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## What gets done and why: Implementing the recommendations of public inquiries

*Abstract:* Public inquiries are often the instrument of choice when governments decide to re-think their approach to large issues, yet there has been little empirical research on how effective they are. This article is an evidence-based look at what affects the implementation of recommendations made by public inquiries. It considers eleven inquiries, examining how they operated, their political and administrative setting, and what action was taken on the recommendations. The central hypothesis is that governments do implement the recommendations of public inquiries under certain conditions. Such implementation extends not only to technical, incremental recommendations but also to recommendations involving systemic changes. The findings point to the role of judges who head and preside over inquiries as policy influencers. Often buffered by inquiry counsel or policy staff, judges may test potential recommendations with governments and other interested parties. The impact of inquiry hearings suggests that public inquiries do not necessarily serve a government's wishes to delay action. If inquiry hearings are the top item in the news, it is hard to see how that furthers a government agenda to bury the issues.

*Sommaire :* Les enquêtes publiques sont souvent l'instrument de choix auquel ont recours les gouvernements lorsqu'ils décident de repenser leur manière d'envisager les grandes questions, or peu de recherches empiriques ont été entreprises pour déterminer de leur efficacité. Le présent article est un examen fondé sur les données probantes de ce qui influe sur la mise en œuvre des recommandations résultant d'enquêtes publiques. Il passe en revue onze enquêtes publiques, examinant comment elles ont fonctionné, quel était leur cadre politique et administratif, et quelles mesures ont été prises à propos des recommandations. L'hypothèse principale est que les gouvernements mettent effectivement en œuvre les recommandations des enquêtes publiques dans certaines conditions. Une telle mise en œuvre couvre non seulement les recommandations techniques croissantes, mais aussi les recommandations concernant les changements systémiques. Les résultats attirent l'attention sur le rôle joué par les juges qui dirigent les enquêtes par l'influence qu'ils exercent sur les politiques. Les juges, souvent utilisés comme tampons par les avocats des enquête publiques ou le personnel chargé des politiques, peuvent tester les

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recommandations potentielles auprès des gouvernements et autres parties intéressées. L'impact des audiences des enquêtes publiques laisse entendre que les audiences publiques ne servent pas nécessairement à retarder les mesures à prendre comme pourrait le souhaiter le gouvernement. Si les audiences d'une enquête publique font la une des médias, il est difficile de voir comment un programme gouvernemental peut progresser en étouffant les questions.

Public inquiries are often the instrument of choice when governments decide to re-think their approach to large issues, yet there has been little empirical research on how effective they are. That is, do governments actually implement the recommendations of public inquiries? And what factors affect the prospects that recommendations will be implemented?

Some have defined public inquiries broadly as a range of instruments that includes government-appointed commissions, task forces, parliamentary committees, statutory investigative and advisory agencies, and departmental studies (Trebilcock et al. 1982). M.J. Trebilcock et al. outlined features that distinguish public inquiries from other instruments, one of them being that "those responsible for undertaking the inquiry generally lack the authority, or influence, to implement the recommendations of the inquiry" (1982: 43). John McCamus assessed the relative advantages and disadvantages of public inquiries compared to other bodies (2003). Nicholas d'Ombraïn charted the history of public inquiries in Canada through the administrations of thirteen prime ministers, revealing cycles of waxing and waning popularity (1997).

The focus here is on public inquiries that have a high degree of independence from the government and that may be based on a statutory framework or the status of the inquiry chair, often a member of the judiciary. Ian D. Clark and David Trick addressed the element of independence in the following definition: "[A] special-purpose advisory commission can be considered to be any time-limited independent body created by government in order to provide advice to government" (2006: 180). The Law Reform Commission of Canada commented that advisory inquiries typically bring objectivity and expertise to their problem-solving tasks. They also provide a forum for the expression of opinion. It is the element of independence from government, however, that establishes their credibility. According to the Law Reform Commission, the independence of commissions of inquiry gives them added credibility, compared to the public service: "Public servants enjoy no more confidence than the government. The public service will be trusted and believed as much as the government, and no more" (1977: 15).

This article is an evidence-based look at what affects the implementation of recommendations made by public inquiries.<sup>1</sup> The approach was to select a sample of public inquiries using four criteria: diversity of subject matter; a mix of jurisdictions, both national and provincial; a sample size large enough to allow investigation of a range of inquiries, including some that were more

and some that were less successful in terms of recommendations implemented; and sufficient time elapsed to allow for implementation of recommendations made by the inquiries. The aim was to select a set of inquiries that could be considered representative of "all" inquiries, not in a statistical sense but in the sense that the sample would be reasonably diverse in subject matter, jurisdiction, success and timing.

In the eleven inquiries examined, I consider how they operated, their political and administrative setting, and what action was taken on the recommendations. Ten of the inquiries were government-appointed commissions and one was a coroner's inquest. All but two had a mandate to investigate specific incidents as well as to develop policy recommendations.<sup>2</sup> The inquiries dealt with a variety of subjects, such as safe drinking water, criminal justice, policing, aboriginal relations, racism, and domestic violence. The inquiries reported between four and eighteen years ago. National governments called three of the inquiries; eight were provincial. With two exceptions, the inquiries selected were Canadian. The two exceptions are the Orr Commission in Israel and the Independent Commission on Policing for Northern Ireland, chaired by the Hon. Christopher Patten, former governor of Hong Kong. Together, they add a comparative perspective to the Canadian experience. The Orr Commission was of interest because its scope included topics ranging from police operations to broad questions of social policy regarding the status of the Arab minority in Israel. The experience of the Patten inquiry provided additional information about the effect of having a formal follow-up body to oversee implementation of the recommendations. Except for a coroner's inquest and the Commission on Policing for Northern Ireland, judges headed all of the inquiries studied.

The research method was a combination of literature review and interviews. The inquiry reports were a primary resource. Research next focused on whether governments implemented the recommendations. Interviews followed and were conducted with people who could interpret why governments had or had not acted on the recommendations. I conducted seventeen interviews, from October 2004 to July 2005, with inquiry chairs, inquiry counsel and policy staff and with individuals involved in implementing recommendations. The interviews included questions on how the inquiry was appointed, work process, timing, resources, research, consultations, implementation planning, report preparation, follow-up arrangements, factors that promoted and impeded implementation, and action taken on the recommendations. Interviews were conducted with the understanding that the information would not be personally attributed. This was necessary because of the requirement to treat as confidential the internal workings of inquiries.

For the purposes of analysis, the dependent variables were defined as the extent to which recommendations were implemented and whether the implemented recommendations were technical or systemic in nature. The

final step was to identify the common factors – the independent variables – that affected whether recommendations were implemented. Independent variables were grouped into two categories – those under the control of an inquiry and those that were external to it.

The central hypothesis was that governments do implement the recommendations of public inquiries under certain conditions. A further hypothesis was that such implementation extends not only to technical, incremental recommendations but also to recommendations involving systemic changes. Systemic changes include major expenditures, significant legislation, new institutions, or new policy directions.

These hypotheses differ from two that are commonly found in the literature. The first of these states that governments often appoint inquiries in order to delay action on an issue: “[The inquiry] represents the government’s response to competing political demands for action and inaction, deferring major resource implications while demonstrating concern for a problem. While it is not a decision to do nothing, it is closer to a ‘non-decision’ than any of the other instruments” (Trebilcock 1982: 44). A variation on this hypothesis recognizes that delay may be a good thing: “Commissions are sometimes used to delay decisions, but it is better to delay and adopt a good solution than to act quickly and do the wrong thing” (Kernaghan and Siegel 1999: 151).

The second hypothesis sometimes advanced says that inquiries cannot achieve more than technical, incremental changes. It states that inquiries may encourage far-reaching debate about change but that they usually recommend little more than administrative tinkering because governments will not accept anything more (Salter 1990: 177).

The participation of judges in inquiries has attracted attention to the question of whether heading an inquiry is harmful to the independence of the judiciary (Law Reform Commission of Canada 1979: 33). From the government’s perspective, appointing a judge to head an inquiry is attractive because public confidence in the judge’s impartiality may enhance the prospects that the public will accept the inquiry’s findings and recommendations. In some cases, especially for investigative inquiries, a judge may have professional skills that are suited to the task (Courtney 1969). On the other hand, there is virtually no discussion in the literature about the role of judges who head inquiries as “policy entrepreneurs,” that is, to analyse their influence on the course of public policy and legislation.<sup>3</sup> This present study points to the role of judges as policy influencers.

## **The inquiries**

### **Walkerton Commission of Inquiry (Ontario)**

The Ontario government commissioned Justice Dennis O’Connor to head the Walkerton inquiry in 2000, after seven people died and 2,300 became ill

after drinking water contaminated with the E.coli bacterium. The inquiry's report, released in 2002, addressed the incident and the question of how to ensure the safety of drinking water.

The inquiry concluded that manure spread near a well had contaminated the drinking water of the town of Walkerton. Justice O'Connor blamed inadequate management of the local water system but suggested that budget cuts in the provincial Ministry of the Environment had also played a role. Justice O'Connor made 121 recommendations and he estimated the implementation cost at \$280 million.

The government announced that it accepted all the recommendations and would implement them. In 2002, the government passed the Safe Drinking Water Act (S.O. 2002, c. 32) dealing with water treatment and distribution. As of May 2007, the government reported that it had implemented more than half of the recommendations and that the remainder were underway.

### **Royal Commission on the Donald Marshall, Jr., Prosecution(Nova Scotia)**

In 1971, Donald Marshall, Jr., a member of the Mi'kmaq First Nation, was sentenced to life imprisonment for the murder of Sandy Seale. He spent eleven years in prison before being acquitted by the Nova Scotia Court of Appeal in 1983.

In October 1986, the Nova Scotia government appointed a commission to investigate the Marshall prosecution. The commission's report, published in December 1989, concluded that Marshall was "convicted and sent to prison, in part at least, because he was a native person." The eighty-two recommendations of the inquiry dealt with wrongful conviction, Mi'kmaq people and criminal justice, blacks and criminal justice, systemic racism, policing, and criminal prosecutions.

The government reported publicly on implementation of the commission's recommendations annually for four years. Even before the commission issued its report, the province appointed a director of public prosecutions to head an independent prosecution service, as the commission would recommend. In October 1991, Nova Scotia amended its Human Rights Act (R.S.N.S. 1989, c. 214) to provide protection against discrimination on several grounds, including aboriginal origin.

### **The State Commission into the Clashes between Security Forces and Israeli Citizens in October 2000 (Orr Commission) (Israel)**

In October 2000, about a month after the start of the second *Intifada*, or uprising of Palestinian Arabs against Israel's occupation of Gaza and the West

Bank, a wave of riots by Israeli Arabs occurred in Israel. The Israeli police responded with force and over the course of a week thirteen Arab citizens were killed. Prime Minister Ehud Barak agreed to the appointment of a judicial inquiry headed by Supreme Court Justice Theodor Orr.

In August 2003, thirty-four months after its appointment, the commission submitted its report. The commission devoted about a third of its report to describing the status of the Arab minority in Israel and the balance to how the police and government responded to the riots. The commission deplored the failure of Israeli governments to deal with the underlying social and economic issues that fed the anger and frustration of many Israeli Arabs.

The commission reported that the police adopted revised policies on policing public disturbances before the commission's report was completed. These reforms addressed most of the recommendations in this area. None of the commission's broad proposals on closing the gaps in public services between the Arab and Jewish sectors were implemented.

### Commission on Proceedings Involving Guy Paul Morin (Ontario)

In October 1984, in Queensville, Ontario, nine-year old Christine Jessop disappeared. Three months later her body was found. Three months after that, her neighbour, Guy Paul Morin, was arrested and charged with her murder. After two trials, Morin was convicted in 1992. In January 1995, an appeal court reversed Morin's conviction, based on new DNA evidence.

In June 1996 the Ontario government appointed Justice Fred Kaufman to head a public inquiry into the wrongful conviction of Morin. The commission's 1998 report catalogued a series of errors and flaws in the police investigation, in the use of jailhouse informants, in forensic science and in the prosecution. The commission was unusually successful. Police and Crown attorneys modified their policies and practices, in some cases in advance of the commission's report. The Centre of Forensic Sciences received increased funding and staff positions, and adopted organizational and procedural changes.

### The Aboriginal Justice Inquiry and the Aboriginal Justice Implementation Commission (Manitoba)

The Government of Manitoba appointed the Aboriginal Justice Inquiry in April 1988. The inquiry proposed 293 recommendations that addressed First Nation self-government, aboriginal legal systems, land claims, recruiting aboriginal police officers, police complaints, and domestic violence. Ten years later, few of the inquiry's recommendations had been implemented. In November 1999, the government appointed a second commission, the

Aboriginal Justice Implementation Commission, to follow up on recommendations of the first. In 2004, three years after the Aboriginal Justice Implementation Commission reported, Amnesty International reported that the pace of action continued to be unacceptably slow.

### **Independent Commission on Policing and the Office of the Oversight Commissioner (Northern Ireland)**

The Independent Commission on Policing for Northern Ireland was set up as part of the Belfast Agreement of April 1998 between the United Kingdom and the Republic of Ireland. The commission developed a comprehensive plan for reforming policing in Northern Ireland. Its September 1999 report contained 175 recommendations that amounted to a total overhaul of policing.

The commission recommended establishing an oversight commissioner to ensure that the commission's recommendations would be implemented. In May 2000, the government appointed the oversight commissioner. As of May 2006, the oversight commissioner reported that 129 recommendations of the original 175 had been completed.

### **Commission for Public Complaints against the RCMP, Public Hearing Report on the Asia Pacific Economic Conference (APEC) Incident (Canada)**

The chair of the Commission for Public Complaints against the RCMP appointed Justice Ted Hughes to chair hearings on fifty-two complaints about how the RCMP treated demonstrators at the APEC conference held in Vancouver in November 1997. The complainants alleged that the RCMP used excessive force to suppress and disperse peaceful protesters and that the prime minister's political staff interfered improperly in police operations.

Justice Hughes' report, released in 2001, identified errors in the RCMP's planning and execution of security arrangements. Justice Hughes found that the RCMP used excessive force on the crowd, violated fundamental freedoms, and used pepper spray on demonstrators punitively and without warning. The report's recommendations addressed public order policing, RCMP relations with the government, and legislation on police independence.

The RCMP commissioner accepted the majority of the report's recommendations. The RCMP adopted five principles that Justice Hughes proposed on the police service's relations with government. The RCMP did not agree that statutory codification of the police-government relationship was needed.

### Commission of Inquiry on Policing in Relation to the Blood Tribe (Alberta)

The Alberta government appointed the Commission of Inquiry on Policing in Relation to the Blood Tribe in March 1989 to investigate the treatment of members of the Blood Tribe by the RCMP, which took over policing from tribal police a few years before. The inquiry looked into twenty aboriginal deaths involving contact with the police or which the police investigated. The inquiry's recommendations addressed cross-cultural training for police, investigating missing persons, consultation with the tribe on policing services, funding, recruitment, and training. Though outside its terms of reference, the inquiry considered the impact of the Indian Act (R.S.C. 1985, c. I-5) on native people and concluded that the act fostered poverty and dependency. The inquiry recommended either drastic change or replacement of the Indian Act.

By the time the inquiry reported, the Blood Tribe police service was already re-established. The main impetus for re-establishing the tribal police came from the tribe's desire for locally controlled policing and changes in federal policy. The federal government took no action on the recommendation to reform the Indian Act.

### Commission of Inquiry into the Shooting Death of Leo Lachance (Saskatchewan)

On 28 January 1991, Carney Nerland shot Leo LaChance in the back as he was leaving Nerland's Prince Albert, Saskatchewan, gun store. Witnesses said that LaChance, an aboriginal man, was shot through the door by accident. The case received public attention when racism was identified as a possible motive. Public concern increased when it was learned that Nerland was a member of a white supremacist organization and an informer for the RCMP.

The government appointed a commission to look into the way the case was handled. The commission report, released in 1993, recommended to the Prince Albert police that "there should be a police officer who is fluent in the Cree language on duty at all shifts" and that cross-cultural training of police and prosecutors be increased. By 1997, the police hired six aboriginal officers and provided cross-cultural training for new recruits.

### Commission on Systemic Racism in the Ontario Criminal Justice System

Public concern about the treatment of black people in Ontario's criminal justice system led the province to establish the Commission on Systemic Racism in the Ontario Criminal Justice System in 1992. From 1978 to 1995, sixteen black individuals were shot by police officers. The commission cost about \$5

million and took thirty-nine months. It commissioned research papers and held public forums as well as expert consultations. The commission's report, released in 1995, called for the government to support a framework for securing racial equality. It addressed anti-racism training, employment of racialized persons in justice administration, participation of racialized persons in developing justice policies, and monitoring racial inequality. Few of the commission's recommendations were implemented, except for increased training in anti-racism.

### Office of the Chief Coroner, Follow-Up on May/Iles Inquest

Ontario's Coroners Act (R.S.O. 1990, c. C.37) requires that the coroner be notified whenever someone dies as a result of violence. The Office of the Chief Coroner holds inquests into deaths to determine who the deceased person was and how, where, when and by what means the person died. An inquest jury may make recommendations to avoid deaths in similar circumstances.

Since 1999, the office has communicated the recommendations of inquests to bodies presumed responsible for acting on the recommendations. One year later, the Office of the Chief Coroner follows up and requests reports on what action was taken.

For this research, the process was reviewed with respect to an inquest into two deaths in a tragic incident of domestic violence. In Oshawa, Ontario, on 8 March 1996, Randy Iles shot and killed his estranged common law wife, Arlene May, then killed himself. The inquest jury returned with 213 recommendations in 1998. The main thrusts of the report were to propose zero tolerance of domestic violence, recognition of the unique aspects of domestic violence as a crime, and a seamless program for victims of domestic violence.

The chief coroner sent the inquest jury's recommendations to twenty-seven organizations considered responsible for taking action. In the May/Iles case, seventy-three per cent of the recommendations were reported as implemented or to be implemented. In a May 2000 statement, the government gave credit to the May/Iles inquest as the source for changes it made in domestic violence.

### Factors affecting implementation

Analysis of the case studies identified the common factors that affected the implementation of inquiry recommendations. In the following discussion, these factors, which are the independent variables, are grouped into two broad categories: those under the control of an inquiry and those beyond an inquiry's control. The dependent variables were defined as the extent to

Table 1. Factors Affecting Implementation of Inquiry Recommendations and Implementation Results

Inquiry	Factors under an inquiry's control				Factors beyond an inquiry's control			
	Feasible recommendations	Implementation planning	Duration (months)	Follow-up/Reporting arrangements	Professional interest	Political environment		
Walkerton	Yes	Partly	23	Yes	Yes	Positive		
Marshall	Yes	Yes	38	Yes	Yes	Positive		
Orr (Israel)	Partly	No	34	No	Yes	Negative		
Morin	Yes	Yes	21	Yes	Yes	Positive		
Manitoba Aboriginal Justice	No	No	40	Yes	No	Negative		
Northern Ireland Policing	Yes	Yes	15	Yes	Yes	Positive		
APEC-RCMP	Yes	No	30	Yes	Yes	Neutral		
Blood Tribe	Yes	No	23	No	Yes	Neutral		
Lachance	Yes	No	17	No	Yes	Neutral		
Systemic Racism	No	No	39	No	Yes	Negative		
Ontario Coroner: May-Isles	Yes	Yes	5	Yes	Yes	Positive		

  

Inquiry	Factors beyond an inquiry's control				Implementation results	
	Political champion	Interests affected	Over-lapping jurisdiction	Supportive parallel developments	Change of government	Degree of implementation
Walkerton	Yes	Majority	No	No	No	High
Marshall	Yes	Minority/ Aboriginal	Yes	No	No	High
Orr (Israel)	No	Minority	No	No	Yes	Partial
Morin	Yes	Minority	No	No	No	High

Technical and systemic  
 Technical and systemic  
 Technical  
 Technical and systemic

Table 1. (*Continued*)

<i>Manitoba Aboriginal Justice</i>	No	Aboriginal	Yes	No	No	Low	Technical
<i>Northern Ireland Policing</i>	Yes	Majority	No	No	No	High	Technical and systemic
<i>APEC-RCMP</i>	No	Majority	No	No	No	Partial	Technical
<i>Blood Tribe</i>	No	Aboriginal	Yes	Yes	No	Partial	Technical
<i>Lachance</i>	No	Aboriginal	No	No	Yes	High	Technical
<i>Systemic Racism</i>	No	Minority	No	No	Yes	Low	Technical
<i>Ontario Coroner: May-Isles</i>	Yes	Majority	No	No	No	High	Technical

which recommendations were implemented and whether the implemented recommendations were technical or systemic in nature.

Defining implementation is inherently difficult. Implementation could range from an announcement that the government accepts a recommendation, to declaring a policy change, to passing legislation, to allocating funds, to establishing a new program or institution, or to some form of verification that the change has been made. The standard used here is action beyond a mere announcement but not necessarily extending to verification. A second methodological problem is making a causal connection between a recommendation and the action that follows. As Bruce Doern and Richard Phidd observed, referring to the possible policy impact of Canadian commissions from the 1950s to the 1980s, "In particular cases their main recommendations have been adopted, though usually only part of the cause can be attributed to the commission itself" (1983: 544).

The following table summarizes the implementation factors. For the dependent variables, the table summarizes the degree of implementation as high, partial or low, and whether recommendations that were implemented represented mainly technical, incremental change or more systemic, significant change. In all cases where systemic changes were implemented, governments also took action on more modest changes. For six of the eleven inquiries, governments implemented most of their recommendations. Three were partly successful. In two cases, few recommendations were followed. Four inquiries led to action on systemic recommendations, and a further five led to mainly technical or incremental changes.

## **Factors under an inquiry's control**

### **Preparing feasible recommendations**

The inquiries shared a number of strengths regarding how recommendations were prepared and written. In seven cases, the inquiries commissioned research that informed the framing of recommendations. The Orr Commission on Policing for Northern Ireland, the Public Hearing on the APEC Incident, the Inquiry into the Shooting Death of Leo Lachance and Coroner's Jury inquiry into the May/Iles deaths did not commission research.

Recommendations that were ultimately implemented were usually designed to be feasible and affordable. In several cases, inquiries made recommendations that ranged from technical changes to systemic changes that might take many years to attract enough support to produce results. Recommendations were often developed with input from the individuals and institutions that would be responsible for implementing them.

Justice O'Connor, chair of Ontario's Walkerton Commission of Inquiry on drinking water, recruited an expert in policy development and management as research director. The research director's task was to make sure that all

recommendations were feasible, sensible and fit the jurisdiction of the Ontario government.

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Two commissions made recommendations that appeared to gain acceptance because they were relatively easy to implement and aroused no opposition. Saskatchewan's Leo Lachance inquiry recommended that the Prince Albert police receive cross-cultural sensitivity training. Similarly, of all the recommendations of Ontario's Commission on Systemic Racism, it was the low-cost proposals on training that received support.

At the other end of the spectrum, between modest and ambitious, Manitoba's Aboriginal Justice Inquiry proposed new directions for provincial and federal legislation and policy. It recommended, for example, establishing aboriginal legal systems, resolving land and resource disputes, and establishing independent investigation of police complaints. It appears that there was little public support for such recommendations.

### Planning for implementation

Some people who head inquiries view their job as limited to developing the best recommendations and presenting them to governments. According to this approach, rooted in the concept of judicial independence, it should be of little concern to the inquiry what government does with the report. Other inquiry chairs plan for implementation.

Justice O'Connor (Walkerton Commission of Inquiry) did not develop a formal implementation plan for the results of his inquiry. Nor did he call for a follow-up body or suggest a regime of reporting on the government's actions on his recommendations. Walkerton inquiry staff let provincial environment officials know what they were doing but did not disclose the draft report. Rather, the inquiry held many meetings on policy alternatives. These sessions brought all the interested parties together for informal exchanges of views. Government people were able to get a good idea of the topics and the likely recommendations.

The Commission on Proceedings Involving Guy Paul Morin adopted processes for developing recommendations that promoted subsequent implementation. Inquiry counsel distributed lists of systemic issues to all parties. The parties were invited to provide written feedback. Inquiry staff prepared position papers on issues and circulated them to the parties. Morin

inquiry counsel held sessions with parties on the systemic issues to promote dialogue on what recommendations might be useful. Inquiry counsel prepared draft recommendations on each issue. They were provided to parties with the statement that they did not reflect the commissioner's opinion. Parties were told that they were free to implement reforms arising from the inquiry without waiting for the inquiry's report. Several did so and it was noted in the report.

As an example of a less proactive approach, Justice Hughes (Public Hearing into the APEC Incident) expected that the RCMP and the government would act immediately to implement his recommendations. He did not consult with the RCMP or the government on the recommendations before issuing his report. The RCMP implemented most of the operational recommendations.

### **Duration of the inquiry**

The average duration for each of the eleven inquiries was twenty-six months, from appointment to reporting publicly. Three reports took more than three years to complete and that may have been a negative factor in how many of the recommendations were implemented for two of them. The Manitoba Aboriginal Justice Inquiry, which took forty months, made little impact. The report on systemic racism in Ontario's criminal justice system took thirty-nine months to complete. By the time it was done, the public's attention had moved on to other issues. On the other hand, the Royal Commission on the Donald Marshall, Jr., Prosecution, which took thirty-eight months, led to action on many fronts. The duration of an inquiry, while not a decisive factor in itself, may become significant to the extent that delay increases the risk that a supervening event, such as a change of government, may occur and alter the political environment.

### **Factors beyond an inquiry's control**

#### **Follow-up arrangements**

In seven cases, governments set up or already had specialized bodies or processes in place to follow up on recommendations.

The Nova Scotia government reported publicly on implementation of the Donald Marshall commission's recommendations annually for four years. A tripartite federal/provincial/aboriginal forum established to further the inquiry's recommendations continued for more than fifteen years and its mandate expanded to address social, economic and educational issues.

The Commission on Policing for Northern Ireland recommended an oversight body to report on implementation. The British government set up an independent oversight commissioner. The oversight commissioner's team developed mechanisms and measures to report on changes.

The Commission for Public Complaints against the RCMP has a statutory process that requires the RCMP commissioner to report on the RCMP's response to recommendations made by the complaint commission. The chair of the complaint commission sends a final report, commenting on the RCMP's response, to the solicitor general, the RCMP commissioner and the parties. The complaint commission publishes the documents on its web site.

Ontario's Office of the Chief Coroner's follow-up process has achieved wide compliance. As mentioned, a year after the coroner's report, most organizations responsible for action provided follow-up reports, and a high proportion of the recommendations were on track to be implemented.

### Professional interest in taking action

In seven cases, people who led institutions at the centre of issues addressed by inquiries appeared to have a strong professional interest in taking action to improve performance. This was so even when there was no particular political interest or leadership driving change forward.

Justice Fred Kaufman built this factor into his work on the Morin inquiry by convening groups of defense bar and senior Crown attorneys to discuss possible recommendations on reform of prosecutions. The same people later worked on implementing the recommendations.

Top leadership of the Police Service of Northern Ireland showed steady support for implementing reforms even when community consensus melted away. The APEC public hearing, which captured media attention for years after the precipitating incident in 1997, disappeared completely from public view in the aftermath of the terror attacks of September 2001. Nevertheless, the RCMP implemented many of the APEC inquiry's recommendations.

### Political environment

In five cases, the political environment was an important positive factor. The political environment favoured strong action on the Walkerton Commission of Inquiry's report. The public and the news media had high expectations that the government would take action to remedy the deficiencies in Ontario's drinking-water regime. Public hearings of the inquiry helped maintain public and media interest for months.

Regarding the Commission on Proceedings Involving Morin, media coverage cultivated a high level of public awareness and interest. The fact that newspaper editorials supported the inquiry's recommendations improved the prospects for government action.

In Northern Ireland, political commitment by the British government and local parties to follow through on reform of the police service was embodied in a formal agreement in advance of the commission's work. After finishing the report, the commissioners personally communicated the report to

communities and non-governmental organizations in Northern Ireland. This translated into pressure on the British government to act.

The Ontario coroner's work on the May-Isles domestic violence case was perhaps the highest profile example, but a series of cases before and after that heightened public consciousness and demands for action.

### Political champion

The leadership of a senior politician or government minister enhances the prospects that action will follow. In six cases, this was a supporting factor. The Ontario premier and the minister of the environment made implementing the Walkerton recommendations a top priority.

The Ontario attorney general took a strong personal interest in implementing Justice Kaufman's recommendations on prosecutions arising from the Morin case. He announced support for the proposals the day of the report's release and appointed an implementation committee headed by a senior Crown attorney.

### Interests affected

In four cases, the recommendations could be seen to affect most citizens or residents, at least potentially, rather than a specific group or minority. For example, the safety of the water supply in Ontario concerned everyone, although issues of management and qualified staff were more relevant in rural areas. Everyone in Northern Ireland had a stake in the reform of the police service. The civil liberties of any citizen could be at risk if police use excessive force to suppress peaceful protest, as happened in the APEC incident. Any family could be touched by domestic violence, so the Ontario coroner's report on May/Isles resonated widely.

Opposing interests blocked or delayed action on the recommendations of several inquiries. Holding judicial inquiries on cases of wrongful conviction has become common practice in Canada; however, the requirement has not been established in legislation as the Marshall inquiry proposed. Governments are evidently unwilling to relinquish their discretion.

For the Commission of Inquiry on Policing in Relation to the Blood Tribe, dissent within the tribe and its institutions prevented full implementation of the recommendations.

In Manitoba, the Aboriginal Justice Inquiry recommended that the government establish a roundtable with aboriginal organizations to keep aboriginal issues on the public agenda. The government did not act on this proposal at least partly because the two largest aboriginal organizations did not support it.

## Overlapping jurisdiction

This factor played a part in two cases. The Marshall inquiry recommended that the federal government set up an independent body to investigate and decide whether to re-open cases of alleged wrongful conviction. No one acted on the recommendation for about nine years, partly because of the jurisdictional factor.

According to some, the Province of Alberta was a half-hearted participant in the changes in First Nation policing. This weakened the implementation of the new direction proposed by the Blood Tribe inquiry.

## Supportive parallel developments

Sometimes, action follows independently of what an inquiry recommends because of parallel developments. It may be a court decision that mandates a change in law or practice, or a change in government policy that moves events in a complementary direction.

Wrongful conviction cases continue to attract attention and follow-up actions. On 26 January 2005, a federal-provincial-territorial working group on miscarriages of justice issued a report with more than fifty recommendations intended to prevent repeats of the errors seen in cases like that of Morin and Marshall.

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The government of Manitoba implemented the Aboriginal Justice Implementation Commission's proposal for child welfare reform. The proposals coincided with the government's election platform promises. In the case of the Blood Tribe policing inquiry, the federal government was developing policy on First Nation policing at the same time the inquiry was underway in 1989–91.

## Change of government

When elections bring a new government to power and an inquiry reports to a different government than the one that appointed it, the likelihood that its recommendations will be implemented is reduced. In the two cases where such a change occurred, implementation was mostly stalled. The longer an inquiry takes, the greater the risk that it will report to a different government. Even if it reports to the same government, there

may be too little time left in the government's mandate to implement recommendations.

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*The most obvious lesson is to design recommendations that are feasible and affordable. That, along with the political environment, seems to be the strongest factor influencing implementation. If an inquiry's recommendations provide answers to current and pressing public issues, they usually get attention*

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The Israeli political environment into which the Orr commission reported was unfavourable in important respects. The commission reported to a different prime minister. The governing coalition changed. Given the threats to security, there was little support for allocating resources to improve the situation of the Arab sector.

The Ontario Commission on Systemic Racism in the Criminal Justice System also reported to a different government and few of its recommendations were adopted. In the June 1995 election, the Conservatives under Mike Harris replaced the New Democratic government that appointed the systemic racism commission. The new provincial government showed no interest in implementing the recommendations.

### **Judges as policy entrepreneurs**

This research illuminates the methods judges use to improve the chances that governments will act on their recommendations and the special assets that judges have as participants in the policy process.

The case studies show that judges, often buffered by inquiry counsel or policy staff, may test potential recommendations with governments and other interested parties. They may issue discussion papers or interim reports to prepare the ground for final recommendations. They may hold forums to help develop consensus around directions. They preside over public hearings.

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*Follow-up and public reporting on implementation help keep the impetus of an inquiry alive*

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Holding public hearings is a powerful way of attracting public and media attention, and keeping the issues before the inquiry alive. Even if hearings are focused on the investigative mandate of the inquiry, the attention-getting value of the process spills over and helps ensure that the public, media and government will anticipate and take seriously recommendations that come at the end of the process. Hearings may simultaneously satisfy the public's

desire to know “what happened” and cultivate receptiveness to proposals about “how to prevent future instances.” The impact of inquiry hearings, as amplified in the news media, suggests that public inquiries do not necessarily serve a government’s wishes to delay action. If inquiry hearings are the top item in the news, it is hard to see how that furthers a government agenda to bury the issues.

What are the special assets that judges bring to the policy arena? Common elements seen in the inquiries reviewed here include the observation that the judges seem to want to make an impact. That can be seen from the appointment of senior staff, particularly on the policy side of inquiries, who know their way around government. The judges themselves are politically astute and well connected to élites. Judges enjoy high prestige, public confidence and respect.

## Conclusion

The foregoing review points to ways to improve the prospects that recommendations of future inquiries will be implemented. The most obvious lesson is to design recommendations that are feasible and affordable. That, along with the political environment, seems to be the strongest factor influencing implementation. If an inquiry’s recommendations provide answers to current and pressing public issues, they usually get attention.<sup>4</sup>

A second rank of factors, also quite powerful, includes planning for implementation and provisions for follow-up, preferably involving public accountability. There can be strong connections between designing feasible recommendations and planning for implementation. To be successful, inquiries should develop recommendations with input from the people and institutions that will be responsible for implementing them. From the experience of the most successful inquiries, it makes sense to propose recommendations that range from relatively technical measures to systemic changes that may take years to gain support.

Long, costly inquiries are not necessarily more successful. The sooner an inquiry reports, the more likely it is to report to the same government that appointed the inquiry and the more likely it is that action will follow.

Follow-up and public reporting on implementation help keep the impetus of an inquiry alive. An inquiry should consider proposing that follow-up be assigned to an existing official or organization, or to a special-purpose body and process. Both arrangements have delivered good results.

The findings support the hypothesis that governments implement the recommendations of public inquiries under certain conditions. That does not necessarily contradict the hypothesis that governments appoint inquiries in order to buy time or to diffuse the political heat on an issue. Both are likely true. For some inquiries, governments implement not only technical or

incremental recommendations but also recommendations that involve systemic changes.

## Notes

- 1 The scarcity of empirical studies of the implementation of public inquiry recommendations is striking. One example of such an empirical study is the one by Sylvia Bashevkin (1988). She too commented on "the relative dearth of studies which question the policy impact of either royal commissions or public opinion" (1988: 391). She reviewed the results of nine federal commissions and task forces and concluded that recommendations favouring economic and cultural nationalism in Canada tended not to be implemented, despite broad support of public opinion, because Canadian élites held more continentalist views. Ian D. Clark and David Trick (2006) examined the results of one inquiry in depth, the Rae report on post-secondary education in Ontario. The authors were able to probe in detail the factors affecting implementation. Their findings illustrate how variables that promote implementation of recommendations, several of which are also identified in the present study, combined to make the Rae inquiry highly successful. Because this inquiry was so successful, analysing that case alone cannot illuminate what happens when such positive factors are absent or when there are factors that impede implementation. For that reason, the present study examines inquiries that were successful to greater and lesser degrees.
- 2 The Canadian academics' roundtable, "Commissions of Inquiry in Canada: Lessons from Recent Experience," hosted by the Institute of Public Administration of Canada in May 2006, made this recommendation: "In creating a commission of inquiry, it should be clear whether the principal mandate of the commission is 'investigative' or 'policy prescriptive.' In practice, many inquiries have mandates that straddle the two basic forms. (See the web site <http://www.ipac.ca/files/ExBrief3Commissions.pdf>.)
- 3 I am indebted to Prof. Sanford Borins for suggesting this focus on the role of judges.
- 4 Ian D. Clark and David Trick identified several of the same factors promoting implementation of inquiry recommendations as this study did. They grouped the factors into the categories of environmental variables, process variables, and political acuity in developing recommendations that attract stakeholder and governmental support. Their advice to future commissions is in line with the findings of this study: "[O]ffering formally independent advice is not inconsistent with keeping in close contact with decision-makers, seeking expert opinion, listening to stakeholders, and being sensitive to dominant public values" (2006: 193).

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