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## The Québec Advisory Council on the Administration of Justice Le Conseil Consultatif de Justice

Maxwell Cohen

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Among the classical problems of democratic government perhaps few are so continuing in their challenge to the political imagination as the creation of better methods to balance the interests and the strategies of the governors and the governed. While in a loose sense democratic systems posit the notion that 'sovereignty' lies with 'the people' it is not without significance that the New Left and their varied allies now employ "power to the people" as a slogan that becomes a critique of the conventional machinery of representative government. For these reasons there are to be found, increasingly, in many western democratic countries varieties of institutions that attempt to better 'communication' between citizen and officeholder, and perhaps more important than communication, methods that attempt to increase the participatory input into the decision-making sector by the public, or technically competent portions of it.

These forms of "participation" cover a wide spectrum. They run from purely private sector, volunteer groups exercising an influence through the quality of their public statements or research, or through the ability to mobilize opinion, to the other end where government itself creates advisory bodies with the specific intention that they should provide the state systematically with a critical evaluation of programs and/or with new ideas often parallel to the established bureaucracy as a staff but not a line function. Even where government designs such para-official systems, these vary greatly in their duties, powers and status. A good example of this new predisposition towards advisory bodies and the scope of their authority and function would be to think of the role of the Economic Council of Canada, or the Science Council of Canada. These two entities have a permanent legislative

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\*Maxwell Cohen, Q.C., Macdonald Professor of Law, McGill University; President, Québec Advisory Council on the Administration of Justice.

mandate with substantial research and advisory powers buttressed by the image of a stern independence. They stand in contrast to the many *ad hoc* advisory groups, particularly on the scientific side, to be found at the federal level at least, in such departments as Environment Canada where their role is limited and temporary.

Examples in the private sector are too numerous to recount here but almost any national organization representing consumers, trade unions or business, native peoples or cultural interests, now express themselves in useful and often very controversial research and statements to found their case for funding or more general changes in public policy.

A public sector advisory council or committee is, of course, usually much more restricted in its program and purposes and naturally does not have the wide-ranging freedoms that are usually associated with private groups making their case both to government and to the public. At the same time the complexity of government introduces new paradoxes into this consultative process. On the one hand government needs more and better experts for the increasing variety of interventionist activities, from pollution to economic development, from health to crime and rehabilitation. These officials must do the research and thinking required before political action can be taken. On the other hand the public demands a greater share in decision-making than ever before and politicians tend to promise electors more opportunities as part of the image they wish to 'sell' to make their parties attractive to the modern voter. Similarly, not all wisdom lies with the bureaucracy, even if great responsibility does. It is to the advantage of both government and the public that other sources be tapped for creative thought in many technical and policy areas and that equally, such groups be used as mechanisms to evaluate government programs themselves with a degree of objectivity, plus the sympathy that may not always be present at the private sector level where there may be a special 'axe to grind' as part of the program of the interests concerned. Nevertheless so much good has come from the private sector in action that it would be quite wrong to calculate the balance between para-official advisory agencies as against private groups in terms of the quality of their contribution. It is enough to say that there is a sufficient shortage of skill and wisdom considering the

magnitude of human problems ahead that any sensible government should be ready to receive knowledgeable, well-considered views whatever the source.

From these general observations it is a short leap to reflect on the rise in official advisory agencies of many types, within recent years, at both the federal and provincial levels. In Québec, for example, the Superior Labour Council, an agency that included representatives of labour, and management, has been functioning for almost two decades. An economic advisory council has had a role, if not too conspicuous a one, for almost the same length of time. Advisory bodies have appeared in the fields of welfare and education within the past seven or eight years.

It is significant, however, that until the late 1960's 'outside' legal advisory activities in government, created specifically for such purposes, have been exceptional. While the Uniformity Commissioners have functioned for a very long time law reform commissions are a creation of only recent years in most provinces and the use of general advisory committees to aid governments at the provincial or federal level, on questions concerning the administration of justice, remained relatively rare. Indeed, it is this rarity which renders so conspicuous the Québec Advisory Council on the Administration of Justice. It was the first advisory council established by a provincial government, in a Cabinet Order in 1955, and to the best of this writer's knowledge it remains today the only advisory council of its kind, not engaged in law reform commission work as such, but in a continuing review of the general state of the justice system.

Its origins are the happy accident of a resolution adopted by the Québec Sub-section on Criminal Justice of the Canadian Bar Association when the Québec branch of the Association met, in May of 1964, in Québec City. There the analogy was drawn in debate between the emergence of advisory arms of government in other sectors, but not in the area of the administration of justice, and the Sub-section concluded that the time was ripe for the creation of such a council in Québec. It is to the credit of the Hon. Claude Wagner when he became the Liberal Minister of Justice in December of 1964 that he invited those who had proposed the scheme at the Canadian Bar meeting in the previous May — when he was present and at the

time a Judge of the Court of Sessions – to formulate plans for such an agency to be sponsored by the government of the day. By April of 1965 the Québec Advisory Council was established (now titled “Le Conseil Consultatif” it no longer has representatives from the universities as it did formerly) with 21 members including the Deputy Minister of Justice and other senior civil servants. Most important the terms of reference were broad enough to include all aspects of the “administration of justice” in Québec and membership on the Council was drawn not only from the Bar and law schools, but from the general public and the behavioural sciences. Almost half the membership were non-lawyers and this influenced both the interests of the Council and the character of its work – sociologists, psychologists, penal reform experts, etc. The Bar itself was represented by distinguished members with experience as defence counsel, crown prosecutors and in labour relations. Only judges were excluded as the May 1964 Resolution had requested. By good fortune although the Council began with no legislative basis – only a Cabinet Minute as its cachet of authority – it had something perhaps more important namely a prestigious and capable counsel as its first chairman, Maître Jean Martineau, Q.C., an acknowledged leader of the Québec Bar and a former member of the Court of Appeal. The breadth of the membership was further emphasized by the appointment of Mme Thérèse Casgrain as Vice Chairman for she was by all odds the best known woman leader in the Province and a vigorous if controversial advocate of women’s rights and civil liberties in general.

Without a fixed budget and only a very general mandate, the Council was serviced by the Department of Justice and initially developed most of its program through requests from the Department that certain subjects be studied. Two points should be noticed here: first, that the Council was primarily ‘responsive’ rather than ‘initiative’ in its approach to its work and, indeed, in these early days it seemed natural to give priority to subjects where the government believed such “outside” advice was urgent. Second, there was no systematic research program or facilities for it although the government would from time to time authorize individual studies by farming them out to academics etc., whenever so requested by the Council. The Secretariat of the Council was ably filled by a

member of the staff of the Laval University Faculty of Law, later its Dean and presently the Public Protector (Ombudsman) of Québec.

With broad terms of reference, a tendency to work on subjects in response to requests from Government, no formal secretariat or permanent research facilities, the Council developed the technique of the internal dialogue rather than extensive external research as its primary operating method. Good examples of its early work and its procedures are to be found in the lengthy discussions which took place in 1965 and '66 to consider the principles that should underlie a new police act for the province, one that would embrace all public and private police services, establish an administrative and disciplinary commission and set guide-lines for standards to be applied in the recruitment, training and administration of policemen and police forces. The Council led by Maître Martineau hit upon the practical and successful device of not trying to draft legislation but only to agree on the main principles that the Council would recommend to Government.

With the wide experience around the table including police officials, crown attorneys, defence counsel, probation and penal experts etc., there was a quite serious level of technical wisdom altogether apart from the lay sensibilities about the police, their image and function – all of which came through the discussions often from sensitive general members of the Council such as Mme. Casgrain.

Other projects followed over the years: a study of the Ombudsman and recommended principles for his office; a revision of the Coroner's Act with new limits on the Coroner's rather extraordinary powers to detain and to conduct proceedings with limited procedural safeguards; legal aid schemes; victims of crime and compensation. Some of these studies were reinforced by limited outside research and consultation but mostly they reflected a continuing dialogue at meetings held usually once every four to six weeks and out of which would come recommendations, on principle, to be then carried forward by the Ministry as it saw fit. Not all of the recommendations were, of course, accepted, but the impact of the work of the Council, always cast in the form of recommended ideas or principles, was noticeable in the legislation that followed in these areas.

Some dissatisfaction was felt in the latter nineteen sixties and early seventies with the Council's excessively informal structure and powers. This stemmed partly from a decline in the intensity of its activities for a year or two although both the Union Nationale (as well as the Liberal Government) gave the Council considerable support despite the change in Government. By 1970/71 it was clear, however, that the Council would be better founded if it rested on a more precise legislative base. Accordingly in 1971 the Québec Assembly enacted a Statute creating the Council with a President and Vice-President plus a membership totalling 16 from various categories, professional and non-professional, all to be appointed by the Lt. Governor in Council. The two principal changes from the old to the new system perhaps were first, the composition of the Council which was made quite rigid in the various sectors to be represented — the Bar, the universities, agriculture, labour etc., and, second, that while the Council was now to have a secretariat, a budget and research assistance, studies to be undertaken by the Council would first have to receive the permission of the Minister of Justice. Its annual report to the Minister and all studies were required to be made public.

The Council has now proceeded under its new statute for two years. Presently it meets once every four weeks, is quite well served on the secretariat and research side by Ministry personnel and has a modest but reasonable budget. One of the difficulties now being encountered, however, is a tendency to choose subjects which often require considerable research, and the documentation may be reaching the point where busy members do not have the time to study the material in detail. Similarly, the Government tends to expect of the Council that it will give a priority to ministerial requests and this priority may or may not interfere with the line of development of major interest to the Council itself — although there is little evidence yet that the Council does not in fact do both tasks without difficulty, namely meet the government priorities and develop its own lines of thought and discussion.

Finally the Council is about to embark on a number of projects which touch on the foundations of the administration of justice itself: the efficiency of the Courts, the training of judges, the adversary system; a re-examination of the role of the police and custodial systems. All of these areas are likely to

occupy increasingly the concern of the Council. Happily they coincide with the priorities envisaged by the Government itself as important for its future programs.

Almost ten years have elapsed since the idea of the Council was first presented to the profession and the public in Québec and adopted soon thereafter by Government. On balance, with slim resources and non-permanent or full-time secretariat personnel, and with some substantial turnover in its membership, the Council has been able to provide both creative proposals and sounding board functions to Government, functions which would be otherwise difficult or even impossible to perform at the official level itself. There is room for advisory councils on the administration of justice as there is for such councils in the many other fields, scientific and social, where they now operate both federally and provincially. The surprise to the Québec observer is the slowness with which the experience with the Council in Québec is being responded to elsewhere in Canada. Perhaps the rise of the Law Reform Commissions may have distracted attention from the utility such a council might serve. There is no doubt, however, that an advisory council transcends the law reform process itself and becomes a sentry standing over, and an energizer touching, the justice system as a whole.