

Table of Contents

<i>Preface</i>	<i>v</i>
<i>Acknowledgments</i>	<i>vii</i>
<i>Table of Cases</i>	<i>xxiii</i>
Chapter 1 — Introduction to Public Inquiries in Canada – Ronda Bessner	1
1. Introduction.....	1
2. What is a Public Inquiry? How is it Created?	2
3. History of Public Inquiries in Canada	4
4. Types of Public Inquiries.....	5
(a) Investigative Inquiries	6
(b) Policy Inquiries	7
5. Differences Between Public Inquiries and Criminal/Civil Trials	8
6. Differentiating Public Inquiries from Parliamentary Committees, Government Policy Departments, Think Tanks and Task Forces.....	10
7. The Importance of Public Inquiries in Canada	13
Chapter 2 — The Role of the Commissioner of a Public Inquiry – Ronda Bessner	19
1. The Appointment of the Commissioner	19
(a) Why Judges are Appointed as Commissioners of Public Inquiries.....	19
(b) Skills Required of a Commissioner.....	27
2. Discussions with the Government Before Assuming the Role of Commissioner	28
3. Lessons Learned from the Somalia Inquiry	29
4. Other Issues to Consider Before Accepting the Position of Commissioner	32
(a) Multiple Commissioners.....	32
(b) Impact on Personal Life.....	34
5. Decisions to be Made at the Inception of the Inquiry.....	35
(a) Hiring the Commission Team.....	35
(b) Physical Premises of the Inquiry.....	37

(c) Conferring with Former Commissioners of Public Inquiries.....	39
6. Meeting with Individuals and Groups in the Affected Community/Communities.....	40
7. Guiding Principles at Public Inquiries.....	44
8. Relationship Between the Commissioner and the Media.....	45
9. Conclusion	47
Chapter 3 — Serving as Commission Counsel at a Public Inquiry	49
I. The Role of Commission Counsel – <i>Ronda Bessner</i>	49
1. The Decision to Become Commission Counsel	49
2. The Inquisitorial Process and the Public Interest	50
3. Impartial “Alter Ego” of the Commissioner	50
4. Time Commitment	52
5. Ensuring there is No Conflict of Interest	52
6. Important Work to be Done in Advance of the Hearings.....	53
7. Regular Meetings with Parties.....	56
8. Preparing Notices of Misconduct	57
9. Involvement in the Preparation of the Final Report	57
II. Reflections on Serving as Lead Commission Counsel: An Interview With Derry Millar – <i>Susan Lightstone</i>	58
III. The Role of Junior Counsel at a Public Inquiry – <i>Duncan Ault</i>	66
1. Serving as Junior Commission Counsel at the Elliot Lake Commission of Inquiry.....	66
2. A Fast Pace	67
3. Unique and Varied Work.....	67
4. The Hearings: An Unparalleled Advocacy Experience	70
5. Learning How to Present Evidence.....	70
6. Be Prepared to Roll Up Your Sleeves	71
7. All-Consuming	72
8. A Singularly Rewarding Experience.....	73
Chapter 4 — Working Together — The Relationship between the Commissioner and Commission Counsel: An Interview with the Honourable Dennis O’Connor and Paul Cavalluzzo – <i>Susan Lightstone</i>	75

Chapter 5 — Constitutional Constraints on Public Inquiries – <i>Ronda Bessner</i>	87
1. Introduction.....	87
2. Division of Powers.....	87
3. Joint Federal/Provincial/Territorial Commissions of Inquiry.....	95
Chapter 6 — Procedural Fairness and Public Inquiries – <i>Madam Justice Freya Kristjanson</i>	97
1. Overview: Procedural Fairness and Public Inquiries.....	98
2. Terms of Reference.....	99
3. The Governing Statute.....	101
4. Principles.....	103
5. Rules of Procedure and Practice.....	104
(a) The Source of the Power to Make Rules.....	105
(b) The Process of Rule-Making.....	105
(c) Key Elements of Rules.....	106
(i) Investigative Inquiries.....	107
A. Evidence Summaries.....	108
B. Witness Panels.....	109
C. Representative Witnesses and Institutional Reports.....	111
D. Community Healing.....	111
(ii) Policy Inquiries.....	112
6. Procedural Fairness: Overview.....	115
7. Procedural Fairness: The Right to a Hearing.....	118
(a) Notice of Alleged Misconduct.....	119
(b) Disclosure.....	121
(c) Cross-Examination.....	123
8. Procedural Fairness: Impartiality and Independence.....	125
9. Standing.....	130
(a) Statutory Provisions.....	131
(b) The Order in Council.....	132
(c) The Rules and Procedures for Standing.....	132
(d) Types of Standing.....	133
(i) Full Standing.....	134

(ii) Limited and Special Standing	137
(iii) Rights of Participation	137
(iv) Avoidance of Duplication and Coalitions	139
(v) Standing for Different Phases of an Inquiry	140
10. Funding	140
11. Conclusion and Checklist	144
Appendix: Recommended Secondary Sources	146

Chapter 7 — How to Run a Public Inquiry – *The Honourable Denise*

<i>Bellamy</i>	147
1. Introduction	147
2. First Things First	149
3. Phase I: The Initial Stages — Setting Up the Inquiry	152
(a) Meeting with Government Officials	152
(b) Commission Counsel	152
(c) Staff	153
(i) Chief Administrative Officer	153
(ii) Communications Officer	154
(iii) Administrative and Technological Support	154
(iv) Senior Legal Analyst	154
(v) Editor	155
(d) Offices and Hearing Room	155
(e) Website	155
(f) Rules of Procedure	157
(g) Document Management	158
(i) Electronic Document Management Services	158
(ii) Archives	159
(h) Security	159
(i) Media	160
(i) Contact and Interviews	160
(ii) Press Releases	161
(iii) Lock-ups	161
(iv) Photographs	161
(v) Post-Inquiry Media Feedback	161
(j) Reading Other Inquiry Reports	162
4. Phase II: The Investigation	162

(a)	Documents.....	162
(i)	Solicitor-Client Privilege.....	163
(ii)	Summoning Personal Documents.....	164
(b)	Witnesses.....	164
(i)	Interviews.....	164
(ii)	Witness Statements and Affidavits.....	165
(iii)	Witness Photographs.....	166
(c)	Investigators.....	166
(d)	Experts.....	167
5.	Phase III: The Hearings.....	167
(a)	Difference Between a Public Inquiry and a Trial.....	167
(b)	Laying the Groundwork for the Report.....	167
(c)	Standing.....	167
(i)	Applications for Standing.....	168
(ii)	Categories of Standing.....	168
(iii)	The Role of Legal Counsel for Witnesses or for Parties with Standing.....	169
(iv)	Funding for Legal Counsel.....	169
(d)	Conduct of the Hearings.....	170
(i)	Opening Statements.....	170
(ii)	Examinations.....	171
(iii)	Notices of Alleged Misconduct.....	172
(iv)	Compelling the Attendance of Witnesses.....	173
(v)	Closing Submissions.....	173
(vi)	Phases of Inquiries.....	174
6.	Phase IV: Writing the Report.....	176
(a)	Preparation.....	176
(b)	During the Hearings Phase.....	178
(c)	After the Hearings were Completed.....	178
(d)	After the Report was Released.....	179
7.	Lastly: Some Quick Tips for Inquiry Commissioners.....	180
(a)	Stress and your Health.....	180
(b)	Negotiate Some Basics.....	180
(c)	Retain an Outside Law Firm Early.....	181
(d)	Stick to Inquiry Principles.....	181
(e)	From the Start.....	181

(f) Remain Relevant — And Be Flexible	181
(g) Sitting Times	182
(h) Electronic Documents	182
(i) Exhibits.....	182
(j) Making Notes	182
(k) Summaries	183
(l) Photographing Witnesses.....	183
(m) Chronology	183
(n) Delays.....	183
(o) Keep in Touch	184

Chapter 8 — The Role of Investigators at a Public Inquiry: Interviews with Bill Blake and Craig Hannaford – Susan Lightstone 185

1. Introduction.....	185
2. Choosing an Investigator: Skills and Experience.....	187
(a) Organizational Skills	187
(b) Interviewing Skills.....	187
(c) Drafting and Notetaking Skills.....	187
(d) Searching Skills.....	188
(e) Managerial or Supervisory Experience.....	188
(f) A Good Network.....	188
(g) Sensitivity and Empathy.....	189
(h) Computer Skills	189
(i) Avoid Conflicts of Interest	189
3. Preparing to Investigate.....	190
(a) Build the Team of Investigators	190
(b) Develop Relationships with Commission Counsel and Other Members of the Inquiry Team.....	190
(c) Begin the Information-Gathering Process	191
(d) Keep an Eye on the Documents Coming into the Inquiry.....	191
(e) Establish a Process for Dealing with Criminal Investigators.....	191
4. The Interviewing Process.....	192
(a) Identifying Who is to be Interviewed.....	192
(b) Preparing for Interviews	192
(c) Arranging the Interviews – “Don’t Play the Heavy”	193

(d)	Selecting the Interview Venue.....	193
(e)	Notetaking at Interviews	193
(f)	The Presence of Lawyers	193
(g)	Knowing Who's to be Interviewed Next.....	193
(h)	Never Losing Sight of the Inquiry's Mandate.....	194
5.	The Role of Investigator During the Inquiry	194
Chapter 9	— Rules of Evidence at a Public Inquiry – <i>Ronda Bessner</i>	195
1.	Introduction.....	195
2.	Power of the Inquiry to Establish its Process and Rules	195
3.	Relevance.....	197
4.	Hearsay Evidence is Admissible in Public Inquiries	200
5.	Privileged Communications	201
(a)	Distinction Between Class and Case-by-Case Privileges.....	201
(b)	Solicitor-Client Privilege	202
(c)	Procedures Relied Upon at Public Inquiries when Privilege is Asserted	204
6.	Public Interest Immunity.....	208
7.	Compellability of Witnesses.....	210
8.	Perjury	213
9.	Search Powers.....	215
10.	Privilege Against Self-Incrimination.....	216
(a)	Evidence Statutes and the Charter.....	216
(b)	Inquiry Witnesses Charged with Criminal Offences: The Example of the Westray Mine Tragedy	218
11.	Conclusion.....	221
Chapter 10	— Research and Policy in a Public Commission of Inquiry – <i>Geneviève Cartier</i>	223
1.	Introduction.....	223
2.	An Overview of the CIPCCI	225
(a)	General Background	225
(b)	Mandate, Structure and Work of the CIPCCI.....	226
(c)	Main Findings.....	227
(d)	The Recommendations of the CIPCCI	229
3.	A Few Lessons and Many Questions.....	231

(a)	General Observations	231
(i)	Democratic Considerations.....	231
(ii)	Combining Fact-Finding and Policy Formulation ...	231
(iii)	The Role of Research.....	232
(b)	Important Elements of Context	234
(c)	Getting to Work	235
(i)	Constructing the Research Team	235
(ii)	Clarifying the Scope of the Mandate	236
(iii)	Formulating Research Questions	236
(iv)	Providing Answers	237
(v)	Writing	241
4.	Conclusion	242
Chapter 11 — Public Inquiries and the Media.....		243
I.	Getting the Message to the Public – <i>Peter Rehak</i>	243
1.	Introduction.....	243
2.	The Inquiry Web Page	245
3.	Public Meetings.....	248
4.	Who Speaks to Media for the Inquiry?.....	250
5.	The Communications Consultant	251
6.	Media Facilities.....	253
7.	Exhibits.....	254
8.	Video	255
9.	Webcast	256
10.	Electronic Recordings in the Hearing Room.....	257
11.	Citizen Journalists	258
12.	Access to Transcripts	260
13.	Report Release.....	261
14.	The Role of Media.....	262
15.	Public Inquiry’s Media Officer: A Checklist of Tasks	262
II.	A Journalist’s View – <i>Colin Perkel</i>	263
Chapter 12 — Counselling and Outreach at Public Inquiries – <i>Celia Denov</i> ...		273
1.	Introduction.....	273
2.	Cornwall Public Inquiry	274

3.	Inquiry Into Pediatric Forensic Pathology in Ontario (the “Goudge Inquiry”).....	274
4.	Results of Provision of Counselling Services at Cornwall Public Inquiry and Goudge Inquiry.....	275
5.	Role of Coordinator of Counselling Services	275
6.	How was the Referral System Established?.....	276
	(a) Cornwall Public Inquiry	276
	(b) Inquiry into Pediatric Forensic Pathology in Ontario	278
	(i) First Nations and Remote Communities.....	279
	(ii) Evaluation of Counselling Service	280
	(iii) Ongoing Service	280
7.	Conclusion	280
Chapter 13 — Managing the Flow of Information at a Public Inquiry – Nadia Effendi and Ivana Nenadic		281
1.	Introduction.....	281
2.	Where to Start?.....	282
	(a) Establishing the Roadmap and Structure of the Inquiry.....	282
	(b) Identifying the Source of Documents: Summonses for Production and Information.....	282
	(c) Narrowing the Field: Preliminary Investigations	284
3.	How to Tackle One Terabyte of Documents?	284
	(a) Retain Electronic Document Management and Review Services	285
	(b) Plan for Unpredicted Delays	286
	(c) Transparency: Full Access to Documentary Database	288
4.	Getting Ready for the Hearings	289
	(a) Establishing Rules to Ensure Efficiency and Effectiveness.....	289
	(b) Identifying Witnesses.....	290
	(c) Use of Overview Reports: An Effective Tool.....	291
	(d) Privilege Claims: Plan a Process	291
	(e) Section 17 Notice: Ensuring Fairness and Confidentiality	292
	(f) Website: Easy Tool to Maintain Transparency	292
5.	The Hearings	293

(a)	Technology Ensures Efficiency	293
(b)	Entering of Exhibits in Bulk.....	294
(c)	Conduct of Hearings: Openness and Transparency.....	294
6.	Post-Hearings Procedures.....	295
(a)	Application by Participant	296
(b)	Evidence from Anonymous Source Post-Hearing.....	297
(c)	Final Submissions	297
7.	The Report: The “Pièce de Résistance”	297
(a)	Efficiency and Cost-Effectiveness.....	297
(b)	Sometimes, Despite all Efforts, More Time is Needed	298
8.	Conclusion.....	299
	Appendix: Document Management Checklist	300
Chapter 14 — The Roles and Experiences of Counsel for Parties at Public Inquiries – Susan Lightstone		303
1.	Sandler and Edwardh: Suggestions For Counsel.....	304
2.	Trudell and Epstein: Counsel at the Walkerton Inquiry.....	306
(a)	William Trudell Talks About Representing Stan Koebel	306
(b)	Justice Michael Epstein Talks About Representing Frank Koebel.....	310
Chapter 15 — Giving Voice: “They are public inquiries. . .” – Susan Lightstone		317
1.	Introduction.....	317
2.	“Inquiry Inspires Hope”.....	320
3.	Voices Heard.....	323
(a)	Lata Pada: Being Heard at the Air India Inquiry	324
(b)	André Picard: Speaking on Behalf of Others – and Himself – About the Tainted Blood Tragedy.....	328
(c)	Elizabeth Hay: The Story of the Mackenzie Valley Pipeline Inquiry Lives on through Fiction	331
(d)	Nicholas Bala: Serving as an Expert Witness at a Public Inquiry	334
Chapter 16 — The Role of the Independent Assessment Officer – Madam Justice Freya Kristjanson		337

Chapter 17 — Ethical Concerns for Public Inquiries – <i>Adam Dodek</i>	339
1. Introduction	339
2. Preliminary Issues: A Paradox and a Tension	341
(a) General Concerns	341
(b) Specific Concerns	345
3. Ethical Issues During the Inquiry	348
4. Ethical Issues After the Inquiry	350
5. Final Thoughts	352
Chapter 18 — Lessons Learned from Experiences at Public Inquiries: An Interview with Marlys Edwardh – <i>Susan Lightstone</i>	353
1. Engage the Public	353
2. Protect Vulnerable People	354
3. Understand the Long-Term Consequences of Working on an Inquiry	355
4. Think Broadly About what “Success” of an Inquiry Means	355
5. Engage Civil Society	356
6. Work at Avoiding Judicial Reviews (Hint: Everybody Stay Flexible)	356
7. Get as Many Outstanding Issues Resolved as Early in the Inquiry Process as Possible	357
8. Take Care with Notices of Misconduct	357
9. Commissioners: Choose Experienced Commission Counsel	358
Chapter 19 — Preparing the Report for a Public Inquiry	361
I. Writing the Report – <i>Ronda Bessner</i>	361
1. Introduction	361
2. Giving Thought to the Report at the Inception of the Inquiry	362
3. Who are the Primary Drafters of the Report?	363
4. Different Volumes of the Report to be Drafted	365
5. Interim Report	368
6. Drafting and Preparing Sections of the Report During the Inquiry	370
7. Ensuring Timely Notices of Misconduct	372
8. Who is your Audience?	374

9.	Fact-Checking.....	375
10.	Translation.....	375
11.	Hiring Editors and Book Designers.....	376
12.	Date to Deliver the Report to the Government	378
13.	Conclusion	381
II.	The Editor’s Role in a Commission Report – <i>Dan Liebman</i>	382
1.	Introduction.....	382
2.	Background.....	383
3.	Levels of Editing.....	384
4.	Components of a Report.....	385
	(a) Cover and Title.....	385
	(b) Preliminary Pages (Prelims).....	385
	(c) Contents	386
	(d) Abbreviations and Acronyms	386
	(e) Glossary and Other Lists.....	386
	(f) Documentation – Footnotes and Endnotes.....	386
	(g) Figures and Tables.....	387
	(h) Quotations and Transcripts.....	387
	(i) Appendices.....	387
	(j) Recommendations.....	387
	(k) Executive Summary.....	387
5.	The Editorial Process	388
	(a) A Three-Stage Process.....	388
	(i) Stage 1: Preparing the Style Guide and Editing Chapters for Approval and Translation.....	388
	(ii) Stage 2: Reading of Complete Report, Final Edit and Preparation for Layout.....	389
	(iii) Stage 3: Page Layout and Checking of Proofs.....	389
	(b) Confidentiality and Security	389
	(c) File Management	390
	(d) Scheduling and Updating	390
6.	Conclusion	390
	Appendix A: Summary of Editorial Tasks.....	391
	Appendix B: Contents of a Recent Style Guide	391

Chapter 20 — Closing the Inquiry — An Interview with Suzanne Labbé – Susan Lightstone	393
Chapter 21 — Assessing the Effectiveness of a Public Inquiry – Ronda Bessner	399
1. Different Measures to Evaluate the Success of Public Inquiries.....	399
2. Measures to Assess Success During the Life of the Inquiry....	399
3. Measure: Implementation of the Recommendations in the Public Inquiry Report	403
4. Measure: Educating the Public	412
5. Measure: Healing	414
6. Measure: Accountability.....	416
7. Measure: Apology by the Government	416
8. Conclusion	422
Appendix I — Public Inquiry Documents	425
Appendix II — Checklist For Prospective Commissioners	521
Appendix III — Canadian Inquiries Legislation	525
Appendix IV — Canadian Apologies Legislation	611
Appendix V — List of Interviews	625
<i>Index</i>	629

