THE UNIFORM LAW CONFERENCE OF CANADA

CIVIL LAW SECTION

A PUBLIC INQUIRIES ACT

ISSUES PAPER

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FOREWORD

At the 2002 Uniform Law Conference Meetings in Yellowknife it was resolved that a paper should be prepared identifying issues and containing recommendations intended to serve as the basis for a ***Uniform Public Inquires Act***. I am pleased that Professor Alastair R. Lucas, Professor of Law, University of Calgary, agreed to undertake the work of preparing the paper and to discuss the shape and content of his paper with a Working Group charged with providing critical comment as the work progressed.

Members of the Working Group were: John Briggs, Nova Scotia; Arthur Close, Q.C., British Columbia; Christopher Curran, Chair, Newfoundland & Labrador; Professor Lucas, Alberta; Sunny Kwon, Ontario; Peter Lown, Q.C., Alberta; Darcy McGovern, Saskatchewan; Paul Nolan, Newfoundland & Labrador; Russell Getz, British Columbia; Tim Rattenbury, New Brunswick; Lynn Romeo, Manitoba; Frederique Sabourin, Quebec; Kelly Ann Speck, British Columbia; and Gregory Steele, Q.C., British Columbia. The Working Group met five times by teleconference call. Discussions were always lively as the Minutes attest. It was decided early on that the focus of the Paper should be on public inquiries as instruments of public government and not on the various other forms of inquiries that have arisen in recent times as mechanisms to review the conduct of public business. Professor Lucas' paper reflects this focus. The Working Group urged Professor Lucas to include specific recommendations in his paper despite a lack of clear consensus on certain issues in order to promote and facilitate a broad debate by the delegates at the conference.

On behalf of the Conference I would like to thank Professor Lucas for his insightful paper. I would also like to thank the individual members of the Working Group for their dedication throughout the year. Finally, I would like to acknowledge the research assistance of Anthony Lucas, B.A., LL.B and the work of Shirl Roch in preparing and formatting the paper.

Christopher P. Curran, Chair
Working Group on Public Inquiries

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1. History of Inquiries - Lessons Learned - Retention of Public Inquiries

[1] The history of public inquiries has been amply reviewed by the federal,[1] Ontario[2] and Alberta[3] law reform bodies and by numerous scholars. Though the frequency of inquiries has varied over time periods, it is clear that the inquiry mechanism has been extensively used by federal and provincial governments over a long period of time. There is evidence that costs and duration of inquiries, particularly of investigative inquiries, has increased.[4] Inquiries are often responsive to particular public events or concerns. They can be created quickly and with relative ease by decisions of the Executive. Though the language of appointment powers in the various inquiries acts varies, generally the scope of inquiry subjects is extremely broad, encompassing matters of good government, conduct of public business, the administration of justice[5] and generally matters of public concern, constrained only by the limits of constitutional jurisdiction.

[2] Inquiries as an institution have been criticized. But, as the Alberta Law Reform Institute noted,[6] most criticisms concern inquiries that focus on specific events and the actions and responsibilities of particular persons in relation to those events. Some concern is directed to the relative expense and the time consumed by inquiries. Thus, the core concerns tend to be about potential costs, process issues relevant to protection of rights and inquiry management, rather than about the appropriateness or effectiveness of inquiries as an instrument of public government.

[3] An important observation that arises from a review of inquiry history is that public inquiries are unique instruments. In particular, they are flexible, easily created, independent (or perceived to be independent) of government and they carry weight in the public and thus in government policy making. Though there are other forms of inquiry, including inquiries in the criminal justice field, inquiries by government officials into the conduct of public business and inquiries by regulatory agencies into matters within their jurisdiction, in all of these cases inquiries are limited[7] by agency jurisdiction or objectives, by relative lack of independence, by resources or expertise available or by lack of coercive investigative powers.

[4] It must also be recognized that inquiries are political instruments. Governments use them for policy advice, but also to insulate themselves from difficult or unpleasant issues or to seek vindication where government credibility has been attacked.[8] Their flexibility, ease of creation and relative public credibility make public inquiries attractive instruments for these purposes.

[5] There has been debate about appropriate qualifications for commissioners. Arguably, the process experience and independence of judges make them ideal candidates. However, politically charged inquiries may put judicial reputation at risk and technically expert or representative commissioners may be most appropriate in certain circumstances. If an inquiries act is to address qualifications at all, it may be best to address only fundamental qualities including general qualification, reputation and

independence.[9]

[6] All of this strongly suggests that there is a continuing role for public inquiries and that the challenge for drafters and legislators is to strike an appropriate balance between flexibility and efficiency of inquiries and protection of the rights of individuals affected by their processes.[10]

Recommendation 1:

(a) The institution of commissions of inquiry should be retained and inquiries should be authorized under inquiries acts that are clear, effective and to the extent considered appropriate by governments, uniform.

(b) Public inquiries may be established in relation to matters of good government, conduct of public business, the administration of justice and generally, matters of public concern.

- Jurisdiction includes Good Government of Province (or Canada) (including "Peace, Order and Good Government")—Federal (s. 2), Alberta (s. 2), British Columbia (s. 8), Manitoba (s. 83(1)(a)), New Brunswick (s. 2), Newfoundland and Labrador (s. 2(1)), Ontario (s. 2), Prince Edward Island (s. 1), Quebec (s. 1), Saskatchewan (s. 2).
- Jurisdiction includes public business—Federal (s. 2), Alberta (s. 2), British Columbia (s. 8), New Brunswick (s. 2), Northwest Territories (s. 2), Newfoundland and Labrador (s. 2(1)), Nunavut (s. 2), Ontario (s. 2), Prince Edward Island (s. 1), Quebec (s. 1), Saskatchewan (s. 2), Yukon (s. 2).
- Jurisdiction includes industries—Newfoundland and Labrador (s. 2(1)).
- Jurisdiction includes municipal matters—British Columbia. (s. 8), Manitoba (s. 83(1)).
- Jurisdiction includes cost and retail price of goods—Prince Edward Island (s. 1).
- Jurisdiction includes public health—Quebec (s. 1).
- Jurisdiction includes welfare of population—Quebec (s. 1).
- Jurisdiction includes elections—British Columbia. (s. 8), Manitoba (s. 83(1)).
- Jurisdiction includes administration of justice—British Columbia. (s. 8), Manitoba (s. 83(1)), New Brunswick (s. 2), Newfoundland and Labrador (s. 2(1)), Ontario (s. 2), Quebec (s. 1).
- Jurisdiction includes campaign contributions—British

Columbia. (s. 8).

- Jurisdiction includes provincial institutions—Manitoba (s. 83(1)).

- Jurisdiction includes any matter of sufficient concern to the public—Alberta (s. 2), Manitoba (s. 83(1)), New Brunswick (s. 2), Northwest Territories (s. 2), Newfoundland and Labrador (s. 2(1)), Nova Scotia (s. 2), Nunavut (s. 2), Ontario (s. 2), Saskatchewan (s. 2), Yukon (s. 2).

(c) The Governor in Council or the Lieutenant Governor in Council should have power to establish inquiries, define their terms of reference, appoint commissioners and replace commissioners where necessary as a result of resignation or incapacity.

- Cabinet establishes — Federal (s. 2), Alberta (s. 2), British Columbia (s. 8), Manitoba (s. 83(1)), Northwest Territories (s. 2), New Brunswick (s. 2), Newfoundland and Labrador (s. 2(1), Nunavut (s. 2), Nova Scotia (s. 2), Ontario (s. 2), Prince Edward Island (s. 1), Quebec (s. 1), Saskatchewan (s. 2), Yukon (s. 2).

- Cabinet appoints commissioners — Federal (s. 3), Alberta (s. 2), British Columbia (s. 8), Manitoba (s. 83(1), Northwest Territories (s. 3), New Brunswick (s. 2), Newfoundland and Labrador (s. 2(1)), Nunavut (s. 3), Nova Scotia (s. 3), Ontario (s. 2), Prince Edward Island (s. 2), Quebec (s. 1)), Saskatchewan (s. 2), Yukon (s. 3).

- Cabinet may indicate scope of inquiry — Newfoundland and Labrador (s. 2(2)).

(d) Commissioners should be qualified impartial persons respected in the community.

2. Independence of Inquiries; Authority of the Executive

[7] Public inquiries are often said to be independent. However, this statement may be more aspirational than factual. Nevertheless, inquiries are generally perceived to be independent of their appointing governments. The ALRI, OLRC and LRCC all support the idea of independence. But this independence cannot be absolute. It must be limited to individual commissioners being free of the control or direction of government and inquiry activities and operations not being under the control of appointing governments. *Dixon v. Canada (Somalia Inquiry Commission)*[11] confirmed that, in the absence of specific provisions in inquiries acts,[12] once established, inquiries remain subject to government control. As a matter of executive discretion:

- terms of reference may be changed or supplemented,
- reporting dates may be imposed or changed, and
- reports may not be released to the public.

[8] The ultimate constraints are political. In practice, as former federal Commissioner

Peter Desbarats has noted, "...questions of time and money are negotiated — particularly money."[13]

[9] It seems fundamental that once established, an inquiry should have sufficient independence to freely conduct its activities and proceedings and deliver its report for public release.[14] What independence matters then can or should an inquiries act address?

[10] Core values, accountability and transparency, would be maximized by commission input in allocation of funds, and by confirming commission budget responsibility and structuring executive discretion concerning commission reports. The objective is to create the conditions for avoidance of even the appearance of potential executive arbitrariness or evasiveness. There can, as the ALRI recommended, be statutory directions concerning inquiry budget preparation, including consultation with commissioners and a duty on the responsible minister to ensure that estimates are prepared and funds appropriated.[15] Once funds are allocated, spending should be in the discretion of the commissioners,[16] subject to reasonable expenditure controls, through schedules of fees and expenses that could be established by regulation.

[11] Though the executive has power to impose or to change a reporting date,[17] this should, for clarity, be spelled out in the act.

[12] The executive should, as the ALRI[18] and the OLRC[19] recommended, be required to table inquiry reports within a specified time. Section 14 of the BC Act requires tabling. The ALRI also made provision for deletion of report portions subject to a public interest test and indication of deletions in the tabled report. Only the Quebec Inquiries Act goes so far as addressing implementation, providing in s. 6 that when a commission has submitted its report, the government "shall order such action to be taken in the matter as shall be warranted by the evidence and report."

Recommendation 2:

(a) Following establishment of an inquiry and appointment of commissioners, the responsible minister should be responsible for ensuring that budget estimates are prepared in consultation with the commissioners and that the funds are appropriated.

(b) Once funds are allocated, spending should be the responsibility of the commissioners in accordance with any regulations respecting inquiry expenditure items and rates.

(c) Executive powers to establish or change inquiry reporting dates should be included in the act.

- Inquiry must be completed as soon as is convenient—British Columbia (s. 14(1)(a)).
- Provincial government will fix completion date—Quebec (s. 19).

(d) Once transmitted, inquiry reports should be tabled in the legislature within a specified time.

- Cabinet must produce report for legislative assembly within 15 days of receiving it — British Columbia (s. 14(2)).

3. Constitutional Limitations

Division of Legislative Powers

[13] Because inquiries are often directed to inquire into matters that involve alleged wrongdoing, the principal area of constitutional jurisdictional problems has been encroachment of provincial inquiries on matters of exclusive federal criminal law jurisdiction.[20] The most common issues have been police conduct and broader problems of law enforcement. Inquiry into matters concerning federal institutions has been held to be outside provincial jurisdiction.[21] More generally, a provincial inquiry cannot be authorized to exercise judicial powers analogous to those exercised by Superior Courts.[22] There are also limits on federal jurisdiction to authorize inquiry into matters of exclusive provincial jurisdiction. Examples may include provincial institutions and provincial natural resources and public property.

[14] It is always incumbent upon the federal or provincial executive to satisfy itself through its legal advisors that the subject matter of a proposed inquiry is within its legislative jurisdiction. This is no different than the need for constitutional law advice before government undertakes a wide range of actions. Is it necessary or appropriate to address this in an inquiries act?[23]

[15] The Alberta,[24] Manitoba[25] and Saskatchewan[26] acts, in their appointment provisions, specify inquiries concerning a matter "within the jurisdiction of the legislature." This goes without saying. The presumption of constitutionality operates. Though such a provision has little legal value, it does provide a reminder to the Executive, and perhaps to interest groups. The OLRC in its Report discussed constitutional law issues at length but made no direct recommendations. Overall, there appears to be little utility in attempting to address the division of constitutional powers in an inquiries act.

Canadian Charter of Rights and Freedoms

[16] Similarly, there is little reason to include provisions in an inquiries act that directly address the Canadian Charter of Rights and Freedoms or statutory bills of rights, including the Canadian Bill of Rights and the Quebec Charter of Human Rights and Freedoms. Potential review of certain inquiry process actions based on these constitutionalized rights should be available. Consequently, relevant rights and freedoms under these instruments must be taken into account in the design of provisions governing the conduct of inquiries. Process design matters that may raise potential Charter issues include coercive powers, contempt powers, and restrictions on hearings such as complete denial of all hearings and *in camera* hearings.[27] It is possible,[28] but unlikely, that mere

establishment of a commission to inquire into certain matters could infringe Charter protected rights.[29]

Recommendation 3:

It is not necessary to include provisions in inquiries acts that address constitutional division of powers or rights under constitutional or statutory bills of rights.

- Must be within jurisdiction of provincial legislature—Alberta (s. 2), Manitoba (s. 83(1)), Saskatchewan (s. 2).

4. Joint Inquiries

[17] One way to address potential constitutional limits on commissions of inquiry and to avoid potential duplication is interjurisdictional cooperation. In addition to joint federal-provincial inquiries, there could, in principle, be joint inquiries by several provincial or territorial jurisdictions. An example of a joint federal-provincial inquiry is the Canada-Newfoundland Commission on the Ocean Ranger Marine Disaster.[30] Joint inquiries with jurisdictions outside Canada could also be included.

[18] While it is possible that authority for establishment of such joint inquiries can be found in the Royal Prerogative or in departmental enabling legislation, it would be clearest to address this matter in an inquiries act. This has, for example, been done explicitly in federal and provincial environmental impact assessment legislation.[31] Joint impact assessment panel reviews founded on this authority are then based on specific interjurisdictional agreements on terms of reference and process. For an inquiries act, one approach exemplified by the ALRI's Report is negative (i.e. "nothing precludes ..." appointment of an interjurisdictional commission). Alternatively, as in the environmental assessment legislation, a positive provision could authorize the executive to enter into agreements for establishment of joint inquiries.

Recommendation 4:

The executive should be authorized to enter into agreements with other jurisdictions, including jurisdictions outside Canada, for the establishment of joint inquiries that meet the requirements of the act.

5. Judicial Review of Inquiries

Scope and Procedure

[19] The Ontario Act contains provisions for stated cases to the Divisional Court concerning "the authority to appoint a commission . . . or the authority of a commission to do any act or thing proposed to be done by the commission in the course of its inquiry."[32] There is a similar provision in Manitoba which covers questions concerning the "validity of a commission issued . . . or the validity of any decision order, direction or other act of a

commissioner . . ."[33] In Ontario, this procedure can be used either by commissions or affected parties. In both cases, proceedings are stayed until the issue is decided by the court.

[20] The Ontario provision has been narrowly interpreted to permit review of jurisdictional errors only.[34] A similar result would be likely for the Manitoba provision with its "validity" language. The LRCC expressed concern that abuse of process through repeated demands for stated cases would "probably be easy".[35]

[21] In other provinces, the ordinary principles and procedures for judicial review are available. Commissions of inquiry are included in the federal court judicial review provisions. It is likely that they come within the scope of bodies subject to judicial review under provincial judicial review procedure provisions or rules of court.[36] However, uncertainty could be resolved directly by an inquiries act provision that decisions, acts or omissions of commissions of inquiry are subject to judicial review on questions of law or jurisdiction.[37] The OLRC recommended retention of the relatively narrow stated case judicial review mechanism because previous procedural reform, along with its recommended reforms would give individuals significant procedural rights.[38]

[22] The idea of a special code for judicial review of public inquiries, including not just standing, but also grounds and remedies seems unrealistic. There has been relatively little enthusiasm for either general or subject-specific codification of common law grounds for judicial review.[39] However, administrative law developments have confirmed that many inquiry decisions, actions and omissions are subject to judicial review.[40] Commissions themselves may require the guidance of courts. Fairness and transparency require that this judicial review jurisdiction be available.

Limitation of Judicial Review - Privative Clauses

[23] If judicial review of inquiries is to be based on general law rights and remedies, the question arises whether inquiries acts should, in any way, limit such review. The Quebec Act contains such a limitation. Section 17 states:

> "No injunction or writ contemplated by articles 846 to 850 of the Code of Civil Procedure or any other legal proceedings shall interfere with or stay the proceedings of the commissioners in an inquiry."

[24] In Manitoba, apart from the stated case procedure, no action or other proceeding lies with respect to commission actions, plans or conduct.[41] The Ontario stated case provision, with its narrow scope, may also be viewed as having a privative effect.

[25] An important factor in considering whether this kind of privative protection for commissions is necessary is the standard of review that courts have applied in review of inquiry decisions. In judicial review generally, courts have made it clear that lack of a privative clause is merely one factor in the pragmatic and functional analysis to determine the standard of review for any particular decision under a statutory power.[42] They have reiterated that expertise is the most important factor. Courts have consistently concluded

that deferential standards, including patent unreasonableness, apply to commissions of inquiry.[43]

[26] Though the principles of procedural fairness have been held to apply to commissions of inquiry, the law is not completely clear.[44] While under the general law of procedural fairness, courts do not usually conduct an assessment to determine the standard of review, so that their effective standard is correctness,[45] a court reviewing federal inquiry procedures assessed standards of review and applied an "extremely high deference standard".[46] Courts do, however, use a functional analysis, considering the nature of the decision, the relationship between the decision maker and an affected person and the effects on that person, to determine whether the threshold for procedural fairness has been crossed.[47] If so, they apply a range of functional criteria to determine the appropriate content of procedural fairness in particular cases.[48]

[27] The result is that the deferential standards of review applied to inquiries by reviewing courts, even in the absence of privative clauses, along with the functional approach to procedural fairness rights, is likely to provide an appropriate balance between protection of inquiry processes and judicial review rights. If so, privative clauses in inquiries acts should be unnecessary.

Recommendation 5:

(a) Decisions, acts or omissions of commissions of inquiry should be subject to judicial review on questions of law or jurisdiction. This should not be by way of stated case.

- Commissioners state a case upon the request of a person affected by a commission appointment or decision — Manitoba (s. 95).
- Commission may state a case of its own motion or if requested by an affected person — Ontario (s. 6).

(b) Privative clauses should not be included in inquiries acts.

- No legal proceedings shall interfere with or stay inquiry proceedings — Quebec (s. 17).
- No action shall be brought with respect to a commissioner's activity — Manitoba (s. 95(4)).

(c) Commissions should have the right to apply to the appropriate court for advice and directions.

6. Efficiency and Fairness

[28] This is an overarching issue that involves a series of specific issues concerning scope of inquiry investigative and process management powers on the one hand and

protection of rights of affected parties on the other. An essential issue is the nature and scope of coercive powers of inquiries to compel testimony and production of evidence and to inspect or search premises and seize evidence. These investigative powers are fundamental if inquiries are to be effective and efficient in carrying out their duties.

[29] From the rights protection perspective, a key concern is whether witnesses should be permitted to refuse to give self incriminating evidence, or more fundamentally, whether persons should be permitted simply to refuse to testify. Important specific safeguard issues include prior notice and response rights for persons against whom a finding of misconduct or the equivalent is proposed to be made. Transparency, particularly whether public hearings must be held, is another issue.

[30] *Coercive Powers*: Powers to compel testimony and evidence appear to be necessary for inquiry effectiveness, though the relative need for such powers will vary depending on the nature (investigatory or advisory on a spectrum), subject and process of inquiries. Need for such powers may be revealed only when an inquiry initiates its investigation or research. Therefore, there is a good argument for including direct coercive powers in an inquiries act and not, for example, as the ALRI recommended,[49] relying on the Executive to decide whether to confer such powers on particular inquiries.

[31] *Search and seizure powers* should be framed to include judicial authorization in a manner that ensures consistency with protections provided by the Canadian Charter and other relevant rights protection instruments.[50]

[32] *Evidentiary Protections:* Given the need for effective investigative tools and the available Charter and evidence act protections, there is little justification for a right in an inquiries act to refuse to testify as recommended by the OLRC.[51]

[33] There is some uncertainty following the Supreme Court of Canada's decision in the *Westray* case[52] concerning rights of accused in criminal proceedings who were compelled to testify in prior inquiry proceedings. The prior testimony cannot be introduced at the trial, but evidence related to the subject of the inquiry testimony can be used if it would have been discovered in any event. It has been argued that either a more manageable test is required or that inquiries should await the completion of related criminal proceedings.[53] A blanket prohibition on use of inquiry evidence in subsequent proceedings would clearly address individual rights.[54] However, the public value of a timely inquiry is also significant. Sections 7, 11(d) and 13 of the Canadian Charter provides evidence use protections. On balance, it seems best not to attempt to resolve this issue in an inquiries act and to rely on constitutional protections.

[34] *Notice of Misconduct Findings*: A requirement for reasonable advance notice of an inquiry's intention to make findings of misconduct or the equivalent against individuals, and a right of effective response (orally, with representation and examination by a person's own counsel) is a fundamental protection. This is provided in 50% of the inquiries acts.[55] Developments in procedural fairness principles that emphasize functional assessment to determine fairness content[56] should give commissions the flexibility to provide appropriate fairness protection short of rehearing large amounts of inquiry

evidence, should notice of potential misconduct findings be given to a party late in an inquiry process.

[35] *Procedural Protection:* The Blood System Inquiry's procedural protections for parties outlined by Cory J. in *Canada (A.-G.) v. Canada (Commission of the Inquiry on the Blood System)*[57] and described as "eminently fair",[58] provide particularly useful guidance. However, it is important to note that the following statement by Cory J. was made in the context of a classic investigatory inquiry with a major focus on identification of potential wrongdoing:

> all parties with standing and all witnesses appearing before the Inquiry ha[ve] the right to counsel, both at the Inquiry and during their pre-testimony interviews;
>
> each party ha[s] the right to have its counsel cross-examine any witness who testified, and counsel for a witness who did not have standing was afforded the right to examine the witness;
>
> all parties ha[ve] the right to apply to the Commissioner to have any witness called whom Commission counsel had elected not to call;
>
> all parties ha[ve] the right to receive copies of all documents entered into evidence and the right to introduce their own documentary evidence;
>
> all hearings would be held in public unless application was made to preserve the confidentiality of information; and although evidence could be received by the Commissioner that might not be admissible in a court of law, the Commissioner would be mindful of the dangers of such evidence and, in particular, its possible effect on reputation.

[36] These fundamental procedural protections tailored to the particular inquiry circumstances and potential effects on individuals should be available to persons likely to be the subject of a finding of misconduct by an inquiry. More flexible and generally less stringent procedural requirements should apply to other inquiry participants.

[37] *Contempt Powers*: A commission's power to compel testimony and production of evidence must be supported by appropriate sanctions. It must also have the authority to deal with direct disruption of its proceedings. One possibility is a statutory offence.[59] However, the importance of timely compliance suggests that the more expeditious and flexible contempt power is a better alternative. Fairness and legitimacy values suggest that contempt powers should be invoked, not directly by commissioners as several inquiries acts now provide,[60] but by the court on application carefully formulated by a commission to address the specific contempt problem.[61]

[38] *Delegation by Commissioners:* Efficiency requires that inquiries should have explicit power to delegate powers to qualified persons to investigate, take evidence, and report to the commission. In carrying out their duties, these persons should have the same

powers and immunities as the commissioners. Inquiries should also have clear authority to engage staff that the commissioners consider necessary.

Recommendation 6:

(a) A commission should have the same powers as a court to compel testimony and production of evidence.

- All inquiries Acts allow commissioners to summon witnesses and require them to produce any document—Federal (s. 4), Alberta (s. 4), British Columbia (s. 15), Manitoba (s. 88(1)), New Brunswick (s. 4(1)), Northwest Territories (s. 4(2)), Newfoundland and Labrador (s. 2(2)), Nunavut (s. 4(2)), Nova Scotia (s. 4), Ontario (s. 7), Prince Edward Island (s. 3), Quebec (s. 9), Saskatchewan (s. 3), Yukon (s. 4).

(b) A commission should have search and seizure power based on prior judicial authorization, consistent with constitutional rights.

- Commissioners may enter and examine any public institution (departmental investigations only)—Federal (s. 7), British Columbia (s. 3).

- Commissioner may view any premises—Manitoba (s. 89).

(c) A commission should have power to apply to the court for contempt orders in relation to failure to testify or produce evidence and actions that disrupt its proceedings (contempt in the face of the inquiry).

- Commissioners have same contempt power as a superior court judge—Alberta (s. 6), British Columbia (s. 16(1)(b)), New Brunswick (s. 7), Quebec (s. 10).

(d) A commission should have explicit power to delegate powers to investigate, take evidence, and report to qualified persons who, for these purposes, should have the same powers and immunities as commissioners.

- Staff, authorized by order in council, have same evidence powers as commissioner—Federal (s. 11(3)), Newfoundland and Labrador (s. 5).

- Person sworn before a Justice of the Peace can take evidence—Alberta (s. 10).

- Deputies have same evidence power as commissioners—Manitoba (s. 93(3)), Saskatchewan (ss. 5(2)-(3)).

- With a judge's permission, a delegate can conduct a search

and remove documents—Ontario (s. 17).

(e) Commissions should be empowered to engage necessary staff.

- Provisions for inquiry staff—Federal (s. 13), Alberta (s. 3), British Columbia (ss. 13(a)-(b)), Manitoba (s. 93(1)), Northwest Territories (s. 10), Newfoundland and Labrador (s. 4), Nunavut (s. 10), Prince Edward Island (s. 3), Quebec (s. 3), Saskatchewan (s. 5(1)).

(f) A commission should not make findings of misconduct against a person unless, before such a finding is made, that person:

(i) has been given reasonable notice of the allegations and supporting evidence, and

- No report against any person until reasonable notice has been given and the person has a full opportunity to be heard—Federal (s. 13), Alberta (s. 13), British Columbia (departmental investigations only) (s. 4(2)), Northwest Territories (s. 7(2)), Nunavut (s. 7(2)), Ontario (s. 5(2)), Prince Edward Island (s. 7).

(ii) has been given a fair opportunity to respond to such allegations and evidence, including the right to counsel and a fair opportunity to present evidence, and the right to be examined by his or her counsel, cross-examine witnesses and make representations.

- Right to cross-examination with discretion of commissioners—Alberta (ss. 12-13).

- Right to cross-examination with a substantial and direct interest—Northwest Territories (s. 7(1)), Nunavut (s. 7(1)), Ontario (s. 5(1)).

- Right to counsel for any person being investigated—Federal (s. 12), British Columbia (departmental investigations only) (s. 4(1)), Prince Edward Island (s. 6), Yukon (s. 6).

- Right to counsel for any person appearing—Alberta (s. 11).

- Right to counsel for any person with a substantial and direct interest—Northwest Territories (s. 7(1)), Nunavut (s. 7(1)), Ontario (s. 5(1)).

- Full opportunity to be heard in person or by counsel—Federal (s. 13), British Columbia (departmental investigations only) (s. 4(2)).

- Right to respond orally at the discretion of

commissioners—Alberta (ss. 12-13).

7. Inquiries as Vehicles for Public Participation

[39] The importance of the "public" in public inquiries was clearly stated by the Salmon Commission,[62] and these sentiments were echoed by the ALRI report, which emphasizes the "openness principle."[63] This principle refers to the combination of public information and public participation reflected by inquiries. Although there is a strong interest in protecting the public nature of commissions of inquiry, recommendations by law reform bodies favour an approach that grants commissions much leeway with regard to public participation, especially when considering such issues as standing, oral hearings, and media involvement.

Standing

[40] Different inquiry acts may have different standing requirements for participants. For example, Alberta's broad "adversely affected" approach contrasts with Ontario's "substantial and direct interest" test. The OLRC advises that this latter test for standing is far too restrictive, considering the importance of public participation in inquiries. Further, it is especially inappropriate for policy inquiries, because it links participation to adversarial trial procedures such as calling and cross-examining witnesses. The OLRC recommends that anyone with a genuine interest should be able to make submissions, but that a commission should have the ability to determine what form they would take.[64] The ALRI suggests that it would be preferable simply to let each commission of inquiry decide who may participate and to what extent. This broad power would be restricted by two controls: 1) the openness principle, and 2) the commission's duty to provide due process to any person against whom a finding of misconduct is made.[65] A relatively broad standing provision is consistent with the relaxation of common law standing criteria in many contexts and the development of discretionary public interest standing based on factors including "genuine interest."[66]

Procedural Rights

Oral Hearings and Media Participation

[41] The ALRI and OLRC agree that oral hearings should not be a requirement for all public inquiries.[67] Written submissions may be sufficient, especially for policy inquiries.[68] The ALRI report recommends that if oral hearings are held, they should, as a general rule, be public, and both the ALRI and the OLRC say that security, privacy and fairness should be among the issues contemplated when a commission is considering *in camera* proceedings.[69] Similarly, both reports suggest that the same issues should apply to a commission's determination of media involvement with a public inquiry, including deciding whether to impose a publication ban. Although not recommended generally, media restrictions are acceptable as long as the openness principle and freedom of the press are properly balanced against the reasons for the restrictions.[70]

Right to Examination and Cross-examination

[42] Any person who achieves standing under the Alberta Act may give evidence, while the commission retains the discretion to allow an adversely affected person to call evidence and examine and cross-examine witnesses.[71] In Ontario, the strict standing test is countered by an extensive right to call evidence and examine and cross-examine witnesses accorded to any individual with standing before a commission.[72] The ALRI and the OLRC agree that the Ontario approach is too broad, and that a commission should be able to determine exactly how a person with standing will participate in an inquiry.[73]

Right to Counsel

[43] Although a majority of the inquiries acts contain a right to counsel for a person appearing before or under investigation by commissions of inquiry,[74] several inquiry acts do not, instead granting discretion to a commission to allow any person whose conduct is being investigated to have counsel.[75] The latter is consistent with Charter-protected rights to have such a discretion based on relevant objective criteria.[76] Under the Quebec Charter of Human Rights and Freedoms, every person has a right to be represented or assisted by an advocate before any tribunal, which is defined to include a commission of inquiry.[77]

Participant Funding and Costs

[44] The OLRC suggests that while a statutory right to funding may be prohibitively expensive, commissions should be able to recommend that the government pay expenses in certain situations,[78] and the ALRI follows suit in one of its recommendations.[79] In an Alberta case it was held that the Alberta Act does not allow a commissioner to order funding for counsel for interested or other parties appearing at an inquiry.[80] However, the ALRI Issues Paper suggests that costs should not be imposed on private individuals for the public benefit of the inquiry,[81] and the ALRI report supports this by recommending that a person who is given notice to appear before a commission be entitled to compensation for reasonable expenses incurred.[82] All of this suggests that reasonable costs of persons summoned to appear before inquiries should be paid and that commissions should at least have the power to recommend to the Executive that participant funding be provided.[83]

Preservation of Inquiry Records

[45] The public interest in facilitating dissemination of inquiry results includes ensuring continued preservation and availability of inquiry records. An inquiries act should make provision for this.

Recommendation 7:

(a) A commission of inquiry should have the discretion to determine who may participate in the inquiry and the manner of participation. In exercising this discretion, a commission should consider the extent to which persons have a genuine interest in the

subject of the inquiry and whether their participation will promote the objectives of the inquiry including openness, fairness and accountability.

- Standing for any witness who believes her or his interests may be adversely affected—Alberta (s. 12).

- Standing for anyone with a substantial and direct interest—Northwest Territories (s. 7(1)), Nunavut (s. 7(1)), Ontario (s. 5(1)).

(b) A commission may, but should not be required to hold hearings.

(c) If a commission holds hearings, they should be in public except where the commission determines, based on considerations of openness, public security and privacy, that hearings should be closed.

- All hearings open except for matters concerning public security, and possibly when intimate financial or personal matters may be disclosed—Ontario (s. 4).

(d) A commission may make orders and arrangements for reporting and televising of hearings, taking into account considerations of openness, fairness and media freedom.

(e) A commission should have the power, based on considerations of openness, public security and privacy, to ban or restrict publication of its proceedings.

(f) A person determined by a commission to have status to participate (Recommendation 7(a) above) should be permitted to be represented by counsel. (See Recommendation 6(f)(ii), above, in relation to persons against whom misconduct findings may be made.)

(g) The reasonable costs of individuals summoned to appear before an inquiry should be paid by government according to a schedule established by regulation. A commission should have the power to recommend that government pay some or all of the reasonable costs of other inquiry participants.

- Remuneration of witnesses—British Columbia (s. 17), Manitoba (s. 96), New Brunswick (ss. 9, 15).

- Cost of witness travel and living paid if witness lives more than 16 km from the place of examination—Prince Edward Island (s. 13).

(h) Provision should be made for the preservation of reports and records of commissions of inquiry.

- Inquiry evidence shall be released to its original owner within a reasonable time—Ontario (s. 12).

8. Relationship of Inquiries Acts to Other Inquiry Powers - Different Modes of Inquiry

Inquiry Powers Under Other Acts

[46] There are a variety of inquiries other than public inquiries. The legislative branch of government can conduct inquiries through legislative committees. Though the subject matter of these inquiries may also be addressed by public inquiries, the purpose of legislative inquiries is specifically to advise and inform the legislature and may not necessarily extend to the broader public purposes served by public inquiries.

[47] Inquiries can also be conducted by a variety of public bodies. These may be classified into "modes" of inquiry,[84] including, apart from commissions of inquiry, task forces, parliamentary committees, advisory and regulatory agency investigations, and studies by departmental or interagency bodies. What all of these other modes of inquiry share is circumscribed subjects or scope, relative lack of independence of government, and for some, relative lack of resources and lack of coercive investigative powers. The relevance of these other inquiry provisions for an inquiries act may be simply that drafters and legislators should be aware of them and should avoid unnecessary direct overlap or potential conflict. Certain features of these inquiries may also be viewed as potential models.

Different Modes of Inquiry Under Inquiries Acts

[48] A direct issue for inquiries acts is whether to include a separate set of appointment and process powers for government departmental investigations or the equivalent. The federal[85] and BC[86] Acts do this explicitly. Some other Acts include reference to subjects that may fall within the ambit of such inquiries in their inquiry jurisdiction sections.[87] It is likely that powers expressed as "matters concerning the conduct of public business" would include issues concerning departments or other public institutions, though "the administration of justice" may, as a matter of contextual interpretation, require specific mention.[88]

Advisory and Investigatory Inquiries

[49] The distinction between advisory and investigatory inquiries[89] may be useful for conceptual purposes, but it is difficult to express clearly in a statute. A principal reason is that many of the same characteristics are present in both types of inquiry. Thus, "advisory" or policy inquiries, like investigatory inquiries focus on events and causes, investigate and assess events, make findings and formulate recommendations. A core difference may be that investigatory inquiries are normally concerned with misconduct, a

concept that is necessarily closer to criminal justice concepts of fault and responsibility. Concerns about interference with individual rights are thus much more central and immediate.

[50] However, rights are also potentially affected by advisory inquiries, even when engaged in broad information gathering, and thus the evidentiary protections and procedural fairness safeguards must be retained in both cases. Similarly, commissioners may require coercive powers in both cases to fully and effectively carry out their inquiry. The result is that distinguishing advisory and investigatory inquiries either by function, by impact, or by necessary investigative powers, is likely to prove futile. Equally, in view of administrative law procedural fairness threshold developments, it is no longer appropriate to continue any analogy to administrative versus quasi judicial processes. It is more appropriate to recognize that there is a continuum of inquiry types between the pure advisory and investigation of alleged misconduct poles[90] and that an inquiries act must accommodate all. Both the OLRC[91] and the ALRI[92] concluded that an inquiries act should not create two separate classes of inquiry.

[51] The specific question is whether inquiries acts should explicitly distinguish forms or modes of inquiry, particularly departmental or institutional inquiries, or should include these inquiries within the scope of generic powers to appoint commissions of inquiry. If there are to be several modes of inquiry, the question of whether there should be different powers for different modes must be addressed. This issue was raised in the British Columbia context in the *Rigaux* case.[93] Overall, it seems wise to avoid the complexity of different modes of inquiry under the same act.

Recommendation 8:

Inquiries acts should not include separate provisions for different modes or forms of inquiry such as departmental or institutional investigations.

- Departmental investigations—Federal (Part II (ss. 6-10)), B.C. (Part I (ss. 1-6)).
- Ministers of Natural Resources and Energy, and Supply and Services may inquire into their own departments—New Brunswick (s. 14(1)).

9. Evidentiary Issues

Evidentiary Privileges

Privilege Generally

[52] A basic issue is how claims of privilege by witnesses in inquiry proceedings based on privileges applicable to other legal proceedings should be treated. In principle, the values of civil rights protection and maintenance of process integrity underlying these judicial process privileges should be equally applicable to inquiries.

[53] Another issue is claims of privilege by witnesses in inquiry proceedings based on

privileges that may be created under other statutes.[94] Application of ordinary interpretive principles may lead to conclusions that such privileges are intended to apply only within the specific statutory context. In any event, avoidance of potential complexity and uncertainty very likely requires that inquiries acts not attempt to address these various statutory privileges and immunities.

Self-incrimination

[54] Section 13 of the Canadian Charter and the various evidence acts support the principle that while a person may be required to testify, self-incriminating testimony cannot be directly used to incriminate the person in subsequent proceedings. However, the scope of this use immunity is not completely clear.

[55] The competing values here are individual legal rights and the public interest in bringing evidence before courts and the efficiency and effectiveness of inquiries in carrying out their public duties. Above it is concluded[95] that the protection accorded by ss. 7, 11(d) and 13 of the Canadian Charter should be sufficient protection against self-incrimination.[96] Similarly, there should be no specific privilege in a public inquiries act against compulsory production of documentary evidence and things.

[56] An inquiries act should not weaken the fundamental criminal law principle expressed by s. 11(c) of the Canadian Charter that an accused should not be compelled to testify at her or his own trial. The problem for inquiries is that a witness charged with an offence may have valuable evidence about matters not related to the charge. Consequently, while the line between evidence in relation to the charge and in relation to other matters will not always be clear, inquiry witnesses should not be compelled to testify on matters related to offences with which they are charged.[97] The Supreme Court of Canada in the *Westray* case[98] articulated a two stage analysis based on these values to determine whether a witness is compellable in inquiry proceedings. First, the court considers the importance to the state of compelled testimony from the witness and whether the primary purpose of the testimony is obtaining incriminating evidence. If the purpose of the testimony is not incrimination, the second stage analysis assesses the prejudicial effect and balances protection of individual rights against the public interest in compelling the testimony to ensure a full and effective inquiry. These compellability principles make it unnecessary to address these issues in an inquiries act.

Inquiry Access to Government Information - Crown Privilege

[57] One set of issues concerns the extent to which inquiries acts should permit inquiry access to information that might otherwise be protected under statutes that codify Crown or public interest privilege. Provincial law on the extent to which courts can go behind claims of privilege by members of the executive is not be settled.[99] The Canada Evidence Act, on the other hand, authorizes limited court review. An issue for provincial inquiries acts therefore is whether Crown privilege claims should be subject to review on public interest grounds either by commissioners or by courts upon application by commissioners or by other parties. The trend of legal development in this area suggests that Crown privilege claims by the Executive are no longer completely immune from judicial

review.[100] This should be reflected in an inquiries act.

Public Access to Inquiry Information

[58] Another potential issue is interface with access to information legislation. It should be clear that access legislation cannot be used to gain access to internal commission files, drafts, and notes. Federal and provincial information access legislation with the apparent exception of Québec,[101] does not apply directly to commissions of inquiry. But the application mechanism of these acts — a defined term, usually "public body", governing application, and an executive power to designate bodies within this definition as subject to the act — creates at least the potential for specific inquiries to be designated because most definitions include the term "commission".[102] Even if a commission of inquiry were designated, most acts do not apply to personal notes, communications or draft decisions created by or for a person acting in a "quasi judicial capacity", which may include at least certain inquiry functions. Also, various categories of information, including information harmful to law enforcement and to personal privacy, are excepted from disclosure under the information access acts.

[59] A paramountcy provision could be included in inquiries acts to make access legislation inapplicable to internal commission information. However, in view of the structure of the access to information acts, the fact that most do not apply directly to inquiries and the wide range of inquiries and relevant types of information, it would be more appropriate to address this issue through the information access statutes.

Recommendation 9:

(a) In general, (but subject to recommendations below) participants in a public inquiry should have the same evidentiary privileges as are available in judicial proceedings.

- Every person has same rights as in court, except that withholding because of public interest does not apply, unless Minister says it does—Alberta (s. 9).
- Witness may refuse to answer any question under Section 5 of Canada Evidence Act—Northwest Territories (s. 8(1)), Nunavut (s. 8(1)).
- Nothing is admissible that would not be admissible in court because of privilege—Northwest Territories (s. 8(2)), Nunavut (s. 8(2)).
- Witness answers cannot be used in subsequent proceedings—Ontario (s. 9), Quebec (s. 11).
- Laws of evidence apply—Ontario (s. 11).

(b) An inquiries act should include no provisions concerning self-incrimination privileges related to testimony or to production of

documents or things.

(c) In view of Charter protections, it should not be necessary to include provisions in inquiries acts to protect inquiry witnesses charged with offences.

(d) Disclosure of information to a provincial inquiry should not be subject to Crown privilege and public interest immunity, including statutory immunities, except where a court, upon review based on the common law, of any Crown or public interest privilege claim, determines that such claim should be upheld and gives appropriate directions.

10. Protection of Commissioners

[60] Although judges are immune from civil liability in almost all circumstances,[103] it is not clear whether the same immunity is conferred upon inquiry commissioners. Many, but not all inquiries acts provide immunity for commissioners. The ALRI suggests that "a commission should be immune from action to the same extent as a superior court judge."[104] The OLRC agrees, contending that "such immunity will promote independent and impartial reasoning and the drawing of conclusions."[105] The ALRI says that while such immunity would allow a commissioner to escape any consequences of wrongdoing committed during a public inquiry, such occurrences are extremely rare, and the public interest is best served by commissions that cannot be sued "if someone does not like what they do."[106] In order to protect honest commissioners from civil action, the ALRI would go so far as to provide immunity for a commissioner who acts maliciously or in bad faith, if the commissioner believes she or he has jurisdiction.[107] In any event, the prevailing opinion appears to be that inquiry commissioners should have the same immunity as superior court judges. For the same reasons, the same protection should apply to commission counsel.

Recommendation 10

Commissions of inquiry, individual commissioners and commission counsel should have the same immunities as superior court judges for acts done in the course of inquiry proceedings and reporting.

- Commissioners have same immunities as superior court judges—B.C. (s. 12), Manitoba (s. 87), Nova Scotia (s. 5), Prince Edward Island (s. 16), Quebec (s.16).

- No action shall be brought against a commissioner unless she or he acted with actual malice or wholly without jurisdiction—New Brunswick (s. 12).

- Government may grant commissioners indemnity—Prince Edward Island (s. 8).

11. Incorporation of Inquiries Act Power Under Other Statutes

[61] It is common, in most jurisdictions, to enact provisions that confer on various persons or bodies, the powers of a commissioner under the relevant inquiries act. The LRCC condemned this practice.[108] The ALRI expressed the view that though specifically tailored powers are likely to be better, "cross-referencing" inquiries act powers has the practical advantages of simplicity and legislative economy.[109]

[62] The ALRI did, however, recommend that a provision be included in an inquiries act to specify that where cross-referencing occurs, the limitations and safeguards relevant to the inquiries act powers incorporated apply to the exercise of the powers under the incorporating statute.[110] The NWT,[111] Nunavut[112] and Ontario[113] Acts do this. This underlines the need for careful investigation by legislators and their counsel to determine whether such inquiries act protections are in fact suitable. There is much to recommend this approach.

Recommendation 11

If another statute grants the powers of a commissioner under the inquiries act, the safeguards and limitations on those powers in the inquiries act should apply to the exercise of powers under the other statute.

- Acts with such provisions — NWT (s. 11), Nunavut (s. 11), Ontario (s. 18).

12. Regulations of Inquiry Costs and Other Administrative Matters

[63] An inquiries act cannot deal completely with all of the details of inquiry costs including remuneration of commissioners, commission staff and professional consultants. Another set of cost issues concern expense payments to witnesses summoned before the inquiry and to other inquiry participants. These matters, as well as other administrative matters, can be the subject of regulations under inquiries acts. Quebec has regulations of this kind concerning matters of finance, administration, engagement of staff and reporting.[114]

Recommendation 12

The Governor in Council or the Lieutenant Governor in Council should have the power to make regulations establishing schedules of fees and expenses for commissioners, staff and consultants and for witnesses who appear before inquiries, and concerning other appropriate administrative matters.

- Acts with regulation-making provisions — B.C. (ss. 6, 17), Manitoba (s. 96), N.B. (s. 18), NWT (s. 12), Nunavut (s. 12), Yukon (s. 7).

13. List of Recommendations

Recommendation 1:

(a) The institution of commissions of inquiry should be retained and inquiries should

be authorized under inquiries acts that are clear, effective and to the extent considered appropriate by governments, uniform.

(b) Public inquiries may be established in relation to matters of good government, conduct of public business, the administration of justice and generally, matters of public concern.

(c) The Governor in Council or the Lieutenant Governor in Council should have power to establish inquiries, define their terms of reference, appoint commissioners and replace commissioners where necessary as a result of resignation or incapacity.

(b) Commissioners should be qualified impartial persons respected in the community.

Recommendation 2:

(a) Following establishment of an inquiry and appointment of commissioners, the responsible minister should be responsible for ensuring that budget estimates are prepared in consultation with the commissioners and that the funds are appropriated.

(b) Once funds are allocated, spending should be the responsibility of the commissioners in accordance with any regulations respecting inquiry expenditure items and rates.

(c) Executive powers to establish or change inquiry reporting dates should be included in the act.

(d) Once transmitted, inquiry reports should be tabled in the legislature within a specified time.

Recommendation 3:

It is not necessary to include provisions in inquiries acts that address constitutional division of powers or rights under constitutional or statutory bills of rights.

Recommendation 4:

The executive should be authorized to enter into agreements with other jurisdictions, including jurisdictions outside Canada, for the establishment of joint inquiries that meet the requirements of the act.

Recommendation 5:

(a) Decisions, acts or omissions of commissions of inquiry should be subject to judicial review on questions of law or jurisdiction. This should not be by way of stated case.

(b) Privative clauses should not be included in inquiries acts.

(c) Commissions should have the right to apply to the appropriate court for advice and directions.

Recommendation 6:

(a) A commission should have the same powers as a court to compel testimony and production of evidence.

(b) A commission should have search and seizure power based on prior judicial authorization, consistent with constitutional rights.

(c) A commission should have power to apply to the court for contempt orders in relation to failure to testify or produce evidence and actions that disrupt its proceedings (contempt in the face of the inquiry).

(d) A commission should have explicit power to delegate powers to investigate, take evidence, and report to qualified persons who, for these purposes, should have the same powers and immunities as commissioners.

(e) Commissions should be empowered to engage necessary staff.

(f) A commission should not make findings of misconduct against a person unless, before such a finding is made, that person:

(i) has been given reasonable notice of the allegations and supporting evidence, and

(ii) has been given a fair opportunity to respond to such allegations and evidence, including the right to counsel and a fair opportunity to present evidence, and the right to be examined by his or her counsel, cross-examine witnesses and make representations.

Recommendation 7:

(a) A commission of inquiry should have the discretion to determine who may participate in the inquiry and the manner of participation. In exercising this discretion, a commission should consider the extent to which persons have a genuine interest in the subject of the inquiry and whether their participation will promote

the objectives of the inquiry including openness, fairness and accountability.

(b) A commission may, but should not be required to hold hearings.

(c) If a commission holds hearings, they should be in public except where the commission determines, based on considerations of openness, public security and privacy, that hearings should be closed.

(d) A commission may make orders and arrangements for reporting and televising of hearings, taking into account considerations of openness, fairness and media freedom.

(e) A commission should have the power, based on considerations of openness, public security and privacy, to ban or restrict publication of its proceedings.

(f) A person determined by a commission to have status to participate (Recommendation 7(a) above) should be permitted to be represented by counsel. (See Recommendation 6(f)(ii), above, in relation to persons against whom misconduct findings may be made.)

(g) The reasonable costs of individuals summoned to appear before an inquiry should be paid by government according to a schedule established by regulation. A commission should have the power to recommend that government pay some or all of the reasonable costs of other inquiry participants.

(h) Provision should be made for the preservation of reports and records of commissions of inquiry.

Recommendation 8:

Inquiries acts should not include separate provisions for different modes or forms of inquiry such as departmental or institutional investigations.

Recommendation 9:

(a) In general, (but subject to recommendations below) participants in a public inquiry should have the same evidentiary privileges as are available in judicial proceedings.

(b) An inquiries act should include no provisions concerning self-incrimination privileges related to testimony or to production of documents or things.

(c) In view of Charter protections, it should not be necessary to include provisions in inquiries acts to protect inquiry witnesses charged with offences.

(d) Disclosure of information to a provincial inquiry should not be subject to Crown privilege and public interest immunity, including statutory immunities, except where a court, upon review based on the common law, of any Crown or public interest privilege claim, determines that such claim should be upheld and gives appropriate directions.

Recommendation 10

Commissions of inquiry, individual commissioners and commission counsel should have the same immunities as superior court judges for acts done in the course of inquiry proceedings and reporting.

Recommendation 11

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Recommendation 12

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Endnotes

1. Law Reform Commission of Canada, Commissions of Inquiry, Working Paper No. 17, (1977); Law Reform Commission of Canada, Advisory and Investigatory Commissions, Report No. 13 (1979) [hereinafter "LRCC"].

2. Ontario Law Reform Commission, Report on Public Inquiries (1992) [hereinafter "OLRC"].

3. Alberta Law Reform Institute, Proposals for the Reform of the Public Inquiries Act, Report No. 62, November 1992, p. 21; Alberta Law Reform Institute, Public Inquiries, Issues Paper No. 3, 1990 [hereinafter "ALRI"].

4. N. d'Ombrain, In "Public Inquiries in Canada", (1997) 40 Can. Pub. Admin. No. 1, p. 86, 96, concludes that, ". . .there has been some (but not dramatic) real increase in the costs and duration of policy inquiries. Investigative inquiries, on the other hand, have been taking longer and costing more, but . . . [this] is not a recent development."

5. Subject to the limits of provincial constitutional jurisdiction: *Bisaillon v. Keable*, [1982] 2 S.C.R. 60, 78; *Starr v. Houlden*, [1990] 1 S.C.R. 1366. See C.E.D. (3'd) Public Inquiries, paras 12-17, Ont. Vol. 27, Title 119.1; West. Vol. 29, Title 122.

6. ALRI, p. 5.

7. See OLRC, pp. 13-16; ALRI, p. 23.

8. ALRI, p. 17. But the Institute notes that an inquiries act should not attempt to address these possible ulterior motives.

9. Though the ALRI (pp. 30-31) and the OLRC discussed these issues, neither made specific recommendations on appointment qualifications.

10. W. Mackay, "Mandates, Legal Foundations, Powers and Conduct of Commissions of Inquiry" in P. Pross, I. Christie and J. Yogis (eds.) *Commissions of Inquiry*. Toronto, Carswell: 1990, p. 37, cited by the ALRI at p. 23.

11. *Dixon v. Canada (Somalia Inquiry Commission)* (1997), 149 D.L.R. (4th) 269 (F.C.A.), leave to appeal refused (1998), 226 N.R. 400 (S.C.C.).

12. Section 83(2) of the Manitoba Act authorizes the Lt. Governor in Council to "revoke, modify or enlarge the scope of any commission."

13. P. Desbarats, "The Independence of Public Inquiries: Dixon v. Canada" (1997) 36 Alta. L. Rev. 252, 253.

14. ALRI, p. 34; OLRC, p. 206.

15. ALRI, pp. 34-35.

16. ALRI, p. 35; OLRC, p. 206.

17. *Dixon v. Canada (Somalia Inquiry Commission)*, *supra.*

18. ALRI, p. 49.

19. OLRC, pp. 206, 217.

20. See *Starr v. Houlden*, [1990] 1 S.C.R. 1366.

21. *A.-G. Quebec and Keable v. A.-G. Canada*, [1979] 1 S.C.R. 218, 240.

22. OLRC, p. 65.

23. Manitoba Evidence Act, s. 83(1).

24. Inquiries Act, s. 1.

25. Manitoba Evidence Act, s. 83(1).

26. Public Inquiries Act, s. 2.

27. ALRI, p. 13; OLRC pp. 112-133.

28. In *T.M. v. Alberta (Public Inquiry Into the Death of JC)*, [1999] A.J. No. 1371, (Alta. Q.B.). The court ordered a stay of fatality inquiry based on s. 24(1) of the Charter where it found that the holding of an inquiry would, in the circumstances, create fundamental unfairness, affecting legal rights and bringing the administration of justice into disrepute.

29. ALRI, pp. 9-11.

30. Report of the Royal Commission on the Ocean Ranger Marine Disaster, 1984.

31. E.g. Canadian Environmental Assessment Act, S.C. 1992, c. 37, partic. ss. 40-44 (Joint Review Panels).

32. Section 6(1).

33. Manitoba Evidence Act, Section 95(1).

34. *Re Bortolotti and Ministry of Housing* (1977), 76 D.L.R. (3d) 408 (Ont. C.A.).

35. LRCC, p. 39.

36. This would require specific study. For Federal Court Act judicial review see *Morneault v. Canada (A.-G.)* (1998), 150 F.T.R. 28 (Fed. T.D.).

37. As recommended by the ALRI at pp. 116-117.

38. OLRC, p. 212.

39. The Ontario Statutory Powers Procedure Act and the Alberta Administrative Procedures Act (which must be applied to particular powers by regulation) remain the only administrative procedure statutes. More ambitious Federal and Alberta administrative procedure code proposals have not been adopted.

40. See generally, C.E.D. (3'd) Public Inquiries, *supra*, paras 33-39.

41. Manitoba Evidence Act, s. 95(4).

42. *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982; *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.

43. *Morneault v. Canada (A.-G.)*, [2001] 1 FC 30 (Fed. C.A.), where the issue was whether there was some evidence to support a material finding of fact within s. 18.1(4)(d) of the Federal Court Act.

44. See *Fraternité inter provinciale des ouvriers en électricité v. Québec (Offfice de la Construction)* (1983), 148 D.L.R. (3d) 626, 628-29 (Que. C.A.) and authorities cited in CED (3d.), Public Inquiries, *supra*, para. 44.

45. See *Ellis Don v. Ontario Labour Relations Board*, [2001] S.C.R. 221, 253, per Binnie J. (diss). In D. Jones and A. de Villars, *Principles of Administrative Law* (Toronto: Carswell, 3'd ed. 1999) at 514, the view is expressed that the standards of review analysis is inapplicable because standards of review "the language of natural justice is simply different from the language of 'correctness' or 'reasonableness'..."

46. *Stevens v. Canada (A.-G.)*, [2002] 3 F.C.J. 142 (Fed. T.D.); Cf *Beno v. Canada (A.-G.)*, 2002 F.C.T. 142 (Fed. T.D.).

47. *Board of Indian Head School Division No. 19 v. Knight*, [1990] 1 S.C.R. 633.

48. *Baker v. Canada (Minister of Citizenship and Immigration)*, *supra*; *2747-3174 Québec Inc. v. Québec (Régie des permis d'alcool),* [1996] 3 S.C.R. 919, para. 22-24.

49. ALRI, pp. 75-78.

50. Section 17(2) of the Ontario Act is an appropriate example.

51. OLRC, p. 194, notes the risk of constitutional invalidity of such a provision in provincial inquiries acts in provincial inquiries acts in relation to subsequent criminal proceedings.

52. *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97.

53. B. Schwartz, " Public Inquiries" (1997) 40 Can. Pub. Admin. No. 1, 72 at 75-76, 82.

54. Ontario, s. 9 (1).

55. Federal, s. 13; Alberta, s. 13; British Columbia, s. 4(2); Northwest Territories, s. 7(2); Nunavut, s. 7(2); Ontario, s. 5(2); Prince Edward Island, s. 7.

56. *Baker v. Canada (Minister of Citizenship and Immigration), supra*.

57. *Canada (A.-G.) v. Canada (Commissioner of the Inquiry on the Blood System)*, [1997] 3 S.C.R. 440.

58. Id., at 478-479.

59. Such as s. 10(1) of the Federal Act.

60. Alberta (s. 6) (if one of the Commissioners is a Court of Queen's Bench judge); British Columbia (s. 16(1)(b)); New Brunswick (s. 7); Quebec (s. 12). Other provincial inquiries acts include powers in commissions to commit persons who refuse to testify or produce documents.

61. This is analogous to the Ontario provision for a commission to state a case for contempt to the Divisional Court. (s. 8).

62. The Salmon Commission Report (UK, Royal Commission on Tribunals of Inquiry, Report of the Commission under the Chairmanship of the Rt. Hon. Lord Justice Salmon, Cmnd. 3121, 1966, quoted by the ALRI at p. 55) stated at 38: "Where there is a crisis of public confidence about the alleged misconduct of persons in high places, the public naturally distrusts any investigation carried out behind

closed doors. Investigations so conducted will always tend to promote the suspicion, however unjustified, that they are not being conducted sufficiently vigorously and thoroughly or that something is being hushed up….Unless these inquiries are held in public they are unlikely to achieve their main purpose, namely, that of restoring the confidence of the public in the integrity of our public life."

63. ALRI, p. 52.

64. OLRC, pp. 208-09.

65. ALRI, p. 63.

66. *Finlay v. Canada (Minister of Finance)*, [1986] 2 S.C.R. 607.

67. ALRI, p. 54, and OLRC, p. 209.

68. OLRC, p. 209.

69. ALRI, p. 59.

70. ALRI, pp. 59-62, and OLRC, pp. 207-08.

71. Public Inquiries Act, s. 12.

72. Public Inquiries Act, s. 5(1).

73. ALRI, pp. 63-64, and OLRC, p. 209.

74. *Supra* note 10, s. 11.

75. British Columbia (s. 4); Prince Edward Island (s. 6); Federal Act (s. 12).

76. *Howard v. Stoney Mountain Institution* (1985), 19 D.L.R. (4th) 502 (F.C.A.).

77. Charter of Human Rights and Freedoms, R.S.Q., c. C-12, ss. 34, 56(1).

78. OLRC, p. 210.

79. ALRI, Recommendation 25, p. 91.

80. *Alberta v. Kamel*, [2002] A.J. No. 751 (Q.B.).

81. ALRI Issues Paper No. 3, p. 93.

82. ALRI, Recommendation 20(4), p. 79.

83. ALRI, p. 90.

84. M. Trebilcock, D. Hartle, R. Pritchard and D. Dewees, *The Choice of Governing Instrument.* Ottawa: Economic Council of Canada, 1982, pp. 38ff.

85. Inquiries Act, Part II (ss. 6-10).

86. Public Inquiry Act, s. 1. Section 14 of the New Brunswick Inquiries Act gives the Ministers of Natural Resources and Energy and Supply and Services specific authority to hold departmental inquiries. The Quebec Inquiries Act also gives inquiry powers to ministers and other named officials: s. 14.

87. Manitoba Evidence Act, s. 83(1)(b).

88. As in Manitoba, s. 83(1)(c); New Brunswick, s. 2, Newfoundland and Labrador, s. 2; Ontario, s. 2; Québec, s. 1.

89. See LRCC, *Commissions of Inquiry*, Working Paper 17 (1977) pp. 23-25.

90. L. Salter, "The Two Contradictions in Public Inquiries". In P. Pross, I. Christie and J. Yogis (eds.), *Commissions of Inquiry, supra* at 176.

91. OLRC, p. 188.

92. ALRI, p. 17.

93. *Rigaux v. B.C. (Commission of Inquiry into the Death of Vaudreuil - Government Inquiry),* [1998] B.C.J. No. 32 (B.C.S.C.).

94. See ALRI, p. 98.

95. Para. 33.

96. This was the ALRI's conclusion: pp. 101-102.

97. This is supported by recommendations of the ALRI, p. 109 and the OLRC, p. 214.

98. *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy*), *supra* at 147-155 (S.C.R.).

99. The ALRI's discussion is with reference to s. 35(1) of the Alberta Evidence Act: ALRI Report, pp. 96-98.

100. ALRI, p. 97.

101. Act Respecting Access to Documents held by Public Bodies and Protection of Personal Information, R.L.Q., c. A-2.1. Sections 3 and 4 extend application to bodies appointed by the Goverment.

102. In most cases, where the definition of "public body" includes "commission", the grammatical context ("agency, board... corporation") suggests permanent bodies.

103. As the ALRI says at p. 43, "A superior court judge has absolute immunity for anything said or done in the belief that they have jurisdiction." See Halsbury's Laws of England, (4th ed) reissue, vol.1(1), paras. 212, 216.

104. ALRI, p. 45.

105. OLRC, p. 207.

106. ALRI, p. 45.

107. *Ibid.*

108. LRCC, p. 7.

109. ALRI, p. 118.

110. *Id.*, pp. 118-119.

111. NWT, s. 11.

112. Nunavut, s. 11.

113. Ontario, s. 18.

114. Règles sur les modalités de gestion administrative, financière et d'engagement de personnel des commissions d'enquête, R.R.Q., c. C-37, r. 1; Regulation respecting reports of public inquiry commissions, R.R.Q., c. C-37, r. 2.

13. Appendix - Comparison of Inquiries Acts

	Power to Establish a Commission of Inquiry	Jurisdiction of a Commission of Inquiry
Federal Act	· general inquiries: cabinet establishes (s. 2) · departmental investigations: Minister establishes (with leave of cabinet) (s. 6)	· good government of Canada · public business (s. 2)
Alberta	· cabinet establishes (s. 2)	· within jurisdiction of legislature · good government of Alberta · public business · public concern (s. 2)
British Columbia	· general inquiries: cabinet establishes (s. 8) · departmental investigations: minister establishes (with authority of cabinet) (s. 1)	· s. 8: elections, good government of B.C., public business, municipal matters, administration of justice, campaign contributions · s. 1: business of government, any person in service of a ministry
Manitoba	· cabinet establishes (s. 83(1))	· good government of Manitoba · provincial institution · administration of justice · election to legislative assembly · affairs of a municipality · any matter important enough
New Brunswick	· cabinet establishes (s. 2)	· good government of New Brunswick · public business · administration of justice · anything cabinet deems to be of public interest
Northwest Territories	· commissioner may establish a board (s. 2)	· public business · public concern
Newfoundland and Labrador	· cabinet establishes (s. 2)	· peace, order and good government · public business · administration of justice · industries · any matter of public good (s. 2(1)) · cabinet may indicate scope of inquiry (s. 2(2))
Nunavut	· commissioner may establish a board (s. 2)	· public business · public concern
Nova Scotia	· cabinet establishes (s. 2)	· any public matter (s. 2)
Ontario	· cabinet establishes (s. 2)	· good government of Ontario · public business · administration of justice · public concern (s. 2)
Prince Edward Island	· cabinet establishes (s. 1) · cabinet appoints commissioners (s. 2)	· good government of Prince Edward Island · public business · cost and retail price of goods (s. 1)

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	Power to Establish a Commission of Inquiry	Jurisdiction of a Commission of Inquiry
Quebec	· government establishes (s. 1)	· good government of Quebec · public business · administration of justice · public health · welfare of population
Saskatchewan	· cabinet establishes (s. 2)	· jurisdiction of legislature · good government of Saskatchewan · public business · of sufficient public importance
Yukon	· commissioner in executive council establishes (s. 2)	· public business · any matter of public concern (s. 2)

	Inquiry into a Minister's own Department	Budget/Funding	Reporting Dates	Replacement of Commissioners
Federal Act	· Part II (ss. 6-10)			
Alberta				
British Columbia	· Part I (ss. 1-6)	· costs and expenses paid out of consolidated revenue fund (in the absence of a special appropriation) (s. 18)	· inquiry must be completed as soon as is convenient (s. 14(1)(a)) · cabinet must produce report for legislative assembly within 15 days of receiving it (s. 14(2))	· cabinet may replace a sole commissioner who leaves (s. 9(2)) · when one or more than one commissioners leave, the remaining commissioners may continue (s. 9(1))
Manitoba				· cabinet may replace a sole commissioner who leaves, or remaining commissioners may continue (s. 84)
New Brunswick	· Ministers of Natural Resources and Energy, and Supply and Services may inquire into their own department (s. 14(1))	· costs and expenses to be paid out of consolidated fund (unless there is a special appropriation) (s. 16)		
Northwest Territories				
Newfoundland and Labrador				
Nunavut				
Nova Scotia				
Ontario				
Prince Edward Island				

	Inquiry into a Minister's own Department	Budget/Funding	Reporting Dates	Replacement of Commissioners
Quebec		· commissioners may incur expenses necessary for the performance of their duties (s. 3) BUT · government will establish an expenditure limit (s. 19)	· "as soon as the inquiry is completed" (s. 6) BUT · government will fix completion date (s. 19)	
Saskatchewan				
Yukon				

	Inquiry Staff	Compelling Testimony and Evidence
Federal Act	· accountants, engineers, technical advisers, experts, clerks, reporters, assistants, counsel	· commissioners may summon any witness, and require them to produce any document (s. 4) · commissioners have same evidence powers as civil court (s. 5)
Alberta	· counsel, clerks, reporters, assistants, experts, persons having special knowledge (s. 3)	· commissioners may summon any witness and require them to produce any document (s. 4) · commissioners have same power to enforce attendance as Court of Queen's Bench judge (s. 5)
British Columbia	· secretary (at commissioner's pleasure) (s. 13(a)) · clerks, stenographers (with consent of cabinet) (s. 13(b))	· commissioners may summon any witness and require them to produce any document (ss. 5(1), 15) · commissioners have some power to enforce attendance as Supreme Court judge (ss. 5(3), 16)
Manitoba	· experts (accountants, engineers, technical advisers, clerks, reporters, assistants, etc.) (s. 93(1))	· commissioners may summon any witness to testify or produce any document (s. 88(1)) · witnesses examined under oath (s. 88(2))
New Brunswick		· commissioners may summon any witness to testify or produce any document (s. 4(1))
Northwest Territories	· accountants, engineers, technical advisers, experts, clerks, reporters, assistants, counsel	· a board may, with reasonable notice, require a person to appear, testify and produce documents (s. 4(2))
Newfoundland and Labrador	· counsel, accountants, engineers, technical advisers, experts, clerks, reporters, assistants (s. 4)	· cabinet may give commissioners power to summon witnesses, compel testimony and produce documents (s. 2(2)) · commissioners have same evidence powers as a civil court (s. 3(1))
Nunavut	· accountants, engineers, technical advisers, experts, clerks, reporters, assistants, counsel	· a board may, with reasonable notice, require a person to appear, testify and produce documents (s. 4(2))
Nova Scotia		· commissioners may summon witnesses, compel testimony, and require documents to be produced (s. 4) · commissioners have same evidence powers as a Supreme Court judge (s. 5)

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	Inquiry Staff	Compelling Testimony and Evidence
Ontario		· commission may summon witnesses and require them to testify and produce documents (s. 7)
Prince Edward Island	· accountants, engineers, technical advisers, experts, clerks, reporters, assistants, counsel	· commissioner may summon any witness, require testimony, and require protection of documents (s. 3) · commissioner has same power to enforce attendance as a civil court (s. 4)
Quebec	· government may appoint a secretary · commissioners may employ stenographers, clerks, messengers (s. 3)	· persons can be required to appear, testify and produce documents (s. 9) · commissioners have same powers as a Superior Court judge (s. 7)
Saskatchewan	· accountants, engineers, technical advisers, experts, clerks, reporters, assistants, counsel (when authorized by cabinet) (s. 5(1))	· commissioners may summon witnesses, require testimony and production of documents (s. 3) · commissioners have same power to compel witnesses as a civil court (s. 4)
Yukon		· any person may be summoned and required to testify and produce documents, with reasonable notice (s. 4) · commissioners have same power to compel testimony as civil court (s. 5)

	Search and Seizure	Subdelegation of Evidence Powers	Evidentiary Protections
Federal Act	· commissioners may enter and examine any public institution (departmental investigations) (s. 7)	· staff, authorized by order in council, have same evidence powers as commissioners (s. 11(3))	
Alberta	· commissioner who is also a judge can enter and view a public building (s. 7(3)) · commissioner who is not a judge can apply to court of Queen's Bench for permission to view a public building (s. 7(4))	· person sworn before justice of the peace can take evidence (s. 10)	· every person has same rights as in court, except that withholding because of public interest does not apply, unless the Minister says it does (s. 9)
British Columbia	· commissioner may enter and search any public institution (departmental investigation) (s. 3)		
Manitoba	· commissioner may view any premises (s. 89) · any searches are free of charge (s. 94)	· deputies have same evidence powers as commissioners (s. 93(3))	
New Brunswick			
Northwest Territories			· witness may refuse to answer any question under section 5 of Canada Evidence Act (s. 8(1)) · nothing is admissible that would not be admissible in court because of privilege (s. 8(2))

	Search and Seizure	Subdelegation of Evidence Powers	Evidentiary Protections
Newfoundland and Labrador		· commissioner may delegate (with consent of cabinet) (s. 5)	
Nunavut			· witness may refuse to answer any question under section 5 of Canada Evidence Act (s. 8(1))
Nova Scotia			
Ontario		· with a judge's permission, a delegate can conduct a search and remove documents (s. 17)	· witness answers cannot be used in subsequent proceedings (s. 9) · laws of evidence apply (s. 11)
Prince Edward Island			
Quebec			· no answer by a witness may be used in a subsequent prosecution (except for perjury) (s. 11)
Saskatchewan		· any person delegated has same powers as commissioners (ss. 5(2) - 5(3))	
Yukon			

	Contempt Powers	Notice of Allegations	Right to Cross-Examination
Federal Act		· no report against any person until reasonable notice has been given and the person has full opportunity to be heard (s. 13)	
Alberta	· any commissioner who is also a judge has the same contempt power as a Court of Queen's Bench judge (s. 6)	· no report alleging misconduct can be made until reasonable notice is given and the person has an opportunity to give evidence (s. 13)	· in the discretion of commissioners (ss. 12, 13)
British Columbia	· same contempt power as Supreme Court judges (s. 16(1)(b))	· report cannot be made until reasonable notice of charge of misconduct and full opportunity to be heard have been given (departmental investigation) (s. 4(2))	
Manitoba			
New Brunswick	commissioners have same contempt powers as a Court of Queen's Bench judge (s. 7)		

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	Contempt Powers	Notice of Allegations	Right to Cross-Examination
Northwest Territories		· no finding of misconduct can be made without reasonable notice and the opportunity to be heard (s. 7(2))	· substantial and direct interest gives a right to cross-examination (s. 7(1))
Newfoundland and Labrador			
Nunavut		· no finding of misconduct can be made without reasonable notice and the opportunity to be heard (s. 7(2))	· substantial and direct interest gives a right to cross-examination (s. 7(1))
Nova Scotia			
Ontario	· commission may apply to divisional court for contempt power (s. 8)	· no finding of misconduct can be made without reasonable notice and full opportunity to be heard (s. 5(2))	· any person with a substantial and direct interest can give evidence, examine and cross-examine (s. 5(1))
Prince Edward Island		· no report shall be made against any person without reasonable notice and full opportunity to be heard (s. 7)	
Quebec	· commissioners have same powers as a court of justice (s. 10) · any person refusing to be sworn or produce documents is in contempt (s. 11-12)		
Saskatchewan			
Yukon			

	Right to Counsel	Right to Respond Orally	Standing
Federal Act	· any person being investigated has a right to counsel (s. 12)	· full opportunity to be heard in person or by counsel (s. 13)	
Alberta	· any person appearing has a right to counsel (s. 11)	· in the discretion of commissioners (ss. 12, 13)	· any witness who believes his or her interests may be adversely affected (s. 12)
British Columbia	· any person being investigated under Part I (departmental investigation) (s. 4(1))	· "full opportunity" to be heard in person or by counsel (departmental investigation) (s. 4(2))	
Manitoba			
New Brunswick			

	Right to Counsel	Right to Respond Orally	Standing
Northwest Territories	· counsel can help someone with a substantial and direct interest (s. 7(1))		· substantial and direct interest (as decided by the board) means a right to give evidence and examine and cross-examine witnesses (s. 7(1))
Newfoundland and Labrador			
Nunavut	· counsel can help someone with a substantial and direct interest (s. 7(1))		· substantial and direct interest (as decided by the board) means a right to give evidence and examine and cross-examine witnesses (s. 7(1))
Nova Scotia			
Ontario	· any person with a substantial and direct interest may use counsel to examine or cross-examine witnesses on evidence relevant to the person's interest (s. 5(1))		· any person who satisfies commission that he/she has a substantial and direct reason (s. 5(1))
Prince Edward Island	· anyone whose conduct is being investigated under the Act has the right to counsel (s. 6)		
Quebec			
Saskatchewan			
Yukon	· where actions or conduct of any person are called into question, that person has a right to counsel (s. 6)		

	Participant Funding and Costs	Protection of Commissioners	Judicial Review/ Standing to Apply For
Federal Act			
Alberta			
British Columbia	· remuneration of commissioners, witnesses · witness travel and maintenance · incidental and necessary expenses (s. 17)	· commissioner has same protection and privileges as a Supreme Court judge (s. 12)	
Manitoba	· cabinet may provide for remuneration of commissioners and witnesses and for payment of incidental and necessary expenses (s. 96)	· commissions have same protection and privileges as a Court of Queen's Bench judge (s. 87)	· commissioners are required to state a case for someone affected by a commission of inquiry, if asked (s. 95)

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	Participant Funding and Costs	Protection of Commissioners	Judicial Review/ Standing to Apply For
New Brunswick	· witnesses are entitled to reasonable compensation (s. 9) · cabinet may provide for remuneration of commissioners and witnesses, and for incidental and necessary expenses (s. 15)	· no action shall be brought against a commissioner unless the commissioner acted with actual malice or wholly without jurisdiction (s. 12)	
Northwest Territories			
Newfoundland and Labrador			
Nunavut			
Nova Scotia		· commissioners have same privileges and immunities as a Supreme Court judge (s. 5)	
Ontario			· case may be stated to a Divisional Court by an affected person (s. 6)
Prince Edward Island	· cost of witness travel and living will be paid if witness lives more than 16 km from the place of examination (s. 13)	· government may grant commissioners indemnity (s. 8) · commissioners have same protections and privileges as Superior Court judges (s. 16)	
Quebec		· commissioners have same immunities as a Superior Court judge.	
Saskatchewan			
Yukon			