for public drunkenness.[50] In the twentieth century, the "drunk tank" was a common term for short-term jailing of people the police found drunk in public.[51] There is ample evidence that many police forces have made it a major part of their mandate to control public intoxication.

The French term for the act of police violence called starlight tours is "la purge géographique," which roughly means "detoxifying by geography." This conveys even more clearly that this is a practice that is targeting public drunkenness. A long

---

48 Pamela H. Bucy, "Corporate Criminal Liability: When Does it Make Sense," *American Criminal Law Review* 46, no. 4 (2009): 1437, 1149.

49 Ibid.

50 Paul Jennings, "Policing Drunkenness in England and Wales from the Late Eighteenth Century to the First World War," *Social History of Alcohol & Drugs* 26 (2012): 69.

51 There is existing research that tends to show that policing public drunkenness has been a particular feature of racist policing in Canada: Elizabeth Comack, *Racialized Policing: Aboriginal People's Encounters with the Police* (Winnipeg: Fernwood Publishing, 2012).

https://doi.org/10.1017/cls.2021.27 Published online by Cambridge University Press

tradition of police services acting to limit public drunkenness, combined with colonial stereotypes around the idea that Indigenous people in particular are prone to extreme intoxication[52] and the existence of a history of policing Indigenous alcohol consumption,[53] create a strong likelihood that officers thought they were performing a policing function, albeit through non-official procedures, when they removed Indigenous women from public view by kidnapping them and dumping them on the side of the highway.

When evaluating whether the starlight tours would meet the criterion of "intent in part to benefit," it should be kept in mind that the perceived benefit may be only slight. These kidnappings appear to have been an unofficial but known, and informally accepted, mechanism that police in Canada used to control public drunkenness, and especially public drunkenness of Indigenous people. Writing about starlight tours in a different Canadian context, Sherene Razack concluded that the practice of starlight tours has the appearance of an "institutionalized" practice. While this is not the language of organizational crime, Razack's attribution of the individual officers' acts to the institution of policing more generally is analogous.[54] Officers would have known that this was not the official policy of the organization, and that these were not sanctioned methods of controlling drunkenness but would also have perceived that they were acting in accordance with part of their responsibility, as officers in a small town, to control people who were intoxicated in a public space. Quebec's provincial police is not the only Canadian police force to have used this tactic in a widespread way. Starlight tours made news as a police practice in Saskatchewan in 2001, when two Saskatoon police officers were convicted of unlawful confinement for coercing a man into a car and dropping him at the edge of town on a freezing night.[55] Several other men had died of exposure in Saskatchewan in the preceding years under mysterious circumstances, and there is speculation that these were starlight tours with fatal endings.[56] The Saskatoon police chief admitted that the practice had been going on for decades, revealing that, as far back as 1976, an officer was disciplined for subjecting an Indigenous woman to this treatment.[57] The target group of this systematic abuse in Saskatchewan was also Indigenous people. Reports suggest that it was an extremely widespread practice, showing 800 calls with complaints after a line was opened up.[58] Similarly, a 2010 study in Winnipeg found evidence that police had "dumped at least 76 people on roads and highways outside the city," and that, as in the other

[52] Laurie Harding, *What's the harm? Examining the stereotyping of Indigenous Peoples in health systems* (Ed. D. Thesis, Simon Fraser University, 2018), at 82.
[53] Robert A. Campbell, "Making Sober Citizens: The Legacy of Indigenous Alcohol Regulation in Canada, 1777–1985," *Journal of Canadian Studies* 42 (2008): 105.
[54] Sherene Razack, "'It Happened More than Once': Freezing Deaths in Saskatchewan," *Canadian Journal of Women and the Law* 26 (2014): 51, 66.
[55] "Saskatoon police chief says drop-offs happened 'more than once,'" *CBC News,* 9 June 2003, www.cbc.ca/1.380299 [perma.cc/3AFQ-VM3F].
[56] Ibid.
[57] "Saskatoon police chief admits starlight cruises are not new," *Windspeaker Publication* (2003), Edmonton, Aboriginal Multi-Media Society of Alberta (issue 4, vol. 21).
[58] Razack, "It Happened More than Once," 74.

https://doi.org/10.1017/cls.2021.27 Published online by Cambridge University Press

cases, police had specifically targeted Indigenous people.[59] The fact that this is a common police tactic across provinces suggests that police officers see the "starlight tours" as an informal, routine police practice.

To engage s. 22.2 of the *Criminal Code*, one would need to show that Golden Vale's senior officers thought that there was a benefit to the organization in letting the practice continue. That's a factual question that could be supported through emails or other documents that showed that senior management was particularly concerned about the ill effects of public intoxication or witnesses testifying to overhearing conversations about it. One could also look for evidence that senior management attributed problems specifically to Indigenous persons being intoxicated in the public sphere, or generally displayed racist attitudes towards Indigenous people. If I were a Crown presented with facts like these, I would find it plausible enough that senior management had knowledge that I would look for this evidence by interviewing retired officers and looking through GVPP records.

4.2. Intent in Part to Benefit and the Sexual Assaults

The requirement of s. 22.2 that there be an "intent in part to benefit the organization" is harder to meet in the case of the sexual assaults and other crimes related to sex. Though there is an argument to make here, it is likely that courts would stop short of finding that there was proof beyond reasonable doubt that the reason senior officers did not intervene was because of an intent in part to benefit the organization. Still, there has been significant research into colonialism and sexual violence that could ground an argument of this sort in the future.[60] This theory would draw on a connection scholars have made between colonizing forces and control of women's bodies, including through violent and sexual means,[61] and relating this to Canada's use of police forces in colonization.

Another possibility is that senior management thought that these officers were still overall beneficial to the organization, despite their ongoing sexual crimes against the population they were supposed to protect, and so decided not to intervene in order to benefit the organization by retaining its personnel. Here one could look at social-science evidence that police organizations have a strong culture of loyalty to fellow officers.[62]

Both of these arguments—colonial control and the desire to retain officers despite their violence against members of the population they are hired to protect—require us to draw on facts that are less concrete than those relating to the kidnappings.[63] This is not to say that a judge would not accept social-science

---

[59] Mark Blackburn, "Wpg police operating starlight tours: study," *APTN News,* 22 October 2010, aptnnews.ca [https://perma.cc/ZD4K-GLWQ].

[60] See, for instance, Andrea Robertson Cremer, "Possession: Indian Bodies, Cultural Control, and Colonialism in the Pequot War," *Early American Studies* 6 (2008): 295, and Lisa J. Long, *Perpetual Suspects: A Critical Race Theory of Black and Mixed-Race Experiences of Policing* (London: Palgrave Macmillan, 2018), 205.

[61] Cremer, 295.

[62] See, for instance, Neil Richards, "Police Loyalty Redux," *Criminal Justice Ethics* 29 (2010): 221, 221 ff on loyalty as "an important moral virtue for police," and Palmater "Shining Light," 269.

[63] An in-depth exploration is beyond the scope of this article, but would be something to explore in expanding this area of research.

https://doi.org/10.1017/cls.2021.27 Published online by Cambridge University Press

evidence about colonial control in relation to sexual assault—Canadian courts have in recent years accepted social-science evidence in the area of racial profiling.[64] The shift in thinking required to capture this set of crimes is nevertheless greater than it is for the kidnappings. Were I an interested prosecutor, I might regretfully make the choice to focus on shifting a judge's legal intuition to encompass the kidnappings alone as organizational crime, in consciousness that this would already be a big step forward for Canadian law, and that it is in law's nature to move slowly and incrementally.

4.3. Some Further Thoughts about Prosecuting Sexual Assaults as Individual Crimes in Light of the Organizational Element

While current Canadian doctrine on organizational crime likely would not achieve justice for all of these crimes, it would be a major step forward to hold the GVPP to account for at least the kidnappings. Also, there may be an indirect way in which investigating organizational crime here could yield results for punishing individual sexual predators in the police force, as the next section will show.

The Crown reported that in nineteen out of the thirty-two cases that came out of the SPVM's investigation into SQ policing in Val d'Or, the problem of identifying the specific individual who perpetrated the offence was the main weakness in the file, as far as successful prosecution was concerned. In other words, in nineteen of these cases, the Crown held that the witness was credibly describing that a police officer had committed a crime or crimes against her, but because she could not tell which police officer it was, there was nothing the state could do. This implies that there was enough evidence to prosecute the officers' employer, assuming that one could fit all the elements of organizational crime as defined in the *Criminal Code*.

The problem of identifying individuals within a large company is a feature that this fact pattern shares with many cases of white-collar crime.[65] In white-collar investigations, the pressure of corporate prosecution has been used in the United States as a means of getting the corporation to conduct an internal investigation and hand over to the state evidence about an individual member of the organization who committed crimes, and this possibility is explicitly recognized in the *Criminal Code*, where it is listed as a factor to consider in the organization's favour in deciding whether a remediation agreement is appropriate.[66] Once the organization realizes that it is at risk of a criminal sanction against itself, it has a greater incentive to cooperate with law enforcement.[67] Generally, the organization is in a much better position than an outside investigator to find incriminating evidence, because it understands how its own structures work and knows where to look for information. That is another possibility here in Golden Vale (and plausibly also in the real town of Val d'Or)—undoubtedly, the provincial police itself has better

[64] See *R v Le*, 2019 SCC 34; *R v Morris* 2018 ONSC 5186.
[65] See Bucy, "Corporate Criminal Liability," 1438.
[66] On the use of corporate criminal investigations to induce corporations to conduct their own investigations, see Jennifer Arlen, "The Potentially Perverse Effects of Corporate Criminal Liability," *Journal of Legal Studies* 23 (1994): 833, 835.
[67] *Criminal Code* s 715.32(2)(f).

https://doi.org/10.1017/cls.2021.27 Published online by Cambridge University Press

expertise and access to evidence in its own records as to which of its employees might have been responsible for crimes in certain areas on certain dates, if it has an interest in finding this evidence. While the corporate practice (and prosecutorial acceptance) of sacrificing middle managers to avoid prosecutions might be frustrating in certain cases of financial crime, in a case like this, leveraging the possibility of organizational prosecution in order to find evidence against individual perpetrators of sexual violence is a not-insignificant consolation.

IV. A Word on Organizational Sentencing or, "Why bother?"

The usual rationale for criminal law is that it results in some kind of penalty or sanctions against the offender, which creates a disincentive for profit-motivated companies. But there are obvious problems with monetary sanctions against a public body, funded by the taxpayers. However, there are methods beyond fines, and reasons beyond mere deterrence, to consider holding companies responsible criminally.

Society's interest in attributing criminal responsibility to an organization goes beyond deterrence. As Dan Kahan puts it, this is the procedure we have to "repudiate the false valuations that [organizations'] crimes express."[68] It is common and unexceptional to see Crown prosecutors pursue criminal charges against governmental bodies in the regulatory context.[69] While regulatory prosecutions are important and will often be more meaningful in the context of organizations, there is an added symbolic weight to "true" criminal sanctions, rather than regulatory fines.[70] While a lawsuit or lawsuits would be the vehicle to bring merited compensation to these victims, civil suits do not send a message of moral condemnation. If there is to be a strong message of condemnation, it must come from some kind of official action, either criminal charges or some policy or legislative response.

There are meaningful criminal sanctions for organizations that are non monetary: the *Criminal Code* specifically allows for a court to prescribe probation conditions to an organization to establish policies, standards. and procedures to reduce the likelihood of a subsequent offence, *and* to report to the court on the implementation of those policies. That means that the court could require the organization to follow up over the course of several years.[71] Alternately, under s. 715.3 of the *Criminal Code*, prosecutors may enter into remediation agreements with organizations that have committed crimes, and the *Code* contemplates that these agreements would require the organization to pay for an independent monitor to report periodically to the Crown on the organization's progress.[72] As

---

68 Dan M. Kahan, "Social Meaning and the Economic Analysis of Crime," *Journal of Legal Studies* 27 (1998) 609, 618–19.

69 See, for instance, *R v The Royal Canadian Mounted Police*, 2017 NBPC 06; *R v St. John's (City)*, 2017 NLCA 71; *R v Department of Transportation and Works (NL) and City of St. John's*, 2014 CanLII 73922, [2014] NJ No 377; *R v New Glasgow (Town)*, 2008 NSPC 15; *R v Kingston (City)*, 70 OR (3d) 577, 240 DLR (4th) 734; *R v Nova Scotia (Minister of Transportation & Public Works)*, 2003 NSSC 274; *Canada (Department of Fisheries and Oceans) v Canada (Department of National Defence)*, 1993 NSCA 182.

70 *R v Metron Construction Corp*, 2013 ONCA 541, paras 75–76.

71 *Criminal Code* s 732.1(3.1)(d).

72 *Criminal Code* s 715.34(1)(i).

https://doi.org/10.1017/cls.2021.27 Published online by Cambridge University Press

part of the court order, a judge could, for instance, order the police force to create a citizen oversight body, a measure that many think is helpful in keeping police organizations within their ethical obligations.[73] These measures could also include the two calls to action in the Viens Report regarding ameliorating the process for ethics complaints,[74] and could in fact go far beyond those to create a really robust system for complaints, including a requirement that an independent body at least follow up on every complaint.

In this context it may be useful also to distinguish between a purely negligent public organization and one where the organization has abetted intentional crime. In the case of a negligent or incompetent organization, it might be sound public policy to decide to pour money and resources into reform, and not focus on condemning past wrongs. But this is not so in the case of an organization that has been facilitating and encouraging violence over the course of many years. If we consider the policing context in particular, there is definitely evidence showing that assigning liability and sanctions to individual officers does *not* have the effect of changing the wrongful behaviour of a police force.[75] This should not however be an argument for simply allowing criminal policing bodies to persist unchecked but could be cause to consider the organizational level as a potential effective lever for change. The task of reforming such a corrupt organization will not be easy one way or another. It may require some difficult choices, but we cannot in good conscience abandon the rights of victims and society to see the organization be held responsible in some way for intentional wrongdoing.

V. Conclusion

What we have in the Val d'Or story is a rash of crimes where nobody has been held publicly accountable. Again, there is not enough evidence accessible to the public to say that organizational liability should have been *charged* in this case. That may be because an organizational charge was never even considered, and so nobody looked for that kind of evidence. But nobody publicly discussed the possibility of using s.22.2 of the *Criminal Code*, though the provision is suited to this scenario. The consideration of Canadian legislation in this area ought to be sufficient to provoke an investigation to uncover evidence of organizational knowledge in the form of senior officers' knowledge of the offences.

In cases where there is pervasive, ongoing wrongdoing of the sort that was reported in Val d'Or, there are principled and pragmatic reasons to pursue the organization itself. The organization both facilitated the commission of these crimes and failed to take any steps to address them. In cases like this one, organizational liability would put some of the blame where blame is due.

---

[73] See Steve Wilson and Kevin Buckler, "The Debate over Police Reform: Examining Minority Support for Citizen Oversight and Resistance by Police Unions," *American Journal of Criminal Justice* 35 (2010) 184.

[74] Viens Report, 289.

[75] See Christopher J. Harris and Robert E. Worden, "The Effect of Sanctions on Police Misconduct," *Crime & Delinquency* 60, no. 8 (2014): 1258, 1260–61, and Greg Pogarsky and Alex R. Piquero, "Studying the Reach of Deterrence: Can Deterrence Theory Help Explain Police Misconduct?" *Journal of Criminal Justice* 32, no. 4 (2004): 371, 381.

Sylvia Rich
University of Ottawa, Faculty of Law
srich@uottawa.ca

https://doi.org/10.1017/cls.2021.27 Published online by Cambridge University Press