Constructing the Social Problem of Wrongful Convictions:

A Qualitative Content Analysis of the Guy Paul Morin Inquiry

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Abstract

In Canada, wrongful convictions arose as a social problem with the rise of the innocence movement throughout the 1990s (Zalman, 2020). Despite its rise as a social problem and the increasing attention it has received in the popular media, there has been a lack of research analyzing exactly how wrongful convictions are constructed. The purpose of this research is to analyze how the claimsmakers present at the Morin Inquiry constructed the wrongful conviction of Guy Paul Morin. The purpose of this analysis is to provide insight into the overall construction of wrongful convictions as a social problem through the examination of the claimsmaking taking place within a typifying example. To accomplish this, a qualitative content analysis of the Commission on the Proceedings Involving Guy Paul Morin, using a social constructionist lens, was conducted. Specifically, this thesis analyzed the contents of the Morin Inquiry using the theory of contextual constructionism as defined by Best (1987, 2013). The findings of this research reveal that: (1) the claimsmakers in the Morin Inquiry constructed Guy Paul Morin's wrongful conviction as a preventable occurrence caused by a combination of individual wrongdoings and correctible systemic errors; (2) through the construction of blameless victims and blameworthy villains as well as the demonstration that wrongful convictions challenge the legitimacy of the criminal justice system, the claimsmakers were able to demonstrate that Morin's wrongful conviction was worth addressing; and (3) through the adoption of inquiry recommendations, future wrongful convictions can be prevented, and the legitimacy of the criminal justice system can be restored. Finally, this thesis concludes by discussing implications, contributions and limitations of the findings before presenting ideas for future research.

Keywords: Wrongful conviction, miscarriage of justice, social constructionism, social problems, public inquiry, Commission on Proceedings Involving Guy Paul Morin

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Introduction

The Case of Guy Paul Morin

On October 3rd, 1984, in Queensville, Ontario nine-year-old Christine Jessop returned home from school at approximately 3:50 pm to an empty household. Upon her mother's return home, Christine was no longer there. Later that evening after still no sign of Christine, her parents notified the York Regional Police Department and search parties began scaling the area. Approximately two months later on the 31st of December, Christine's body was found in Durham Region, some 50 kilometres east of where she went missing. Autopsies of the body revealed that she had been sexually assaulted and stabbed to death.

Durham Regional Police took charge of the case and began their search for possible suspects. During an interview with the two investigators, Inspector John Shephard and Detective Bernie Fitzpatrick, Christine's parents mentioned that their neighbour Guy Paul Morin was a "weird-type guy" (Kaufman, 1998, p. 64). From that moment forward, Morin was seen as a possible suspect. On February 22nd, 1985, Shephard and Fitzpatrick set up an interview with Morin to discuss his possible involvement in Christine Jessop's disappearance. During this interview, Morin was recorded as making some unusual comments to the investigators. At trial, these comments would be displayed by the prosecution as demonstrating "consciousness of guilt" (Kaufman, 2005).

Following Morin's interview, the investigators were quite convinced that he was involved somehow with Christine's disappearance. Nevertheless, they had to build a case and prove their theory. Tunnel vision began to set in on behalf of the police investigators and they began shaping every aspect of their evidence to fit the profile of Morin. It was not long before the officers had gathered enough evidence to place Morin under arrest.

On April 22nd, 1985, exactly two months after his original interview with the police, Morin was placed under arrest for the sexual assault and murder of Christine Jessop. While under arrest he was placed in a jail in Whitby, Ontario where he shared a cell with a man named Robert Dean May. On the night of June 30th, Mr. May alleged that Morin broke down and confessed to the Jessop murder; this alleged confession was apparently overheard by another man in the next cell, Mr. "X". Both men would eventually act as jailhouse informants and testify against Morin at trial.

Morin's first trial began on January 6th, 1986 and lasted about four weeks. At trial, the majority of the prosecution's case rested on hair and fibre evidence found on both Christine's necklace and in Morin's automobile. The forensic experts testified that the hair samples found embedded in Christine's necklace "matched" that of the samples taken from Morin. Furthermore, the fibre samples found on Christine's clothing "could have" came from Morin's car and/or house, as similar fibres were found there. In addition to the testimony of the forensic experts, the Crown's case also relied heavily on the testimonies of the two jailhouse informants. On February 7th, 1986, the jury returned with a verdict of not guilty and Morin was acquitted.

One month later, on March 4th, 1986 the Attorney General of Ontario filed an appeal of Morin's acquittal based on the grounds that the trial judge erred in his direction of the jury with regards to the meaning of "reasonable doubt" (Harland-Logan, n.d.). The Ontario Court of Appeal agreed with the Crown's position and ordered a new trial. Morin and his defence attorney attempted to appeal this ruling to the Supreme Court of Canada however, that appeal was dismissed.

On May 28th, 1990, about five and a half years after Christine Jessop originally went missing, Morin began his second trial. A majority of the same evidence was used at the second

trial, including the faulty hair and fibre evidence and the jailhouse informant testimonies. However, in addition to the evidence presented at the first trial, the Crown now had multiple witnesses who recalled a wide array of damaging information that apparently reflected Morin's "consciousness of guilt". These testimonies were given from neighbours, police officers, community members, and the family and friends of both Christine and Guy Paul Morin. The majority of these testimonies consisted of painting Morin as an "oddball", with stranger behaviors, and hence capable of murder. After hearing these testimonies and the evidence that was previously presented at the first trial, on July 30th, 1992, the jury reached the verdict that Morin was guilty of first-degree murder. As a result, Morin was sentenced to life in prison and would go on to spend 18-months behind bars.

Immediately following Morin's wrongful conviction, a grass-roots organization called the Justice for Guy Paul Morin Committee sprang into action (Campbell, 2018). This group would later come to operate under the title of the Association in Defence of the Wrongfully Convicted (AIDWYC) and is now known as Innocence Canada (Harland-Logan, n.d.). On February 9th, 1993, the Committee was successful in obtaining bail for Morin while he awaited his appeal. Days before Morin and AIDWYC were set to present their arguments to the Ontario Court of Appeal, newly available DNA testing on the semen stains found on Christine's underpants was made available.[1] This new DNA evidence proved indisputably that Morin was not guilty of Christine Jessop's murder and on January 23rd, 1995, Morin was acquitted of his first-degree murder charge.

[1] DNA testing was relatively new during Morin's trials and as such, technology at the time did not allow forensic experts to properly assess the deteriorated blood and semen stains found on Christine Jessop's underpants. It was not until 1995 that improvements in forensic science and DNA testing allowed experts to conclude the samples on Christine's underpants could not have originated form Guy Paul Morin.

In response to the wrongful conviction of Guy Paul Morin a Commission of Inquiry was created to review the case and its various proceedings. On June 26th, 1996, an order-in-council in the province of Ontario was passed and signed by the Lieutenant Governor, officially setting the commission in motion. Following this, Justice Fred Kaufman, a Quebec Court of Appeal judge was appointed as the sole Commissioner of the inquiry and was directed to make recommendations regarding the administration of justice in Ontario. This inquiry would last twenty-two months and when presented to the public on April 9th, 1998, the final report would consist of 1244 pages and 119 recommendations. In addition to the inquiry, Morin received a $1.25 million payment from the Ontario government as well as a public apology.

About 22 years after the Morin Inquiry was published, in October of 2020, based on DNA evidence, the Toronto Police Service (TPS) announced that they believe the true killer of Christine Jessop was Mr. Calvin Hoover. Mr. Hoover would have been in his twenties at the time of Christine's disappearance and was a neighbor of the Jessop's, who knew the family; he even assisted with the search parties for Christine following her disappearance. In 2015, Mr. Hoover committed suicide and therefore, never faced prosecution for the offence. News reports indicate that Mr. Hoover was at one point a "person of interest" but was never considered a suspect by the police and was never questioned regarding his involvement in Christine's murder and disappearance (Fox, 2020; McNair, 2021).

Purpose and Objectives

The case of Guy Paul Morin represents one of the most notorious wrongful conviction cases in Canadian history. Despite being nearly 30 years old, Morin's case still commonly arises in law classes and innocence project circles as an example of how the criminal justice system can err in its judgment. Furthermore, scholars and activists still use the case as a prime example of

why changes within the criminal justice system are needed. As mentioned above, following the wrongful conviction of Mr. Morin, a public Commission of Inquiry was called to review the case and the proceedings involved. Public inquiries are essentially massive fact-finding operations that seek to uncover the truth regarding a situation involving the actions of government. Their main purpose is to report on the findings of the fact-finding operation and subsequently provide recommendations aimed at addressing the issues uncovered over the course of the investigation. Despite the fact that public inquiries are often headed by some of the best and most well-respected legal minds in the country and their final reports offer achievable policy solutions, they have been relatively understudied in relation to wrongful convictions. The purpose of this thesis is to analyze the public inquiry called to review the case of Guy Paul Morin using a social constructionist lens. Namely, this thesis seeks to analyze the Morin Inquiry as a claimsmaking campaign and ultimately, determine how the claimsmakers present at the inquiry construct the wrongful conviction of Guy Paul Morin. This analysis will help to contribute to the research on wrongful convictions as a social problem as well as contributing to the literature examining the usage of public Commissions of Inquiry. Furthermore, this research will provide a theoretical examination of wrongful convictions which certain scholars have noted is lacking (Leo, 2005).

Chapter Outlines

The first chapter of this thesis will overview the existing research literature surrounding wrongful convictions and public Commissions of Inquiry and will demonstrate the gap in the literature that this research intends fill. This chapter first examines the causes, effects and methods of remedying wrongful convictions. It then proceeds to examining the purpose and structure of public inquiries, the role of the Commissioner, examples of previous public Commissions of Inquiry and the use of public inquiries in Canada. The chapter then concludes

with an explanation as to why there is a need to critically examine public inquiries and their contents.

The second chapter will overview the theoretical framework used for the analysis. This chapter begins by detailing the origins of social constructionism including its epistemological and ontological underpinnings and then describes a subsection of social constructionism used for this analysis – contextual constructionism. Following this is a review of the social problems' literature and an examination of how claimsmaking is used in the construction of social problems. The chapter then concludes by situating the topic of wrongful convictions as a social problem and provides a justification for the analysis of the Morin Inquiry as a claimsmaking process.

The third chapter provides some context for the inquiry under analysis and details the structure and composition of the inquiry. This chapter begins by detailing the purpose and mandate of the Morin Inquiry and then proceeds to describe the various claimsmakers and parties granted standing. The different phases of the inquiry and the structure of the final report are then discussed and analyzed. Lastly, this chapter briefly discusses the socio-political context surrounding the Morin Inquiry in the early 1990s.

The fourth chapter discusses the research methods used over the course of this thesis and provides an explanation of the various methodological decisions. This chapter begins by discussing why the Morin Inquiry was selected as a source of data and explains the case study design used. This chapter then proceeds to discuss the data collection methods and explains the analytical strategy. Namely, this section describes the appropriateness of a qualitative content analysis for analyzing rhetorical themes and examines Best's (2013) *grounds*, *warrants* and *conclusions* and how they were used to code the data into appropriate units of analysis. This

chapter concludes with an in-depth explanation of the analytical process and justifies the decisions made.

The fifth chapter presents, analyzes and discusses the findings of the current research through a social constructionist lens. This chapter details the various codes and themes drawn from the Morin Inquiry and discusses how they contribute to the construction of Morin's wrongful conviction. Various examples from the inquiry demonstrating the key themes are detailed, discussed, and analyzed using the theoretical framework.

The sixth and final chapter of this thesis begins by examining and summarizing the broader research findings of this thesis. It then proceeds to discussing the implications, contributions and limitations of the current research and finally offers directions for future studies.

Chapter 1: Literature Review

The purpose of this chapter is to review the research literature surrounding wrongful convictions and public inquiries and to demonstrate the gap that this research will attempt to fill. To begin, the literature surrounding wrongful convictions and miscarriages of justice will be briefly examined. This section will begin by defining some key terms and will then proceed to examine the common causes and effects of wrongful convictions. Next, will be an examination of the various methods used by the Canadian criminal justice system to help remedy the occurrence of a wrongful conviction. Topics within this section include the Canadian Court of Appeal process and reliance on sec. 696 of the Canadian *Criminal Code.*[2] The third section and bulk of this literature review will then examine the public Commission of Inquiry, specifically the structure of public inquiries and how they came to exist. First, the overall purpose and goals of a Commission of Inquiry will be examined followed by an examination of the role of the Commissioner as well as their various duties and responsibilities. Examples of Commissions of Inquiry that were called in the past will be explored and the reasoning behind the seven public inquiries reviewing wrongful conviction cases will be briefly touched upon. Given that most of the inquiries discussed made recommendations for change, the final section of this literature review will broadly examine the degree of implementation of these recommendations.

Wrongful Conviction Literature

In Canada and the United States, wrongful convictions came to be considered a social problem alongside the rise of the innocence movement in the 1990s, however, earlier accounts demonstrated a recognition of this problem in the early 20th century through the work of

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[2] *Criminal Code,* R.S.C. 2002, c. 13, s. 71. 696.1-696.6.

Borchard (Zalman, 2020). The innocence movement itself was sparked by the rise of DNA forensic evidence in solving crimes. Improvements in DNA forensic evidence provided the criminal justice system with irrefutable evidence that someone did or did not commit a crime (Norris, 2017). This scientific revolution in turn led to a rise in exonerations across North America, as now, people could prove beyond a reasonable doubt that in many cases the criminal justice system erred in its judgment. While the concept of someone being wrongly convicted was not new, the ability to definitively prove it was. Given that innocence could now be proved in some cases where physical evidence was present, it opened the door for research into how these errors could happen.

While the recognition and study of wrongful convictions might be relatively new, the phenomenon has existed since criminal prosecutions first began. In most Western societies it is widely accepted that the criminal justice system will possess some degree of error, and in certain instances, people will be convicted for crimes they did not commit. Over the past few decades, there has been a substantial amount of research that has arisen examining various aspects of wrongful convictions (Campbell, 2018; MacFarlane, 2006; Roach, 2012b). Two specific areas of the literature that have attracted a lot of attention from researchers are the causes and effects of wrongful convictions. However, before examining this literature, it is important to note that while some authors differentiate between the terms "wrongful conviction" and "miscarriage of justice", for the purposes of this thesis they will be used rather interchangeably, as for the purposes of this thesis both will refer to those who are either factually or procedurally innocent.

Causes of Wrongful Convictions

While there are an overwhelming number of factors that can lead to a wrongful conviction, the literature typically discusses five main factors as being the fundamental cause of

most wrongful conviction cases. The first and foremost contributing factor is eyewitness error or eyewitness misidentification (Bell et al., 2008; Gould & Leo, 2010; Yarmey, 2001). As its name suggests, this occurs when a witness mistakenly identifies the wrong person as the perpetrator of a crime. Secondly, arises the issue of false confessions (Brockman, 2010; Leo, 2009; Moore & Fitzsimmons, 2011). False confessions occur when the accused confesses to a crime they did not commit and often come about as the result of plea bargains or overly intense and coercive police interrogations. A third major contributing factor is professional misconduct, which includes misconduct on behalf of the prosecution, police, defence lawyers or even judges (Anderson & Anderson, 2009; Gould & Leo, 2010; Kennedy, 2004). With regards to the police, misconduct can include things like tampering with evidence, witness coaching, conducting improper investigations, ignoring alternative explanations and coercive questioning of suspects. On behalf of the prosecution, similar forms of misconduct are present, however, prosecutors have often been accused of overzealousness, ignoring relevant information and failing to disclose exculpatory evidence. Ineffective defence counsel can take many different forms but is typically is a result of inadequate funding, an absence of quality control, or a lack of motivation (Anderson & Anderson, 2009). While less common, judges can also contribute to a wrongful conviction by biased charges to the jury, or impartiality in questioning from the bench. A fourth factor is erroneous forensic science and forensic expert testimony (Campbell, 2011, 2018; Roach, 2012b). While forensic science evidence in court may well "rule-out" certain suspects, particular areas of forensic science are not definitive and what were once widely accepted practices have in recent years been discredited, such as hair microscopy and serology analysis (Bell et al., 2008; Gould & Leo, 2010). Lastly, is the use of unreliable informants, including jailhouse informants, other co-accused and coerced witnesses (Bell et al., 2008; Campbell, 2018; Kennedy, 2004). One of the

most problematic influences in wrongful conviction cases has been the use of "jailhouse informants", who represent individuals who are incarcerated and bring information to the authorities in exchange for some sort of benefit, such as leniency in their sentence, monetary rewards or dismissals of charges (Campbell, 2018). This type of evidence has proven to be highly unreliable and possibly even coerced or perjured. In addition to these standard causes, MacFarlane (2006) identifies four predisposing circumstances that can foster the occurrence of wrongful convictions. These include: public pressure to convict in high profile cases, the presence of an unpopular defendant or someone that is part of a minority group, the creation of a legal environment where "winning" a case is seen as more desirable than seeking the truth or obtaining justice and noble cause corruption, which is the belief that professional misconduct is justified if it is done in order to convict a guilty offender (MacFarlane, 2006).

While the factors listed above are mentioned in the literature as being the more common causes of wrongful convictions, it is important to note that a single factor cannot simply cause a wrongful conviction on its own, as it is often an interaction of these (and other) factors that ultimately occur in conjunction with each other to result in a wrongful conviction. Furthermore, wrongful convictions do not occur in a vacuum and societal, political and economic factors may play a significant role in determining a wrongful conviction (MacFarlane, 2006).

Effects of a Wrongful Conviction

It is undeniable that the person most affected by a wrongful conviction is the individual who finds themselves accused and possibly convicted for something they did not do. People who are wrongfully convicted experience a majority of the same issues as other long-term prisoners, such as fear, insecurity, psychological deterioration, loss of relationships and in some extreme cases Post-Traumatic Stress Disorder (PTSD) (Grounds, 2004). In addition to these regular pains

of imprisonment, the wrongly convicted also experience a variety of issues associated with suffering a miscarriage of justice, such as having a preoccupation with proving their innocence and if exonerated, seeking acknowledgement and compensation for the injustices they were forced to experience (Campbell & Denov, 2004; Denov & Campbell, 2005). However, it is not only the wrongfully convicted who are directly affected by a wrongful conviction as the families of the wrongfully convicted also suffer. Examples of the problems the wrongly convicted may encounter include, enhanced financial burdens, stigma and being forced to conduct daily life without a prominent member of their family present (Denov & Campbell, 2005).

MacFarlane and Cordner (2008) state that the reason wrongful convictions are so harmful is because their effects extend far beyond the individual who was wrongly incarcerated. For them, wrongful convictions represent a "triple failure" in the criminal justice system as:

> "an innocent person has been convicted and imprisoned; the truly guilty person was allowed to go free and, potentially, commit further crimes; and, finally, the victim's family, who had a sense of closure with the conviction, has been re-victimized by opening an emotional wound, which, with an increasingly cold evidentiary trail, may never be healed" (MacFarlane & Cordner, 2008, p. 3).

Given the seriousness of a wrongful conviction it is not surprising that they produce many harmful effects. At the same time, they also call into question the legitimacy of the criminal justice system. It is a commonly held belief in Canadian society that when a crime occurs, the police will conduct an investigation, seek factual evidence that supports a charge, the prosecution will then seek to ascertain the truth at trial and if a conviction results, it will be justifiable (Campbell, 2019). When a wrongful conviction occurs, it represents an error in this process and consequently, the criminal justice system loses legitimacy. Along this line of thinking, in order to regain the legitimacy lost, the state must attempt to rectify its errors. If the system is unable to correct its errors than it can no longer be considered a functional system and consequently,

legitimacy is lost. For this reason, the Canadian criminal justice system has implemented measures to help reduce or address the number of errors the system produces. Two of these measures, which will now be examined, include appeals through the Court of Appeal process and conviction review, available through sec. 696 of the Canadian *Criminal Code*.

Methods of Remedying Wrongful Convictions

Wrongful convictions represent a serious flaw in the criminal justice system; the idea that the system could fail so badly as to convict an innocent person raises significant concerns. However, it also needs to be accepted that in any criminal justice system there will be some degree of error and in some instances, people will be convicted for crimes they did not commit. The main avenue for rectifying wrongful convictions in Canada is through provincial courts of appeal. Any individual who feels as though they were wrongly convicted of their crime at trial can appeal[3] their ruling to a higher court (Superior Court or Provincial Court). In order to be successful, the appellant must show that the trial judge erred in their interpretation of the law or facts presented (Department of Justice, 2017). Following the Court of Appeal's decision, the appellant (either the accused or the Crown) can appeal[4] the case even further to the Supreme Court of Canada whereby a final decision will be made. The Supreme Court's decision on whether or not to grant leave for an appeal is usually determined by nine justices.[5] If a leave for an appeal is granted, the case will be heard and a decision at the Supreme Court is determined through a majority ruling.

[3] This process of appeal is not so straightforward, and appellants must seek out what is considered "fresh evidence" (see the fresh evidence test from *Palmer v The Queen* [1980] 1 SCR 759).
[4] When there is a dissenting opinion on the provincial court of appeal decision by one of the judges on a question of law, asking for leave to appeal is unnecessary.
[5] A minimum of five justices is required, however, it more commonly consists of seven or nine.

A further avenue for rectifying wrongful convictions in Canada is the post-conviction review process, which is set out in Sections 696.1-696.6 of the Canadian *Criminal Code.* In order for an applicant to be eligible, they must have exhausted all of their avenues for appeal and judicial review[6] and present new and significant evidence that was not previously acknowledged by the courts.[7] This level of review "provides criteria for seeking remedies; makes review available for virtually all criminal offences whether summary or indictable; and gives reviewing officers powers to subpoena witnesses and compel the production of documents" (Botting, 2010, p. 2). If the applicant meets these criteria, then the application is assessed by the Criminal Conviction Review Group (CCRG) of the Department of Justice, and the preliminary assessment stage begins; the investigation phase follows this if the CCRG believes a case has merit. This group is comprised of a number of lawyers who report directly to the Minister of Justice and are governed by *Regulations Respecting Applications for Ministerial Review – Miscarriages of Justice.* The investigation can include interviews, scientific testing, the obtaining of documents and contacting various legal professionals. After the investigation is complete, an investigative report is drawn up, shared with the applicant and amended where necessary. The CCRG then submits the application to the Minister of Justice on a recommendation for review. From here, the Minister must be satisfied that there is a reasonable basis to conclude that a miscarriage of justice likely occurred and if so, he or she may order a new trial or refer the case back to the Court of Appeal as if it were an appeal from the person.[8] In extreme circumstances where the minister is convinced a miscarriage of justice has occurred and a blatant injustice has been

[6] *Criminal Code,* R.S.C. 2002, c. 13, s. 71. 696.1
[7] *Criminal Code,* R.S.C. 2002, c. 13, s. 71. 696.4 (a)
[8] *Criminal Code,* R.S.C. 2002, c. 13, s. 71. 696.3

suffered, they may decide to skip the investigatory phase and order an immediate remedy, however this occurs only very rarely (Botting, 2010).

Canada's post-conviction review process has received a lot of scrutiny over recent years and many have been calling for it to be reformed (Anderson, 2015; Leverick et al., 2017; Roach, 2012a). At the same time, others have maintained that while it is far from perfect, it is quite sufficient in its operation (Scullion, 2004; Somji, 2012). One significant criticism of Canada's post-conviction review process has been regarding its lack of independence. Many scholars believe that the Minister of Justice is too close to the prosecution to be able to render an impartial decision (Anderson, 2015; Campbell, 2018). Others believe that in cases where the miscarriage of justice is a result of state malpractice it is important for the body that is reviewing these claims to be a separate and distinct entity (Leverick et al., 2017). Regardless of the reasoning, the argument has been made that this lack of independence within the Canadian review process has in turn resulted in a lack of public confidence in the system. While there is no debating the fact that the Canadian post-conviction review process and the Minister of Justice are both entrenched within the government, Scullion (2004) makes the rather dubious argument that independence is not required for an impartial ruling. The second criticism is that the evidentiary burden that the conviction review places on applicants is too great (Anderson, 2015). Currently, applicants must make the case that based on new and substantial evidence, a wrongful conviction has likely occurred. The standard of this requirement is higher than the standard utilized in the court of appeal and places a large onus of proof on an applicant who may be working out of a prison cell (Anderson, 2015; Leverick et al., 2017). Essentially, the test required to *obtain* a court hearing is greater than the test that will actually be applied *at* the court hearing (Campbell, 2018). While this onus may be large and often seen as unfair, Scullion (2004) also notes that this is post-

conviction review, not a new trial. Applicants have already been found guilty in the court of law and the onus is not on the Minister of Justice to assume innocence and proceed accordingly, but rather it should be on the applicant to display to the Minister on what grounds they believe a miscarriage of justice has occurred. Another criticism of the Canadian post-conviction review process is that it is too costly and far too slow. In many cases, the process can take years to complete and can place some financial burden on the applicant (Anderson, 2015; Roach, 2012a). Lastly, the Canadian post-conviction review process has been criticized extensively for its lack of transparency (Anderson, 2015; Leverick et al., 2017; Roach, 2012a). Though some believe that this lack of transparency is justified (Scullion, 2004), many propose that a lack of legislative guidelines allows the Minister of Justice to keep decisions regarding applications secret and makes it difficult for many applicants to determine the criteria necessary for review (Anderson, 2015; Leverick et al., 2017).

Developing sound policies that can help reduce the occurrence of wrongful convictions is extremely important and has been at the forefront of wrongful conviction research. An interesting point brought up when considering implementing policies to help reduce the likelihood of wrongful convictions is "can we reduce the amount of innocent convictions without [also increasing] unjust acquittals?" (Sorochan, 2008, p. 94). Philosophically, many scholars have tried to answer this question by debating the Blackstone Ratio against the Bismarck Ratio. Namely, the questions these ratios pose is to ask whether it is better to let ten guilty men go free than to convict one innocent man or is it better to convict ten innocent men than to let one guilty man go free (Sorochan, 2008). More practically, other scholars have suggested ways to reform preventative methods that are already in place, without increasing unjust acquittals (Loewy, 2007). These suggestions include things like requiring police forces to videotape their

interrogations to help mitigate the occurrence of false confessions. Others include presenting juries with some sort of disclaimer when admitting jailhouse confessions into evidence, having eyewitness identification lineups conducted by an objective third party, the privatization of crime laboratories, introducing open-file discovery and providing more funding for public defence (Leo, 2017; Loewy, 2007). The suggestions here are plentiful and as will be displayed later throughout this thesis, many of the suggestions here have emerged as recommendations from Commissions of Inquiry.

Public Inquiries

While the Court of Appeal and sec. 696 of the Canadian *Criminal Code* are the preferred and most frequent methods of responding to wrongful convictions, in extreme cases where these remedies fail, the Canadian justice system has the ability to call for public Commissions of Inquiry. Over the years, a number of Commissions of Inquiry (previously referred to as Royal Commissions) have been launched to examine a number of issues related to questions of justice. While some have been related to individual miscarriages of justice, others focused on a wide range of topics including aboriginal justice, systemic racism, water contamination, complaints regarding the RCMP and much more. Federal public inquiries can be created by the Canadian government under Part 1 of the *Inquiries Act*[9] or by a provincial government through their corresponding legislation.[10] In Canada, to date there have been seven Commissions of Inquiry launched to review the causes of wrongful convictions in nine individual cases. These inquiry panels conduct wide-ranging examinations of the systemic causes of wrongful convictions in specific cases, with the ultimate goal of exposing to legislators and policymakers areas requiring change (Roach, 2012b). Public inquiries provide a unique means of investigating occurrences of

[9] *Inquiries Act,* R.S.C. 1985, c. I-11
[10] See for example for Ontario: *Public Inquiries Act*, 2009, S.O. 2009, c. 33, Sched. 6

wrongful convictions and can offer various possibilities of policy and legislative reform. Unlike the conviction review process examined above, the inquiry process is much more public and for the most part, independent of the government (Campbell, 2018).

In examining Commissions of Inquiry, the literature reviewed will be divided into four sections. The first will begin by defining what a public inquiry is, how it is formed and its overall purpose. Next the role of the Commissioner will be examined, as well as their various duties and responsibilities. From there, examples of Commissions of Inquiry that were called in the past will be briefly touched upon. Lastly, the usefulness of public inquiries will be discussed, in particular the degree to which their recommendations have been accepted by governments.

The Commission of Inquiry

Commissions of Inquiry have been held in the past to review a wide array of topics. They are typically "mandated by the provincial or federal government on an ad hoc basis to investigate circumstances surrounding problems of public concern" (Campbell, 2018, p. 210). When an inquiry is launched, it is authorized under either provincial or federal law by the executive of a government; they in turn determine the terms of reference, choose the Commissioner(s) and in some instances impose a time limitation.[11] A commission's "terms of reference" are what dictate its entire life; they essentially set out what a specified commission can and cannot do (Ratushny, 2009). They are established by an order-in-council and are legally binding and enforceable by the courts. In recent years, Commissions of Inquiry have become a distinctive, although limited, means of tackling wrongful convictions. Justice Hickman, the Commissioner of the Marshall Inquiry[12] states that "the primary function of a commission of inquiry is, as its name suggests, to

[11] See for example: *Inquiries Act,* R.S.C. 1985, c. I-11 (Federal), *Public Inquiries Act*, 2009, S.O. 2009, c. 33, Sched. 6 (Ontario) or *Public Inquiries Act*. R.S., c. 372, s. 1 (Nova Scotia).
[12] This was a Royal Commission launched by the Government of Nova Scotia in 1986 to review the wrongful murder conviction of Donald Marshall Jr. in 1971.

inquire. It is not a court, and it is not charged with establishing guilt or legal fault" (Hickman, 2004, p. 185). Their purpose is to ascribe responsibility and provide policy recommendations, not to determine who is guilty or legally at fault. That being said, they are not criminal prosecutions and after investigating and ascribing blame, they do not engage in prosecuting the wrongdoers and do not seek to bring them to justice. Finally, it is important to note that wrongfully convicted individuals cannot apply for a Commission of Inquiry to be held in their name and in most cases extensive lobbying and media attention will have a great influence on whether or not an inquiry is called in a given instance (Campbell, 2018).

Public inquiries are typically formed when there is a crisis that affects the public's confidence in the government, or for the purposes of this thesis, a wrongful conviction that affects the public's confidence in the criminal justice system. Public inquiries offer a way for the government to claim they have responded to a problem while still maintaining a distance. However, deciding to call a public inquiry is not an easy choice for government officials to make. Centa and Macklem (2001) argue that governments have increasingly been reluctant to call inquiries into a given public crisis, even when there is a likelihood that it could help to address significant areas of policy reform. The reason for this reluctance appears to be due to a fear of adverse political consequences (Centa & Macklem, 2001). Inquiries are incredibly expensive and while their functions may be independent of the government, their expenses are not (Schwartz, 1997). Furthermore, public inquiries can result in the exposure of the errors made by various government officials and can bring to light many things that governments would rather keep concealed. Over the course of an inquiry, errors are highlighted, flaws are pointed out and the possible misconduct of government officials is brought to the forefront.

When a public inquiry is launched concerning a wrongful conviction, the legitimacy of the criminal justice system is called into question, and as a result, public confidence can be restored (Campbell, 2019; Hickman, 2004). In other words, when a wrongful conviction occurs, there has been an error in the criminal justice system, and it requires investigation. Commissions of Inquiry, if conducted properly, offer a valid means of investigating these situations and can provide policy recommendations to avoid future instances. Their independence from the government increases the likelihood that events will not be "covered-up", which helps in restoring public faith in government (Ratushny, 2009). Furthermore, Commissioners have typically been quite effective in "getting to the bottom" of various issues as they possess broad investigatory powers and have the ability to compel witness testimony (Ratushny, 2009). A commission's mandate is another key factor for inspiring public confidence as they are typically designed to address specific areas of public concern. Lastly, public inquiries have a degree of transparency that helps to inspire public confidence (Botting, 2010). A final note that needs to be made is that for a Commissions of Inquiry to truly restore public confidence in the criminal justice system, their use needs to be restricted to instances in which the system was unable to correct itself (Hickman, 2004). To launch a public inquiry for every mistake made would cause the public to lose confidence in the process altogether.

While the stated purpose of a public inquiry is most definitely to restore public confidence and demonstrate a government's willingness to change, in another sense, one could make the argument that the true purpose of a public inquiry is to manage dissent. It is important to note that public inquiries are most often launched following extensive lobbying and media coverage. Essentially, the challenges being placed on the system become too great and thus, the government is forced to launch a public inquiry in order to strategically manage these various

challenges and critiques. While the distinction between restoring confidence and managing dissent may be rather nuanced, it is an important distinction to make. Notably, the purpose of restoring confidence infers a degree of "willingness and desire to change" whereas the purpose of managing dissent, infers a desire to maintain the status quo as much as possible, implementing changes only when they are absolutely required to preserve the legitimacy of the system.

The Role of the Commissioner

After a Commission of Inquiry is set in motion, one of the first steps is for the government to appoint a Commissioner to conduct the proceedings. This is no small undertaking, given that a Commission of Inquiry is extremely time consuming and can last years. After receiving a request for an appointment, a Commissioner can work with the government to establish the mandate, terms of reference and possible time constraints for the inquiry. It is quite common for retired judges to become Commissioners due to their extensive legal qualifications and experience conducting hearings (Ratushny, 2009). Furthermore, judges are typically seen as impartial observers and thus help to inspire public confidence (Campbell, 2018).

After a Commissioner is appointed they are given a wide array of powers, derived entirely from the *Inquiries Act* (provincial or federal) and set the terms of reference which allows them to engage in their fact-finding expedition (Campbell, 2018; Ratushny, 2009). The first task a Commissioner must complete is putting together a team comprised of counsel, administrative staff, spokespeople etc… Next, a Commissioner must develop a budget for their undertaking and must determine which parties will be granted standing at the hearings. Parties who are granted standing may have their interests represented in the proceedings, and are able to intervene, examine witnesses and make final representations during the concluding arguments (Kaufman, 2005). Following this, the commission will begin hearings and the investigation will commence.

During this stage, the Commissioner is responsible for managing members of the commission and ensuring that the commission is working to fulfill its mandate and by assuring things do not go "off-track". The final duty of the Commissioner is to produce and publish the final report. This report will contain the recommendations of the commission as well as the Commissioner's reasoning for providing them; it is the ultimate goal of the inquiry and once it is published, the commission ceases to exist.

Examples of Commissions of Inquiry

In Canada to date, there have been seven Commissions of Inquiry launched to review issues related to a number of wrongful convictions. They include the Marshall Inquiry, the Morin Inquiry, the Sophonow Inquiry, the Lamer Inquiry, the Driskell Inquiry, the Milgaard Inquiry and the Goudge Commission of Inquiry. These Commissions of Inquiry are considered systemic reform commissions, meaning that they do not have the power to refer specific cases back to the courts and although they provide systemic reform recommendations, they cannot require that they be implemented into law (Roach, 2010).

The first public inquiry called to review wrongful convictions in Canada was the Marshall Inquiry headed by Justice Hickman and whose final report was published in 1990. This inquiry was called to review the wrongful murder conviction of Donald Marshal Jr., a Mi'kmaq man from Nova Scotia. This inquiry had a large mandate and also examined the administration of justice in Nova Scotia, however, what made it extremely unique was its examination of Indigenous rights and racial inequality within the province.[13] The second inquiry called to review wrongful convictions in Canada was the Morin Inquiry in 1998. This inquiry, which is the main focus of this thesis, was headed by Justice Fred Kaufman and sought to review the wrongful

[13] See Hickman, T. A. (1990). *Royal Commission on the Donald Marshall Jr., Prosecution.*

murder conviction of Guy Paul Morin for the death of Christine Jessop. This inquiry reviewed the administration of justice in Ontario and brought to light the role of tunnel vision, jailhouse informants and forensic science in contributing to wrongful convictions.[14] The third wrongful conviction inquiry came in 2001 and was headed by retired Supreme Court Justice Peter Cory. This inquiry reviewed the conviction of Thomas Sophonow, who was wrongly convicted of murdering Barbara Stoppel outside a donut shop in Winnipeg, Manitoba in 1981. The Sophonow Inquiry once again helped to highlight the presence of tunnel vision in the Canadian criminal justice system and also openly condemned the use of jailhouse informants in criminal proceedings.[15] In 2006, the Lamer Commission was called in Newfoundland and Labrador to review the three separate wrongful murder convictions of Ronald Dalton, Randy Drunken and Gregory Parsons. This inquiry examined a variety of issues revolving around the administration of justice in Newfoundland and Labrador including the availability of legal aid, police investigations and Crown culture.[16] The fifth inquiry, called in 2007 reviewed the wrongful conviction of James Driskell in Manitoba. Headed by Justice Patrick LeSage, had an unusual mandate in that it sought to thoroughly examine the role of professional misconduct and tunnel vision in causing Driskell's wrongful conviction.[17] The sixth public inquiry was called in Saskatchewan in 2008 to review the wrongful conviction of David Milgaard, who spent 23 years in prison for the murder of Gail Miller in 1970. Justice Edward P. MacCallum was appointed as head of the commission called to review the details of Milgaard's case. This inquiry focussed on a variety of factors that contribute to causing wrongful convictions in Canada more generally,

[14] See Kaufman, F. (1998). *Commission on the Proceedings Involving Guy Paul Morin*.
[15] See Cory, P. (2001). *The Inquiry Regarding Thomas Sophonow*
[16] See Lamer, A. (2006). *The Lamer Commission of Inquiry Pertaining to the Cases of: Ronald Dalton, Gregory Parsons, Randy Druken*
[17] See LeSage, P. (2007). *Report of the Commission of Inquiry into Certain Aspects of the Trial and Conviction of James Driskell*

and made various recommendations regarding file retention, compensation and statements obtained from minors.[18] The most recent public inquiry called to review wrongful convictions was the Inquiry into Pediatric Forensic Pathology in Ontario launched in 2008. This inquiry was headed by Justice Stephen Goudge and was tasked with investigating the practice of pediatric forensic pathology within the province of Ontario. More specifically, this inquiry examined the work of Dr. Charles Smith and his role in causing multiple wrongful convictions.[19]

Outside of wrongful convictions, public inquiries have been called to review a wide array of issues within Canadian government. One of the more recent inquiries called was the National Inquiry into Missing and Murdered Indigenous Women and Girls which published its final report in 2019.[20] Given that a number of Indigenous women and girls had gone missing and been found murdered over the previous 30-40 years across Canada, this inquiry was tasked with examining the systemic causes of violence against Indigenous women and girls and the existing policies and practices in place to combat this violence. This inquiry addressed issues such as sexual assault, racism, child abuse, domestic violence, harassment, suicide and bullying and sought to educate the public on the experiences of Indigenous women, girls, and 2SLGBTQQIA people.[21] Another recent Canadian inquiry was the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182.[22] This inquiry was called to examine the events and subsequent investigation of the 1985 terrorist attack that resulted in the deaths of 329 innocent people. This inquiry was held in 2006 and sought to improve Canada's overall security and intelligence system. A third example of a public inquiry called in Canada was the Commission of Inquiry

[18] See MacCallum, E. P. (2008). *Commission of Inquiry into the Wrongful Conviction of David Milgaard*
[19] See Goudge, S. (2008). *Inquiry into Pediatric Forensic Pathology in Ontario*
[20] See Buller, M. (2019). *Final report - National Inquiry into Missing and Murdered Indigenous Women and Girls*
[21] There was a great deal of controversy around this inquiry, in part due to how long it took to come to fruition, and the reticence of previous politicians to admit there was a problem.
[22] See Major, J. (2006). *Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182*

into the Decline of Sockeye Salmon in the Fraser River.[23] As it was named, this inquiry was called to review the decline of sockeye salmon in the Fraser River and provide recommendations on how to improve the situation. The final report for this inquiry was published in 2012 and offered 75 recommendations on how the Government of Canada and Government of British Columbia should proceed.

While Commissions of Inquiry are quite common in the Canadian context, other common law countries have used them for various means. For example, Australia has recently completed a Royal Commission examining natural disaster arrangements[24] and has two other Royal Commissions underway, examining violence against people with disabilities[25] and aged care quality.[26] New Zealand currently has two Royal Commissions underway examining abuse in state care facilities[27] and the Christchurch mosque shootings from 2019.[28] While the United Kingdom is not currently undertaking any Royal Commissions, they have a long history of instituting such inquiries, dating back to the early 1800s. Other countries to call Royal Commissions (or Commissions of Inquiry) include Malaysia, India, Hong Kong, Ireland and South Africa. While the United States do not conduct Commissions of Inquiry, they do conduct Congressional Commissions which have a similar role in that they study policy issues and report their findings to congress, however, similar to Royal Commissions, they do not have the power to implement their recommendations (Straus & Egar, 2019).

Commissions of Inquiry are long and complex investigative tools, that when conducted properly, their recommendations can offer a wide range of policy and legislative solutions. The

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[23] See Cohen, B. (2012). *Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River*
[24] See *Royal Commission into National Natural Disaster Arrangements,* published (28 October 2020)
[25] See *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*
[26] See *Royal Commission into Aged Care Quality and Safety*
[27] See *Royal Commission of Inquiry into Abuse in Care*
[28] See *Royal Commission of Inquiry into the Attack on Christchurch Mosques on 15 March 2019*

examination of these Commissions of Inquiry was intended to show the breadth of issues that commissions have been called to examine in the past. Furthermore, it demonstrates that public inquiries are not unique to Canada and are certainly not unique to the topic of wrongful convictions. However, the idea of using public inquiries as a response to wrongful convictions is relatively unique to Canada. The following section will now briefly discuss how public inquiries have been used within the context of wrongful convictions in Canada and finally, a justification for further research into public Commissions of Inquiry will be presented.

Use of Commissions of Inquiry

Given the highly political nature of Commissions of Inquiry, and the fact that in Canada, inquiry commissions cannot force their recommendations into legislature, there are a number of factors that can affect the degree to which recommendations are implemented. Stutz (2008) highlights ten factors that historically have influenced whether or not recommendations from inquiries are implemented. These include the feasibility of the recommendations, the degree to which the inquiry has planned for their implementation, the duration of the inquiry, prior arrangements to follow-up on recommendations, the interests that the recommendations serve, professional interest in taking action, the current political environment, the support of high-powered political figures, the jurisdiction of the commission, supportive parallel developments and changes in government (Stutz, 2008).

Defining implementation can be quite difficult, as it can range from a mere announcement that a government supports a recommendation, to the actual passing of legislature (Stutz, 2008). Additionally, just because a recommendation was implemented, does not mean it was necessarily due to the inquiry. A most notable attempt in defining the degree to which wrongful conviction inquiries have been implemented comes from Botting's (2010) book which

seeks to catalogue the various ways in which the seven Commissions of Inquiry related to wrongful convictions have been implemented in Canada. Though it is beyond the scope of this literature review to fully examine Botting's results, a brief examination is necessary. Botting determined that overall, the courts have implemented the recommendations on very few occasion and while provincial legislatures have acknowledged the inquiries to some degree, "the federal government has lagged behind, being reluctant to make changes to the *Criminal Code* beyond the actual initiation of a review by the Minister of Justice" (Botting, 2010, p. 25). Moreover, Botting found that "most of the recommendations have no effect whatsoever outside the provincial boundaries of the inquiry and are destined never to have force of law" (Botting, 2010, p. 25).

Despite Botting's overall damning conclusions, these Commissions of Inquiry have had some limited influence in recent years. The Marshall Inquiry, led to the establishment of Director of Public Prosecutions (DPP) and Public Prosecution Service (PPS) in Nova Scotia (Botting, 2010; Stenning, 2000). In addition, some recommendations from the Marshall Inquiry regarding improving conditions of Mi'kmaq communities have been implemented[29] (McMillan, 2014). The Sophonow Inquiry saw some results with respect to its recommendations regarding identification procedures. A 2006 study found that "Ontario police agencies adopted the majority of the recommendations from the Sophonow Inquiry" (Beaudry & Lindsay, 2006, p. 182). Some researchers have noted that the inquiries' recommendations have played an indirect role in reducing the occurrence of tunnel vision as well as noble cause corruption throughout Ontario (Beaudry & Lindsay, 2006; Botting, 2010; MacFarlane, 2006). Moreover, the Morin Inquiry and Gouge Inquiry both played a significant role in exposing the unreliability of forensic experts and

[29] An example of this includes the establishment of the Tripartite Forum in 1991 and the incorporation of Mi'kmaq interpreters for accused individuals.

expert witnesses in some criminal cases (Botting, 2010). Since the publication of the Goudge Inquiry in 2008, all of the recommendations presented in final report have been implemented. The recommendations from the Morin Inquiry by Justice Kaufman helped in reforming forensic practices in the province of Ontario, restricting the use of jailhouse informants and highlighting the severity of tunnel vision (Botting, 2010; Ratushny, 2009). The degree to which the entirety of any of the inquiry's recommendations have been implemented might seem somewhat discouraging, however, it is important to note the crucial role that the inquiries have played in raising public awareness around the topic of wrongful convictions. While there is no guarantee that their suggestions will be acknowledged, the inquiries have at least played a role in limiting the risks of future wrongful convictions. As highlighted by Ratushny (2009), sometimes the mere "shining of light into dark places" can be enough to inspire change.

The Need to Critically Examine Public Inquiries

Despite the fact that public inquiries are often headed by some of the best and most well-respected legal minds in the country and their final reports offer achievable policy solutions, they have been relatively understudied in relation to wrongful convictions. While it is beyond the scope of an MA thesis to examine this gap in its entirety, this thesis is an attempt to address this. By examining the process and outcome of the Guy Paul Morin Inquiry, chaired by Justice Kaufman, as a claimsmaking process with the goal of maintaining the legitimacy of the criminal justice system, this research will examine how the claimsmakers involved in the inquiry constructed the social problem of wrongful convictions. Since this analysis only examines one inquiry, it will only involve an analysis of how the claimsmakers involved in the Morin Inquiry construct the wrongful conviction of Guy Paul Morin. However, the construction of such a high-profile case undoubtedly contributes to the overall construction of wrongful convictions, more

generally, as a social problem. As outlined in the next chapter, this analysis will be guided by the theoretical framework of contextual constructionism as defined by Joel Best and others.

Chapter 2: Theoretical Framework

Much of the research and literature on wrongful convictions is devoid of examinations from sociological and criminological theoretical standpoints (Leo, 2005). Leo (2017) has highlighted that in fact, two main research questions have dominated the field of wrongful convictions. These are: "why do innocent individuals get wrongfully convicted" and "what can the criminal justice system do to prevent these miscarriages of justice" (Leo, 2017, p. 96). What is problematic is that these are basic cause-and-effect questions that tend to yield the same canonical solutions over and over again (Leo, 2017). Leo argues that this may be due to the fact that most of the early research conducted into wrongful convictions was undertaken by lawyers and journalists and not social scientists. For him, this scholarship essentially falls into three genres. First, there are big picture studies that provide the standard canonical policy solutions to the standard causes of wrongful convictions (Leo, 2017). Zalman and Larson (2016) label this genre as the "innocence paradigm". The authors state that this literature has begun to take the form of agenda-setting, where the various causes of wrongful convictions, are stated, simplified and then added to the policy reform agenda. In order to break out of this intellectual dead end, it is necessary to broaden the conceptualization of "causes" and develop new research questions that will allow for new insights and the development of a more theoretically informed and policy-relevant body of knowledge (Leo, 2017; Zalman & Larson, 2016). The second genre present in the wrongful conviction scholarship is what Leo (2005) labels the specialized studies. This genre has been relatively successful in researching specific factors contributing to wrongful convictions, for example eyewitness misidentification and false confessions. While these studies help to understand the ways in which errors in various processes have caused wrongful convictions, they fail to acknowledge the ways in which the criminal justice system

systematically generates error (Zalman, 2006). The third genre acknowledged is the true-crime genre, which is important for expanding awareness of wrongful convictions and can help humanize the issue, however, it tends to lack real empirical value (Leo, 2017).

In order to break out of the "familiar plot" or "intellectual dead end" to which wrongful conviction literature has succumbed, this field of study requires both more theoretical and criminological involvement (Leo, 2017; Norris & Bonventre, 2015). One of the most prominent attempts to integrate theory into the study of wrongful convictions has been Packer's (1964) crime control and due process models. Packer describes these models as the two competing forces that shape the criminal justice system (Packer, 1964). The due process model seeks to limit governmental power, protect the innocent and preserve individual rights. The crime control model focuses on denouncing crime and the protection of society through the swift apprehension and punishment of offenders. In the study of wrongful convictions, it can be argued that an over emphasis on crime control can result in the occurrence of a miscarriage of justice. Conversely, an over emphasis on due process, can result in unjust acquittals (Findley, 2008). While there have been some other notable attempts to integrate theory into the study of wrongful convictions, such as that of Doyle (2016) who examines wrongful convictions as complex organizational accidents, most of the attempts made so far have only been able to provide single factor explanations. Perhaps, instead of there being one grand theory that explains the occurrence of wrongful convictions, there may be a multitude of theories from criminology, sociology and legal studies that can all offer differing explanations (Campbell, 2018). This sort of eclectic approach has been suggested by many recent scholars and perhaps it has much to offer (Doyle, 2016; Zalman & Larson, 2016).

The purpose of this chapter is to highlight the theoretical framework that will be used to interpret and analyze the data for this research project, that of social constructionism. This chapter will begin by examining its origins and philosophical underpinnings and will demonstrate the epistemological and ontological positions underlying this theory. The second section will examine competing conceptions within the field of social constructionism and will demonstrate the usefulness of contextual constructionism for this research. The third section will explore the constructionist conceptualization of social problems and will proceed to explain how social constructionism has become useful in the study of social problems. The fourth section of this chapter will expand on the claimsmaking process and will identify how claimsmaking is used in the construction of social problems. Within this section, many key concepts will be identified. The final section of this chapter will help to situate the topic of wrongful convictions as a social problem and identify the key research questions used to guide the research.

The Commission on the Proceedings involving Guy Paul Morin[30] which examined the wrongful conviction of Guy Paul Morin for the murder of Christine Jessop, will be considered as a claimsmaking process for the purposes of this thesis. Given that this process involves various competing claimsmakers, the theoretical framework identified in this chapter will provide the necessary tools and concepts to analyze how the social problem of wrongful convictions came to be constructed through the Morin Inquiry. Since this analysis is only based on a single inquiry, any analysis and conclusion will only refer to how the claimsmakers involved in the inquiry construct the wrongful conviction of Guy Paul Morin; results will not be transferable to any other inquiry results. At the same time, the construction of such a high-profile case undoubtedly

[30] Hereafter referred to as the Morin Inquiry

contributes to understanding the overall construction of wrongful convictions as a social problem.

Social Constructionism

Social constructionism is a theoretical framework that originated in the late 20th century and has often been associated with postmodern thought (Slater, 2018). Social constructionists believe that knowledge is constructed rather than created and thus, they assert that knowledge is social in origin (Andrews, 2012; Slater, 2018). Social constructionism can be contrasted with determinism and objectivism as constructionists do not believe that human actions are the result of prior conditions. Social constructionists see knowledge as arising out of social processes and while they accept there is an objective reality, they are more concerned with studying how knowledge is constructed and understood. Slater (2018) asserts that "social constructionism is a sense-making process that relies on a socially generated understanding of the world" (p. 1628). He goes on to state that this premise demonstrates three distinct beliefs within the framework of social constructionism:

> "(1) reality is intimately linked to subjective experience; (2) subjective experience, while assimilated at the individual level, is nevertheless defined by broader social forces and effects; and subsequently (3) understanding of one's personal experiences corresponds to socially constructed concepts that shape, direct, and normalize the meaning of such experiences" (Slater, 2018, p. 1628).

For the most part, constructionists tend to focus their research on meaning-making processes. There is much less focus on objective conditions and a large emphasis placed on subjective definitions, and for this reason, social constructionist perspectives have come to be labelled as subjectivist. When it comes to social problems, a constructionist would argue that a social problem does not exist until it is defined as such and that while certain conditions may be in existence, they are not classified as social problems until society deems them to be social

problems (Loseke, 2003). Objectivists, on the other hand, contend that social problem conditions exist in the real world and that claimsmakers merely bring these to the public's attention rather than construct them (Loseke, 2003). Over the last few decades, social constructionism has become more prominent in the analysis of social problems, and as such, social constructionist researchers have shifted their focus from studying social conditions to studying the processes through which certain issues become labelled as social problems (Best, 2013). Social constructionism's recent involvement within the study of social problems has resulted in a fundamental debate within the field concerning how social problems ought to be studied. Namely, its members have been divided into strict constructionists and contextual constructionists. While both these perspectives have merit, contextual constructionism will be the position used throughout this research as it is more practical due to its relativist epistemology and realist ontology (Best, 1987, 1995).

Contextual Constructionism

In the early days, social problems research involved competing conceptions from the functionalists who opted for objectivism and constructionists who advocated for the need to consider the subjective elements of social problems. Constructionism was able to delve into certain aspects of social problems research that objectivist researchers could not. Namely, constructionists were able to examine how claimsmakers can formulate social problems and how meaning becomes constructed throughout the claimsmaking process (Loseke, 2003).

Strict Constructionism vs. Contextual Constructionism

Despite being accepted as a theoretical framework for studying social problems, there are also many critiques of social constructionism. The largest came not from the functionalists, but from within the constructionist ranks. In 1985, soon after the renowned work of Spector and

Kitsuse, who outlined how the empirical study of social problems ought to take place, Woolgar and Pawluch charged constructionist researchers with engaging in "ontological gerrymandering" (Spector & Kitsuse, 1977; Woolgar & Pawluch, 1985). This critique claimed that the majority of constructionist analyses were internally flawed, as on one hand, constructionists challenged assumptions made about social conditions, yet on the other hand, they would often make their own assumptions about what was and was not real (Woolgar & Pawluch, 1985). The critics of ontological gerrymandering claimed that constructionists were paying selective attention to objective conditions, and this resulted in their analyses being internally inconsistent. As a result, they urged analysts to avoid making any sort of assumptions about the empirical world and claimed that pure constructionist research must refrain from any evaluation of claims (Best, 1993, 2013). Following this strong critique, two main schools of social constructionism emerged, firstly there were the strict constructionists who, like Woolgar and Pawluch, "argue that social problems analysts should avoid making assumptions about objective reality" (Best, 1995, p. 341). Secondly, and in opposition, there were the contextual constructionists who contend that in certain instances, analysts need to make assumptions about the objective world (Best, 1995). The main goal of contextual constructionism is to understand social problems in terms of the claims that are made about them. Further to this aim, is the goal of examining claimsmakers themselves and how they subjectively construct social problems. While doing so however, researchers may need to make certain assumptions about objective conditions (Best, 1995).

Contextual constructionists seek to locate claims within their given context and since there are so many elements involved in a context, the analyst is required to make some assumptions about these elements. Contextual constructionists contend that these sorts of assumptions should not be seen as flaws, simply because they are assumptions but rather, they

should only be seen as problematic if it can be established that the assumption has somehow damaged the analysis (Best, 1995). Lastly, it is important to note there is a third, much less popular, form of constructionism in existence. This stance is commonly referred to as vulgar constructionism and it is typically seen as being more objectivist than constructionist. Best (2013), states that vulgar constructionism equates social construction with fanciful thinking. Vulgar constructionists see things like official crime statistics as true and accurate representations of reality, rather than as social constructions. More simply put, if one were to design a "constructionist spectrum" there would likely be strict constructionism at one end and vulgar constructionism at the other.

If vulgar and strict constructionism are the two extremes, contextual constructionism can be seen as the middle ground between these two approaches. Contextual constructionism, as its name suggests, places a large focus on the context of claimsmaking. Contextualists argue that in order to truly understand social problems claims, one needs to take into consideration the context in which the claims are being made (Best, 1995). In fact, contrary to the strict constructionist belief, contextualists believe that it is neither possible nor desirable to ignore the context in which claims are made. Strict constructionism and its abstinence from any sort of assumption about objective reality allows it to remain analytically pure, however, that purity comes at a terrible cost. Best (1993) argues that strict constructionism's desire to maintain constructionism's epistemological integrity has pushed it into a "contextless region where claims-making may only be examined in the abstract" (p. 123). While strict constructionists refrain from any sort of claim evaluation, contextualists contend that any claim can be evaluated and just because a statement is labelled a claim, does not necessarily discredit it (Best & Loseke, 2018). For example:

> "A claim may be based on various sorts of evidence, such as official criminal justice statistics or public opinion polls, which are in turn social constructions—products of the

> organizational practices of police departments, polling firms, and so on. Strict constructionists often argue that one set of claims (e.g., statistics about rising crime) cannot be used to assess other claims (e.g., claimsmaking about 'crime in the streets'). But contextual constructionists assume that they can know—with reasonable confidence—something about social conditions. They acknowledge the socially constructed nature of crime rates and other information about social conditions, but they assume that such information can still be used to (imperfectly) describe the context within which claimsmaking occurs" (Best, 1995, pp. 347–348).

To continue with the crime rate example, contextual constructionism would allow for the assessment and evaluation of statistics that were previously put forth as being objective. Take for example, a claimsmaker who claims that there has been a reduction in city-wide crime rates and cites the fact that there has been a 20% reduction in conviction rates as proof of such a claim. Now a contextualist, rather than challenging the claim that there was a 20% reduction in conviction rates, would instead ask questions about how that statistic is being used to demonstrate a reduction in overall crime and perhaps would analyze the framing techniques used in presenting that claim.

The Applicability of Contextual Constructionism

Due to its ontological flexibility, contextual constructionism provides a much more practical theoretical framework that fits well with the objectives of this research project. Contextual constructionism emphasizes the importance of taking the necessary precautions to ensure results do not become contaminated, while at the same time, it allows for one to conduct a sociological analysis that is not completely devoid of social context (Best, 2019). As identified by Best (1993), the contextual constructionist approach allows analysts to assume some knowledge about social conditions. Conversely, in order for one to conduct a case study from the constructionist approach, certain assumptions have to be made about the existence of a social problem (Best, 1993). For the purpose of this research project wrongful convictions are assumed

to be a social problem in contemporary Canadian society. While this assumption may be supported by a certain degree of academic knowledge (as will be demonstrated in later sections), it is nonetheless an assumption that must be made. Conducting this research from the strict constructionist standpoint would simply not provide the necessary degrees of freedom required to complete this case study design. Thus, a contextual social constructionist approach will be used for understanding the data interpreted and analysed for this study.

Social Problems

The Rise of Social Problems Literature

In the early days, social problems were typically defined in terms of particular social conditions. A social problem was considered to be any sort of social condition that proved to be harmful to society's well-being. This viewpoint came to be regarded as objectivist, as it defined social problems in terms of objective conditions (Best, 1995). The objectivist viewpoint was typically supported by functionalist researchers and others who emphasized the importance of societal consensus (Best, 2002). However, with the rise of constructionism, this way of studying social problems soon became inadequate for two reasons, firstly, it ignores the subjective element of social problems (Best, 1995). In other words, it ignores the fact that no social problem actually becomes a social problem until society labels it as so. Secondly, most objective conditions have relatively little in common with one another, making it difficult for researchers to guide their thinking about these issues (Best, 1995).

Prior to the work of Blumer (1971) and Spector and Kitsuse (1977), objectivism tended to dominate social problems research. In an attempt to challenge the objectivist reasoning, Blumer (1971) highlighted that it would be a gross mistake to assume that any sort of harmful condition automatically becomes a social problem within society. He points to the fact that

history is full of instances where dire social conditions go unnoticed or unmanaged. This important revelation was followed by the flagship work of Spector and Kitsuse (1977). They, in fact, sought to define social problems differently. Instead of considering social problems to be the result of various social conditions, the authors sought to define social problems in terms of "the activities of those who assert the existence of conditions and define them as problems" (Spector & Kitsuse, 1977, p. 74). Following this notion, Spector and Kitsuse (1977) defined social problems as "the activities of individuals or groups making assertions of grievances and claims with respect to some putative conditions" (p.75). Thus, a social problem is created when individuals or groups, usually trying to inspire some sort of change, engage in claimsmaking about a condition. This point proves an integral part of the constructionist study of social problems, which is that constructionists are not concerned with proving the validity of assertions nor are they concerned with establishing a factual basis for objective conditions. Rather, constructionist researchers are concerned with the assertions being made about the existence of social problems. Put differently, constructionists are interested in what claimsmakers have to say about social conditions, not with the social conditions themselves.

Characteristics of Social Problems

With the emergence of constructionism in the social problems' realm some 40 years ago, scholars have since characterized social problems in order to help researchers study when, where and how they arise. One important aspect to note about social problems is that they are highly relative to a specific time and place, rather what is and what is not considered a social problem depends on when and where a social condition occurs. Loseke (2003) notes that what we call a social problem is not a stable category and that there are many instances of social problems moving in-and-out of the public's concern. She notes that the public can begin to recognize

certain conditions as problems, even when objective indicators show that the condition is not new (Loseke, 2003). Furthermore, there are instances where the degree of public worry does not correlate with the severity of the condition (Loseke, 2003). In other words, there can often be no relation between the social problems that concern citizens and what exists in the objective environment.

The wording of the term "social problem" itself alludes to three unique characteristics. Firstly, labelling a social condition as a "problem" infers that it is somehow undesirable or in some way causes harm (Loseke, 2003). Secondly, labelling something as a "problem" alludes to the fact that it is possible to develop a solution (Best, 1995). Problems are considered solvable, with retrievable solutions. Lastly, from the word "social" one can deduce that the problem at hand affects a significant number of people (Loseke, 2003). The word "social" tells us that the problem does not just simply affect one individual, but instead, it causes issues for society at large.

An interesting aspect of social problems is that any given condition can often be constructed in many different ways. Essentially, social problems become the result of disagreements amongst claimsmakers. For instance, in Loseke's (2003) example of school shooters, it is possible to ask multiple questions: "is the problem of teens who gun down their classmates a problem of schools? Parents? Mentally unbalanced teens? Peer pressure? A mass media saturated with violence? Guns?" (Loseke, 2003, p. 5). Depending on how the social problem is shaped, conditions can be understood as resulting from various different things.

The Social Problems Process

Joel Best (2013) introduced constructionism to something called the social problems process; this is a six-stage process through which the majority of social problems progress. It is

important to note that the stages in this process do not necessarily follow a specific order and they can often move back and forth between stages. Additionally, once the sixth stage is reached, the process is not necessarily complete, and it may end up repeating itself. The first stage in the social problems process is claimsmaking, where some sort of claimsmaker brings forth a claim that a particular condition is problematic and needs to be fixed. From here begins the media coverage stage whereby the media begins to cover the issue and bring it to public attention. Third, is the public reaction stage where members of the public begin to react to the social problem presented to them. The fourth stage is the policymaking stage where institutions, governments and organizations begin to address the issue and attempt to devise a solution to the problem. The fifth stage is titled "social problems work" where after new policies have been devised, work now needs to be done to have those policies implemented. Lastly, is the policy outcome stage where the new policies that have been implemented are now evaluated and critiqued by various claimsmakers. An important point to be made about the social problems process is that as social problems progress through each stage, they are constantly constructed and reconstructed by various claimsmakers (Best, 2013). This means that an analyst who studies the construction of a social problem at stage one might see it as being constructed differently than an analyst examining the same problem at stage six. Social problems do not remain constant, and this is often the result of competing claimsmakers.

Social Problems and the Importance of Claimsmaking

The social problems process examined above involves an incredible number of people, who in some way work to construct or attempt to resolve social problems (Loseke, 2003). Like many things in North American society, the possession of money, status and power can play a role in those claims that are heard and those that are not. Social problems are, to a large degree, a

competition amongst competing claimsmakers. In fact, due to the competition involved in the social problems process, some scholars have begun to refer to it as the "social problems game" (Loseke, 2003). Loseke (2003) states that:

> "The *goal* of the social problems game is to persuade people to worry about a condition and to do something to resolve it, it is to persuade people to use particular categorizations when they are practical actors in daily life trying to make sense of their own experiences and the experiences of others around them. The social problems game is a set of *activities* (social problems work) and *players* who compete, and there are *competitions* and *strategies* for winning" (Loseke, 2003, p. 20).

These competitions occur as people have a limited carrying capacity for social problems (Loseke, 2003). Meaning that claimsmakers must convince them what social problems they should care about and what solutions they should opt for. As social problems inevitably become shaped by claimsmakers, it comes as no surprise that the claimsmaking process becomes so important and this is exactly why constructionists place so much emphasis on studying it.

The Claimsmaking Process

For organizational purposes, this section will be divided into two parts. Firstly, will be an examination of the roles and goals of claimsmakers; various traits common to claimsmakers will be identified. Second, this section will examine how social problems come to be framed by claimsmakers. Here, various tactics and techniques common to the claimsmaking process will be identified and discussed in detail.

Roles and Goals of Claimsmakers

Claimsmaking has been defined in various ways within the field of social problems research. One of the most basic definitions is that claimsmaking is a form of interaction that involves one party making a demand regarding some putative condition to another party (Spector & Kitsuse, 1977). In other words, claimsmaking can be seen as a persuasive act of

communication (Best, 1995). The demands and statements made during the claimsmaking become known as claims, which can be defined as "any verbal, visual, or behavioral statement that seeks to persuade audience members to define a condition as a social problem" (Loseke, 2003, p. 26). Those who make the claims and seek to persuade members of the public, come to be known as the claimsmakers. The ultimate goal of a claimsmaker is to shape our sense of what a given social problem is or how it should be solved. At the same time claimsmakers typically have some sort of vested interest and usually aim to gain something if their claim is successful. For example, a claimsmaker may act as they view a particular issue as offending their moral values. In other instances, objective interests may motivate claimsmakers as they see the potential to gain economically, socially or politically. Highlighting a claimsmaker's clear motives can be quite difficult as often a variety of both subjective and objective interests find their way into the process and it can be difficult to determine which specific interests are truly motivating the claimsmaker (Loseke, 2003). Furthermore, there are many different kinds of claimsmakers including activists, specialists, professionals, pressure groups, officials, scientists, politicians and many more (Best, 1995). Loseke (2003) differentiates between two different groups of claimsmakers common to the claimsmaking process. Firstly, she highlights that there are the "primary claimsmakers" who are those who first seek to construct the social problem. Often these are social activists, politicians, scientists or professionals. Secondly, there are the "secondary claimsmakers" who work to translate and package the claims made by others. More often than not, the secondary claimsmakers are members of the mass-media.

The importance of the claimsmaker may appear to be obvious, however, equally important in the process are those whom the claimsmaker seeks to persuade, as they are the ones who determine what claims are successful and what ones are not. Those whom the claimsmakers

seek to persuade - the ones who evaluate the believability and importance of social problems claims - are commonly referred to as the "audience" (Loseke, 2003). Within the audience, there are also many different members. Best (2013) highlights four different individuals which come to construct the audience. First, there are the converted individuals who are allies of the movement and already support the claims being made. On the other end, there are the resolutely hostile members of the audience who will refuse to support the movement no matter what the appeal. In between, are the persuadable members of the audience, who, if given the proper appeal, may end up supporting the movement. Additionally, there are "target populations" who embody the problem and would likely be affected if the claims were to be moved forward. Any social problems movement has the potential for multiple different audiences, however, not all members of the audience are treated equally. Loseke (2003) mentions something called the "hierarchy of audience significance", this concept refers to the idea that certain audience members possess higher degrees of influence than others. It is for this reason that Loseke (2003) states that "it is possible to win the social problems game with a very small number of votes as long as they are from powerful segments of an audience" (p. 28). In the social problems game, the truth typically does not matter, instead, what matters is what the audience believes to be true. For this reason, an important trait of a successful claimsmaker is being high on the "hierarchy of credibility" (Becker, 1967). Those who are higher on this hierarchy typically have their claims regarded as more truthful than those on the bottom of the hierarchy. People such as scientists, legal professionals and doctors typically have their claims go unchallenged despite their actual truth value.

What is referred to as "typification", is perhaps one of the most important parts of the social problems process. Typification involves claimsmakers characterizing a problem's nature

in terms of some specific perspective (Best, 1995). For example, a claimsmaker may attempt to characterize prostitution as a moral problem as opposed to a criminal problem or drug abuse as a medical problem as opposed to a criminal problem. While there may be a debate on how a certain condition should be typified, there can also be debate amongst those who agree on the typification of an issue. For example, competing claimsmakers might both see condition X as a criminal problem, however, they disagree on what should be done about it. In other instances, there exists "valence issues" which typically have a general social consensus regarding the desirability of an issue, however, a debate still exists as to what should be done about it (Best, 2013). For example, there is a general consensus that child pornography should be stopped, however, there are competing claims on the best means to achieve this end. Valence issues can be contrasted with "position issues", in which there is generally a greater deal of public debate (i.e., abortion, gun laws, drug use). Both valence and position issues can be part of the social problems process, however the ways in which claimsmakers go about typifying each will differ. Wrongful convictions can be considered valence issues as it is a generally accepted principle in North American society that people should not be punished for crimes they have not committed. However, as will be displayed later, there exists disagreement on what should be done to resolve this issue.

As discussed, claimsmakers inevitably hope to persuade audience members to support their claims (Best, 2013). In order to do this, they must fashion their claims into successful packages that appeal to audience members (Lowney, 2007). This process of shaping a social problem has been referred to as "framing" and it is a valuable tool used by claimsmakers. The following section will describe the framing process and will identify tactics commonly used by claimsmakers.

Framing the Problem

In order to properly convince an audience and fully make sense of the claimsmaking process, claimsmakers almost always engage in what is referred to as "framing". Social movement scholars have identified three main styles of framing that claimsmakers must engage in, in order to properly construct their problem (Best & Loseke, 2018; Loseke, 2003; Lowney, 2007). Firstly, there is the diagnostic frame which constructs the meaning of the condition (Loseke, 2003). This frame seeks to define the condition and attributes the various aspects of blame and responsibility. An important part of constructing a diagnostic frame is constructing one party as the victim and another as the villain. In order to construct victims and villains, often claimsmakers will use typifying examples, where they present an extreme case that clearly exemplifies the problem (Best, 2013). For example, when constructing terrorism as a social problem, claimsmakers in previous years would often refer to the attacks on 9/11 as a typifying example, as it clearly demonstrates terrorists as the villains and innocent Americans as the victims. Constructing the victim, and especially the villain can be a difficult task as audience members may not necessarily see things the way claimsmakers intend them to. For this reason, it is important for claimsmakers to properly appeal to their cultural context in order to properly persuade their audience (Lowney, 2007). In order to construct a victim, the audience needs to see them as morally good and innocent. Conversely, the villain needs to be seen as blameworthy and morally wrong. Constructing the villain can be extremely difficult as members of the audience may not see them as worthy of condemnation. Another potential way to construct a diagnostic frame is through "domain expansion" wherein claimsmakers use the success of a previous claimsmaking campaign to expand their problems category and tackle new related issues

(Loseke, 2003). For example, opponents of the death penalty have used the recent success of the innocence movement to attract attention to their cause (Bandes, 2008).

The second style of framing used by claimsmakers is the motivational frame, which seeks to construct the reasons why audience members should deem a condition intolerable (Lowney, 2007). Essentially, the motivational frame explains why anyone should care about the problem at hand. Often in this stage claimsmakers appeal to either logical reasoning or emotions when trying to establish their point. The appeal to logical reasoning is often achieved through the help of experts and other well-known activists as they can ground the claims in professional discourse (Lowney, 2007). Additionally, an emotional appeal is often achieved through the construction of innocent and blameless victims. Motivational frames are extremely important as "how we think and how we feel about social problems are inextricably related" (Loseke, 2003, p. 77). Furthermore, it is important to note that motivational frames are culturally and historically specific and are thus forever changing.

The third style of framing used by claimsmakers is labelled as prognostic. Prognostic frames seek to construct and present solutions to the problems at hand (Loseke, 2003). The goal of prognostic framing is to not only help legitimize certain solutions but also to persuade the audience as to who is responsible for implementing and carrying out the proposed solutions. Prognostic framing can often be quite challenging, as claimsmakers need to provide sufficient detail for audience members to see their solutions as legitimate, while at the same time they do not want to provide too much detail as that may lead to debates about implementation (Lowney, 2007).

While the term "framing" is commonly used by social movement thinkers, constructionists tend to utilize the terms *grounds*, *warrants* and *conclusions* when analyzing the

construction of claims (Best, 2013; Lowney, 2007; Toulmin, 2003). *Grounds* are statements used by claimsmakers to help construct the nature of a social problem. They are essentially another way of referring to diagnostic frames. *Warrants* are statements that explain why an audience should see a certain condition as a social problem. This is quite similar to what Loseke (2003) labelled as a motivational frame. Finally, there are *conclusions* which are statements made by claimsmakers offering possible solutions for a social problem. In other words, similar to prognostic frames, they seek to explain what should be done about a certain social problem (Best, 2013). While both schools of thought are essentially referring to the same things, the literature on social movements has gone into much more depth in explaining how framing is used and thus provides a more useful explanation.

Wrongful Convictions as Social Problems

As discussed, social problems are not a stable category, and they are often situated within specific cultures at specific times. The social problem of wrongful convictions is no different in this regard. Zalman (2018), states that "wrongful conviction becomes a social problem when innocence consciousness arises, meaning that a significant number of people view miscarriages of justice as caused by correctible systemic factors, and not as inevitable failures of courts" (Zalman, 2018, p. 449). While Zalman (2018) states that wrongful convictions are now recognized globally as a social problem they are not always viewed or understood in the same way as different cultures respond to different social stimuli and thus, various social, legal and political factors all influence how wrongful convictions came to be viewed as social problems. While wrongful convictions have occurred since the beginning of criminal trials, they have only recently been shaped as a social problem.

As discussed in chapter one, with the rise of the innocence movement in the 1990s when wrongful convictions were viewed as a social problem, claimsmakers began presenting various typifying examples, such as that of the Central Park Five which clearly demonstrate the severity of wrongful convictions. As with the construction of any social problem, typifying examples are crucial, and they are much more useful if they are dramatic, clearly demonstrate the villains/victims and clearly appeal to the publics' moral and cultural values (Bandes, 2008). In presenting the case of the Central Park Five, claimsmakers were able to clearly demonstrate how the criminal justice system can err. This case was able to clearly highlight Korey Wise, Kevin Richardson, Raymond Santana, Antron McCray and Yusef Salaam as victims of a prejudice and racist American criminal justice system[31]; all five of them were African American males and falsely confessed to involvement in the crime. When constructing the villains in this case it is important to consider that claimsmakers can choose to typify an issue as either being a result of social structures, social forces, individuals or a combination (Loseke, 2003). The police and prosecution involved in this case might not have offered suitable "villain status", as their attempts to solve a murder by any means necessary could be seen as "trying to do the right thing". Thus, in this case it was easier to construct racial inequality within the criminal justice system as being the obvious villain. Clear typifying examples, such as the Central Park Five case were provided one after another over the course of the innocence movement which created public outrage and ultimately diminished the confidence much of the public may have had in the criminal justice system. Furthermore, it demonstrated why the criminal justice system requires various checks and balances in order for it to be accountable (Norris, 2017).

[31] It is important to note that the Central Park Five only came to be seen as victims following their exoneration.

While the victims of wrongful convictions are quite easily constructed (ex: the "wrong" man who did nothing wrong and was nonetheless sucked into a nightmarish situation), constructing the villain is much more difficult (Bandes, 2008). Loseke (2003) believes that in North American society, "our cultural theme of individualism (constructing individual responsibility) led to the tendency to construct diagnostic frames holding individuals responsible for causing social problems" (Loseke, 2003, p. 106). In the context of wrongful convictions, Bandes (2008) states that forcing blame on individuals rather than on deeply rooted systemic issues is often an easier pill to swallow for many members of the public. Consequently, due to the societal emphasis on individualism, the villain of wrongful convictions has come to be constructed as various individual actors.

Situating the Morin Inquiry Within Social Constructionism

This research seeks to examine how the social problem of wrongful convictions is constructed throughout the Morin Inquiry, and as a result will examine the construction taking place in stage four of the social problems process – the policymaking stage. In this stage there is a move away from the activists and experts who worked to identify the troubling conditions, towards policymakers and those with the power to help institute social change (Best, 2008; Lowney, 2007). In the context of the Guy Paul Morin case, the inquiry involved a shift away from the media, activists and advocates for the wrongfully convicted, towards an appointed commission and Commissioner whose duty was to make recommendations and help develop various areas for policy reform. While it is not within the inquiry's power to implement the policies they develop, they nonetheless set the stage for other claimsmakers to conduct their social problems work. Lowney (2007), highlights that the players in this stage often have less emotional commitment to solving the condition at hand and as a result, the help of "insider

claimsmakers" is often required to bring things to fruition. These insider claimsmakers know how to construct a good story and have the ability to motivate and convince policymakers to advance their solutions. The idea of the "insider" as acknowledged by Lowney (2007), can be seen within the public inquiry process. Take for example, Innocence Canada (formerly AIDWYC), as an example of an interested party that was granted standing at the inquiry hearings and found their way into the policymaking process in order to ensure that their voices were heard and that their proposed solutions would not go unnoticed. Since this thesis has the Morin Inquiry as its main source of data, it will mainly focus on the claimsmaking made by Commissioner Kaufman since he is the one who headed the inquiry and wrote the final inquiry report. However, other interested parties and those granted standing in this inquiry will also have their claimsmaking examined, albeit to a much less degree that that of Commissioner Kaufman. That being said, while there are competing claimsmakers present within the Morin Inquiry, the published inquiry report can be seen as one large claimsmaking campaign aimed at achieving a desired goal. So as will be seen, while there are competing claimsmakers and disagreements on how certain issues should be constructed and/or rectified, the official published report in its entirety is nonetheless working towards achieving one desired goal: to restore public confidence and maintain the legitimacy of the criminal justice system.

The wrongful conviction of Guy Paul Morin represents a fundamental failure of the Canadian criminal justice system. The public Commission of Inquiry launched to review this wrongful conviction can be seen as a claimsmaking campaign aimed at shaping the social problem of wrongful convictions. As demonstrated above, strong typifying examples are essential in the social problems process. In the overall analysis of wrongful convictions as a social problem, the case of Guy Paul Morin can be seen as a typifying example. It is a high-

profile case that clearly demonstrates how mistakes were made by the criminal justice system and the severe impact that wrongful convictions can have on an individual, a family and a community. Thus, through the use of social constructionism in analyzing the public inquiry's construction of this wrongful conviction, one can gain useful insight into the social problem construction of wrongful convictions as a whole.

Zalman (2018) emphasizes that more research is needed to better understand wrongful convictions as a social problem. The contextual constructionist lens put forth in this chapter offers a valid and unique means of contributing to this understanding. Thus, through using the contextual constructionist lens and through analyzing the rhetoric of the Guy Paul Morin Inquiry, this instrumental case study design will examine how the various claimsmakers in the Morin Inquiry sought to shape the social problem of wrongful convictions. This conceptual framework provides the analytical tools of *grounds*, *warrants* and *conclusions* that will allow for the coding and analysis of claims put forth in the inquiry and consequently, determine how the claimsmakers involved in the inquiry proceedings, sought to construct the wrongful conviction of Guy Paul Morin.

Chapter 3: Contextualizing the Morin Inquiry

As the theoretical framework used over the course of this analysis is contextual constructionism, it is first important to provide some context for the claimsmaking being analyzed. Thus, this short chapter will provide a brief overview of the structure and composition of the Morin Inquiry. The purpose of this section is to detail the structure and composition of the inquiry, including how and why the commission was created, the mandate, parties granted standing, phases of the inquiry and the structure of the report being examined. Importantly, this section will also provide a brief social problems analysis of the inquiry structure and will tie in various aspects of the social problem's literature. Lastly, this section will briefly examine the socio-political context surrounding the Morin Inquiry.

The Purpose and Mandate of the Inquiry

On June 26th, 1996, the Order in Council appointing Commissioner Fred Kaufman pursuant to the *Public Inquiries Act*, R.S.O. 1990, c. P.41 was released by the Attorney General of the province of Ontario. The purpose of the inquiry was ultimately to examine the wrongful conviction of Guy Paul Morin and provide policy recommendations in order to ensure it does not happen again. To fulfil this objective, Commissioner Kaufman was given three distinct roles. First, he was tasked with an investigative role, the purpose of which was to determine why the investigation into Cristine Jessop's death and the proceedings that followed, resulted in the wrongful conviction of Guy Paul Morin. The second role given to the Commissioner was that of an advisor, whereby he was asked to provide advice and recommendations aimed at preventing future miscarriages of justice. Third, the Commissioner was given an educational role whereby he was required to educate members of the public regarding the administration of criminal justice in Ontario and the proceedings involving the case of Guy Paul Morin.

After the wrongful conviction of Guy Paul Morin, the legitimacy of the criminal justice system was called into question, bringing attention to the social problem of wrongful convictions. To restore this legitimacy, a claimsmaking campaign was required to appropriately construct Morin's wrongful conviction and pinpoint key measures that could help rectify the social problem. From a social problems perspective, Commissioner Kaufman was given the role of a key claimsmaker aimed at restoring the legitimacy of the criminal justice system. His investigative role allowed him to construct the *grounds* of Morin's wrongful conviction. It tasked him with engaging in a "fact-finding" operation where he was able to determine and construct the nature of Morins wrongful conviction (what caused it, who caused it and how it occurred). His educational role gave him the ability to present his claimsmaking to the general public and ensured that he received attention from members of the public. Lastly, his advisory role gave him the ability to construct *conclusions* that could be presented as a means of rectifying the social problem.

Loseke (2003), highlights that in claimsmaking, there is something known as the *hierarchy of credibility* which essentially states that based on various factors (i.e prestige, expertise, wealth, popularity) certain claimsmakers are considered more important than others. In Canada, judges are typically seen as well-educated, well-respected, neutral third-party observers and are likely considered high on the hierarchy of credibility. Therefore, appointing a judge as the head of the inquiry helped contribute to the credibility of the report and the overall claims being made.

Claimsmakers, the Audience and Parties Granted Standing

Pursuant to section 5 (1) of the *Public Inquiries Act* of Ontario, a commission is required to permit standing to any person who has a substantial and direct interest in the subject matter.

Being granted standing allows the party to give evidence and to call and examine witnesses. Essentially, it allows parties to engage in the claimsmaking campaign. Twenty-five interested parties were granted standing at the Morin Inquiry (see Appendix A for a full list), while all of these parties took on the role of a claimsmaker throughout the inquiry, none of them had as dominant of a claimsmaking role as Commissioner Kaufman. This makes sense not only in terms of the hierarchy of credibility, but also practically, as Commissioner Kaufman was the one who authored the final report. Therefore, while Commissioner Kaufman was the central claimsmaker at the Morin Inquiry, as will be displayed later in this thesis, other claimsmakers had a significant impact as well (e.g., AIDWYC, The Ontario Crown Attorneys' Association and the Centre of Forensic Sciences). A final point to note, is that while Kaufman was undoubtedly the most prominent claimsmaker at the inquiry, often times his claimsmaking was secondary in nature. Essentially, rather than engaging in the mere reiteration or transmission of claims, Kaufman would engage in the interpretation and repackaging of claims in such a way that furthered the inquiry objectives.

As the name suggests, public inquiries are made public and as such, they seek to persuade members of the public as to how they should view the social problem of wrongful convictions. Therefore, for the purposes of the claimsmaking campaign under analysis, "the audience", whom the claimsmakers are presenting their claims to, can be considered to be any members of the Canadian public, with an increased emphasis on the Ontario public. However, as explained above, there are different sections of the audience with some members possessing higher degrees of influence than others, such as members of parliament or other high-powered policymakers. Therefore, it can be assumed that the claimsmakers involved would likely be targeting these specific parties.

Phases of the Inquiry and Structure of the Report

Hearings for the Morin Inquiry were divided into eight different phases (see Table 1 below). These hearings were then put together by Commissioner Kaufman into a final report and published.

Table 1

Phase	**Objective**
Phase 1	Examined in-custody statements and jailhouse informants.
Phase 2	Examined forensic evidence and the Centre of Forensic Sciences (CFS).
Phase 3	Examined the York Regional police Investigation.
Phase 4	Examined the Durham Regional Police Investigation.
Phase 5	Examined issues that arose over the course of Morin's trials, with an emphasis on the second trial.
Phase 6	Sought to assess various systemic issues.
Phase 7	Allowed parties who were given section 5 notices to address the allegations made against them.[32]
Phase 8	Allowed for the final submission of written and oral statements from the various parties involved.

The final report consisted of five different chapters organized according to key issues. The first chapter outlined the scope and nature of the inquiry; it gave background information, introduced the mandate, and outlined the structure of the proceedings. The second chapter looked at forensic evidence and the role of the CFS. The third chapter examined the usage of jailhouse informants. The fourth and shortest chapter, examined the investigation by the York Regional Police. Lastly, the fifth and longest chapter, examined the Durham investigation and the role of

[32] A "section 5 notice" essentially outlines the alleged misconduct of the party whom it is given to. It is a requirement under section 5 (2) of the *Public Inquiries Act* that anyone given such a notice be given the opportunity to be heard during the inquiry.

the prosecution. Each chapter was then broken down according to specific issues (i.e., hair comparisons, fibre comparisons, environmental contamination). In most situations, after dividing the chapters according to specific issues, the Commissioner would then begin to detail the "facts" surrounding that particular issue, before concluding with his "findings", where he would essentially summarize and evaluate the various facts collected. This process would then continue until no new issues arose. The chapter would then conclude with the Commissioner offering his recommendations aimed at addressing the issues that arose during the fact-finding process.

From a social problems' perspective, the bulk of the chapter describes the various *grounds* surrounding Morin's wrongful conviction. The Commissioner's fact-finding basically works to define the nature of the wrongful conviction and detail its various causes. At the end of the chapter, the Commissioner then presents his *conclusions* on how to address the issues previously described. In presenting these *conclusions,* the Commissioner also provides various *warrants* that help to rationalize and justify why the *conclusions* being offered are important and why the social problem of wrongful convictions needs to be addressed.

Socio-Political Context

As discussed above, the Morin Inquiry was called in 1996 and thus the socio-political context in which the inquiry was conducted must be considered. In the 1990s the social problem of wrongful convictions was only beginning to develop with the emergence of DNA evidence and the rise of the innocence movement. During this period in time, wrongful convictions did not receive the amount of popular media attention that they do today and as such, while the possibility of wrongful convictions always existed, the public was only beginning to realize the possible prevalence of the issue. It can be argued that the laws and policies in place in the 1990s were less structured to prevent and remedy wrongful convictions than they are today. While this

may have been trending towards a degree of improvement, namely following the inquiry into Donald Marshall Jr.'s wrongful conviction, policies and legislations specifically preventing wrongful convictions were still quite nascent. For example, the amendments to the *Criminal Code* regarding sec. 696 and applications for ministerial review were not implemented until 2002. Further to this point, it could be argued that there was perhaps more of an emphasis on crime control during this time period, which must be considered.

Chapter 4: Methodology

The central focus of this thesis is to contribute to the knowledge of how claimsmakers construct the social problem of a wrongful conviction. More specifically, this thesis seeks to examine how claimsmakers involved in public inquiries work to construct the social problem of wrongful convictions. As this topic is quite broad and could encompass a wide range of data sources, a case study design was determined to be the most desirable approach. Consequently, the following research question guided this research: *How is the social problem of a wrongful conviction constructed by the claimsmakers involved in the Guy Paul Morin Inquiry?* The Morin Inquiry was chosen as the basis for this study for two main reasons. First, the Morin Inquiry recognized and contains what is now widely held as the seminal definition of tunnel vision. Secondly, it provided a unique analysis of the use of jailhouse informants in the Canadian criminal justice system and helped to highlight the unreliable nature of this form of testimony. Essentially, this inquiry formalized an examination of what are now widely recognized as fundamental contributing factors to wrongful convictions in Canada

An official copy of the Commission on the Proceedings involving Guy Paul Morin acted as the main source of data as transcripts were far too lengthy to analyze, however, the proceedings are contained in two volumes and comprise over 1200 pages. In order to properly code the data and establish more basic units for analysis, Best's (2013) *grounds*, *warrants* and *conclusions* were employed, as a means of breaking down the social problem construction. *Grounds*, *warrants* and *conclusions* offer a valid means of coding data in order to help decipher the rhetoric present. Best's (2013) concepts and categories were not forced into the data, but rather they were first engaged, and subsequently, new categories were allowed to emerge. After the data was collected and coding reached saturation, a qualitative content analysis was

conducted in order to determine the themes that arose regarding the construction of wrongful convictions.

In this chapter, the research methods used throughout this thesis are highlighted and the various methodological decisions made are discussed. The first section discusses the data source and case selection, namely it discusses the suitability of a case study design as well as how a published copy of the Morin Inquiry can act as a useful data source. The second section examines the analytical strategy used and describes the appropriateness of a qualitative content analysis for analyzing rhetorical themes. The final section examines the data collection methods used, namely Best's (2013) *grounds*, *warrants* and *conclusions* and how they were used to code the data into appropriate units of analysis.

Data Source and Case Selection

Documents as a Source of Data

There are a number of things that can constitute a document, from news articles to magazines to official government publications. In social science research, documents offer a unique and somewhat practical means of studying the social world. For the purpose of this research, a document analysis of an official copy of the Commission on the Proceedings involving Guy Paul Morin as published by the Government of Ontario was undertaken. At first, the inquiry transcripts were sought as a means of tackling the research question, however, given that the transcripts consisted of thousands of pages, examining them would be a rather daunting task for the purpose of an M.A thesis. Thus, the official publication of the Morin Inquiry offered enough valid information in order to appropriately answer the research question, while still being a reasonably sized document to undertake.

One's ontological and epistemological positioning plays a large role in determining how

a document can be analyzed as well as what sort of information a document can offer. From a very realist perspective, documents can offer a means of examining social conditions and can essentially mirror the social world. From a contextual constructionist perspective, however, the position is taken that while documents can offer some insight into social conditions, they should not be seen as the focus of research (Best, 1995). Rather, the focus needs to be placed on examining the claims made within the documents and the context in which those claims are created (Best, 1995). Consequently, due to the epistemological positioning taken in this thesis, documents become more than just containers of content (Prior, 2004). While content is extremely important, it is necessary to go beyond that and examine documents within their context (Rapley, 2007).

Case Study Design

Fundamentally, a case study can be described as the empirical investigation of a specific bounded phenomenon within its real-life context; it is the all-inclusive examination of a single case (Mabry, 2008; Ruddin, 2006; Yin, 2018). In this sense, the case study is more of a research strategy as opposed to a research method (Kohlbacher, 2006). In Canada, there have been seven public Commissions of Inquiry launched to review the causes of wrongful convictions. Given the sheer size of a public Commission of Inquiry and the various time restraints placed on an M.A thesis, only a single inquiry was examined. Thus, the Morin Inquiry was chosen to for this case study for two main reasons. Primarily, a major reason for choosing the Morin Inquiry was out of sheer interest in the case. Secondly, the Morin Inquiry put forth very unique recommendations regarding the usage of jailhouse informants and provided an in-depth analysis on the issue of tunnel vision.

The importance of case studies in constructionist research has been well-noted by some

of the leading social constructionist researchers (Best, 2015; Spector & Kitsuse, 2001). In fact, it has been recommended that social constructionists work to advance the field of social problems through the use of detailed case studies (Best, 2015). While this is not the end goal of the field, it is a crucial stepping stone towards developing a theory of social problems (Best, 2015).

Determining what case to use is of great importance. Stake (1994) states that there are three styles of case studies that researchers may choose from. Firstly, there is the intrinsic case study, which is a case that is undertaken so that the researcher can gain a better understanding of the case in its own right. Basically, the specificities of a given case are the main concern. Secondly, there is the collective case study which is the instrumental study of a multitude of cases. Lastly, is the instrumental case study, and this research project is an example of that. Stake (1994) defines an instrumental case study as being when:

> "A particular case is examined to provide insight into an issue or refinement of theory. The case is of secondary interest; it plays a supportive role facilitating our understanding of something else. The case is often looked at in depth, its context scrutinized, its ordinary activities detailed, but because this helps us pursue the external interest. The case may be seen as typical of other cases or not… the choice of case is made because it is expected to enhance our understanding of that other interest" (p. 237).

In terms of this research, while the Morin Inquiry is of obvious interest, that interest is secondary to examining how wrongful convictions come to be constructed as a social problem. This research does not seek to generalize across all wrongful conviction inquiries, but rather to make more of a conceptual contribution to the wrongful conviction, social problem and public inquiry literature.

Case study research has received some criticism over the years on several fronts, however, there have also been others who have stated the need for case studies in strengthening social science research (Best, 2015; Flyvbjerg, 2006). A central critique of case study research has been its inability to produce generalizable results; essentially formal generalizations based on

a single study of a phenomenon are impossible (Flyvbjerg, 2006; Ruddin, 2006). Some responses to this claim include that formal generalizations are not the only way people gain knowledge (Ruddin, 2006), analytic generalizations are just as important as statistical generalizations (Yin, 2018) and case study researchers are not required to provide generalizations but rather prove they conducted their study properly and captured its uniqueness (Stake, 1994). This preoccupation with generalization stems from positivism and the idea that the social sciences should mimic the natural sciences. However, given the ontological and epistemological positioning taken for this project, proving the generalizability of results is not a central concern. The purpose of this case study design is not to generalize to every public inquiry or wrongful conviction case but rather to make a conceptual contribution to the literature. Furthermore, case studies have been critiqued on the grounds that they do not provide a context-independent theorization (Flyvbjerg, 2006). However, given the theoretical framework (contextual constructionism), the context of a phenomenon is extremely important and thus, creating a theory that is independent of a context would not be seen as possible or desirable.

Data Collection and Analytical Strategy

Qualitative Content Analysis

The analytical strategy that will be used in analyzing the data is a qualitative content analysis. There is some variation in the literature as to what a qualitative content analysis entails, but for the purpose of this research, it is as "a research method for the subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns" (Hsieh & Shannon, 2005, p. 1278). The goal of this research method is to develop a description of the phenomena as well as various concepts and categories that help describe it (Eto & Kyngäs, 2008). In order to properly describe qualitative content analysis and

explain how it will be useful as the analytical strategy for this study, it is first important to differentiate it from quantitative content analysis and grounded theory.

A quantitative content analysis is a commonly used research method that essentially involves the systemic counting of words, phrases or codes that arise throughout a text (Huckin, 2003). This method is often conducted using computer software and tends to ignore possible implicit meanings that can exist in the context of a text (Huckin, 2003). This form of analysis has been criticized for being too reductive and not reflecting human meaning-making. Qualitative content analysis, on the other hand, acknowledges both implicit and explicit concepts, it allows the researcher to play a role in determining the meaning of a text within its given context. Qualitative content analysis goes beyond the mere counting of words and completes an in-depth examination of a text and the language used within it (Hsieh & Shannon, 2005). It provides the researcher with not just a simplistic description of the data, but rather a rich, in-depth and detailed understanding of the meaning of a text (Eto & Kyngäs, 2008).

A common mistake made among students and researchers is labelling qualitative content analysis as grounded theory. While these two approaches share some similarities, it is important to note that they do not entail the same thing. It is beyond the scope of this section to examine all of the differences and similarities that exist between grounded theory and qualitative content analysis; however, there is one major distinction that must be made and that is that while both approaches follow coding procedures and seek to establish thematic categories, when the codes are collected and categories created, qualitative content analysis does not focus on creating theories or finding relationships amongst the categories (Cho & Lee, 2014). While the main focus of grounded theory is to establish a theory, the main goal of qualitative content analysis is

to format the material in terms of categories and themes that provide answers to the research questions set out (Cho & Lee, 2014).

Qualitative content analysis was selected as the analytical strategy for this thesis because it provided a necessary emphasis on context, language and rhetoric that allowed for the analysis of the claims put forth throughout the Morin Inquiry. Content analyses can be conducted either inductively, deductively or through some combination of the two (Ezzy, 2013). Deduction involves deriving preconceived theories and codes from the literature and using that as the basis of the coding procedures (Cho & Lee, 2014). Essentially, it would involve applying preconceived codes to the material in order to see if and when they arose. On the other hand, through induction, the researcher begins their analysis with no preconceived codes and inductively allows various codes, categories and themes to arise from the data (Cho & Lee, 2014). This research represents a balance of these two approaches, and draws on certain preconceived codes, while at the same time allowing new ones to emerge. Corbin and Strauss (2008) acknowledge that when thematically coding a piece of text:

> "a previously identified theoretical framework can provide insight, direction, and a useful list of initial concepts. However, a researcher should remain open to new ideas and concepts and be willing to let go if he or she discovers that certain 'imported' concepts do not fit the data. The importance of 'remaining open' is essential even for experienced researchers working on their own program of research" (Corbin & Strauss, 2008, p. 40).

As will be explored in the next section, Best's theory of (1987, 2013) *grounds*, *warrants* and *conclusions* and their corresponding subcategories will be explored in order to help code the data. While actively engaged with these concepts, new variants could also be added. Additionally, special attention was given to the fact that Best's (1987, 2013) *grounds*, *warrants* and *conclusions* may not be all-encompassing and perhaps may overlap in certain instances.

Coding Procedure

In order to appropriately tackle the research question, the data from the inquiry were analyzed for both the manifest and latent content present. A manifest content analysis examines any visible and surface content present in the data (Cho & Lee, 2014). For this research, that involved analyzing various quantifiable elements such as the frequency with which certain claims or thematic groups of claims emerged. However, the majority of the analysis examined the latent content (rhetoric) present in the text, meaning that it examined the hidden or underlying meanings contained in the claims. In order to properly code the latent content and analyze the rhetoric used throughout the Morin Inquiry, the data to be coded was placed into manageable units of analysis. To do this, Best's (1987) *grounds*, *warrants* and *conclusions* were employed. These concepts were first explored by Toulmin (1958) as a means of analyzing arguments. Since then, constructionist scholars such as Best (1987, 2013) have used these concepts as a way to analyze the rhetoric put forth by claimsmakers. For this research, Best's (2013) *grounds*, *warrants* and *conclusions* were used as a means of organizing and coding the claims put forth throughout the Morin Inquiry. The *grounds*, *warrants* and *conclusions* were identified until saturation was reached and from there, they were analyzed in order to determine the rhetoric utilized by claimsmakers.

Grounds. Best (2013) defines *grounds* as the basic facts underlying claims that identify the nature of the social problem. It is important to note that the facts themselves are socially constructed. Similar to the diagnostic frame identified in Chapter 2 of this thesis, *grounds* reflect the social context from which they emerge and vary greatly across time and space (Best, 2013). Thus, what is accepted as reasonable and relevant *grounds* is highly dependent on the views of the society in which the problem is being examined. For example, "a theocratic society may

define most social problems in terms of sin; while a society which grants medical professionals considerable authority may characterize many social problems as diseases" (Best, 2013, p. 243). *Grounds* play a key role in attributing blame and are extremely important in shaping whether a social problem is caused by structural, systemic or individual wrongdoings. Depending on the nature of the *grounds*, they may be widely debated among competing claimsmakers or widely accepted (Best, 1987). Defining the nature of a social problem is extremely important, however, equally important is the need to define why anyone should care about the issue.

Warrants. *Warrant* statements help explain to audiences why a specific condition should be seen as a social problem and consequently, why we should see that problem as intolerable. *Warrant* statements tend to evoke emotions, utilize elements of their cultural context and are essential in linking *grounds* to *conclusions* (Best, 1987). *Warrants* can either be implicit, explicit or both depending on the claim being made. Implicit *warrants* are more common and typically more successful as they target the audience subconsciously and can thus avoid coming under direct scrutiny (Lowney, 2007). An important point to note is that audiences belong to certain "social units" (i.e., an academic discipline) and members of these certain social units hold particular lines of reasoning to be valid (Best, 1987). Therefore, for a *warrant* to be considered valid and persuasive, it must abide by a line of reasoning held to be valid by the social unit in which it is addressing. This is why implicit *warrants* are more common, as they can often circumvent the audience's validation process.

Conclusions. *Conclusions* are essentially the claimsmakers solutions to the social problem at hand. After defining what the problem is (*grounds*), and why society should care about it (*warrants*), claimsmakers now need to demonstrate what needs to be done to solve and/or eradicate the problem (Best, 2013). At the beginning of a claimsmaking campaign,

*conclusion*s may be as simple as a call to raise awareness, yet as they progress, they may include policy proposals and legislative changes. *Conclusion* statements not only help to legitimize certain solutions, but they also help display to the audience who is responsible for implementing the proposed solutions. Similar to "prognostic framing" examined in chapter two, *conclusions* need to ensure they provide sufficient detail about solutions, while at the same time not providing too much detail, as that may lead to debates about implementation.

Analytical Process

Stuckey (2015) underlines the importance of creating a "storyline" before jumping into coding data. Developing a storyline involves asking "what are the data telling me that will help me understand more about the research question?" (Stuckey, 2015, p. 8). Typically, a storyline is directly linked to one's research question and sometimes incorporates "the big picture". Its purpose is to "help you decide what concepts and themes you want to communicate in your analysis and guides you in how your data could be organized and coded" (Stuckey, 2015, p. 8). As such, the construction of a storyline was something done at the outset of the coding process for this research project. Constructing a storyline allowed for the structure of the coding process to be determined at the outset of the project. Furthermore, it allowed for the codes to be organized according to how they contributed to social problem construction. The storyline that was developed at the outset of this coding process is as follows: The wrongful conviction of Guy Paul Morin was an extreme blow to public confidence in the Canadian criminal justice system and as such a public inquiry was launched to restore this confidence. The purpose of the inquiry was to (1) establish what went wrong, figure out the causes of Morin's wrongful conviction and ascribe blame (construct the *grounds*); and (2) provide recommendations on how to repair what went wrong, restore public confidence and ensure the same results do not occur again in the

future (construct the *conclusions*). In order to legitimize the recommendations offered and connect them to the established wrongdoings, various rationalizations needed to be developed (constructing the *warrants*). Essentially, the Morin Inquiry, through the example of Guy Paul Morin, describes what a wrongful conviction is and why, as the audience, we should care or seek to rectify the issue. It then concludes by offering its own solutions on how the problem can solved. This entire affair is a claimsmaking process which ultimately seeks to contribute to the construction of wrongful convictions as a social problem. As such, coding the inquiry according to its *grounds*, *warrants* and *conclusions* and subsequently conducting a qualitative content analysis of the results would allow for this claimsmaking process to be deciphered.

As the Morin Inquiry was already published and easily accessible online, no other data collection for the purposes of this study was necessary. The qualitative analytical software NVivo 12 was used in order to help code the inquiry publication. After a PDF copy of the official publication of the Morin Inquiry was obtained and uploaded to NVivo 12, the coding process began. The inquiry was read through and coded a total of three times using the following process. The researcher would begin by reading through and coding a single chapter and upon completion, would go back to the beginning and read through the chapter a second time before proceeding to the next chapter. Once finished going through all of the chapters, the researcher would repeat the process. A final point to note is that due to the extreme length of the fifth chapter (totalling just under 600 pages), it was divided into five different sections. As such, these five sections followed the same coding process as the other chapters.

Open coding is the first stage in the coding process identified by Strauss and Corbin (1990), and it consists of an interpretive process whereby a piece of text is broken down analytically. Essentially, it involves the researcher reading through a piece of text reflectively

and identifying relevant codes and categories within the data. In the context of the current research project, the open coding stage involved reading through the Morin Inquiry with a social constructionist lens while simultaneously coding the inquiry according to the *grounds*, *warrants* and *conclusion* statements present. While the method of structuring codes according to *grounds*, *warrants* and *conclusions* was predetermined, the specific codes which fell into these categories were allowed to arise inductively.

In order to properly identify the *grounds*, *warrants* and *conclusion* statements present, a "coding cheat sheet" containing the central research questions for the research endeavour was kept readily available during the coding process. This sheet involved separate research questions for *grounds*, *warrants* and *conclusions* that could be used to help identify and differentiate between the various *grounds*, *warrants* and *conclusion* statements present. In order to help identify the *ground* statements present in the Morin Inquiry, the following questions were put forth and included on the coding sheet:

- What *ground* statements as highlighted by Best (2013) are presented?
- How is the nature of wrongful convictions constructed?
- What are the identified causes of Morin's wrongful conviction and how are they presented?
- How is blame attributed and absolved throughout the inquiry?

Furthermore, in order to identify the *warrant* statements, present in the inquiry, the following questions were put forth and included on the sheet:

- How is the importance of addressing wrongful convictions demonstrated?
- What are the identified effects of Morin's wrongful conviction?
- Who was affected by Morin's wrongful conviction?
- How do the claimsmakers appeal to emotional or cultural values and what specific values are appealed to?
- How is the need to address the causes of Morin's wrongful conviction rationalized and explained?

Lastly, in order to identify the *conclusion* statements, a large focus was placed on the recommendations offered by the Morin Inquiry. The reasoning is that since the recommendations offered in the inquiry are intended to reduce the occurrence of wrongful convictions in Canada, they can be assumed to be the claimsmakers proposed solution to the social problem. In order to identify these statements, the following questions were put forth and included on the sheet:

- What methods or tactics are offered as a means of remedying wrongful convictions?
- What is offered as a solution to reducing the occurrence of wrongful convictions?
- How do the *conclusion*s presented help to maintain or restore the legitimacy of the criminal justice system?
- How does the presentation of these *conclusion* statements help to maintain the legitimacy of the criminal justice system?

The second stage in the coding process identified by Strauss and Corbin (1990) is axial coding whereby the codes and categories identified in the open coding stage are refined, developed, related and/or interconnected (Gibbs, 2018). For the current research project, the first half of axial coding involved breaking down the broad categories of *grounds*, *warrants* and *conclusions* and developing sub-categories and codes. From the sub-categories developed, codes where further connected together and grouped according to common themes.

The final stage of the coding process is selective coding, which involves the creation of "core" or "central" categories that further tie the previously developed categories together (Gibbs, 2018). For the current research project this involved grouping together the sub-categories developed during the axial coding stage and developing broad themes that were representative of the rhetoric present in the inquiry. A qualitative content analysis was subsequently conducted, and the themes developed for *grounds*, *warrants* and *conclusions* were analyzed in order to explain how the claimsmakers involved in the Guy Paul Morin Inquiry construct the social problem of wrongful convictions.

Finally, there are a few important points to note about the coding process for the current research project. Firstly, while the coding process has been explained in a rather linear fashion, in reality, this was not how it was carried out. The coding which took place was very much an iterative process and involved constantly connecting codes, developing possible higher-level codes/themes within the data and regularly moving back and forth between coding stages. Furthermore, sometimes open and axial coding were done simultaneously. Second, analytical memos were absolutely fundamental to the coding process that took place. Saldana (2009) states that "analytic memos are somewhat comparable to researcher journal entries or blogs – A place to 'dump your brain' about the participants, phenomena or process under investigation" (p. 41). Various analytic memos were recorded throughout the coding process and proved to be crucial when later developing and analyzing themes. Lastly, as highlighted briefly above, since the Morin Inquiry was a rather large document (totaling 1244 pages), after progressing through each chapter of the inquiry, the researcher went back and reviewed all of the notes and codes collected over the course of the chapter. The purpose of this was not only to review the work completed but to also ensure that coding was taking place in a sound and consistent manner. During this review codes were tidied up, preliminary connections were drawn, and a preliminary analysis of the findings was conducted.

Chapter 5: Analysis

The purpose of this thesis was to contribute to understanding how claimsmakers construct the social problem of a wrongful conviction, as found in the Morin Inquiry. To accomplish this, a qualitative content analysis of the Morin Inquiry was conducted and various themes surrounding the construction of Morin's wrongful conviction were inductively drawn from the data. The purpose of this chapter is to detail the various codes and themes drawn from the Morin Inquiry and to discuss how they contributed to the construction of Morin's wrongful conviction. Following social constructionism, the main theme headings were *grounds, warrants* and *conclusions*. Each section is first organized according to key themes (i.e., individual wrongdoing), these themes are then broken down in terms of the subthemes that constructed them (i.e., blaming and absolving blame), and finally, various examples from the inquiry demonstrating these key subthemes are detailed, discussed, and analyzed using the theoretical framework.

Grounds

As discussed earlier, Best (1987) notes that *grounds* provide the "facts" of the social problem. Essentially, they detail the nature of a social problem, discussing what causes it, who causes it, how common it is and so forth. In the Morin Inquiry, establishing the *grounds* involved constructing who caused or contributed to causing the wrongful conviction of Guy Paul Morin, in other words, who is at fault and who or what is to blame. Best (1987) also highlights that "facts" themselves are socially constructed therefore determining whether or not the facts are objectively true is not the primary objective of the constructionist inquiry. Thus, this section will not seek to evaluate whether or not the findings presented by the claimsmakers are objectively

true, but rather will examine how they worked to construct the wrongful conviction of Guy Paul Morin.

As noted in the methods chapter, this thesis involved a blended deductive/inductive approach. The deductive portion involved first coding the inquiry for any available *grounds* statements present. This involved finding instances where the claimsmakers sought to establish the "facts" surrounding Morin's case (i.e., determining what caused Morin's wrongful conviction and who is at fault). After determining the various *grounds* statements present, themes were inductively drawn as a means of classifying and categorizing the established codes. Three major themes were drawn: *individual wrongdoing*, *systemic error* and *preventability.* The theme of individual wrongdoing includes instances from the inquiry where the claimsmakers would construct Morin's wrongful conviction as being a result of the actions of specific individuals. This theme relates to the idea that wrongful convictions are caused by "bad apples" rather than a deficient criminal justice system. In contrast to individual wrongdoing, the theme of systemic error includes instances where the claimsmakers seek to highlight the deficiencies of the criminal justice system and its associated entities. This theme places more of a focus on larger scale issues, such as the use of jailhouse informants and various problematic policies. The theme of preventability includes instances where the claimsmakers construct Morin's wrongful conviction as something that could have been avoided. This theme stresses that if it were not for the actions of "bad apples" and the presence of deficient policies, Morin's conviction could have been prevented. Furthermore, this theme works to construct the social problem of wrongful convictions as something that can be solved. Finally, while it is not a major theme throughout the inquiry, the use of experts in helping to construct the *grounds* of the social problem will be explored.

Individual Wrongdoing

Individual wrongdoing is comprised of two different subthemes/codes. Firstly, and perhaps most importantly, it consists of various instances of *blaming* which involves claimsmakers specifically highlighting the wrongdoing of certain individuals. The second subtheme present is *absolving blame*, and in contrast to *blaming,* this involves instances where the claimsmakers specifically highlighted that the actions of certain individuals either did not contribute to the cause of Morin's wrongful conviction or should not be viewed as wrongdoing. An important point to note about this subtheme is that simply because an actor or organization is absolved of blame in one scenario, does not mean that they will be absolved of wrongdoing in every scenario.

Blaming. This was the most common code found over the course of the inquiry. Blaming involves claimsmakers demonstrating or highlighting who committed wrongdoing and who should be held accountable or scrutinized for their actions. When the Commissioner (or other claimsmakers) highlight the wrongdoing of certain individuals or groups of individuals, they are in essence, blaming them for causing Morin's wrongful conviction. This code was seen extensively across every chapter of the inquiry; however, this section will focus solely on the blaming that took place in chapter five of the inquiry.

The purpose of chapter five of the Morin Inquiry was to review the investigation conducted by the Durham Police Department (DPD) and the role of the prosecution. As mentioned earlier, the York Regional Police Department (YRPD) was the first department to investigate the disappearance of the victim, Christine Jessop. Christine's body was later found in the DPD's jurisdiction and as such, they took over the homicide investigation. In chapter five of the inquiry, a great deal of blame was attributed to the DPD, mainly regarding their handling of

the body site evidence and general investigative techniques. Among other things, the Commissioner highlighted that the department placed undue reliance on polygraphs, had improper record keeping and note taking techniques (including conducting many un-recorded interviews) and were dismissive of various YRPD reports. While some of this blaming was generally directed at the DPD, much of it was specifically targeting the lead investigative officers: Detective Bernie Fitzpatrick and Inspector John Shepherd. The following excerpt demonstrates an instance where the Commissioner is highlighting of some of these wrongdoings. When discussing Durham's interviews with various contentious witnesses, the Commissioner said:

> "A number of times, there would be a wholly inadequate written record of those interviews. Hours of untapped interviews might be reflected in a single entry in a notebook or in an incomplete *précis* or description of the interview contained in a supplementary report" (Kaufman, 1998, p. 779).

Obviously in a serious investigation, such as the one involving the murder of a young child, this sort of conduct is seen as problematic. In this excerpt, the DPD and namely, Inspector Shepherd and Detective Fitzpatrick, are having their conduct called into question. In referencing their conduct as being inappropriate in this way, blame is also placed on these individuals as opposed to the system. If wrongful convictions are viewed as resulting from individual wrongdoing, it requires *conclusions* that address the actions of individuals to be brought forth. For example, increasing training for the parties involved and imposing harsher penalties on rule breakers.

A major topic over the course of chapter five was the discussion of tunnel vision on behalf of the police and prosecution. A number of different police officers and prosecutors in this chapter were highlighted as having acted with tunnel vision to some degree (i.e., Mr. Smith – a prosecutor at the second trial and Ms. McLean – a prosecutor at the first trial), however, the most severe examples were on the parts of Inspector Shepherd, Detective Fitzpatrick and the lead

prosecutor at the second trial, Mr. McGuigan. As discussed in the literature review portion of this thesis, tunnel vision involves a narrow focus on a specific theory and can lead to investigators ignoring possible exculpatory evidence (MacFarlane & Cordner, 2008). It was also highlighted that tunnel vision can lead to "noble cause corruption" where investigators are willing to do anything necessary to convict anyone whom they perceive to be a guilty offender (MacFarlane, 2006). Both of these phenomena were seen extensively throughout the fifth chapter of the inquiry. The following excerpts are intended to convey some of the Commissioner's findings of tunnel vision and attribution of blame in this regard:

> "The problem identified at this Inquiry arises where officers take a certain view of matters and 'filter' everything through that view. The statements of a person regarded to be a suspect can rarely, if ever, survive scrutiny which is unduly filtered or coloured in this way. The same statements excite no suspicion when uttered by someone else" (Kaufman, 1998, p. 798).

> "Both Detective Fitzpatrick and Inspector Shephard acknowledged during the Inquiry that short of a rock-solid alibi (such as proof that Morin had been incarcerated at the relevant time), there was nothing Mr. Morin could have said to convince them they had arrested the wrong person" (Kaufman, 1998, p. 851).

These findings by the Commissioner are intended to show just how extreme and dangerous the tunnel vision on behalf of the investigators truly was and lead to a large degree of blame attribution. Furthermore, this underlines the severity of individual actions and conveys the message that the wrongdoing of individuals is crucial to the occurrence of the social problem. Lastly, these passages establish "tunnel vison" as being a major cause of Morin's wrongful conviction.

Absolving Blame. Just as it is important to see how the causes of Morin's conviction are constructed, it is also important to highlight how the supposedly "blameless" parties are constructed. While this code was reoccurring across every chapter in the inquiry, this section will focus on its presence in chapter three. Chapter three of the inquiry was aimed at reviewing the

role and usage of jailhouse informants in the Morin trial. Over the course of the chapter, Commissioner Kaufman attributed blame to a number of different parties regarding the problematic and perhaps reckless usage of these informants. However, Commissioner Kaufman also ensured that other parties were absolved of blame. Namely, over the course of chapter three, one can see the Commissioner absolved blame from individual members of the police and prosecution (i.e., Mr. Scott, Ms. Mclean, Mr. Smith) while at the same time the informants themselves were constructed as blameworthy. The following passage examining the prosecution's decision to use jailhouse informant testimony exemplifies this point:

> "Had the present policy manual been in effect during Guy Paul Morin's trials (together with my recommended changes), a decision should have been made that the informants were not to be tendered as witnesses. This represents a change in policy, which cannot be visited upon the prosecutors at the first or second trials. Put succinctly, I find no misconduct in the prosecutorial decision to call these informants" (Kaufman, 1998, p. 488).

Rather than condemning the actions of the prosecution, the Commissioner contends that it was a fair use of evidence given the adversarial nature of the system. In other words, Kaufman could not blame the prosecution for acting on policies in existence at that time to their advantage despite the role it may have played in causing Morin's wrongful conviction.

Systemic Error

This theme is comprised of three different subthemes/codes. The first subtheme to be examined is the aspect of *blaming*, as opposed to a similar code under the theme of individual wrongdoing, this subtheme consists of instances where the claimsmakers find systemic problems (e.g., problematic use of forensic evidence/experts, a lack of impartiality on behalf of the prosecution and CFS, deficient jailhouse informant policies, permitting the use of consciousness of guilt evidence) to be at fault for causing Morin's wrongful conviction. The second subtheme found is *absolving of blame*, while relatively uncommon in this context, it consists of instances

where aspects of the "system" (i.e., departments of the criminal justice system such as Crowns and police, its policies, its structure etc…) are absolved of any role in causing the occurrence of the social problem. The third subtheme found is *questionable evidence*, this consists of instances where extremely problematic forms of evidence were permitted into the court proceedings.

Blaming. This code includes instances where systemic issues, such as policies or legislation highlighted as being problematic are labelled as having contributed to the wrongful conviction of Guy Paul Morin. At the same time, it was necessary to exclude some instances where the Commissioner engaged in blaming a group of individuals, for example, where the Commissioner highlights wrongdoing on behalf of the "Durham Police". This would have been included under the code if the Commissioner was discussing systemic issues such as police culture, but not when he was simply highlighting a singular instance of wrongdoing on the behalf of an individual officer. As discussed, properly attributing blame is important in a claimsmaking campaign as blame is needed in order to pinpoint what caused the social problem. For the social problem of wrongful convictions, placing a degree of blame on the system is important, as it results in systemic recommendations. However, this construction must be done skillfully in order to ensure that it does not have the effect of further reducing the legitimacy of the system. Since the objective of the inquiry is to restore legitimacy, this would in fact be contradictory.

In chapter two of the inquiry, when examining the conduct of the Centre for Forensic Sciences and the various policies surrounding forensic science in Ontario, the Commissioner highlighted multiple different systemic issues. While not all of the systemic issues presented in this chapter will be discussed, one that received the most attention was with regard to the terminology used by forensic scientists when describing their findings to the prosecution and while testifying in court. At trial and when referring to hair and fibre evidence found in Morin's

car and embedded in Christine's necklace, the forensic examiners highlighted that the evidence found was "consistent with" or "could have" originated from a particular source. The Commissioner highlighted that referring to evidence in this manner is incredibly problematic, as it can mislead jury members and over-emphasize evidence with little or no probative value. The following excerpt demonstrates this position:

> "due to the uneven use of language, as well as the inherent complexity of the subject matter, the scientists' findings (and their limitations) are easily miscommunicated and/or misapprehended by non-scientists" (Kaufman, 1998, p. 89).

By highlighting that the court erred in not challenging the problematic communication of forensic evidence, one can see the Commissioner placing blame on the system. Essentially, it is the role of the courts to ensure that jury members and "non-scientists" clearly understand the evidence being communicated to them and if they are unable to, the blame falls on the system.

Another systemic issue brought up in the second chapter of the inquiry was with regard to the working relationship between the CFS and the Crown and police, and the challenges that placed on the impartiality of the organization. The Commissioner noted that the lack of impartiality of the forensic examiners was not only an issue in the case of Morin, but a general problem at the CFS (and forensic centres generally). An example of this bias is demonstrated below:

> "The current CFS policy is that the defence is entitled to retain CFS analysts, but that a copy of any report generated must be forwarded to the prosecution. In other words, the defence enjoys no confidentiality when retaining the CFS. Of course, it follows that there is no policy of confidentiality where the defence questions a CFS analyst already working on the case at the instance of the authorities" (Kaufman, 1998, p. 226).

What this passage is intended to demonstrate is that while the CFS was supposed to play the role of an impartial forensic examiner – balancing the interests of the defence and the prosecution simultaneously– the policies in existence at the CFS at that time clearly favoured the objectives

of the prosecution. Providing the prosecution with preferential treatment severely disadvantages the members of the defence, and as such creates a systemic issue.

Absolving Blame. The subtheme of absolving blame was far less common in the area of systemic errors, as opposed to that found under the individual wrongdoing section. A possible reason for this could be that if blame is effectively constructed on behalf of the individual, then there is no requirement to absolve blame on behalf of the system. An alternative explanation could be that if the system is perceived to be a legitimate entity, then absolving it of blame may not be required. Essentially, if the system is commonly regarded as something that functions efficiently then it might be that no blame should be given. A third possible explanation is simply that the attribution of blame is seen as more important than the absolving of blame. Nevertheless, absolving of blame with regard to systemic errors was evident in a certain circumstance in the inquiry. The following exemplifies this:

> "In addressing the causes of wrongful convictions, the O.C.A.A. submitted they can occur when the system breaks down, whether through prosecutorial misconduct, defence misconduct, or judicial incompetence. They are the exception and not the norm. There will regrettably always be miscarriages of justice; the challenge is to create an environment in which they will be few and far between" (Kaufman, 1998, p. 1106).

This passage is referring to comments made by the Ontario Crown Attorneys Association (OCAA) essentially stating that they consider wrongful convictions to be aberrations in an otherwise well-functioning criminal justice system. Constructing wrongful convictions as aberrations re-enforces that idea that wrongful convictions are not common and thus, alleviates the blame being placed on the system. Also notable in this passage is the claimsmakers reference to what causes wrongful convictions: prosecutorial misconduct, defence misconduct and judicial incompetence. Notably, all these causes revolve around individual actions rather than systemic issues.

Questionable Evidence. While this subtheme could perhaps fall under the umbrella of *blaming*, it was coded separately due to its high prevalence. The rationale behind this code is that ultimately it is the role of the system to ensure that problematic and illegitimate forms of evidence are prevented from being used at trial. If this is not properly done, it is not the fault of the individual parties (i.e., Crown or police) who used this form of evidence to their advantage (as this is inherent to an adversarial system) but the fault of the system which made the availability of such evidence possible. This theme was highlighted multiple times when examining the role of forensic experts and forensic science in contributing to the wrongful conviction of Guy Paul Morin. At the inquiry, Kaufman found that the bulk of the forensic evidence used against Morin at trial had little to no probative value in court. For example, when discussing the necklace hair evidence Kaufman found that it "yielded nothing more than a conclusion that Guy Paul Morin, together with countless others could not be excluded as the donor of the necklace hair" (Kaufman, 1998, p. 109). Similar findings in chapter two were also made around blood evidence as well as fibre comparison evidence. Questionable evidence was also a major topic over the course of chapter three when examining the usage of jailhouse informants. Both informers, Mr. May and Mr. X, were highlighted as having criminal records, being pathological liars and suffering from a variety of mental health disorders. The Commissioner described them as unreliable, possessing little to no credibility and being completely motivated by self-interest. The use of questionable evidence was also highlighted in many instances over the course of chapter five, especially with regard to the "consciousness of guilt" evidence. In that instance, multiple testimonies from community members and police officers which on their own, possessed little probative value, were used cumulatively by the prosecution to establish so called "consciousness of guilt" on behalf of Mr. Morin. This evidence

included, for example, the testimony from Ms. Paddy Hester (found by the commission to be a contentious witness) who allegedly had interactions with Mr. Morin where he displayed what she described as "guilty behaviour", the "funeral scream evidence" given by Janet Jessop where Ms. Jessop allegedly saw and heard Mr. Morin screaming for forgiveness the night of Christine's funeral, and the dog scent evidence given by Constable David Neil Robertson whereby the officer's dog allegedly made indications that demonstrated Christine had been in the Morin's vehicle. Lastly, it should be noted that all of this evidence only came to light during the second trial which was also seen by the Commissioner as being particularly problematic.

Preventability

One of the more minor themes seen over the course of the inquiry was the construction of Morin's wrongful conviction as being preventable. Codes presented under this theme tended to demonstrate that if it were not for some individual wrongdoing or if proper policies, practices and procedures were followed, then Morin would have never been convicted. Constructing wrongful convictions as being preventable occurrences helps set the stage for the legitimacy of the criminal justice system to be restored as it allows the audience to see the social problem as rectifiable. Establishing the idea that wrongful convictions can be "solved" opens the door for solutions to be presented as to how this can be accomplished. The following passage exemplifies the theme of preventability:

> "At Mr. Morin's second trial, the prosecution resisted a *Vetrovec* warning referable to Mr. May and Mr. X in the charge to the jury. Mr. Smith conceded that such a warning was warranted and that it would have been preferable had he not taken that position. In my view, if ever a warning was required, this was the case" (Kaufman, 1998, pp. 634–635).

In this passage one can see the Commissioner highlighting the fact that had proper *Vetrovec* warnings been given, perhaps Morin would not have been convicted.[33] The following logic can be deduced from this claim: The use of a *Vetrovec* warning by the judge to the jury helps to alert the jury as to the possible dangers inherent to relying on the evidence of certain unsavory and undesirable witnesses (Public Prosecution Service of Canada, 2011). If in some instances, such a warning is not given, this may ultimately influence a conviction in error. This would not be the fault of the system as it has been constructed to prevent wrongful convictions from occurring. However, since the system is composed of human actors, mistakes can occur. This line of reasoning opens the door for the restoration of public confidence as now all that is seemingly required is the introduction of further guidelines on the effective use of current practices.

The Use of Experts

While the use of experts in constructing the *grounds* of Morin's wrongful conviction is not a recurrent theme throughout the inquiry, it was seen near the end of chapter five when the claimsmakers were attempting to link the case of Mr. Morin to the broader social problem of wrongful convictions. The experts were called upon to highlight what they thought were the most common causes of wrongful convictions and from there, relate these common causes to the case of Morin. Various experts and academics who testified at the inquiry were often referred to as having a breadth of knowledge pertaining to wrongful convictions and had their various degrees and qualifications highlighted extensively. This can be seen as a means of qualifying these individuals as true experts of the topic.

[33] The *Vetrovec* warning is a practice established by the Supreme Court of Canada whereby when dealing with a disreputable or unsavoury witness, the trial judge should instruct the jury to give special consideration/scrutiny to the evidence being presented (See *R. v. Vetrovec*, [1987] 1 S.C.R. 81).

In chapter five the commission heard from a variety of different parties both from Canada and elsewhere. These individuals included, leading academics, current and ex-police officers, members of the OCAA, members from the Ministry of the Attorney General and other wrongfully convicted individuals. In this portion of the inquiry, the experts highlighted many of the most common causes of wrongful convictions, such as the use of jailhouse informants, faulty forensic science, prosecutorial and police misconduct, eyewitness error and so forth. However, what was most interesting was the way in which different parties sought to construct the occurrence of wrongful convictions. The following passages exemplify this point:

> "As I reflected earlier, Mr. Wintory was a forceful advocate of the adversarial system as the most effective way to ensure that 'right prevails', that is, that the guilty are convicted and the innocent spared. In his view, false, inaccurate or misleading evidence may frequently exist. However, these do not cause miscarriages of justice. Miscarriages of justice are, instead, caused by prosecutorial failure to provide broad disclosure, ineffective assistance of defence counsel and the failure of a judicial function" (Kaufman, 1998, p. 1106).

> "Wrongful convictions occur throughout the Anglo-American world, with very similar causes in each jurisdiction. Such convictions are not aberrations; there is a pattern of systemic factors that tend to lead to unjust results" (Kaufman, 1998, p. 1093).

The first passage refers to comments made by Richard Wintory – a witness tendered by the OCAA to examine the role of jailhouse informants. In this passage we see wrongful convictions being constructed as rare yet inevitable occurrences. Furthermore, the wording alludes to the fact that wrongful convictions are most commonly due to individual wrongdoing, rather than inherent systemic flaws. By contrast, the second passage, referring to submissions made by Professor Dianne Martin (Associate Professor of Law at Osgoode Law School), refers to wrongful convictions as being somewhat common occurrences in any criminal justice system. The construction of *grounds* between these two competing claimsmakers is an important distinction

to note as the two different constructions are likely to lead the audience[34] to two different *conclusions* on how wrongful convictions can be solved. For example, the first passage would be more likely to lead to solutions that can reduce individual wrongdoing, like stricter guidelines, better training, or harsher penalties. The second passage on the other hand is more inclined to lead to solutions oriented around a reconstruction of the criminal justice system towards more of a due process model.

Warrants

Warrant statements are typically used by claimsmakers as a means of convincing members of the audience as to why a social problem needs to be solved. In some instances, *warrants* are implicit or latent, however they can also be explicit or manifest. In the context of the Morin Inquiry, *warrant* statements are used to describe to the audience why the social problem of wrongful convictions is harmful and why it should be addressed. *Warrant* statements are key to establish as they often act as a link between the associated *grounds* and *conclusions* of a claimsmaking campaign. In the Morin Inquiry, the *warrant* statements help link the "facts" (or *grounds*) surrounding Morin's wrongful conviction to the recommendations presented at the end of every chapter. In other words, they help link the causes of Morin's wrongful conviction to the recommendations aimed at addressing the causes.

Similar to the *grounds* section, the coding for this section first involved identifying any *warrant* statements present. This involved finding instances where claimsmakers were providing justifications for why the social problem of wrongful convictions should be addressed. After determining the various *warrant* statements, three major themes were then inductively drawn to

[34] The usage of the term "audience" throughout this chapter is on par with the definition given by Loseke (2003). Essentially, as discussed earlier, the audience consists of those whom the claimsmakers seek to persuade; the ones who evaluate the believability and importance of social problems claims (Loseke, 2003)

classify and categorize the established codes. Firstly, there was the theme of *blameless victims*, which according to Best (1987) is common to many claimsmaking campaigns. This theme essentially encompasses instances where claimsmakers seek to construct certain parties as being victims of the social problem. This construction is usually quite dramatic, involves powerful wording and often appeals to the audiences' emotions. The second major theme found was *challenging legitimacy*. This was the most common *warrant* theme which involved statements that called into question the legitimacy of the criminal justice system, often as a means of demonstrating how it could potentially be restored. The third major theme found was the construction of *villains*. In contrast to the first theme, this involved demonstrating to members of the audience how harmful and serious the acts of wrongdoers truly were and why they justified the reception of the *conclusions* presented.

Blameless Victims

The theme of blameless victims is relatively common to many different claimsmaking campaigns. Essentially, it uses the rationale that there are wrongdoers (villains) who perpetuate or cause the social problem and then there are the individuals who are taken advantage of or harmed (victims). In constructing a social problem, Best (1987) states that it is crucial to firmly construct both, so that the audience can clearly differentiate between the two. Furthermore, clearly defining and describing the victims of a social problem provides the audience with an idea of how harmful the social problem can be and how it can affect people.

Over the course of the Morin Inquiry, the following parties were most prominently constructed as being the victims. First and foremost, Guy Paul Morin received a great deal of victim construction. Given that the entire inquiry was based upon the injustices he experienced, this comes as little surprise. A second party that received some degree of victim construction was

the Jessop family. This victim construction mainly originated from the idea that this family was also victim of a great injustice due to the fact that their daughter's killer was never caught.[35] A third victim constructed at the inquiry was Christine Jessop herself. While constructing Christine Jessop as a victim might appear obvious, this construction was key to various aspects of the claimsmaking campaign. Lastly, it is worth mentioning that there was a major subtheme underlying the construction of blameless victims, that being, "one wrongfully convicted person is enough". In essence, the suffering that these victims endured is so severe that it alone justifies the reception of the *conclusions* being presented.

At the very outset of the inquiry in chapter one, the Commissioner goes into some detail describing the life and personalities of both the Morins and the Jessops. In this section, Morin is detailed as being a hardworking man with a passion for beekeeping and music and Christine was detailed as being a very young, happy, and loving child who enjoyed playing sports and spending time with her friends. By presenting this information to the audience, it helps to personalize the victims to some degree, which in turn helps to evoke feelings of sympathy and emotion amongst members of the audience which is crucial in gaining support (Loseke 2003).

As mentioned above, Mr. Morin received the greatest deal of victim construction over the course of the inquiry. This is absolutely essential in the construction of wrongful convictions as a social problem as one of the main reasons in justifying why this social problem needs to be solved and why the *conclusions* presented should be adopted, is to prevent innocent people like Morin from having to suffer further injustices. This construction mainly appeals to emotion as a means of convincing audience members. Take the following passage:

[35] While at the time of the inquiry the murderer of Christine Jessop was unknown, recent DNA evidence have led authorities to believe the true killer to be Mr. Calvin Hoover. However, Mr. Hoover committed suicide in 2015 and never faced prosecution for this offence.

> "On July 30, 1992, after he was convicted of murder and sentenced to be imprisoned for life, he was detained, first in Millhaven and then in Kingston Penitentiary, where he had to cope in a terrifying environment for over six months. His description of life in Kingston was particularly moving. The Jessop killing and the subsequent investigations, arrests, imprisonments, trials, and appeals seriously affected his life and the lives of his family for over 10 years" (Kaufman, 1998, p. 1106).

This passage demonstrates a common victim construction strategy highlighted by Loseke (2003), whereby the claimsmakers construct a victim as suffering horribly. First and foremost, this passage attempts to appeal to the audiences' emotions. The claimsmaker describes Morin's experiences as "terrifying" and concludes by stating that these events seriously affected Morin's life and the lives of his family members. Furthermore, the claimsmaker highlights that Morin's depiction of life in the Kingston penitentiary was "particularly moving", inferring that his experience there was quite negative and seriously affected his well-being. Also of note, the claimsmaker acknowledges that the amount of time Morin was made to suffer was quite lengthy (10 years), essentially pointing this out to the audience in an attempt to quantify the amount of suffering Morin was forced to undergo.

As mentioned by MacFarlane (2006), wrongful convictions do not only victimize the individual who stood trial, but they also victimize the family who is denied justice for their loved one. In the Morin Inquiry, the construction of the Jessop family as being victims in this way was quite clear. Attributing the Jessop family, namely Janet Jessop (the victim's mother), victim status was also crucial in ensuring that no blame could be placed upon the family. Take for example the following quote, given by the Commissioner when discussing Ms. Jessop's "funeral night scream evidence":

> "No one relished the prospect of confronting or demeaning Ms. Jessop. The tragedy she has gone through is monumental. There can be no greater loss to a parent than a young child, particularly under these circumstances. It follows that the apprehension and conviction of her daughter's killer assumed great importance. The arrest and prosecution

> of Guy Paul Morin undoubtedly focused her anger upon him — understandably so" (Kaufman, 1998, p. 977).

On the night of Christine Jessop's funeral, Mrs. Jessop and several others who were at her residence alleged that they heard screaming coming from the Morin backyard. The group described it as a male voice crying "God, help me, oh please, God, help me!". At the second trial Mrs. Jessop testified that the voice was that of Mr. Morin and that immediately following the incident she witnessed a silhouette of a person enter the back door of the Morin residence. While several people heard the screams, Mrs. Jessop was the only one to identify the voice as Mr. Morin's and as she was the only one to see a person enter the Morin back door following the incident. Furthermore, there was no evidence called about this incident at the first trial and the first police report of the screams was only recorded several months after the occurrence. As a result, the funeral night scream evidence was regarded at the inquiry as being highly questionable. In most instances, when highly questionable evidence was given, such as that of contentious witnesses, a degree of blame was placed upon the party delivering that evidence. However, for Ms. Jessop this was not the case, as her victim status essentially provided a safeguard against any serious form of blaming. In this passage we can see the Commissioner sympathizing with Ms. Jessop and appealing to the audiences' emotions with the idea that the tragedy Ms. Jessop was forced to suffer was truly unimaginable and outweighed any form of possible wrongdoing on her behalf.

Perhaps unsurprisingly, Christine Jessop was also constructed as being a victim over the course of the inquiry. Take for example, the following passage when describing Christine Jessop's disappearance:

> "Christine Jessop was a child of tender years when she disappeared. Her bicycle was lying on its side in the shed, as opposed to the upright position in which she generally kept it. Its kickstand and carrier appeared to be damaged. Her pink jacket, which the

> Jessop's believed she had been wearing that day, was hanging on a hook that was beyond Christine's reach when the Jessop's returned home that afternoon" (Kaufman, 1998, p. 646).

This passage represents a clear demonstration of what Loseke (2003) refers to as "constructing victim purity". First and foremost, the wording used in this passage constructs Christine as being an innocent and blameless young girl. Christine is referred to as being a "child of tender years", there is a description of the bicycle that she was riding (an activity common to children), there was a description of the "pink jacket" she was wearing and finally there was mention that her jacket was hung on a hook that was beyond her reach (signalling that she is of a very small stature). This passage allows the audience to create an image of what they believe Christine may have looked like and in turn, constructs her as being pure, innocent, and blameless.

While Christine was an obvious victim at the inquiry, constructing her as such was actually quite key to the claimsmaking campaign as it provided a means of absolving certain parties of blame. Essentially, constructing Christine Jessop as a victim allows for the label of "noble-cause corruption" to be applied to those who committed wrongdoing in the name of obtaining justice for Christine. As discussed in the literature review section of this thesis, noble-cause corruption is the belief that professional misconduct is justified if it is done in order to convict a suspected guilty offender (MacFarlane, 2006). While this label does not necessarily absolve parties of all their wrongdoing, it helps to mitigate and explain such wrongdoing in a way that makes it tolerable to the audience.

According to Best (1987), constructing a social problem along the lines that "one occurrence is enough" can be very effective in garnering audience support. In his analysis of the missing children social problem during the 1980s, Best stated that "a claims-maker might argue, for instance, that even a single child abducted by a stranger is one too many, and that, therefore,

something must be done. But concluding that something must be done demands that one accept some *warrant* that the problem deserves attention" (Best, 1987, p. 108). This strategy is used during the Morin Inquiry by Commissioner Kaufman when justifying the need to adopt his recommendation of improving the quality of hair and fibre analysis equipment at the CFS. The following passage exemplifies this point:

> "I continue to recognize that there are legitimate uses to be made of hair and fibre evidence. Indeed, added technology may enhance those uses someday. To paraphrase Mr. Lockyer's submissions made in another context, should the new technology permit the Centre's analysts to exclude one person from unjust prosecution or conviction, the money will have been well spent" (Kaufman, 1998, p. 325).

In this instance the Commissioner was appealing to the cultural sentiment that people should not be wrongfully convicted, and the criminal justice system should do everything in its power to ensure that this does not occur. Seeing as it is a widely held belief that individuals should not be punished for things they have not done; this is an extremely hard claim for counter-claimsmakers to argue against. As a result, the Commissioner can ensure that his *warrants* relating to this claim are accepted by members of the audience.

Challenging Legitimacy

The main rational behind this theme is based on the logic that the most important function of the courts is to ensure that the guilty parties are prosecuted, and the innocent parties set free. If the courts are unable to do this effectively, they may be perceived as illegitimate and confidence in them is lost. This theme was quite pervasive over the course of the inquiry and as such, contains the following three subthemes: (1) the need to address the causes of Morin's wrongful conviction; (2) the appeal to expert opinion or jurisdiction as to why certain issues need to be addressed and (3) the appeal to the presence of deficient policies, as current policies were unable to address the social problem.

Need to Address Causes. Following the identification of the causes of Morin's wrongful conviction, claimsmakers were then required to ensure their proposed *conclusions* were adequately tied to these identified causes (or *grounds*). As such, claimsmakers needed to demonstrate to the audience that there was a significant need to address the causes of Morin's wrongful conviction as not doing so would leave the criminal justice system (and its associated entities) as illegitimate. The following passage demonstrating this point is a submission by the Criminal Lawyers Association (CLA) that was quoted at length in the final inquiry report:

> "The problem broadly identified as 'institutional bias' in these submissions is illustrated by the response by the Centre to the problem of 'overstating evidence'… no accountability exists in relation to this problem and no plans have been expressed to change the Centre of Forensic Sciences' approach to this problem" (Kaufman, 1998, p. 258).

The purpose of this passage is to highlight that despite the issue of institutional bias and overstatement of evidence being key causes of wrongful convictions, no action has thus far been taken to address these issues. The claimsmaker is signalling to the audience that a biased system that relies on experts who overstate various forms of evidence is not deserving of public confidence. Essentially, any significant factor that leads to the cause of a wrongful conviction is worth addressing and the fact that the CFS continues to be exempt from discipline, should be unacceptable for members of the audience. As a result, we see the claimsmaker creating a need and desire on behalf of the audience to have the issue addressed.

Appeal to Experts or Jurisdiction. As demonstrated in the *grounds* section of this thesis, appealing to experts can be an effective means of claimsmaking due to a perceived hierarchy of credibility. Furthermore, according to Lowney (2007), appealing to experts is common in a claimsmaking process as claimsmakers and activists often need assistance in "selling" their claims to members of the audience. Experts are thus, able to provide the necessary professional discourse and have the credibility to do so. In the Morin Inquiry, expert opinion was

often used to support a claimsmaker's position that a specific cause of Morin's wrongful conviction was intolerable and thus needed to be rectified. In other instances, claimsmakers would appeal to the perceived superior state of affairs in other jurisdictions. In essence, this involved appealing to the fact that other jurisdictions have taken measures to solve similar issues and/or have regarded similar conditions to be worthy of addressing. The obvious conclusion being that therefore so should Canada.

Experts were commonly used over the course of chapter two when discussing the hair and fibre analyses used in Morin's trials as well as when discussing the current state of affairs at the CFS. These topics involved a large degree of specialized knowledge and scientific jargon and as a result outside experts were often called in to testify and give their opinion. In chapter three, appealing to other jurisdictions was especially prevalent when discussing the Los Angeles Grand Jury investigation into "the involvement and use of jailhouse informants in the county's criminal justice system" (Kaufman, 1998, p. 555). In chapter five, experts were called to weigh in on a number of different systemic issues including: videotaping witnesses, the admission of demeanour evidence, tunnel vision, police culture and the admission of fresh evidence. The following is an example of an appeal to expert opinion from chapter two, regarding the implementation of blind proficiency testing:

> "Mr. Cook testified that his laboratory performs some blind hair and fibre testing. Mr. Lucas testified that a study in the United States is currently examining whether it is feasible to develop a blind proficiency testing program for forensic science. The CFS should look to these resources for guidance in developing its own program of blind proficiency testing" (Kaufman, 1998, p. 380).

In this passage we can see the claimsmaker presenting both an appeal to an expert, as well as to another jurisdiction. The claim is first referencing an expert (Mr. Cook) on how their laboratory conducts business, inferring that this laboratory is superior in its capacity to conduct blind hair

and fibre testing. From there, the claim references developments currently taking place in the United States and concludes that the CFS should consult the results of this jurisdiction in developing its own future programs. Essentially, this claim is highlighting that since other jurisdictions are taking measures to implement blind proficiency testing, so should the CFS.

Deficient Policies. In his analysis of the missing children social problem, Best (1987) found that a common *warrant* theme used over the course of the claimsmaking campaign was the highlighting of deficient policies. A similar theme was evident throughout the Morin inquiry. Essentially, this subtheme involves an appeal to the idea that current policies in place are unable to properly address the social problem and therefore must be changed, as a system that possesses deficient policies is illegitimate and unable to function properly.

The presence of deficient policies was highlighted on many occasions over the course of the second chapter. For example, it was highlighted with regard to a lack of policies surrounding the reception of circumstantial evidence at trial, namely with respect to the introduction of hair and fibre evidence that "could have come from" Guy Paul Morin, as well as the admission of evidence which showed "indications of blood". Essentially, the claimsmakers put forth that policies curtailing the use of potentially misleading language were non-existent at the CFS and this posed a challenge to the legitimacy of their conclusions.

Deficient policies were also highlighted on many occasions over the course of the third chapter. Evidence of deficient policies were highlighted with respect to policies surrounding rewards and benefits received by jailhouse informants for testifying, policies regarding proper record keeping techniques by provincial correctional facilities, policies surrounding the use of polygraphs for testing the veracity of questionable evidence and perhaps most importantly, policies surrounding the assessment of jailhouse informant reliability and credibility. The

following passage is intended to demonstrate the Commissioner's general emphasis on the deficiencies regarding jailhouse informant policies in Ontario:

> "The policy guidelines produced by the Ministry of the Attorney General do not nearly go far enough to address the problems that jailhouse informants present. The specific recommendations which follow address the inadequacies of the present policy" (Kaufman, 1998, p. 600).

In the inquiry, the Commissioner is calling for a complete overhaul with regard to the use of jailhouse informants in Ontario as he found the current policies and guidelines to be entirely deficient. Essentially, at that time, the existing policies were unable to prevent problematic informants and questionable evidence from entering the criminal justice system, which lead to the appearance of illegitimacy. By highlighting the policy manual as being deficient, the Commissioner then set the stage for recommendations to be presented on how it can be fixed. This is seen at the end of the passage when the Commissioner emphasizes the idea that action needs to be taken and it should take the form of the recommendations being provided.

A number of deficient policies were also highlighted over the course of the fourth and fifth chapters, especially with regard to policies surrounding the disclosure of potential suspects:

> "There have been notorious miscarriages of justice where other suspects, later shown to be the perpetrator, were known to the authorities and not disclosed. Without reflecting upon the merits of an ongoing case, I am aware that this issue is alleged to arise in the Milgaard case. The scope and means of disclosure of other suspects, consistent with the right to make full answer and defence and the need to ensure that the innocent are not convicted, is an important issue, the resolution of which is beyond the scope of this Inquiry" (Kaufman, 1998, p. 1092).

This claim on behalf of the Commissioner is quite unique as it is highlighting the existence of a problem, however unlike many other claims in this section, it is not directly tied to a recommendation on how to resolve the issue. Instead, it seeks to inspire future claimsmaking campaigns and urges members of the audience to seek out their own *conclusions*.

Villains

The main purpose of constructing the villain is to point blame toward those who perpetuate or cause the social problem. However, constructing a villain is much more complicated than simply highlighting wrongdoing on behalf of various individuals. As Lowney (2007) notes, the audience tends to only assign blame when they feel the harm being committed was intentional. In other words, for a villain status to be attributed, the audience must perceive the actor as intentionally committing the wrongdoing that has led to the occurrence of the social problem. However, members of the audience might disagree as to whether or not wrongdoing was committed for a "good reason", or they might believe the alleged villain to also be a victim and thus, a true villain status can be difficult to construct. Furthermore, Lowney (2007) notes that because villain construction can be quite difficult, a number of claimsmaking campaigns will temper construction of the villain in hopes of maintaining audience support. In order for this to be possible, the claimsmaking campaign must have strong victim construction in order to achieve the desired emotional appeal required for effective claimsmaking.

In the Morin Inquiry there were two different subthemes present when constructing the villains. Firstly, there was *active construction* where by three different individuals were actively constructed as being the villains throughout the inquiry. Namely, these individuals were the informants, Mr. May and Mr. X, and to a lesser degree, Ms. Stephanie Nyznyk, a forensic examiner from the CFS. Secondly, there was the subtheme of *rationalizing or mitigating* where parties who had committed wrongdoing would have their actions rationalized or mitigated by the claimsmakers.

Active Construction. Actively constructing a villain can often involve an appeal to the audience's logic, or more commonly, an appeal to the audience's emotions. In appealing to the

audience's logic, the claimsmakers are relying on the idea that any reasonable person who reads the established wrongdoing on behalf of the alleged villain will undoubtedly find them worthy of condemnation. This appeal is more commonly used when the wrongdoing in question is quite severe and self-explanatory, or when the party being constructed as the villain is of low social stature (i.e., a jailhouse informant). When appealing to the audience's emotion, typically more social problems work is involved as the claimsmakers are attempting to demonstrate to members of the audience why the alleged villains should be seen as blameworthy.

In the second chapter of the inquiry the individual who was most constructed as a villain, was Ms. Stephanie Nyznyk from the CFS. As acknowledged in the *grounds* section of this thesis, Ms. Nyznyk received a great deal of blame for her role in miscommunicating evidence to the police and prosecution as well as her role in covering up evidence contamination. Essentially, over the course of the inquiry Ms. Nyznyk was constructed as being incompetent, deceitful and selfish. Her skills as a forensic examiner were challenged, her integrity was called into question and overall, she was displayed as having a total disregard for the harms suffered by Mr. Morin.

At the same time, it was the jailhouse informants who were mainly constructed as villains, throughout chapter three. In constructing villains as dangerous outsiders Loseke (2003) states that the claimsmakers must convey these individuals as being extremely evil, "outside of society" and less than human. Over the course of the chapter, both Mr. May and Mr. X were constructed as being very undesirable human beings. The claimsmakers in this chapter highlighted on many occasions that they lacked credibility and reliability, were inherently selfish, incredibly deceitful and quite dangerous. Mr. May was referred to as a pathological liar, a conman, self-serving, lacking a social conscience and having anti-social personality disorder.

Mr. X was referred to as a sexual predator, a pedophile, delusional and possessing a lengthy criminal record for sexual offences.

Rationalizing and Mitigating. In some instances, it may not be beneficial for the claimsmakers to construct a certain actor as being a villain, despite their actions fitting the description of one. This could be for a variety of reasons, including perhaps, because the alleged party is a key actor within the criminal justice system and therefore, constructing them as a villain might further reduce the legitimacy of the system which would be counterproductive to the overall purpose of the inquiry. Essentially, rationalizing and mitigating are the claimsmakers way of ensuring that despite their wrongdoing, certain actors are not constructed as villains. This subtheme is a combination of two villain construction strategies highlighted by Loseke (2003). The first strategy is to "not construct villains" and the second strategy is to "engage in blame deflection". This subtheme embodies both these strategies as it ensures certain parties are not constructed as villains and it provides a rationale for the wrongdoing that has taken place.

Rationalizing and mitigating wrongdoing on the behalf of actors within the criminal justice system can be extremely dangerous in a claimsmaking campaign and as such, it must be done very carefully. As Bandes (2008) notes:

> "The incendiary nature of claims of police and prosecutorial bad faith presents a terrible conundrum. The failure to identify, address, and condemn wrongful conduct may serve to perpetuate the conduct, and worse, give the impression that it is occurring with impunity and even official approval…However, individual misconduct often flourishes for institutional reasons, and it is problematic when condemnation of individual actors takes the place of a broader examination of the underlying problem" (Bandes, 2008, p. 20).

In this sense, the claimsmakers who are engaging in the rationalizing and mitigating of wrongdoing need to be extremely careful that they are not condoning the actions that took place, however, at the same time they also need to ensure their highlighting of wrongdoing does not further challenge the legitimacy of the criminal justice system.

Over the course of the Morin Inquiry various members of the prosecution and police were constructed as "quasi-villains" (ex: Inspector Shepherd from the DPD and co-lead investigator in the Morin case; Detective Fitzpatrick from the DPD and co-lead investigator in the Morin case, John Scott a Crown Prosecutor at Morin's first trial; Susan MacLean a Crown Prosecutor at Morin's first trial; Leo McGuigan a Crown Prosecutor at Morin's second trial; and Alex Smith a Crown Prosecutor at Morin's second trial). In these instances, the wrongdoing on behalf of the actors was so severe that it may have warranted a villain construction (i.e., it was possibly intentional, harmful, and well thought out) however, for some reason their wrongdoing was rationalized and therefore a villain status could not be fully attributed. In the case of Shepherd and Fitzpatrick, as police officers, this was often done through highlighting their actions as being a result of noble-cause corruption or tunnel vision (MacFarlane & Cordner, 2008). In other words, these two individuals were so focussed on closing the case and obtaining justice for the Jessop family that their judgment was clouded, and they were willing to go to extreme lengths to ensure they obtained a conviction. In the case of the prosecution, this was often done through highlighting that these actors truly believed they were prosecuting a guilty person. The following passage exemplifies this:

> "I accept that John Scott, Leo McGuigan, Alex Smith and Susan MacLean wholeheartedly believed, throughout their involvement in the Guy Paul Morin proceedings, that Mr. Morin was guilty of the offence with which he was charged" (Kaufman, 1998, p. 1069).

By highlighting that the prosecutors believed in Morin's guilt, the claimsmaker is signalling to the audience that these actors believed they were doing the right thing and thus their wrongdoing is rationalized. In other words, while the wrongdoing of these actors may perhaps have been intentional and harmful, it was not their intention to convict an innocent person. Framing their

wrongdoing in this way creates the appearance that they are not responsible for causing the social problem, but instead only responsible for a serious error in judgment.

In another instance, wrongdoing was mitigated through the demonstration that it was not done out of malevolence towards Mr. Morin, but rather due to a lack of objectivity:

> "As several Crown counsel told me during the Inquiry, prosecuting someone who turns out to be innocent is a Crown attorney's 'worst nightmare'. I accept that. I also accept that no Crown counsel involved in this case, and no police officer involved in this case, ever intended to convict an innocent person. Although I have sometimes described the human failings that led to the conviction of Guy Paul Morin in very critical language, many of the failings which I have identified represent serious errors in judgment often resulting from lack of objectivity, rather than outright malevolence" (Kaufman, 1998, p. 1243).

In this passage the Commissioner described both the prosecution and police as not intending to convict an innocent person, in fact, this would be their "worst nightmare". While there is no avoiding the fact that the actions of the police and prosecution were wrong, this passage mitigates those actions by portraying the members of the police and prosecution as good people who made honest mistakes, rather than as a group of individuals acting out of malice or selfish desire who intended to convict an innocent person.

Conclusions

Conclusion statements are essentially the claimsmaker's solutions to the social problem – statements that demonstrate what needs to be done to solve and/or eradicate the problem (Best, 2013). When constructing the *grounds* and *warrants* of a social problem, the claimsmakers are essentially describing what a problem is and why it should be solved. As a result, the only thing left to do is present to the audience what should be done to resolve the issue. In such instances, Best (1987) notes that "claims-makers may have an agenda with several goals" (p. 112). In the Morin Inquiry two main goals on behalf of the claimsmakers can be seen. Firstly, perhaps a more latent goal of the claimsmakers was to restore the legitimacy of the criminal justice system. As

noted by Campbell (2019) and Hickman (2004), when wrongful convictions occur they represent a failure of the criminal justice system and consequently, they result in a loss of public confidence and pose a challenge to the legitimacy of the system. The ultimate purpose of the inquiry was to restore this legitimacy. The second goal seen on behalf of the claimsmakers is definitely more manifest or readily apparent, and that is to prevent future wrongful convictions. Unsurprisingly, a majority of the recommendations presented by Kaufman sought to achieve this goal. Both of these goals became readily apparent as early as the third page of the inquiry when the Deputy Attorney General of Ontario, in justifying the public inquiry, stated that "The minister is deeply committed to maintaining the public's faith in the system, and to ensuring that the ministry takes whatever steps are necessary that such a situation does not reoccur" (Kaufman, 1998, p. 3).

As previously mentioned, the *conclusion* statements presented in the Morin Inquiry most often took the form of the Commissioner's recommendations. These recommendations clearly state what the Commission thinks should be done about the social problem as well as providing details on how it should be accomplished. Throughout the inquiry there were 119 different recommendations presented, each with corresponding *grounds* and *warrants* supporting their adoption. Given the large number of recommendations, it is beyond the scope of this thesis to fully analyze and detail every recommendation presented. As a result, this section will examine and analyze the above stated "goals" of the claimsmakers as thematic categories and will demonstrate how these goals are realized through the recommendations presented in the inquiry report. Therefore, the goals of *restoring legitimacy* and *preventing future wrongful convictions* will be examined. Finally, over the course of the analysis a third *conclusion* theme was also inductively drawn from the data: *disagreement*. As will be discussed, this theme represents

instances where the claimsmakers agree on the *grounds* and *warrants* of the social problem but disagree on how the problem should be addressed.

Restoring and Maintaining Legitimacy

As presented many times throughout this thesis, wrongful convictions pose a serious challenge to the legitimacy of the criminal justice system. Consequently, when they occur, the legitimacy of the system must be restored in order to preserve public confidence. In essence, the mere launching of a public Commission of Inquiry works to enhance legitimacy as it demonstrates that the system is attempting to correct its own errors. Nevertheless, public inquiries are not the only means of rectifying wrongful convictions and tend to only be reserved for extreme cases. Other means, such as acquittal on appeal, the admission of wrongdoing and provision of compensation, can also work to restore the legitimacy of the system.

In the final portion of the inquiry report the Commissioner established that despite all the inadequacies and wrongdoing highlighted over the course of the inquiry, the current system is far from irreparable. The following passage demonstrates this:

> "My conclusions should not be taken as a cynical or pessimistic view of the administration of criminal justice in Ontario. On the contrary, many aspects of Ontario's system of justice compare favourably to other jurisdictions. Most of its participants, police, forensic experts, Crown and defence counsel and the judiciary perform their roles with quiet distinction. These participants are justifiably proud of their roles in the administration of justice, and the roles performed by their colleagues. It is understandable, then, that a Report which focuses on systemic inadequacies may be viewed by some of them with dismay, if not frustration (Kaufman, 1998, p. 1243).

Therefore, despite requiring a few reparations, this perspective reflects that the current system is still viewed as legitimate and is still deserving of public confidence.

Self-Correcting System. A subtheme that was found to be recurring over the course of the inquiry was the presentation of a "self-correcting system". This subtheme includes instances where the claimsmakers highlight how the system has gone about rectifying its own errors, prior

to being told to do so by the inquiry. This construction conveys the appearance that the system is self-correcting and thus enhances perceived legitimacy. Highlighting that those accused of wrongdoing have pre-emptively made changes to correct their errors conveys that the system possesses the necessary checks and balances to sort itself out.

This subtheme was evident in chapter two of the inquiry when the Commissioner was reviewing changes that had already been made to the Crown Policy Manual, in the years following Morin's exoneration and prior to the inquiry beginning. Essentially, the Government of Ontario pre-emptively updated its Crown Policy Manual to address many of the issues that would be raised at the inquiry. The following explains:

> "By letter dated November 14, 1997, the Acting Deputy Attorney General provided me with two new Crown policies, one relating to jailhouse informants and one relating to physical scientific evidence… It does indeed specifically respond to a number of the issues raised at this Inquiry. The Ministries are to be commended for this policy. Subject to several comments made in the context of specific recommendations, I endorse much of the policy's contents" (Kaufman, 1998, p. 297)

In this passage, we can see that by endorsing the pre-emptive changes made by the various ministries, the Commissioner is signalling to the audience that the system has the ability to repair itself without having to be told so by the claimsmakers, which in turn helps to increase the perceived legitimacy of the system.

Preventing Future Wrongful Convictions

Aside from preserving the legitimacy of the criminal justice system, a major goal of the inquiry was also to present the audience with valid *conclusions* as to how the social problem can be resolved. It is impossible to retroactively prevent wrongful convictions and thus, the only solution is to ensure that future occurrences are minimized. While it would be ideal for the claimsmakers to ensure that their recommendations will eliminate the social problem in its entirety, they are conscious that this would be impossible. Therefore, the majority of the

recommendations are aimed at reducing the likelihood of similar causes of Morin's wrongful conviction occurring in the future.

In many instances the Commissioner stated that the purpose of a given recommendation was to prevent what happened to Mr. Morin from happening elsewhere. For example, this was seen as early as the very first page of the inquiry, when the Commissioner stated the commission's overall purpose: "The reasons for the failure are set out in the pages which follow, and so are suggestions for change, designed to make similar failures less likely" (Kaufman, 1998, p. 1). An example of this theme can be found in chapter three under Recommendation #59 regarding holding of a *voir dire* on the reliability of informer evidence. In this recommendation the Commissioner is calling for a legislative amendment that would essentially make jailhouse informant testimony presumptively inadmissible unless otherwise ruled by the trial judge:

> "It is my strongly held belief that the dangers associated with jailhouse informant evidence, together with its great potential to mislead, should make such evidence presumptively inadmissible. A trial judge should determine whether the evidence, together with the surrounding circumstances, meets a threshold of reliability sufficient to justify its reception as evidence. If admissible, the jury would determine the ultimate reliability of the evidence." (Kaufman, 1998, p. 628).

In examining this *conclusion* statement, it is important to acknowledge how the previously established *grounds* and *warrants* make its presentation possible. Throughout the inquiry, wrongdoing on behalf of Mr. May and Mr. X (i.e., their lies about an alleged confession) was established as being a major cause of Morin's wrongful conviction. Following this, the claimsmakers began constructing Mr. May and Mr. X as being the "dangerous villains". Furthermore, the claimsmakers put forth that current policies aimed at addressing the unreliability of jailhouse informants are deficient. In social problems terms, the claimsmakers have established the *grounds* of Morin's wrongful conviction – that unreliable testimony from jailhouse informants helped cause the wrongful conviction – and the claimsmakers have also

established key *warrants* as to why this issue should be addressed – to prevent future villains from harming future innocent victims and because current policies are unable to do so – therefore, all that is left to construct is the solutions as to how this issue may be addressed, which is the purpose of recommendation 59.

Disagreement

Different competing claimsmakers at the inquiry had differing agendas and goals in mind when engaging in their claimsmaking. For example, Commissioner Kaufman can be seen as trying to fulfill his inquiry mandate; AIDWYC can be seen as trying to serve the needs of the wrongfully convicted; the OCAA can be seen as serving the needs of the prosecution; the CLA can be seen as serving the needs of defence attorneys and so forth. In the majority of instances, the various competing claimsmakers would agree on the established *grounds* and *warrants* (i.e., what caused the wrongful conviction, why it needs to be addressed). However, they disagreed as to what exactly should be done to rectify the issue. The Commissioner's discussion following his presentation of Recommendation #87 clearly demonstrates this. Recommendation #87 focussed on the powers of a Court of Appeal to entertain "lurking doubt" as a premise for overturning a conviction and is stated as follows:

> "Consideration should be given to a change in the powers afforded to the Court of Appeal, so as to enable the Court to set aside a conviction where there exists a lurking doubt as to guilt." (Kaufman, 1998, p. 1176).

The term "lurking doubt", recognized as part of the UK system of criminal appeal considerations, refers to experiencing a sense of disquiet following a guilty verdict. In other words, upon reviewing a guilty verdict, a lurking doubt occurs when members of the Court of Appeal sense that there has been a potential injustice. In his explanation of Recommendation #87 the Commissioner notes that the Morin family quite supported the idea. However, he also notes

that this position was heavily resisted by the OCAA. The OCAA believes that expanding the appellate court's jurisdiction to allow for acquittals based on lurking doubt "suffers from imprecision and a lack of recognition of the essential role of non-verbal testimonial factors" (Kaufman, 1998, p. 1184). In other words, the appellate courts do not have the necessary context of a case to adequately make this sort of decision, as they do not hear the evidence firsthand. Whereas the Morin family was of the position that too much emphasis is placed on the trial process and more powers should be given to the appellate courts to overturn cases. They argued that "a system of justice that places so much faith in the trial process is inviting wrongful convictions. The appellate process must be broadened to increase its ability to overturn cases in which serious doubts remain despite a conviction a trial" (Kaufman, 1998, p. 1186).

In other instances, the competing claimsmakers would even go as far as agreeing on the general implementation of a *conclusion*, however, they would disagree on what it should specifically contain. For example, in Recommendation #19 the Commissioner recommends the creation of an advisory board for the CFS. He states that "an advisory board to the Centre of Forensic Sciences should be established consisting of Crown and defence counsel, police, judiciary, scientists and laypersons. It should be created by statute" (Kaufman, 1998, p. 364). The Commissioner goes on to highlight that several parties at the commission endorsed such a recommendation including both the CFS and AIDWYC. However, there were later disagreements as to the precise role of the advisory board. The CFS stated that it "envisages an advisory board, meeting regularly to discuss and comment on policies and performance and providing advice and feedback to the Centre's management and to the Ministry. It would not be a decision-making or policy-making body" (Kaufman, 1998, p. 365). Whereas other parties proposed that "the advisory board play a far more prominent role at the Centre. Such a board, it

is contended, should establish policy and effectively operate as the Centre's board of directors, with the Director reporting to it" (Kaufman, 1998, p. 366). Ultimately, the Commissioner presented a compromise solution that adopted aspects of both parties' positions. However, such a disagreement amongst competing claimsmakers can lead to arguments amongst members of the audience. For this reason, Lowney (2007) cautioned that claimsmakers need to provide the audience with sufficient detail that they feel confident the *conclusions* offered could work to rectify the social problem. At the same time, they should abstain from providing too much detail so that it does not lead to premature disputes about implementation. In other words, *conclusions* need to be strategically presented to prevent competing claimsmakers from confusing or losing the audience's attention.

Chapter 6: Conclusion

This thesis sought to determine how the claimsmakers present at the Morin Inquiry constructed the wrongful conviction of Guy Paul Morin. To accomplish this, a qualitative content analysis of the Commission on the Proceedings Involving Guy Paul Morin was conducted, using a social constructionist lens. The purpose of this analysis was to provide insight into the overall construction of wrongful convictions as a social problem through the examination of the claimsmaking taking place within a typifying example. Ultimately, the Morin Inquiry was treated as a claimsmaking campaign intent on constructing the social problem of wrongful convictions in a way that helped restore legitimacy to the criminal justice system. In order to achieve this claimsmaking goal, the claimsmakers were required to construct the various *grounds*, *warrants* and *conclusions* of their social problem in a way that garnered audience support. Consequently, the themes developed in this qualitative content analysis pertained specifically to their usage over the course of the inquiry.

A crucial aspect of any claimsmaking campaign is the connection between *grounds*, *warrants* and *conclusions.* Basically, claimsmakers need to properly construct the *grounds* and *warrants* of a social problem so that the audience is able to see the *conclusions* being presented as a possible solution. This is absolutely essential in a claimsmaking campaign, as if the audience cannot see the *conclusions* being presented as a solution to the problem, then they will inevitably lose value. As displayed in the *grounds* portion of the analysis chapter, the claimsmakers in the Morin Inquiry constructed Guy Paul Morin's wrongful conviction as a preventable occurrence caused by a combination of individual wrongdoings and correctible systemic errors. Each of these constructions were beneficial to the claimsmaking campaign in different ways. Firstly, by constructing Morin's wrongful conviction as being a result of individual wrongdoing, the

claimsmakers were able to justify solutions that revolved around mitigating the actions of individual actors. For example, recommendations involved increasing training for parties and imposing harsher penalties on rule breakers. Furthermore, allocating blame and placing responsibility on certain actors allowed the claimsmakers to engage in victim/villain construction more effectively. For example, clearly highlighting how the wrongdoing of Mr. May and Mr. X contributed to the wrongful conviction of Mr. Morin allows the audience to determine who was harmed by whose actions. Secondly, constructing Morin's wrongful conviction as being a result of systemic errors provides the claimsmakers with the opportunity to suggest systemic changes. For example, highlighting that the actions of Ms. Nyznyk alone caused the wrongful conviction of Mr. Morin would not permit the claimsmakers to logically offer broad systemic changes as a solution. However, demonstrating that Morin's wrongful conviction was caused by problematic communication around the forensic evidence and bias on behalf of the CFS allowed the claimsmakers to present changes that would affect the overall functioning of the system. In addition, highlighting that wrongful convictions are caused by systemic problems calls into question the legitimacy of the criminal justice system. Challenging the legitimacy of the system allows for solutions to be offered on how it can be restored. Lastly, constructing wrongful convictions as being preventable occurrences helps to reenforce the idea that wrongful convictions can be solved. Furthermore, this helps to enhance the need for solutions that can effectively "prevent the preventable", as a system that cannot do so is illegitimate.

In the *warrants* section it was established that, through the construction of blameless victims and blameworthy villains as well as the demonstration that wrongful convictions challenge the legitimacy of the criminal justice system, the claimsmakers were able to show that Morin's wrongful conviction was worth addressing. As discussed, the purpose of *warrant*

statements are to help connect the *grounds* of a social problem to the *conclusions* (i.e., what should be done to solve the problem). In the Morin Inquiry, clearly demonstrating how innocent individuals can come to be harmed by wrongful convictions allowed the claimsmakers to justify the need for their solutions. Furthermore, clearly constructing who the villains of the social problem were, also allowed the claimsmakers to justify the need for action. Essentially, both of these constructions allowed the claimsmakers to convince the audience that in order to prevent future victims from being harmed by future villains, certain recommendations needed to be adopted. In addition to victim and villain construction, the claimsmakers in the Morin Inquiry also demonstrated that wrongful convictions challenge the legitimacy of the criminal justice system. The claimsmakers achieved this construction through highlighting the presence of deficient policies, appealing to expert opinion and establishing the need to address the causes of Morin's wrongful conviction. The construction of Morin's conviction as challenging the legitimacy of the criminal justice system was essential in linking the systemic causes of the conviction to the need for recommendations aimed at restoring the legitimacy of the criminal justice system. In fact, this *warrant* theme allowed the claimsmakers to show how systemic problems reduce public confidence in the system and in turn, demonstrate why maintaining or restoring their confidence is important.

After establishing a need to address the issue, the claimsmakers were then able to present in their *conclusions* that through the adoption of the inquiry recommendations, future wrongful convictions could be prevented, and the legitimacy of the criminal justice system restored. As discussed, *conclusions* are essentially the claimsmakers solutions on how the social problem can be rectified. Most of the *conclusion* statements in the Morin Inquiry took the form of official recommendations. Rather than analyzing every recommendation and specifically detailing the

issues they were aimed at addressing, this thesis sought to examine the recommendations as thematic categories. It was determined that the two main goals of the Morin Inquiry were to restore the legitimacy of the criminal justice system and to prevent future wrongful convictions from occurring. It was then analyzed how these two main goals were realized through the inquiry recommendations. Essentially, it was determined that the ways in which the claimsmakers constructed the *grounds* and *warrants* throughout the claimsmaking campaign provided the claimsmakers with the opportunity to effectively present *conclusions* aimed at achieving their goals.

Finally, earlier in this thesis it was argued that perhaps the true purpose of a public inquiry is to strategically manage dissent rather than to restore public confidence. The question then becomes, "*how has the inquiry constructed wrongful convictions in such a way, that it allows for the status quo to be appropriately maintained?"*. Essentially, constructing wrongful convictions as being preventable occurrences that are primarily a result of individual wrongdoings and correctible systemic errors, allows for the construction of solutions that are rather small in scale and do not necessarily target actual structural and systemic deficiencies. As a result, the way in which the public inquiry constructs social problems, allows the system to avoid real structural change and thus, the status quo is maintained. This is not meant take away from the many positive changes that resulted from the Morin Inquiry, but rather, it is more to acknowledge that perhaps the true role of a public inquiry is more so that of a "protector" or "guardian" of the status quo and less so that of an "activist" or "crusader", attempting to effect structural change.

Implications and Contributions of the Research

This thesis can be viewed as a contribution to a number of different bodies of research. Firstly, as highlighted by Leo (2005), there has been a lack of theoretical involvement within the study of wrongful convictions. This thesis helps to fill this gap by providing a theoretically inspired analysis of one of the most widely known wrongful conviction cases in Canadian history. Secondly, this thesis provides a critical examination of public inquiries as a form of claimsmaking, through social construction theory. In general, the literature studying Canadian public Commissions of Inquiry is rather limited and as such, no previous empirical research has examined how they work as a form of claimsmaking intent on inspiring policy reform and legislative change. Thirdly, this thesis provides a contribution to the existing social problems literature. While other research has already examined wrongful convictions as a social problem, this thesis provides some empirical evidence for how this construction can take place. Aside from this contribution, this thesis also helps to contribute to the broader research on the claimsmaking process and how social problems can come to be constructed.

Limitations

A number of scholars have emphasized that the purpose of a case study design is not to produce generalizable results (Ruddin, 2006; Stake, 1994; Yin, 2018), but rather to capture the uniqueness of a phenomenon and provide a conceptual contribution. However, despite this viewpoint it should be acknowledged that a possible significant limitation of this thesis is the generalizability of its results. As this research only examined the construction of one wrongful conviction within a single public inquiry, the findings are not generalizable to other public inquiries or the study of the social problem of wrongful convictions as a whole. Another limitation of this thesis is the possibility of interpretive bias when coding data and developing

conclusions. As noted by Kelle (2007), qualitative researchers always bring with them their own lens and conceptual networks when investigating aspects of social life. As such, the themes and descriptions put forth throughout this thesis should be understood as social constructions themselves (Best, 1995). It should also be acknowledged that throughout data collection and analysis, the quantitative counting of claims was given relatively little consideration. The justification for this decision was that certain claims are more impactful than others and as such, reducing claims to a simple statistic would not prove useful. Rather, it was more valuable to qualitatively examine the rhetoric inherent to the claims to understand how they sought to construct the social problem of wrongful convictions. Nevertheless, this should be highlighted as a possible limitation as it prevented the researcher from determining the occurrence rate at which certain claims emerged.

Future Research

While the current research has helped contribute to the gap of theoretical involvement in the study of wrongful convictions, the area as a whole is still relatively understudied and as such, future research should continue to build on this. Additionally, future research could utilize other relevant criminological and sociological theories (i.e., governmentality) as a means of studying public inquiries. The current research yielded some interesting findings with regards to how claimsmakers involved at the Morin Inquiry constructed the social problem of wrongful convictions. Future research could build off these findings and determine if wrongful convictions are constructed in a similar manner across different public inquiries. Furthermore, future research could compare the construction of wrongful convictions found in public inquiries to other social constructions of wrongful convictions found in different claimsmaking campaigns. As acknowledged in the theoretical framework chapter, the construction of Morin's wrongful

conviction throughout the inquiry was stage four of Best's (2013) claimsmaking process. Therefore, future research studies could examine the construction of Morin's case during other stages of the claimsmaking process. Namely, these studies could examine how Morin's case, or that of another wrongly convicted person, was constructed over the course of his trial, conviction, appeal and exoneration and how these constructions differed.

Best (2015) recommends that in order to truly further the field and create a theory of social problems, future researchers need to investigate the links that exist between different social problems and claimsmaking campaigns. As a result, future research could compare the construction of wrongful convictions as a social problem to the construction of other social problems and analyze common techniques, constructions and themes. Furthermore, future research could examine if the construction of wrongful convictions as a social problem varies across different countries and cultures (e.g., the causes of the social problem, justifications for addressing the social problem and solutions to the social problem).

Final Words

Nearly 30 years ago, Guy Paul Morin was wrongfully convicted for the murder of Christine Jessop. Today, his case still commonly arises in law classes and innocence scholarship circles as an example of how the criminal justice system can err in its judgment. Innocence projects and social activists still refer to his case as a prime example of why change is needed. Despite various claimsmaking campaigns and the efforts of social activists in solving the social problem of wrongful convictions, they continue to occur with some frequency. In the concluding portion of his inquiry report, Commissioner Kaufman states that the case of Guy Paul Morin is not unique, that there are other individuals across the country who have suffered a similar fate to that of Guy Paul Morin, and not been exonerated. While wrongful convictions seem to be

gaining more traction in the media with recent documentaries such as The Innocence Files and Making a Murderer, it is evident that still more social problems work is needed in order to bring greater attention to the issue of wrongful convictions. While this thesis has contributed to this work through providing an analysis of a previous claimsmaking campaign, the mission is far from complete.

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Appendix A – Parties Granted Standing

The following is a list of the 25 parties granted standing at the Commission on the Proceedings Involving Guy Paul Morin. This list has been copied directly from the final inquiry report (Kaufman, 1998).

1. The Attorney General of Ontario
2. The Centre of Forensic Sciences and persons employed by or associated with the Centre
3. The Chief Coroner for Ontario and persons employed by or associated with that office
4. Bernie Fitzpatrick
5. Gordon Hobbs
6. Janet, Kenneth and Robert Jessop
7. Susan MacLean
8. Leo McGuigan, Q.C.
9. Sergeant Michael Michalowsky
10. Guy Paul, Alphonse and Ida Morin
11. John D. Scott Q.C.
12. John Shephard
13. Alex Smith
14. Ministry of the Solicitor General and Correctional Services and persons employed by or associated with the Ministry
15. Association in Defence of the Wrongly Convicted (AIDWYC) – on systemic issues only
16. Criminal Lawyers' Association — on systemic issues only
17. Ontario Crown Attorneys' Association — on systemic issues only
18. Durham Regional Police Association — on systemic issues only, except insofar as the Association's counsel also had a mandate to represent four specific officers, Joseph Loughlin, Robert Chapman, Thomas Cameron and David Robinet, each of whom were entitled to full standing
19. York Regional Police Association — on systemic issues only, except insofar as the Association's counsel also had a mandate to represent specific officers whose conduct may be examined
20. Chief of Police and York Regional Police Board — the latter, on institutional issues only, except insofar as their counsel also had a mandate to represent senior officers whose conduct may be examined and who are not represented by the York Regional Police Association
21. Durham Regional Police Board — on institutional issues only, except insofar as its counsel also had a mandate to represent senior officers whose conduct may be examined and who are not represented by the Durham Regional Police Association
22. Canadian Bar Association — Ontario — on systemic issues only, limited further to particular Phases of the Inquiry

23. Law Union — on systemic issues only, limited to closing submissions only
24. Mr. X (jailhouse informant15 and witness) — limited to the Phase(s) of the Inquiry which directly concerned him
25. Robert Dean May (jailhouse informant and witness) — limited to the Phase(s) of the Inquiry which directly concerned him

Appendix B – Key Actors List

This is not intended to be an exhaustive list of every person involved in Guy Pau Morin's case, but rather a list of some of the most prominent actors involved:

Guy Paul Morin	Wrongfully convicted for the murder of Christine Jessop
Commissioner Fred Kaufman	Commissioner appointed to lead the Morin Inquiry
Jack Pinofsky	Lead defence counsel at Morin's second trial
Elizabeth Widner	Co-counsel with Jack Pinofsky
Ida Morin	Guy Paul Morin's Mother
Alphonse Morin	Guy Paul Morin's Father
Yvette Morin (Devine)	Guy Paul Morin's Sister
Frank Devine	Guy Paul Morin's Brother-in-law
Andrew Devine	Guy Paul Morin's Nephew
Robert Jessop	Christine Jessop's Father
Janet Jessop	Christine Jessop's Mother
Ken Jessop	Christine Jessop's Brother
Justice James Donnelly	Judge at Morin's second trial
Leslie Ann Chipman	Christine Jessop's schoolmate
Sandra Horwood	Witness tendered by the defence
Detective Bernie Fitzpatrick	Lead Investigator for Durham Regional Police
Inspector John Shepherd	Lead Investigator for Durham Regional Police
Inspector Robert Brown	In charge of the Durham Regional Police Service Crimes Against Persons Squad
Trevor McCagherty	Durham Chief of Police
Sergeant Michael Michalowsky	Officer in charge of identification aspects for Durham Regional Police; Convicted of perjury
Dr. John Hillsdon-Smith	Performed Christine Jessop's Autopsy
Justice Archibald Mcleod Craig	First Trial Judge
Clayton Ruby	Attorney for Guy Paul Morin at his first trial
Mary Bartley	Attorney for Guy Paul Morin at his first trial
John Scott	Crown Prosecutor at Guy Paul Morin's first trial
Suzan Mclean	Crown Prosecutor at Guy Paul Morin's first and second trial
Dr. Clyde Snow	Forensic Anthropologist who examined Christine Jessop's exhumed body

Stephanie Nyznyk	Forensic Examiner at the Centre of Forensic Sciences
Norman Erikson	Forensic Examiner at the Centre of Forensic Sciences and Stephanie Nyznyk's supervisor
Roger Cook	Author of the Jackson and Cook study referenced during Morin's trial
Mr. Crocker	Forensic biologist at the Centre of Forensic Sciences
Leo McGuigan	Crown Prosecutor at Guy Paul Morin's second trial
Alex Smith	Crown Prosecutor at Guy Paul Morin's second trial
Brian Gover	Crown Prosecutor at Guy Paul Morin's second trial
James Lockyer	Defence Lawyer, AIDWYC Director and Appeal Lawyer for Morin
Thomas Hopen	Independent Forensic Examiner from MVA inc.
Shirley Stephek	Centre of Forensic Sciences technician who discovered the hair and fibre contamination
Dr. Ray Prime	Director of the Centre of Forensic Sciences during Morin trial
Lynn Sedgewick	Analyst at the Centre of Forensic Sciences
Douglas Lucas	Former Director at the Centre of Forensic Sciences
Judy Bourke	Australian author; Her work on unreliable scientific evidence was referenced in the inquiry report
Dr. Edward Blake	American forensic scientist who specializes in DNA work; Determined DNA evidence at trial could not have originated from Mr. Morin
Dr. David Bing	American forensic scientist who specializes in DNA work; Determined DNA evidence at trial could not have originated from Mr. Morin
Dr. John S. Waye	Canadian forensic scientist who specializes in DNA work; Determined DNA evidence at trial could not have originated from Mr. Morin
Dr. William Tilstone	Executive Director of the National Forensic Science Technology Center in Florida
Dr. James Robertson	Director of Forensic Services, an agency of the Australian Federal Police; Testified at the inquiry
Dr. James Young	Chief Coroner for the Province of Ontario and the Assistant Deputy Solicitor General, Public Safety Division, in Ontario; Testified at the inquiry
Robert Dean May	Jailhouse informant tendered by the prosecution

Mr. X (Real name hidden to protect the identity of the informant)	Jailhouse informant tendered by the prosecution
Dr. Birgitta Jansen	Staff psychometrist (and later a psychologist) at the Whitby Psychiatric Hospital; Provided psychiatric diagnosis for Mr. May
Dr. Glenn Cameron	Physician with the Forensic Assessment Unit of the Penetanguishene Mental Health Centre; Provided psychiatric diagnosis for Mr. May
Dr. Andrew Malcolm	Forensic psychiatrist whom the defence had retained to carry out a mental status assessment of Mr. May and Mr. X
Mr. Brown	Crown attorney in charge of prosecuting Mr. X for sexual assault
Kathy Mutch	A former girlfriend of Mr. May; Allegedly heard Mr. May confess to perjury
Susan Mutch	Kathy Mutch's sister-in-law; Allegedly heard Mr. May confess to perjury
Daryl Thompson	Old Friend of Mr. May; Allegedly heard Mr. May confess to perjury
Basil Mangano	Private investigator retained by Mr. Morin's defence counsel at the first and second trials
Susan Mulligan	Law student from Mr. Jack Pinofsky's office
Orville Kerlew	Superintendent at Whitby jail
Joan Blake	Secretary to the superintendent at the Whitby jail (Mr. Orville Kerlew)
Ms. McIntyre	Secretary to the superintendent at the Whitby jail (Mr. Orville Kerlew)
Mary Humphries	Head of the records department at Whitby jail
Laura Mair	Employee at Whitby jail
Sergeant Gordon Hobbs	Metropolitan Toronto Police Officer, formerly seconded to the Durham Regional Police Service; Was placed in jail with Morin to elicit a confession; Testified at first trial to allegedly obtaining a confession from Morin
Detective Myno Van Dyke	Polygraph examiner for Mr. May and X
Douglas Dalton	Special Counsel at the "Los Angeles Experience" (Jailhouse informant investigation in Los Angeles that was referenced at trial)
Sara Welch	President of the Ontario Crown Attorney's Association
Martin Weinberg	Witness for Criminal Lawyers Association; Lawyer in Boston
Richard Wintory	Was tendered by the Ontario Crown Attorneys' Association as a witness on systemic issues, specifically jailhouse informants

Sergeant Thomas Hart	Durham Regional Police; Testified at the inquiry regarding Durham's informant registry policy
Constable Rick McGowan	York Reginal police; Witness for the crown at 2nd trial; First officer to attend Jessop residence after Christine's disappearance
Constable David Neil Robertson	York Reginal police; Witness for the crown at 2nd trial who gave dog scent evidence
Inspector Robert Wilson	York regional police, officer in-charge of Jessop investigation (until taken by Durham)
Sergeant Rick McCabe	York Regional Police; Participated in Jessop investigation
Constable Raymond Bunce	York Regional Police; Participated in Jessop investigation
Detective Eric Strong	York Regional Police; Participated in Jessop investigation
Detective Sergeant John Nechay	York Regional Police Officer seconded to the Durham investigation
Sergeant Ken Paton – York Regional Police	York Regional Police; Participated in Jessop investigation
Inspector Barry Delaney	York Regional Police; Participated in Jessop investigation
Brian Abraham	York Regional Police; Participated in Jessop investigation
Sergeant Gordon Lemoine	York Regional Police; Participated in Jessop investigation
Sergeant Alex Low	York Regional Police; Participated in Jessop investigation
Detective Christopher Barret	York Regional Police; Participated in Jessop investigation
Sergeant William Scott	Durham Regional Police; First to respond to finding of Jessop's body
Constable Rick Keeler	Durham Regional Police; First to respond to finding of Jessop's body
Detective Peter Moore	Durham Regional Police; Participated in Jessop Investigation
Constable David Robinet	Durham Regional Police; Participated in Jessop Investigation
Constable Sam Fox	Durham Regional Police; Participated in Jessop Investigation
Superintendent Doug Bullock	Durham regional Police; Administrative officer in charge of the Criminal Investigation and Intelligence Branch
Detective Doug King	Durham Regional Police; Participated in Jessop Investigation

Detectives Reg Webster	Durham Regional Police; Participated in Jessop Investigation
Detective Peter Holley	Durham Regional Police; Participated in Jessop Investigation
Sergeant George Scott	Durham Regional Police; Participated in Jessop Investigation
Sergeant Kenneth Hudson	Durham Regional Police; Participated in Jessop Investigation
Detective Sergeant Holley	Durham Regional Police; Found the lighter at Christine Jessop's body site
Constable Jeffery Hewett	Durham Regional Police; Alleges he dropped a lighter at Christine Jessop's body site
Constable Paul Nadeau	Durham Regional Police; Assisted Constable Hewett in searching for the lost lighter
Constable Joseph Kapuscinski	Durham Regional Police; Participated in Jessop Investigation
Sergeant Kenneth Hudson – Durham Regional Police	Durham Regional Police; Participated in Jessop Investigation; Assisted the OPP in their investigation of Sgt. Michalowsky
Dr. Allan Gordon Adelman	Doctor appointed to evaluate Mr. Michalowsky's ability to testify at the inquiry
Constable Patrick Holtof	Durham Regional Police; Participated in Jessop Investigation
Detective Joseph Loughlin	Durham regional police; Originally assigned to Jessop investigation
Detective Reg Webster	Durham regional police; Originally assigned to Jessop investigation
Dr. Taylor	Dentist for the Jessop's
Ms. Lowson	Receptionist at Dr. Taylor's office
Staff Sergeant Pike	York Regional Police; Spoke to dentist regarding Jessop's family arrival home the day of Christine's disappearance
John Douglas	FBI Criminal Profiler; hired by Shepherd and Fitzpatrick to create a profile of Christine's killer
Robert Atkinson	Store owner who saw Christine Jessop the afternoon she was abducted
Ken Doran	Cell mate of Mr. X; Was at the Whitby jail the same time period as Mr. May and Mr. X.
Paddy Hester	Contentious witness at Morin's second trial; Community member
Doug Greenwood	Contentious witness at Morin's second trial; Friend of Robert Jessop
John Carruther	Contentious witness at Morin's second trial; Friend of Robert Jessop

Leslie Chipman	Contentious witness at Morin's second trial; Christine Jessop's best friend
Mandy Patterson	Contentious witness at Morin's second trial; Played in Guy Paul Morin's band
Peter Payne	RCMP dog handler; Allegedly worked with Constable Robertson, although Mr. Payne denies having done so
Albert Boley	Former OPP Staff Sergeant in charge of the canine unit; Testified that Constable Robertson's evidence and training was very inadequate
Lorraine Pike	Paddy Hester's daughter in law; Wife to Constable Patrick Hester
Constable Patrick Hester	York Regional Police; Paddy Hester's son; Husband to Lorraine Pike
Bruce Affleck	Morin's original counsel before Clayton Ruby
Alexander Sonsa	Bruce Affleck's partner
Dr. Graham Turrell	Psychologist who assessed Morins mental state for first trial
Dr. Basil Orchard	Psychologist who assessed Morins mental state for first trial
Micheal Brian Joll	Peel regional Police (1977-1990); Testified to McGuigan supporting 'noble cause corruption'
Herbert Pratt	Textile expert called by the crown concerning the "laundromat test"
Barry Gaudette	A fibre examiner with the RCMP; Called by the crown concerning the "laundromat test"
Constable Harry Shepherd	Durham regional police; Conducted laundromat test
Constable Brian Dalrymple	Ontario Provincial Police; Tested partial fingerprint from Christine's recorder
Professor Martin	Expert called to the inquiry to highlight common causes of wrongful convictions
Mr. James McClosky	Expert called to the inquiry to highlight common causes of wrongful convictions
Alistair Logan	Expert called to the inquiry to highlight common causes of wrongful convictions
Nigel Hadgkiss	Expert called to the inquiry to highlight common causes of wrongful convictions
Micheal Radlet	Expert called to the inquiry to highlight common causes of wrongful convictions
Rubin Carter	On the panel of wrongfully convicted individuals who testified at the inquiry
Rolando Cruz	On the panel of wrongfully convicted individuals who testified at the inquiry

David Milgaard	On the panel of wrongfully convicted individuals who testified at the inquiry
Joyce Milgaard	On the panel of wrongfully convicted individuals who testified at the inquiry; Mother of David Milgaard
Joyce Ann Brown	On the panel of wrongfully convicted individuals who testified at the inquiry
Patrick McGuire	On the panel of wrongfully convicted individuals who testified at the inquiry
Rick Norris	On the panel of wrongfully convicted individuals who testified at the inquiry
Sergeant Richard Sullivan	Durham Regional Police Panel; gave evidence on systemic policing issues
Seargent Thomas Hart	Durham Regional Police Panel; gave evidence on systemic policing issues
Sergeant Myno van Dyke	Durham Regional Police Panel; gave evidence on systemic policing issues
Inspector Charles David Mercier	Durham Regional Police Panel; gave evidence on systemic policing issues
Charles Lawrence	Durham Regional Police Panel; gave evidence on systemic policing issues
Jean Paul Brodeur	Systemic witness tendered by AIDWYC to testify on policing issues
Richard Erikson	Systemic witness tendered by AIDWYC to testify on policing issues
John Briggs	Systemic witness tendered by AIDWYC to testify on policing issues
Sara Welch	Participated on the Joint Ontario Crown Attorneys ' Association and Criminal Lawyers ' Association Panel
Steven Sheriff	Participated on the Joint Ontario Crown Attorneys ' Association and Criminal Lawyers ' Association Panel
David Butt	Participated on the Joint Ontario Crown Attorneys ' Association and Criminal Lawyers ' Association Panel
Lee Baig	Participated on the Joint Ontario Crown Attorneys ' Association and Criminal Lawyers ' Association Panel
Brice Durno	Participated on the Joint Ontario Crown Attorneys ' Association and Criminal Lawyers ' Association Panel
Paul Culver	Called for the Ministry of the Attorney General Panel

Peter Griffiths	Called for the Ministry of the Attorney General Panel
Dan Mitchell	Called for the Ministry of the Attorney General Panel
Lidia Narozniak	Called for the Ministry of the Attorney General Panel
Paul Lindsay	Called for the Ministry of the Attorney General Panel
Dana Venner	Called for the Ministry of the Attorney General Panel