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General Introduction

Royal Commissions are a particular form of *ad hoc independent commission of inquiry* that originated in England and that may also be found today in many countries that are, or were former, colonies

The types of inquiry and the subject matters they may be charged with investigating are multiple. Some commissions of inquiry are established to inquire into and provide recommendations on general issues of public policy, such as the situation of Aboriginal peoples in Canada (*Royal Commission on Aboriginal Peoples*, 1996). Others are appointed to investigate in the wake of disturbing events in Canadian society, be these alleged wrongdoing by public officials such as a scandal involving the sponsorship of public events in Quebec (*Commission of Inquiry into the Sponsorship Program*

litigation as organizations and individuals who meet requirements established by the commission can be granted standing as parties to the inquiry, sometimes with government funding to support their participation. There is no formal description of the criteria for granting participation rights, but usually an established interest in the issue is required, at a minimum. Their role in the inquiry process is similar to that of the *amicus curiae*, or intervener, in the litigation process, in that they can raise issues relating to the public interest, which might have otherwise been ignored (Williams, 2000).

Finally, inquiries can be advantageous for the victims of misconduct, despite the emotional difficulty they may experience in reliving their experiences publicly. Inquiries can draw attention to the issues and help advance demands for corrective action (*Truth and Reconciliation Commission of Canada*, 2009-present), and some inquiries have helped expose misconduct or other flaws in the criminal justice system or trial process that had led to the wrongful conviction of particular individuals (for example the *Lamer Inquiry into the Administration of Justice*, 2006 and the *Royal Commission on the Donald Marshall Jr. Prosecution*, 1989) (Derrick, 2003).

Even with their many benefits, independent commissions of inquiry are often the subject of criticism. Governments are frequently accused of using public inquiries as a political tool. Inquiries are also often denounced for infringing on the rights of private citizens and for giving commissioners powers similar to those of judges, but without providing participants with the protections of the regular judicial system. In addition, inquiries are routinely criticized for being time consuming and costly, especially because in a large number of cases, their Report is shelved and commission recommendations are never implemented. Despite the criticisms, however, much of the literature supports the existence of independent public inquiries as an instrument of governance, both for their role in bringing information to light and for their independence from regular institutions of governance. Indeed, the consensus seems to be that implementation of recommendations constitutes only one of the criteria that should be used in evaluating the overall usefulness of inquiries.

2. Various Types of Public Inquiry Mechanisms in Canada

Although the focus here is on *ad hoc* independent commissions of inquiry established under federal and provincial inquiry statutes, there are many other mechanisms which governments can use to inquire into issues of public concern. Some have similar powers and perform similar functions as inquiries under the *Inquiries Acts*, while others have a very different legal framework.

and responsibilities of coroners, a significant part of which includes the power to conduct public inquiries into deaths of individuals. These provincial statutes even make inquiries mandatory when an individual has died under particular circumstances (for example, in Ontario these include inquiries into deaths in police custody). Each province also has a Fire Commissioner, Fire Marshal or equivalent official who is directed by legislation to conduct investigations into fires. Federally, a Fire Protection Services office conducts investigations and reports into fires at federal buildings. Most Fire Marshalls also have investigatory powers similar to those given to coroners.

Third, there are statutory agencies with investigative and inquisitive mandates, such as the Transportation Safety Board of Canada. This Board is a statutory agency with a mandate to investigate transportation occurrences, including conducting public inquiries into accidents such as airplane crashes. Often these statutes provide investigators with the same coercive powers as commissions of inquiry under the *Inquiries Acts*, and they normally follow similar procedures.

Fourth, there are also provincial and federal statutes respecting ombudsmen, a specialized office with a mandate to inquire into allegations of maladministration whether in relation to specific cases or an entire department or agency. In the latter case, the ombudsman investigation resembles a Part II inquiry under the *Inquiries Act*, although the ombudsman's power to conduct investigations or inquiries is not usually backed by the same powers conferred on a commissioner under the federal and provincial inquiry statutes. Some provincial *Ombudsman Acts* do, however, confer powers to compel testimony, produce documents and enter premises, although the exercise of such powers typically requires prior approval of the Attorney General.

Task forces are a fifth type of official, public, inquiry mechanism. Task Forces are non-statutory inquiries that are invariably appointed by a particular Minister who seeks to advance a policy objective. As such, they are less formal and usually less independent than commissions of inquiry established under statute or the royal prerogative. They normally have no coercive powers to summon witnesses or require the delivery of documents. They can be created to inquire into any issue, and they can be made up of members inside or outside the public service. Their reports are not necessarily made public although most are (see, for example, *Quebec Task Force on Access to Justice*, 1991). Parliamentary committees are another form of non-statutory inquiries, which again would be considered less independent, and subject of political dynamics, such as party discipline (Trebilcock et al., 1982). Internal investigations, such as investigations by Police Commissions into specific instances of police intervention (usually those involving a shooting by a police officer) are another form of inquiry, and even regular police investigations can be considered a form of inquiry.

A final type of inquiry mechanism, which is meant primarily to provide ongoing advice on matters of public policy, is exemplified in the plethora of advisory bodies established either by Parliament (as in the case of the former *Law Commission of Canada*) or by the executive or a particular Ministry (for example, the *Science, Technology and Innovation Council of Canada*, an ongoing body which provides external policy advice and reports to the government). While these bodies perform a role similar to those *ad hoc* commissions of inquiry created to look into a major policy issue confronting the government (*Mackenzie Valley Pipeline Inquiry*, 1977), they typically do not have coercive powers and are mandated to make general policy recommendations to the legislature or to the sponsoring Ministry. Those reporting to Parliament have a degree of independence similar to commissions of inquiry, while those constituted by a Ministry are most often not given the same independence.

The differences between the many types of public inquiry mechanisms just reviewed can include the level of independence, the level of public involvement, whether or not findings and reports are released to the public, the procedures followed, as well as the overall objective of the inquiry. Part II, below, provides an overview of inquiries under the provincial and federal inquiry statutes and the features that distinguish them from all these other inquiry mechanisms.

Part II: Legal Frame ork of P ɹblic I q ɹiries ɹ der I q ɹiries Acts

This Part examines the current legal framework governing the constitution, management and reporting mechanisms of inquiries, as well as the judicially enforceable legal and constitutional controls over the manner in which they are established and ful f ll their mandate.

1. Scope a d P ɹrposes of I q ɹiries

What constitutes a valid matter for inquiry under Parts I and II of the Act?

As already noted in the Introduction, under Part I of the federal *Inquiries Act*, the executive has the authority to appoint a commission for matters concerning the good government of Canada and the conduct of any part of the public business of Canada. Under Part II, a Minister can appoint a commissioner to investigate and report on the state and management of the business of the minister's department, as well as into the conduct of employees of the department, as long as it relates to their of f cial duties.

To simplify, Part I is meant to be reserved for matters of public concern while Part II is aimed at investigating matters internal to a speci f c department. Although Part I inquiries are often emphasized in discussions of the federal *Inquiries Act*, some notable inquiries have been established under Part II, such the *Commission of Inquiry into Certain Events at the Prison for Women in Kingston*, 1996). In some cases, conversely, a matter that could have been the subject of a departmental investigation under Part II is referred to an inquiry established under Part I (Wilson, 1982). Part II inquiries are noted as being less formal than Part I inquiries and their reports are not always made public (Kernaghan & Siegel, 1995). There has not been, to date, a successful judicial challenge to the decision to appoint a Part I or a Part II inquiry, this matter apparently being left to the discretion of the executive.

During the *Commission of Inquiry into the Actions of Canadian Ofýcials in Relation to Maher Arar*, 2006, an inquiry constituted under Part I of the *Inquiries Act*, an attempt was made to challenge the jurisdiction of the inquiry on the basis that the phrasing of the executive order, and the fact that the Minister of Public Safety and Emergency Preparedness and not the Prime Minister had recommended that it be established, had the effect of constituting the inquiry as a legally impermissible hybrid of Part I and Part II inquiries. The commissioner rejected the challenge on the basis that the matters leading to the establishment of Part I and Part II inquiries are not mutually exclusive, that there is no speci f c language required in an executive order as long as the intention is clear, and that although it is usually the Prime Minister who recommends a Part I inquiry, this is not a legal requirement under the *Act* (*Arar Inquiry*, 2006).

Provincially, while *Inquiries Acts* differ from province to province, generally they contain a provision that the executive branch of the provincial government has the authority to appoint a commissioner to investigate into matters concerning the good government of the province, or matters which the executive deems to be of public concern. That is, most provincial statutes focus on inquiries that would, if created under the federal *Act*, be Part I inquiries.

In principle, the power to establish commissions of inquiry is limited to the subject matters that fall within the constitutional jurisdiction of the government that wishes to establish it. The application of the division of powers provisions of the Canadian constitution to the scope of inquiries appointed by federal and provincial governments will be covered below in Section 5 of this Part.

against named individuals. Examples of well-known Canadian inquiries that fit into this category are the *Commission of Inquiry into the Sponsorship Program and Advertising Activities*, 2005, 2006, the *Commission of Inquiry into the Facts of Allegations of Conpict of Interest concerning the Honourable Sinclair M. Stevens*, 1987 and the *Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, 1997. Similar limitations also apply to the recommendations of mixed policy/investigatory inquiries such as the *Commission of Inquiry into the Blood System in Canada*, 1997. Inquiries with an investigative function have been the subject of most legal analysis and critique since their processes and outcomes sometimes border on legal proceedings like grand jury investigations, and can have significant impact on the civil rights of individuals and organizations. These procedural protections for persons whose conduct is investigated by an inquiry will be discussed below in section 4 of this Part.

It is widely noted however, that many inquiries perform both an investigative and a policy function. For example, in making policy recommendations, a commission might have to consider past events, undertaking investigations and taking testimony under compulsion of law (OLRC, 1992; Trebilcock & Austin, 1998). Conversely, many investigative inquiries are also given the mandate to provide recommendations on how to improve policies and procedures so as to avoid similar events in the future. The exact mix of these two functions of an inquiry will depend on the specific terms of its mandate.

2. Appoi ti g P ıblic I q ıiries

A commission of inquiry under Part I of the Canadian *Inquiries Acts* may only be initiated through an executive order. In these inquiries, the executive appoints a commissioner to inquire into a particular matter on the recommendation of either the prime minister (which is usually the case), or on the recommendation of a particular minister (D'Ombrain, 1997). Under a Part II inquiry (a departmental investigation), the commissioner is appointed by a minister to inquire into a particular matter, although the authority to do so is provided by a minute from the report of a regular meeting of the executive (Anthony & Lucas, 1985).

he Executive Order

The executive order or instrument establishing an inquiry names the commissioner or commissioners who shall conduct it and sets out the terms of reference for the commission, as well as provides other directives to the commissioner. These other directives might relate, for example, to the manner of submission of the report, deadlines, the hiring and remuneration of commission staff and counsel, the participation of third parties in the inquiry and their funding, and specific rules relating to the disclosure of information. In cases where there is more than one commissioner, the executive order will specify who shall be the chairperson (or in rare cases such as the *Royal Commission on Provincial-Dominion Relations* (Rowell-Sirois), the *Royal Commission on Bilingualism and Biculturalism* (Laurendeau-Dunton), and the *Royal Commission on Aboriginal Peoples* (Dussault-Erasmus), which two commissioners will be co-Chairs). The overall budget of an inquiry is not set out in the executive order but is provided for in a separate executive document, although the salary of commissioners is specified by the initial executive order. Any modifications to terms established by the original executive order must be made through another executive order.

Inquiry Commissioners

In the past, sitting judges of the various Canadian courts were frequently appointed as commissioners, particularly for inquiries with an investigative mandate (Manson & Mullan, 2003). These are almost always drawn from the federally-appointed senior judiciary, including the Supreme Court of Canada (in the *Gouzenko Inquiry*, 1946, both Justices Taschereau and Kellock from the Supreme Court were appointed commissioners) although some provincial inquiries are headed by provincially-appointed judges. The appointment of sitting judges has been the subject of much debate and is somewhat less frequent today. On one side it is argued that judges bring knowledge, experience and impartiality to the inquiry process, and judges are generally well respected by the public (LRCC, 1979). On the other hand, involving a sitting judge in what may turn into a partisan political issue can threaten the independence of the judiciary, an important feature of the Canadian constitutional system. The reputation of the particular judge for impartiality can also be affected by his or her involvement in an inquiry.

Some countries prohibit sitting judges from conducting inquiries. Nonetheless, even in the face of such constitutional prohibitions in times of "national emergency" sitting judges have been permitted to serve on independent commissions of inquiry (for example, the *President's Commission on the Assassination of President Kennedy in the United States* was chaired by Chief Justice Earl Warren). The Canadian Judicial Council has published a protocol for the appointment of judges to serve as a guideline, and the federal *Judges Act* prohibits judges from receiving additional remuneration for conducting an inquiry.

Retired judges (frequently retired judges of provincial Courts of Appeal and the Supreme Court of Canada) are increasingly being appointed as commissioners. In the past fifteen years, for example, five recently retired Supreme Court judges have conducted inquiries. Other individuals with relevant expertise are also appointed as commissioners. Commissioners who are not members of the judiciary have included former politicians, law school deans, members of the legal community, and members of groups or communities affected by the inquiry. Former politicians are most often chosen to head public policy type inquiries that have a significant overlay of political sensitivity (for example, a former federal finance minister chaired the *Royal Commission on the Economic Union and Development Prospects for Canada*, 1985, and a former premier of the province of Saskatchewan chaired the *Royal Commission on Canada's Health Care System*, 2002. Legal

allocated, a separate request for additional funding must be made. As with extensions of time, however, it is customary for those requests for additional funding to be granted (Centa & Macklem, 2003).

Despite the protective framework of the *Inquiries Acts* and the several independence-reinforcing practices that have grown up around inquiries, they do not benefit from a constitutional or legal guarantee of independence like that which is granted to the judiciary under the Canadian constitution, notably section 96 of the *Constitution Act, 1867* as interpreted by the Supreme Court of Canada (*Provincial Judges Reference*). The central elements of judicial independence (not all of which are currently in place in Canada) are these: an a-political appointments process; life-tenure; a protection against reductions in salary and benefits; autonomy of administration of the judicial function; removal only for cause following a highly formalized process involving the participation of both Houses of Parliament (the House of Commons and the Senate).

Despite the public expectation of independence, reinforced when constitutionally-independent judges are appointed commissioners, many of the guarantees applicable to the judiciary (or their analogues) are absent from the inquiry framework. To begin, courts have emphasized that inquiries are created by the executive and are largely under the control of the executive. Through an executive order, the executive creates an inquiry, chooses a commissioner, determines the terms of reference, and fixes a reporting deadline. The executive can also amend the contents of an executive order on its own initiative by passing a new executive order, and may effectively terminate an inquiry in this way (*Dixon* v. *Canada*). Even though commissioners have a great deal of flexibility within their terms of reference as to interpretation and procedure, the executive order can be drafted in a way that allows the executive to tightly control what an inquiry is able to accomplish. Limitations of this type are enforceable in court should an inquiry informally attempt to enlarge its mandate. The executive also has the power to determine whether or not an inquiry report will be released to the public. Even though some provincial inquiry statutes make release of the report mandatory, there is still an allowance for sensitive information to be withheld.

Overt political interference in an inquiry, once constituted, has been rare in Canadian history, but it has occurred and when this happens it is likely beyond the reach of the courts to prevent. Normally, partisan politics, if present at all, are manifest in the definition of the terms of the inquiry and the choice of commissioners. Given the close relationship between the public expectation of independence and public confidence in inquiries, the failure to enact appropriate guarantees of independence can be seen as a major gap in the inquiry framework. This issue, as well as the manner in which, by conscripting judges, governments seek to use the principle of judicial independence to enhance the legitimacy of inquiries, will be considered in Part III, Section 2.

3. Powers and Procedural Aspects

While each inquiry is at liberty to develop its own internal procedures, there are certain powers and procedures which are outlined in the various inquiry statutes. To date, however, no Canadian jurisdiction has enacted a comprehensive *Administrative Procedures Act* or *Statutory Powers Procedure Act* to govern comprehensively public inquiries. The recent *Ontario Public Inquiries Act*, 2009 does, however elaborate in section 5-31 a detailed code relating to impartiality, information and evidence, witnesses, search and seizure powers, hearings, public participation, protection of participants and witnesses, and enforcement procedures including the power to punish for contempt.

Right to Notice and Counsel

Federally, the *Inquiries Act* requires that any individual being charged with misconduct must be given reasonable notice of the charge, and must also be granted the opportunity for a hearing before a report is made. The Supreme Court of Canada in *Canada (Attorney General)* v *Canada (Commission of Inquiry into the Blood System)* determined that notices must be as detailed as

possible, and must be issued as soon as possible, but that the point at which a commissioner will be able to issue notices will depend on the situation. Otherwise there is no requirement as to when a notice must be issued or what form it must take, and these elements have differed from inquiry to inquiry. The federal *Inquiries Act* also provides the right to counsel for anyone against whom allegations of misconduct are, or are likely, to be made. Other individuals under investigation may be granted counsel at the commissioner's discretion.

Provincially, statutes vary greatly and may include provisions that are not in the federal statute such as provisions on granting participation rights, on the type of hearings that should be held, on the immunity of commissioners (sometimes giving the same immunity as a judge of the court), the power to state a case before the courts, admission of evidence, and search and seizure. Conversely, some provincial statutes do not include the same rights as the federal statute, for example the right for persons charged to be represented by counsel. It is believed, however that the denial of counsel would be subject to judicial review (MacKay & McQueen, 2003). Some provincial statutes also omit the requirement of notice for charges of misconduct, but notices would still likely be required based on the judicially-developed principles of procedural fairness (Ratushny, 2009).

Evidence

The federal and all provincial inquiry statutes give commissions various powers with respect to evidence. They usually do not have the power to compel the production of documents covered by executive privilege, but are authorized to summon witnesses and require them to testify, as well as to require the production of documents. The extent of such powers, especially when exercised in connection with an inquiry that has the mandate to attribute opprobrium for past conduct, and the right of witnesses to refuse to testify, are the subject of much debate and will be discussed in Section 5 below.

Report/Recommendations

Most executive orders establishing inquiries require that, following the inquiry, a report be submitted to the executive or, in the past, sometimes to Parliament (Anthony & Lucas, 1985). Recently it has been the practice that the Report is submitted to the executive, rather than directly tabled in Parliament. In some provinces, the inquiry statute states that reports will be released to the public. However, in other provinces and federally, unless the executive order specifically provides that the report be made public, the government retains the discretion whether or not to release the report. Even so, most reports are released to the public. In some situations, parts of a report might be censured, for example because it contains information considered secret (Wilson, 1982; *Gouzenko Inquiry*, 1946).

It is often noted that the recommendations resulting from inquiries often do not get implemented, and this is used to support the argument that inquiries are an ineffective tool of governance. Similar arguments are also made about Reports issuing from institutionalized investigation, inquiry and recommendatory processes such as Law Reform Commissions. It is interesting, however, that there is significant uptake of recommendations from coroners' inquests, perhaps because the events giving rise to the inquest are well-defined specific instances and the recommendations tend to be specific and not particularly costly to implement. Whether implementation of recommendations is appropriate as a measure of the success of an inquiry will be examined in Part III, section 1, below.

4. Public Inquiries and Private Rights

It is inherent in investigatory processes, particularly when the investigation is triggered by an allegation of official wrongdoing or a tragic event – for example, a food, a mining disaster, a bridge collapse, or a transportation accident – that certain individuals, groups or organizations may be singled out for censure. Unlike a civil or criminal trial in which defendants or accused

Even if inquiry recommendations are disregarded, there is still value to be found in the process and findings of the inquiry. For example, public inquiries often influence the future behaviour of government officials (Ratushny, 2009), and sometimes inquiries can have unanticipated effects on policy and practices. The process of engagement with Aboriginal peoples during the *Mackenzie Valley Pipeline Inquiry*, 1977 modeled, and created expectations about, the way government should consult with Aboriginal people on resource development. These practices have now become standard practice in all such negotiations with Aboriginal people.

Still other commissions, for example the *Commission on the Non-Medical Use of Drugs*, 1973, the *Royal Commission on the Economic Union and Development Prospects for Canada*, 1985 and the *Royal Commission on Aboriginal Peoples*, 1996, all produced a considerable amount of valuable research. This research was not constrained in the way that policy research within government departments or by academic investigators working under government contract typically is, and also unlike such in-house or commissioned research, it was immediately put into the public domain.

Finally, some have argued that in many cases, the primary role of an inquiry is to enable a society to engage in a process of catharsis, either following a period of great social upheaval (as in Truth and Reconciliation Commissions) or when a society is in the process of accommodating itself to a new reality (as in the case of the *Royal Commission on Bilingualism and Biculturalism*, 1970). In such

The three Canadian reports also addressed issues of individual rights and recommended protections such as immunity for commissioners and commission counsel and protection for witnesses similar to that in judicial proceedings. The Law Reform Commission of Canada proposal included recommendations such as the right to counsel for all witnesses, immunity from defamation action for witnesses, and the right to call witnesses for those being charged with misconduct. The Alberta proposal also included protections such as immunity for witnesses and the right to be represented by counsel, while the Ontario proposal included the right, subject to narrow exceptions, not to self-incriminate.

All three proposals aimed at encouraging public participation through open and transparent inquiry processes, outlining situations when commissions can hold hearings *in camera*, providing guidelines for individuals and organizations interested in participating, as well as attempting to ensure that inquiry reports are released to the public. The Ontario and Alberta proposals specifically addressed the issue of independence, with the Alberta report recommending that a provision on independence be specifically included in a new inquiry statute, while the Ontario report recommended that independence be a guiding principle of public inquiries. The Law Reform Commission of Canada report did not make any specific recommendations for independence, but some of its procedural recommendations appear to be an attempt to ensure independence.

Not surprisingly given the fact that inquiries frequently taken much longer to complete than initially contemplated in the executive order, and often run over-budget, a common theme of each Report was the need to increase the efficiency of public inquiries. None of the three reports made any specific recommendations regarding the role of judges as commissioners of inquiries, although this issue has been the subject of extensive debate in the literature, as noted earlier.

Finally, the proposal from the Alberta Law Reform Institute included a detailed recommendation related to when judicial review of inquiry decisions should be permitted, while the view of the Law Reform Commission of Canada was that judicial review of public inquiries should be governed by the general law relating to judicial review of administrative action.

Despite the consistency of the recommendations of these reports, neither the Parliament of Canada, nor most provincial legislatures have amended their *Inquiries Acts* in consequence. Only the province of Ontario, which enacted a totally revised *Public Inquiries Act* (that came into force on June 1, 2011), has significantly recast its public inquiries legislation. This statute, adopted in conjunction with the *Good Government Act* in 2009 incorporated a number of structural and procedural proposals meant to codify the rights of participants in an inquiry process. Even though the Act sought to incorporate the latest thinking about the scope, function, processes and judicial oversight of inquiries, it has been criticized, primarily on the basis that it gives the government too much control over commissions, limiting their independence and constraining their capacity to conduct truly impartial and independent policy and investigative inquiries.

4. The Political Economy of Public Inquiries

of powers doctrine (Carver, 2008). While the independence of the judiciary is an important characteristic of the Canadian constitutional system, there is no strict doctrine of separation of powers in Canada, and nothing to prevent judges from performing executive functions. This is not the case in other jurisdictions, for example in the United States where the constitution would not permit it (*Re Residential Tenancies Act*). However, having a sitting judge as an inquiry commissioner is certainly not necessary, and many Canadian inquiries are headed by individuals who are not members of the judiciary. On the other hand, in Canada the involvement of judges, specifically in investigative inquiries, has been an important source of public confidence in inquiries. In this light, retired members of the senior judiciary may well be an adequate substitute for sitting judges as inquiry commissioners.

The existence of mechanisms to protect individual rights should be considered essential to the proper functioning of commissions of inquiry. The coercive powers granted to commissioners, despite the criticism, are generally considered necessary to ensure that commissioners obtain the information required to carry out an investigation. Such powers do have a serious impact on individual rights, and therefore it is necessary that all those involved be protected. In Canada, public inquiries are subject to the *Canadian Charter of Rights and Freedoms*, and also to certain rights in the *Canadian Bill of Rights*. Other statutes, such as the federal *Evidence Act* also provide protections to inquiry participants. An independent prosecutorial service may also important in ensuring that serious infringement of individual rights does not occur. Inquiries can generate pressure to charge and convict individuals (Fitzgerald Inquiry, 1989) even though the goal of inquiries is not to act as a substitute for judicial proceedings. Without a strong and independent prosecutorial service there is a risk that an inquiry might infame public pressure for criminal proceedings rather than serve to provide a dispassionate report that can be assessed and acted upon, if necessary.

The role of commission counsel is also important in ensuring the legitimacy of an inquiry (O'Connor, 1990). Particularly in investigative inquiries where commission counsel is responsible for cross-examining witnesses; a task which is adversarial by nature and which if undertaken by the commissioner, would compromise the perception of the commissioner's impartiality. Sometimes this role means they do not participate in drafting the final report (Ratushny, 2009).

The free flow of information within civil society is also necessary for inquiries to be effective. As has been noted, much of the value of public inquiries lies in their ability to inform and educate the public. However if information is not accessible, there is no guarantee that the public is receiving accurate information, or any information at all. The media is crucial to providing information on public inquiries, and can even be involved in initiating calls for a public inquiry. An independent media is therefore another important institution in ensuring that inquiries can achieve their public information and education function (Fitzgerald Inquiry, 1989).

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