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MacDonald Commission

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Comment on Inquiry Management

*J.G. Godsoe, Q.C.**

I think whether the commission is a policy commission or an investigative commission or both, as the case was with the Ocean Ranger Inquiry, a commission almost inevitably is drawn into an adversarial context. I think in the case of an investigative commission, the parties, who have interests at stake that are being investigated and adjudicated upon, will tend, over time, to start to question the validity of the commission. Likewise, a policy commission frequently is criticized as soon as it is announced or, as in the case of the MacDonald Commission, even before it was announced as being a dodge behind which the government of the day is hiding because it has a failure of public policy. This adversarial context exacerbates the difficulty of managing what is a difficult process even without the glare of the adversarial context.

With the MacDonald Commission, the mandate was not the subject of extensive consultation. I think very few people were involved in the development of the MacDonald Commission mandate and we were able to insert three clauses which I would recommend to those who are developing commission mandates. One was the sunset clause. It really does help if you have a finite duration because there is always a tremendous trade-off between speed and efficacy and, on the other hand, quality. Always your researchers will be telling you, "for God's sake, if you only give us six more months or another year or even six more weeks, it can make a big difference on quality."

* Secretary to the MacDonald Commission

The second clause was a right of access to government documents. Certainly, if you are a policy commission, this is a very helpful tool. And we wrote that before the deputy ministers of the Government of Canada were able to see the clause and there was, I think, a level of consternation once they saw that we had the right to have everything, except actual recommendations to cabinet.

The third clause was what I would call, rather lightly, the right to publish. You do not really have the right to publish because you are delivering a report to the Governor-in-Counsel and that is your mandate under the statute. What we inserted, and it has not been challenged, was the right to publish our research. I cannot really imagine that any government would refuse to publish the report itself. That would be surprising, although the MacDonald Commission certainly was wondering what would happen in the fall of 1984 when a new government came to office and had to make the very difficult decision of whether to allow the work of the MacDonald Commission to continue or to wrap up the Commission.

Our organization was very much like the Part II Ocean Ranger organization. We had a research stream. We had a hearing secretariat. We then had a very small group called "policy" which had a specialized function. We had an administrative group headed by a superb former Privy Counsel officer, Harry Stewart, who came out of retirement. I certainly would underline the tremendous help that a former bureaucrat can be in any commission – a bureaucrat who understands how government has to be administered from a financial and a contracts point of view. It keeps you on the straight and narrow. Essentially, we had no commission counsel because the commissioners themselves chose to do the interrogation of witnesses during the public hearings.

One question which was raised last night was the question of value for money. Certainly one test is whether answers are produced and the normal test for a policy commission is, "are their recommendations ever implemented?" That sounds like a good bottom line test, but I would argue that is not an accurate test of the value of policy commissions; and virtually every commission turns into a policy commission because, with investigative commissions, not only are the specific questions responded to, but most investigative commissions place their answers in a broader policy context. I think that is always very helpful.

I would not suggest that the main test of the usefulness of a commission is to tally up the recommendations that were adopted by government within the next five years and those that were not. Far more important is, "did the work of the commission influence the course of public policy?", a much more difficult question to answer. It is a deeper question and it relates to values and to public policy formation. It also relates to process and I will not go into that except to pose the question and to suggest that the response to the utility of the

commission and public policy is a far more complex one than that normally suggested.

The second value for money is the body of research which is, in fact, published and made available. In these times of university cutbacks and research and development cutbacks, the publication of research, I think, is even more important than it was, say, ten or 20 years ago.

The hearings, themselves, in public policy commissions tend to pull together the players on a particular issue. They force those players to listen to one another. They force those players, particularly umbrella organizations, chambers of commerce and the like, to pull their own membership together on a particular public policy issue. For example, for our inquiry, the Canadian Manufacturers Association pulled together their organization and produced a kind of a blueprint for the future which, they told us, simply would not have been possible but for the existence of the commission and the requirement of their membership to make a submission.

I would argue that the personnel of the commission and of the other players who submit to the commission or appear before the commission is another legacy of royal commissions. And I will not dwell on that, but I think if one looks at the personnel who have been involved in various royal commissions, one can see that they have then gone on to make contributions in public policy or in private life, and I think that there is a legacy, a networking capability which some may think is more important than others.

Finally, I would agree totally that you should think early and often about the form and the substance of your report. We had 13 commissioners to sign off on our final report covering three volumes and a bewildering variety of topics. The only way you can do that is by evolving a strategy and trying to get the commissioners and the senior staff together on that strategy very early and then sticking to it.

In the end, you certainly cannot manage the inquiry without producing the report, so the job of the commission secretary, if nothing else, is to make sure that report is produced and then it is up to the chairman and the commissioners to sign it, alter it, or throw it out and cause you to begin again.

