



# THE ADVOCATES' JOURNAL





# A key aspect of Canada's democratic process



Ronda Bessner and Susan Lightstone  
*Public Inquiries in Canada: Law and Practice*  
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**A**s co-authors and editors-in-chief of *Public Inquiries in Canada: Law and Practice*, Ronda Bessner and Susan Lightstone have produced an important how-to guide on running a public inquiry. Informed by the contributions (written and oral) of former commissioners, lawyers, police officers and other key players, this book also serves as a historical record of public inquiries in Canada. Although the number of judicial commissions of inquiry in Canada ebbs and flows, it is apparent that these proceedings are a key aspect of Canada's democratic process and an important source for developing public policy.

There have been hundreds of federal, provincial and municipal public inquiries since Confederation, each called to investigate high-profile tragedies and scandals. The most well-publicized in recent years include probes into tainted blood supply (Krever); wrongful convictions (Marshall, Morin); public drinking-water safety (Walkerton); the role of Canadian officials in the detention and torture of a citizen (Arar); the death of an Indigenous protester (Ipperwash); and the state of pediatric forensics (Goudge).

What can start as a seemingly straightforward, narrow investigation can quickly expand into a complex and wide-ranging review, which is exactly why this book is such an important contribution: It stands as a roadmap for running an effective public inquiry. Such direction is a must-have to provide structure to what can otherwise become an unwieldy investigation.

My first "real" law job after being called to the bar in 2001 was as assistant Commission counsel to the Walkerton Inquiry, headed by Dennis O'Connor. (For transparency's sake, this is where I met and worked with co-author Ronda Bessner.) From 2002 to 2004, I represented a party with standing at the (MEP) Toronto Computer Leasing Inquiry, and later I had a brief stint with the Ipperwash Inquiry. As a young lawyer, there was no better training than watching top lawyers conduct investigations and examinations and witnessing judges lead their inquiry, balancing efficiency and fairness in the public interest.

The opportunity to work on a public inquiry is career- and life-changing, as several of the contributors to this volume recount. Indeed, many lawyers and judges develop expertise, which puts them on the go-to list for future inquiries. This book is rich in first-hand accounts by the heavy-hitters of the public inquiry bar. We hear from Justice Freya Kristjanson (Walkerton, Arar); Paul Cavalluzzo (Walkerton, Arar); Mark Sandler (Goudge, Kaufman); Marlys Edwardh (Krever, Marshall); and Bill Trudell (Walkerton,



Cornwall), among others.

Dennis O'Connor is credited with being the "founder of the modern public inquiry." The authors and contributors to this book tip their hats to O'Connor for setting the gold standard template of how to run a public inquiry with teeth, where procedural fairness and justice are revered. O'Connor's method has been followed in subsequent probes, and this book documents the most important steps involved, from drafting the terms of reference, to setting rules and procedures for public standing, to releasing the final report to the public.

As repeated throughout this book, inquiries can offer a catharsis – a public airing of a tragedy. This function can serve to help bring some relief to victims and their families who have suffered because of a preventable error. Susan Lightstone's chapter "Giving Voice: They Are *Public Inquiries*" documents the grieving as well as the healing that inquiries can bring to victims of tragedies who finally have a chance to be heard. She points to the Mackenzie Valley



Pipeline, Blood, Walkerton, Air India, Ipperwash and Elliot Lake inquiries as examples.

Ronda Bessner's chapter on the "Rules of Evidence at a Public Inquiry" records the cornucopia of legal issues arising in public inquiries that have developed the jurisprudence on hearsay evidence; privileged communications; Cabinet privilege; public interest immunity; perjury; constitutional division of powers; and *Charter* rights such as the right to be free from unreasonable search and seizure, and the right not to incriminate oneself.

The book offers a number of candid insider accounts. Bill Trudell offers compelling thoughts on his representation of Stan Koebel, the general manager of the Walkerton Public Utilities Commission at the time of the E. Coli outbreak that killed seven people and sickened twenty-three hundred.

We hear from two experts on the important role of the media. Peter Rehak, a former journalist who has advised multiple

commissions of inquiry on media relations, offers an "A to Z" blueprint on how public inquiries should facilitate media coverage. Veteran journalist Colin Perkel, who has covered several high-profile inquiries, argues that these proceedings are essential to satisfy the public's thirst for accountability and truth. "The media's indispensable role," writes Perkel, "is to convey that truth, along with its complexity, to a public that needs and wants real and honest answers."

I enjoyed the personal stories of inquiry lawyers and judges about how difficult it was to be away from their families, law practices, the court and the city (most hail from Bay Street). Several of the inquiries, including Walkerton, Elliot Lake and Ipperwash, have taken place in settings far from large urban centres because the commissioner(s) made it a priority to hold the hearings close to the places and people most affected by the events. As Ipperwash lead counsel Derry Millar explains in his interview with the authors, "I felt strongly that the Inquiry should be in the Ipperwash area so that people associated with the community could come to the hearings and the people who were making decisions would also be in the community." Although "moving up there" no doubt helps establish the trust of the community, it is not, as we learn, always convenient or comfortable. Motels and apartments become home for the visiting participants, far from family for weeks and months on end. In small communities, social interactions can be landmines, where there is a need to maintain a distance from community members and "opposing" lawyers.

The separation from the practice and family allows for the all-encompassing workload and focus on the hearings but, as a few contributors acknowledge, this would not have been possible without their spouses. One's "domestic resources" are as much of a prerequisite as supportive law partners who can pick up the slack and keep the practice going.

Although most of the book's contributors are highly optimistic about the value of public inquiries, there is one particularly critical voice in this collection. In law professor Adam Dodek's view (set out in the chapter "Ethical Concerns for Public Inquiries"), sitting judges should not be commissioners. Not only does he believe that sitting judges should be helping their brothers and sisters on the bench (a public access to justice issue), but they should not be in the position of criticizing government or of recommending policy alternatives for elected legislators. To do so, Dodek says, "puts stresses on judicial independence" and "offloads" responsibilities of the executive.

I believe that crib notes summarizing each public inquiry would have been helpful. A quick reference to the mandate of each probe referred to, and a list of the major players (such as judges, lawyers and individuals under scrutiny) could prevent some of the (slight) repetition that is inevitable with multiple contributors to a book. It would help those outside of the inquiry world, as well as the younger crowd, understand who Stan and Frank Koebel were (recall: the beer fridge, the lab reports, the scapegoating). With that information, one can better understand and appreciate both Bill Trudell's and Michael Epstein's accounts of representing the Koebels at the Walkerton Inquiry.

*Public Inquiries in Canada: Law and Practice* reflects on inquiries into some of Canada's worst tragedies and scandals. The book reinforces how there is seldom one cause of the events, but rather a web of bad actors, ignorance and inadequate law and regulatory oversight. Each inquiry is tasked with coming to a conclusion about what happened and how, and to make recommendations so that history does not repeat itself. This book no doubt will help future public inquiries get there. 