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A HISTORY OF ROYAL COMMISSIONS

THOMAS J. LOCKWOOD*

“The necessity for action was clear to everyone,
But the view was very general that nothing could be done,
And the Government courageously decided that the Crown
Should appoint a score of gentlemen to track the trouble down—
Which always takes a long, long time.”¹

The circumstances which lead the Government to appoint a Royal Commission are as varied as the exigencies of political life. H. O. Clokie, in his book *Royal Commissions of Inquiry*,² classifies them as inquiries which:

- (1) prepare the way for a predetermined Government policy;
- (2) ascertain in a more or less “expert” fashion the best or most feasible solution of a problem the Government desires to tackle but on which it has made no final decision;
- (3) delegate to a representative body the task of solving some major economic or social controversy which the Cabinet does not feel called upon to settle;
- (4) forestall public criticism or prevent anticipated political pressure;
- (5) postpone as long as possible the consideration of a question distasteful to the Government and, at the same time, to pacify some politically powerful section of the public.

Normally the decision to create a Royal Commission combines several of these considerations. Due to the difficult growth of an efficient Civil Service, the Canadian executive, both federal and provincial, draws on such outside sources of information as Royal Commissions, to formulate policies. This reliance is vividly revealed by the great range of subjects explored by the Commissions (see Tables 1, 2, 3 and 4).

Apart from examining economic and social questions (of which the recent Carter Royal Commission on Taxation is a prime example), Royal Commissions (more properly titled in this instance Royal Commissions of Inquiry) have been employed in the politically volatile area of investigating charges laid against various public officials. Their use in Canada spans more than a century, starting with an investigation in 1848 (two years after the Inquiries Act was passed (see *infra*)) into charges against André Benjamin

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¹ Sir Alan Herbert, *Mild & Bitter*, p. 254. First printed in *Punch*, Vol. 186, June 27, 1934, 708. See Appendix 1 for complete text of poem.

² H. O. Clokie and J. W. Robinson—(1937) Stanford University Press 123.

Papineau³ right up to the 1966 inquiry by Mr. Justice Spence of the Supreme Court of Canada into the affairs of Gerda Munsinger and various high-ranking Cabinet members.

The Royal Commission is probably one of the most used but least understood phenomena in Canadian history. Criticisms of their use have been numerous and varied. In an effort to put the Royal Commission into historical perspective a seven-stage approach will be employed:

(1) A general, but brief, introduction to Commissions, including a definition, appointment, and powers of Commissions;

³ This was the first occasion which the author could find when the Inquiries Act was employed. The commission, setting up the investigation, read as follows:

To all to whom these Presents shall come:— Greeting:

Whereas in and by an Act of the Parliament of the Province of Canada, made and passed in the ninth year of Her Majesty's reign, intituled, "An Act to empower Commissioners for enquiries into matters connected with the public business to take evidence on oath," it is among other things enacted, that whenever the Governor, Lieutenant Governor, or person administering the Government of the said Province, acting by and with the advice of the Executive Council thereof, shall cause enquiry to be made into and concerning any matter connected with the good government of the said Province, or the conduct of any part of the public business thereof, or the administration of justice therein, and such enquiry shall not be regulated by any special act, it shall be lawful for the Governor, Lieutenant Governor, or person administering the Government as aforesaid, by the Commission, to confer upon the Commissioners, or persons by whom such enquiry is to be conducted, the power of summoning before them any party or witnesses, and of requiring them to give evidence on oath, orally or in writing, (or on solemn affirmation, if they be parties entitled to affirm in civil matters), and to produce such documents and things, as such Commissioners shall deem requisite to the full investigation of the matters into which they are appointed to examine, and the Commissioners shall then have the same power to enforce the attendance of such witnesses, and to compel them to give evidence, as is vested in any court of law in civil cases, as in and by the said Act, reference being thereunto had, may more fully appear: And whereas certain charges have been preferred against André Benjamin Papineau, of the Parish of St. Martin, Esquire, in his capacity of Justice of the Peace for the District of Montreal, by certain inhabitants of the said parish, and it is expedient to appoint a Commissioner to investigate these charges: Now know ye, that reposing trust and confidence in the loyalty, integrity, and ability of William Ermatinger, of the City of Montreal, Esquire, I have nominated, constituted, and appointed, and by these presents do nominate, constitute and appoint, the said William Ermatinger to be a Commissioner to investigate, at the City of Montreal, the charges so as aforesaid preferred against the said André Benjamin Papineau, Esquire, with full power to summon before him any party or witnesses, and to require them to give evidence upon oath, which oath he is hereby authorized to administer, or on solemn affirmation, and to compel such witnesses to produce such documents and things as he the said William Ermatinger may deem requisite to the full investigation of the said charges.

And it is my will and pleasure that the said William Ermatinger do report the result of the said investigation with all convenient speed to the Governor, Lieutenant Governor, or person administering the Government of the said Province for the time being.

Given under my Hand and Seal at Arms at Montreal, this first day of July, in the year of our Lord one thousand eight hundred and forty-seven, and in the eleventh year of Her Majesty's Reign.

(Signed) ELGIN AND KINCARDINE
By Command.

(Signed) D. DALY, Secretary.

- (2) A summary of the history of British Royal Commissions from 1066 to roughly 1900;
- (3) An analysis of Royal Commissions appointed by the British Parliament to investigate various facets of Canadian life;
- (4) Pre-Confederation Canadian Commissions;
- (5) A parliamentary history of the Inquiries Act from the passage of Part I in 1846 to the attainment of its present form in 1912;
- (6) A brief study of post-Confederation Commissions;
- (7) An evaluation of the various criticisms levelled against Royal Commissions from their inception in 1066 to roughly 1900.

(1) A General Introduction to Royal Commissions

The definition of "Royal Commission" is not at all clear. "Royal Commissions" said Sir Edward Coke, "are a delegation by warrant of an Act of Parliament or of the common law whereby jurisdiction, power and authority is conferred on others".⁴ The prefix "royal" implies that the power delegated has been granted under the Great Seal and is a heritage of the past when English kings held the prerogative and all the instruments attached to its use. Royal Commissions are executive appointments, formally authorized by the instrument that was possessed by the king.

A committee is a section or subdivision of a larger body to which the former is responsible. This is not true of Royal Commissions. A Royal Commission is not a subordinate part of a larger body. If a committee may be defined as a secondary organ of one of the institutions of the state, a Royal Commission must be defined not as such a secondary organ but as a primary institution, though usually of a temporary nature. A Royal Commission is not created as a subordinate part of any other institution but takes its formal origin from the legal centre of authority, the Crown.

Presumably all commissions issued under Part I of the Dominion Inquiries Act⁵ qualify; these include many minor investigations into individual charges of political partisanship. Commissions issued under Part II of the Inquiries Act do not bear the Great Seal and therefore technically fail to qualify; but several important investigations set up as "departmental inquiries" under Part II have been regarded as Royal Commissions. Several other statutes have provided for public inquiries, and commissioners appointed under these Acts have often been designated as "royal" commissioners—for example, 38 Victoria c. 53 (1875) to adjust claims to Manitoba lands; the Combines Investigation Act, the Judges Act (to study a case for dismissal of a judge). Predating the Industrial Disputes Investigations Act, there were also many commissions set up to study industrial unrest.

⁴ 3 Institutes, 165, quoted in Clokie, *supra* note 2, p. 149.

⁵ Inquiries Act, R.S.C. 1954, c. 154, Part I reads (in part) as follows:

s. 2. The Governor in Council may, whenever he deems it expedient, cause inquiry to be made into and concerning any matter connected with the good government of Canada or the conduct of any part of the public business thereof.

s. 3. In case such inquiry is not regulated by any special law, the Governor in Council may, by a commission in the case, appoint persons as commissioners by whom the inquiry shall be conducted.

The basic procedure in appointing Commissions is that a memorandum is submitted to the Cabinet by the Minister of the Department concerned, which states the reasons for calling the inquiry. The Cabinet examines the memorandum and if it accepts it a formal Order in Council is issued duly authorized by the Great Seal (employed, technically, only by the Governor in Council). The Order in Council is now the "royal commission", complete with references and powers. It is sent to the various appointees whose names appear on the document; a separate commission is not required for every commissioner named. Sometimes the Order in Council is tabled in the House, although parliamentary approval is not required, as it is in England.⁶

Royal Commissioners derive their powers generally from the Inquiries Act and specifically from their warrant of appointment. They are technically free to devise their own methods of operation. Occasionally the executive will impose a maximum time limit for reporting, but normally the commissioners are merely requested to report "as soon as possible", and as noted above, "all these things take a long, long time".⁷

In New Zealand the Governor-General may issue "commissions" without any statutory authority, but simply because he is the chief executive officer. A statute grants powers to commissioners similar to those in the Canadian statute. The power to issue commissions without legislative authority is assured in New Zealand.⁸ In New South Wales it is also assumed that the Governor of the State has the power to issue a Commission of Inquiry without legislative authority. By The Royal Commissions Evidence Act of 1901, commissioners may summon and examine witnesses and punish for refusal to give evidence.

In Australia it has been mainly the states which have issued Royal Commissions; in Canada the opposite holds true. The reason for the difference lies mainly in sections 91 and 92 of the British North America Act. Section 91 grants residual powers to the Dominion by the general "peace, order and good government" clause. In 1867 the provinces were expected to be little more than over-sized municipalities and their powers were consequently restricted. Thus, for a long time, the federal government took the initiative in all matters of legislative policy and in the general economic and physical expansion of the country. Investigations to aid this process were instigated by the federal authorities and not by the provinces.

⁶ Each edition of the Canada Year Book contains a list of newly-appointed Royal Commissions, both federal and provincial, indicating the date of their appointment and terms of reference.

⁷ Herbert, *supra* note 1.

⁸ Jellicoe v. Haselden, 22 N.Z.L.R. 349 at 350.

Commencing with the *Local Prohibition* case in 1896,⁹ the Judicial Committee of the Privy Council gradually enlarged the scope of provincial jurisdiction by its interpretation of the "property and civil rights" clause in section 92. Greater control leads to larger and more complex governmental organs and more investigations. Thus, the provinces have been making greater use of Royal Commissions to assist them in carrying out their increased legislative burdens.

Powers of Commissions

A Royal Warrant of Appointment usually granted the power to summon such persons as should be judged likely to afford any information upon the topic in question, to call for, have access to, and examine all such books, documents and records as might afford the fullest information. However, historically, no person could be compelled to testify, except by statute. This question first arose in England when the *Royal Commission upon Municipal Corporations* was appointed in 1835. The Merchant Tailors' Company refused to testify. They stated that "by common law, which is the right of the subject, no man can be compelled to disclose any matter that may expose himself to peril, except in the due course of justice . . . Commissions for inquiry may be the source of much useful information furnished voluntarily . . . but . . . it is not consistent with the law or the liberty of the subject, that commissioners . . . should be endowed with a power of compulsion either for the disclosure of facts or the attendance of witnesses".¹⁰

In *Attorney-General of Commonwealth of Australia v. Colonial Sugar Refinery Company* Viscount Haldane stated that "a Royal Commission has not, by the laws of England, any title to compel answers from witnesses, and such a title is therefore not incidental to the execution of the powers under the common law."¹¹ Again, in *McGuinness v. Attorney-General (Victoria)* it was stated that

what, if any, coercive powers the Crown might give by a special commission of inquiry under the prerogative remained a matter of doubt up to the last century. But gradually it has come to be understood that no power of compelling testimony can be so conferred, notwithstanding that a clause purporting to enable the commissioners to call witnesses before them is commonly inserted in a commission of inquiry. Alpheuse Todd in his *Parliamentary Government in England*,¹² stated in unqualified terms that unless expressly empowered by Act of Parliament no commission can compel the production of documents or the giving of evidence or can administer an oath. But a commission granted at common law is not invalidated as a whole by an attempt to confer such powers.¹³

Royal Commissions thus had no inherent power of compulsion despite what the wording of the warrant might indicate. In this respect they were in a less favourable position than the committees

⁹ *Attorney-General Ontario v. Attorney-General Canada*, [1896] A.C. 348. This shift in power was made manifest in *John Deere Plow Co. v. Wharton*, [1915] A.C. 330, 18 D.L.R. 353, 7 W.W.R. 706, where Lord Haldane stated "Without expressing a final opinion about it, I should say 'civil rights' was a residuary expression . . ."

¹⁰ Quoted in Clokie, *supra*, note 2 at 85-86.

¹¹ [1914] A.C. 237 at 257 (Judicial Committee of the Privy Council).

¹² (1869) at 352.

¹³ (1940), 63 C.L.R. 73 at 98-99.

of the House of Parliament, whose powers of enforcing attendance of witnesses and production of documents were covered by Parliamentary privilege. In England it was not until 1921 that the Tribunals of Inquiry (Evidence) Act¹⁴ granted any executive committee or Commission of Inquiry these powers (designated as the rights and privileges that are vested in the High Court) upon the passage by both Houses of Parliament of a resolution declaring the subject matter of the inquiry to be of urgent public importance.

The matter was settled earlier in Canada with the passage of Part I of the Inquiries Act in 1846.¹⁵ The powers of commissioners appointed under this Act are consolidated in sections 4 and 5 which read as follows:¹⁶

s. 4. "The commissioners have the power of summoning before them any witnesses, and of requiring them to give evidence on oath, or on solemn affirmation if they are persons entitled to affirm in civil matters, and orally or in writing, and to produce such documents and things as the commissioners deem requisite to the full investigation of the matters into which they are appointed to examine."

s. 5. "The commissioners have the same power to enforce the attendance of witnesses and to compel them to give evidence as is vested in any court of record in civil cases."

The major contentious area in Canada concerning the rights of parties before Royal Commissions is the right to counsel. Section 12 of the Act states that:

The commissioners *may* allow any person whose conduct is being investigated under the Act, and *shall* allow any person, against whom any charge is made in the course of such investigation, to be represented by counsel.

The controversy arises because charges are usually laid subsequent to the report of the Royal Commission, so that when a person appears before the Commission, his right to counsel is a discretionary matter for the Commissioners. This was brought forcefully to light in the case of *Rex v. Smith*.¹⁷ There, Smith, after being held incommunicado for thirty-two days, was taken before a Royal Commission to give evidence. He objected to being sworn or giving evidence without first being permitted to consult his counsel. Mr. Commissioner Taschereau answered this objection by stating that:

there is no witness that has been accused here when he came as a witness. When the investigation is finished and we have finished with our work we will make a report to the Government and the Government will deal with you as they deem it advisable, but for the moment you are just a witness for the purpose of this investigation. That is all. You have to be sworn.

This ruling was subsequently upheld by the Ontario Court of Appeal, who further declared that because Smith had not invoked the protection of s. 5(2) of the Canada Evidence Act, the evidence he gave was admissible against him in the ensuing trial on a criminal charge.

¹⁴ II George V, c. 7.

¹⁵ This is discussed at length, *infra*, Section 5.

¹⁶ Inquiries Act, R.S.C. 1952, c. 154.

¹⁷ [1947] O.R. 378 (Ont. C.A.).

In *re The Ontario Crimes Commission, Ex parte Feeley and McDermott*,¹⁸ counsel for two of the persons whose conduct was being investigated requested that he be permitted to call and examine witnesses and to cross-examine witnesses called by counsel for the Commission. Mr. Commissioner Roach refused this request, taking the view that Feeley and McDermott were not "persons affected", since the terms of the commission authorized no more than an inquiry within defined limits and a report to be made thereon by the Commissioner. He held that the inquiry was therefore not a proceeding "inter partes" in which a binding decision or adjudication affecting personal or property rights could or would be pronounced. On a stated case to the Ontario Court of Appeal, made pursuant to s. 5(1) of the Public Inquiries Act (Ontario),¹⁹ it was held that as a general rule there is no absolute right vested in anyone to appear before a Royal Commission except persons summoned to the inquiry. Counsel representing persons who claim to have an interest in the proceedings may not appear as of right, but only by leave of the Commissioner. However, very serious allegations had been made against Feeley and McDermott and thus they should have a right to defend themselves, by presenting their own evidence and cross-examining witnesses called by the Commission.

Doubt was cast upon the correctness of this decision in the Supreme Court of Canada case of *Guay v. Lafleur*.²⁰ Here the court held that an investigation under the Inquiries Act was a purely administrative matter which could neither decide nor adjudicate upon anything; it is not a judicial or quasi-judicial inquiry but a private investigation at which persons, whose conduct is being investigated, are not entitled to be present or represented by Counsel.

If it is true that a Royal Commission exercises no judicial functions and is not a judicial Tribunal, then "no question of bias or interest on the part of a person appointed as a member of such a commission can arise. . . . The qualifications of commissioners . . . are a matter entirely for the consideration and judgment of the Governor General's responsible advisers".²¹

Having briefly reviewed the method of appointment and the rights and powers of commissions and parties who appear before them, we will trace the development of these phenomena in an endeavour to place them in a historical perspective.

¹⁸ (1962), 34 D.L.R. (2d) 451 (Ont. C.A.).

¹⁹ R.S.O. 1960, c. 323, s. 5(1) reads as follows: "Where the validity of the commission or the jurisdiction of a commissioner or the validity of any decision, order, direction or other act of a commissioner is called into question by any person affected, the commissioner, upon the request of such person, shall state a case in writing to the Court of Appeal setting forth the material facts and the decision of the court thereon is final and binding."

²⁰ (1964), 47 D.L.R. (2d) 226.

²¹ *Timberlands Woodpulp Ltd. v. Attorney-General*, [1934] N.Z.L.R. 270 at 295.

(2) History of British Royal Commissions 1066-c. 1900

Like so many other institutions of considerable antiquity, the origins of Royal Commissions are "lost in hazy mists of the incompletely recorded past".²² The Crown appoints Royal Commissions either by virtue of the prerogative or by authority of an act of Parliament; thus they depend upon simple royal warrant or upon royal warrant issued in pursuance of parliamentary permission or instruction. Therefore, in England, the history of Royal Commissions is closely intertwined with the constitutional struggles over the royal prerogative. Their development is connected with the attempts made at various periods to restrict royal action to certain definite and legalized modes of procedure. From earliest times, numerous efforts have been made either to abolish Royal Commissions or to confine their use to certain types and purposes already recognized or specially admitted by statute. Thus the popularity of Royal Commissions fluctuated with the supremacy of the Crown.

Royal Commissions of Inquiry have been traced back as far as the Domesday Book, although most writers seem to prefer to commence their history with the Commission on Enclosures in 1517. The earlier date is the beginning of an institution whose functions were similar to the royal commissions of today; the later date is when the current form was adopted.

Clokie and Robinson²³ have divided the development of Royal Commissions into five historical periods, which coincide with the chief periods of English constitutional history:

- (1) later Middle Ages (1066-1485)
- (2) Tudor and early Stuart era (1485-1689)
- (3) Hanoverian England (1689-1800)
- (4) Nineteenth century
- (5) Twentieth century.

In the first period, commissions had their origin and experienced their first restrictions. In the second period, they underwent a wide extension, which culminated in their abolition. The third stage was one in which they were either in complete abeyance or were overshadowed by other parliamentary organs. In the Nineteenth century and especially under Queen Victoria, Royal Commissions not only developed with renewed vigour, but attained their most significant achievements.

The source of royal commissions is to be found in the generally assumed right of the Crown to appoint officials to perform duties temporarily or permanently on behalf of the King. In this sense, the members of a royal commission share their status with all other royal commissioners (i.e.) with those officers whose authority is derived from appointment under royal seal—officers of the army, colonial governors, sheriffs, judges and many more.

²² Clokie, *supra*, note 2 at 24.

²³ ROYAL COMMISSIONS OF INQUIRY (1937), Stanford University Press.

Early English government was not divided into the specialized organs which exist today. The "curia regis" was composed of the highest officers of the state and sat at Westminster. Throughout the kingdom, sheriffs and royal bailiffs constituted a somewhat irregular hierarchy of officials who represented royal authority in the particular locality. In addition to these, the King, from time to time, vested certain men with powers to examine a specific problem. The most famous instance is that of the Domesday Book, which was compiled between 1080 and 1086 by Royal Commissioners, who were sent by William I into every corner of his kingdom to ascertain the ownership of each estate of land and its value for taxation. In some places the entire county was summoned by these Commissioners, though usually the information was obtained from a sworn jury from each Hundred within the county. This awesome investigation resulted in the compilation of a mass of information respecting landholding, cultivation and population of the manors throughout England shortly after the Conquest. These investigators may therefore be regarded as the first royal commissioners but their duties usually extended to judicial and administrative work as well as investigation. Today royal commissions of inquiry are restricted to the inquisitorial function alone, as they theoretically possess neither administrative nor judicial functions (i.e.) they do not conduct "trials".²⁴

Long before the establishment of Parliament or of modern legislative procedure Royal Commissions had become an established feature of English administration. To a large extent the growth of this type of investigation ran parallel to the development of royal justice and administration. The increased centralization wrought by Royal Commissions was not accomplished without bitter opposition from the local magnates. The Magna Carta was drafted largely to curb the expanding jurisdiction of the King. It created a presumption against the legality of any new judicial or administrative agencies. Moreover, the rise of Parliament at the end of the Thirteenth century seemed to indicate that the need for the old Commissions of Inquiry was being outgrown. The development of the representative principle in the House of Commons, by which knights, burgesses and freeholders were brought to Westminster as the "Great Inquest into the state of the Nation" could be interpreted as superseding the special inquests ordered by the Monarch.

The Tudor and Stuart periods were characterized by the enlargement of royal functions and accompanying this, there was an increased use of commissions for inquisitorial as well as for semi-judicial and administrative purposes. The "Rotuli Parliamenti" abound with requests by the commons for inquiries into grievances. The tendency under the Tudors was to increase these commissions. The issue of commissions of inquiry in relation to the miscellaneous matters which

²⁴ However some of the comments by Schroeder J.A. in *Re The Ontario Crime Commission, Ex parte Feeley and McDermott* (1962), 34 D.L.R. (2d) 451 (discussed *supra*, note 18) could be said to lead to the opposite conclusion.

came before it was a part of the regular procedure of the Star Chamber. The most notable of the commissions under the Tudors were the Commissions of Inclosures of 1517, the commissions for the investigation of the monasteries, and the Court of High Commission for ecclesiastical causes.

Of these, only the "Domesday of Inclosures" of 1517 was an act of prerogative. Statutes had been passed in 1489 and 1515 to check the conversion of arable into pasture land and the depopulation of the country, under penalty to the Crown in case of evasion or breach. In 1517 the Crown by letters patent appointed commissioners for several counties of England to inquire into a large number of subjects, specified in detail, relating to the matter in question. The sheriffs were commanded to bring before the commissioners "*probos et legales homines*" through whom the truth of the matters to be investigated might be known. Following the report of the commissioners, large numbers of persons were summoned to appear in Chancery, and suits were brought against them in the Exchequer Court for the recovery of the King's "moiety" under the Act of 1489.

Arguments similar to those raised today against Royal Commissions were used in the 1613 case where Coke assisted in the Star Chamber proceedings against one Whitelocke for contempt. The contempt alleged lay in an opinion given by Whitelocke as counsel to Sir Robert Mansel, Treasurer of the Navy, against the legality of a Royal Commission to inquire into abuses in the Navy, to give orders for the punishment of offenders, and to lay down rules for the better government of the Navy in the future. Whitelocke contended that the Commission was irregular and without precedent—it was inquisitorial, and it infringed the various provisions of the law which require that a man shall not be proceeded against except by due process of law. He interpreted the commission as giving power to the Commissioner to punish offenders.

This interpretation was rejected by Sir Francis Bacon who, as Attorney-General, appeared for the prosecution and pointed out that the scope of the Commission was "*ad inquirendum*" only, and the commissioners were to give orders that the offenders should be proceeded against in the ordinary courts of justice. He urged successfully that the inquiry was but a preparation for a subsequent proceeding at law, and no more forbidden by the statutes requiring indictments than were commitments by justices for trial, or the apprehension and detention of offenders before trial.

After the Revolution of 1688 the political centre of gravity moved from the Crown to Parliament; thus the legal base for Royal Commissions was removed and they fell into decay and insignificance for over one hundred years. However the Crown's right to conduct simple inquiries was never abolished, and the use of Commissions with parliamentary approval still remained. The select-committee procedure, however, became the characteristic parliamentary device for inquiry. Hundreds of select committees were set up during the eighteenth

century to perform essentially the same functions that Royal Commissions had previously performed. Nevertheless, despite the pre-eminence of committees, Royal Commissions were repeatedly used to handle such vexatious problems as land partition, the supervision of enclosures and so on.

Royal Commissions reached their fullest development during the Victorian Age. Despite a "laissez-faire" philosophy, Parliament became increasingly interested in investigating every phase of social life with a view to remedying the evils which were apparent. Countless inquiries were made during the course of the century into all phases of social life, both for the purpose of finding out the state of the nation and to discover what the populace were thinking. Many of these Commissions were engaged upon inquiries of considerable magnitude.²⁵

The Government of the day sought two things. Where no policy issue was involved, they desired expert inquiry of a nonpartisan type which would produce results upon which they could found a policy. On the other hand, when there was a policy which had to be preceded by inquiry, the Cabinet desired to have the investigation made by men who, even if not openly partisan, were at least sympathetic to their views. Select committees could not always provide these conditions. Royal Commissions, on the other hand, could be made definitely expert or impartial when needed or they could be "packed" to any degree desired. In addition, "a royal commission has many advantages over a parliamentary committee; it can, while a parliamentary committee cannot, prolong its work beyond the limits of a session even for years; and it is possible to appoint scientific experts as members so as to secure a completely impartial treatment of the subject; the consequence is that commissions have largely superseded parliamentary committees when elaborate inquiries have to be made".²⁶

Before the evolution of ministerial responsibility, the King's prerogative was an object of bitter dispute, as has been shown above. Royal Commissions were subject to much abuse, since they were initiated under the royal seal. Coke disliked Commissions as they were a manifestation of that royal prerogative which he desired to diminish. However, by the Nineteenth Century, it was firmly established in England that the powers of the Crown were exercised by the Ministry. Therefore, there was none of the old hostility of Parliament to royally constituted Commissions, since the latter were appointed in reality by the Cabinet, which had become an agency of the House of Commons. The Cabinet issued the Commissions and the King only acted as a "rubber stamp" of authority.

It is true that the rapid growth of Royal Commissions in the Nineteenth Century did lead J. Toulmin Smith²⁷ and other defenders

²⁵ See Tables 1 and 2 for a listing of the wide range of topics investigated.

²⁶ J. Redlich, *THE PROCEDURE OF THE HOUSE OF COMMONS* (1908), Vol. II, 193.

²⁷ J. Toulmin Smith, *GOVERNMENT BY COMMISSIONS ILLEGAL AND PERNICIOUS* (1849).

of the Tory stronghold to attack "government by commissions". Their two main objections to Royal Commissions were that they were illegal and that they were "spoils of office". The illegality argument was based on the premise that there were certain fundamental laws of England which were violated when "royally" appointed Commissioners were authorized to inquire into or to administer the law (which they claimed was being done) in any fashion other than by the common-law proceedings of the courts of justice. However, their attacks were chiefly political; their uneasiness was occasioned by the fear that the Whigs were using these bodies as a means of providing lucrative positions for their followers.

As an efficient civil service did not develop until the 1850's, the burden of initiating legislation rested squarely on the Government. The period from 1830-60 was the hey-day of royal commissions. J. Redlich even goes so far as to ascribe every great piece of social legislation in the Nineteenth Century to the reports of royal commissions. For example, in 1832 a Royal Commission was appointed to inquire into the operation of the poor laws, and on its report was founded the great Poor Law Amendment Act of 1834. The Municipal Corporations Act of 1835 was also preceded by the investigations and report of a Royal Commission. Between 1832 and 1844, Redlich says, there were no fewer than one hundred and fifty Royal Commissions at work.²⁸ Since 1870 and the reform of the bureaucracy in Great Britain the use of Royal Commissions has declined, although they still form a very important adjunct to parliamentary committees.

One interesting sidelight: the members of early Royal Commissions generally served without remuneration or with mere expense allowances. There were exceptions, and in 1832 it was declared in Parliament that "one notable Scotch canal commission had swallowed up more money than all the other commissions put together from the year 1807 down to a very recent period, and had it not been for the fortunate discovery of steam navigation, the chances were that the whole of the money would have gone to the bottom of the canal".²⁹

(3) British Royal Commissions Pertaining to Canada

Following the capture of Quebec from the French in 1759, English interest in British North America increased sharply. However, British policy was basically enunciated by the colonial Governors and no full-scale investigations were made of the colonies until well into the Nineteenth Century. There were investigations by individuals and the colonies had their "champions" in the British Parliament but, because of the decline in the use of royal commissions in England itself, none were sent to Canada during this period, with one notable exception.

During and subsequent to the American Revolution, many people in North America wished to retain their ties with Britain and, as a result, these Loyalists, as they were called, suffered material losses at

²⁸ Redlich and Hirst, *ENGLISH LOCAL GOVERNMENT*, Vol. 2, 320.

²⁹ *Hansard's Parliamentary Debates* (New Series), Vol. 25, 291.

the hands of the Americans who wished to sever all connections with their former homeland. The British wished to compensate the Loyalists for their deprivations and therefore Parliament passed a very detailed Act giving power to Royal Commissioners to look into the losses suffered by these people.

The statute was entitled "Act Concerning Losses and Services of Persons during Dissension in America" and appointed six Commissioners. The powers of the Commissioners were fairly extensive. For example, article III of the Act read:

And be it further enacted that it shall and may be lawful to and for the said Commissioners, or any two or more of them, and they are hereby authorized, impowered, [sic] and required, to examine upon oath (which oath they, or any two or more of them, are hereby authorized to administer), all persons whom the said Commissioners, or any two or more of them, shall think fit to examine, touching all such matters and things as shall be necessary for the execution of the powers vested in the said Commissioners by this Act; and all such persons are hereby directed and required punctually to attend the said Commissioners at such time or place as they, or any two or more of them, shall appoint.

Apart from this power to examine witnesses under oath, the Commissioners also could send for papers and exclude any person whom they felt gave false evidence concerning their losses. One novel feature of this Act was that it provided a sanction for anyone guilty of perjury:

And be it further enacted by the authority aforesaid, that in case any person or persons, upon examination upon oath before the said Commissioners, or any two or more of them respectively, as before mentioned, shall wilfully and corruptly give false evidence, every such person so offending, and being thereof duly convicted, shall be and is and are hereby declared to be subject and liable to such pains and penalties as by any law now in being persons convicted of wilful and corrupt perjury are subject and liable to.³⁰

The initial decision of the Commissioners was to hold all its meetings in England and just receive written submissions from persons who could not afford to come to England to substantiate their claim. However, it was finally decided to send two of the Commissioners, Colonel Thomas Dundas and Jeremy Pemberton, to Nova Scotia to settle the claims of persons who were living there. If there was any difference of opinion as to the question of compensation to any individuals, the Governor of the particular colony was to be consulted; he would also take the place of any Commissioner who died.

John Wilmot, one of the Commissioners, said that the chief complaint against the Commissioners was the fact that they did not hold a public inquiry, but examined each individual claimant in private. Wilmot defended the Commission's action as various claimants were questioned about other claimants and it was felt that this could not be done very satisfactorily in an open inquiry. He said that this action was perfectly consistent with the practice of the courts of justice of the day. An analogy could be drawn between the mode of procedure adopted here and that in both the *Ontario Crime Commission* case and *Guay v. Lafleur* where what amounted to "in camera" proceedings

³⁰ Article VI.

were held. In the latter of these cases the Supreme Court of Canada upheld the actions of the Commissioners saying that it was purely a fact-finding investigation and thus the party whose conduct was being studied had no right to be present. However, this Loyalist Commission was entrusted with the power of actually fixing the amount of compensation to be awarded an individual and so, on a theoretical basis, he had more right to hear the evidence being presented against him than in these modern cases where he has at least the opportunity of meeting his accusers in the subsequent criminal trial.

The next time Canada was mentioned in the British Parliament on the subject of Royal Commissions was on May 2, 1828 when William Huskisson moved for the establishment of a Commission

To investigate . . . whether those extensive, valuable, and fertile, possessions of the Crown, the Canadas, are or are not administered under a system of Civil Government, adapted to the wants, the well-being, and the happiness of nearly a million of British subjects, and well calculated to maintain the allegiance of our settlement and preserve unbroken the affection and good understanding which should always subsist between colonies and the mother country.³¹

He stated:

I am glad that the supreme power of the British Parliament to deal with defects or difficulties . . . and to reform the previous acts of the legislature, in regard to the government of our Canadian territories, cannot be disputed. I am the rather disposed to rejoice at this circumstance, because, standing aloof, as we do, from the party feelings and local jealousies of the Canadians, our decision will be the more respected; first as coming from a high and competent authority; and next on account of our manifest impartiality.³²

A Royal Commission, subsequently appointed, reported on May 25, 1830, and recommended that:³³

(1) A majority of the members of the Legislative Councils of Upper and Lower Canada ought not to consist of persons holding offices at the pleasure of the Crown.

(2) Judges should not hold seats in the Executive Councils of Upper and Lower Canada.

(3) With the exception of the Chief Justice, judges should not be involved in the political business of the Legislative Councils.

The House of Commons were in apparent agreement over these recommendations but, when introduced into the House, they were expressed in a form which indicated censure of the Government—and so were defeated by a vote of 155-94.

In 1834, a Commission of Inquiry was appointed to investigate the "political conditions of the Canadas". The investigation was brought about by the fact that Lower Canada was on the verge of revolution; the House of Assembly had formally seceded from all

³¹ Parliamentary Debates (England) New Series, Vol. 19, April 22, 1828 to July 22, 1828, 300.

³² *Id.*, 302.

³³ *Debates* (N.S.) Vol. 24, 1093.

communication with the Executive and had expressed its intention of impeaching the Governor, Lord Aylmer. The mover of the resolution for setting up this Commission, Mr. Roebuck (who seemed to champion Canadian causes throughout the 1830's), said that the troubles were caused by "the extremely rash and petulant behaviour of the . . . Secretary of the Colonies".³⁴ The Executive Council was virtually running Lower Council and the people were becoming so disenchanted with the state of affairs that they began to look towards the example of the United States as a possible solution for their problems.

On March 9, 1835, a petition from members of the Legislative Council and the House of Assembly of Lower Canada was laid before the House of Commons.³⁵ The petition charged the Government with mismanagement and bias in their dealings with Lower Canada. As a result, the Government appointed a Royal Commissioner to investigate. The specific powers granted to this Commissioner were not outlined but it was stated that "the object was that the person selected should go fully provided with instructions, so that there should be no necessity for repeated communications across the Atlantic."³⁶ Lord Amherst was named as the Commissioner and his function seemed to be viewed as that of a mediator.

On April 6, 1835, Mr. Roebuck stated that Lord Amherst was the brother-in-law of a Mr. Haile, who was the leader of a party in the colony, against which many of the complaints of the colonists were levelled. He implied that Lord Amherst might not be impartial, and this could cause further discontent in the colony. The Chancellor of the Exchequer replied that Lord Amherst was too highly respected to let any such relationship marr his impartiality.³⁷ As a result, the matter was dropped.

On June 12, the Earl of Aberdeen castigated the Government for its delay and change of plans, whereby a commission of three, rather than just Lord Amherst, were to be sent to Canada to investigate. He stated:

It might be a fit thing in this country (i.e. England) in moments of timidity, in order to get rid of a difficulty, to appoint a Commission of Inquiry . . . ; but, in this case, a Commissioner ought to go out ready to act, and a Commission of Inquiry is worse than useless.³⁸

Lord Glenelg replied that if a real and searching inquiry was to be instituted, more than one Commissioner would be needed. The vastness of the inquiry in Canada would be beyond the powers of any single individual.

Not only political questions but fiscal questions and judicial questions and legal questions of great importance, must come under the examination of the Commission, and it is therefore no disparagement to any

³⁴ *Debates* (Third Series) Vol. 22, 767.

³⁵ *Debates* (Third Series) Vol. 26, 660.

³⁶ *Id.*, 1133.

³⁷ *Debates* (Third Series) Vol. 27, 836 and following.

³⁸ *Debates* (Third Series) Vol. 28, 721.

individual, let his talents be what they might, to say that he would scarcely be able to grapple single-handed with the whole extent of the various subjects which must come under his consideration.³⁹

As originally conceived, a new step in the history of Royal Commissions might have been taken, as Lord Amherst was to hold both the office of Commissioner and Governor, allowing him to investigate and then act upon his findings. This would have made him prosecutor, judge and legislator. However, the Royal Commission as finally constituted, had only the investigative function and had no power to act upon its findings.

On March 16, 1837, Lord Ripon raised some queries in the House of Lords about the expense of the Royal Commission sent to Canada. He stated:

Among the various productions that spring up in these days in such luxuriant profusion out of the political soil, nothing [is] more remarkable than the abundance of the crop of Commissions. [I can] not help thinking that there might be very good reason for exercising at least a moderate degree of vigilance respecting the growth of that species of expense; [I can] not help thinking that there [is] some danger, if a little vigilance [is] not exercised, that the crop of Commissions might grow to be a crop of evils.⁴⁰

At the same time, on the other side of the Atlantic, the members of the Assembly of Lower Canada were not exactly enamoured with the Royal Commission sent out by the British House of Commons. However, their complaint was not one of expense but more fundamentally, that the Royal Commissioners were wholly unauthorized persons, having no right to interfere in any of the affairs of the colony. To express their feelings they sent a letter to the King, part of which was read in the House of Commons on April 14, 1837:

The presence in the provinces of certain pretended authorities, whose powers and attributes are not to be found either in the constitution, or in any law, has so often been alleged by your Excellency, and by the executive authorities in the metropolitan state, as being of a nature to retard to a future period the restoration of order and the introduction of those improvements demanded by the people, that we cannot refrain from here making a few general observations which must have attracted the attention of every public man. We believe that this House is the legitimate and authorized organ of all classes of inhabitants in the country, and that its representations are the constitutional expressions of their wishes and of their wants. We believe that the impartial use we have made of the powers vested in us for the protection and happiness of all our fellow-subjects ought to have secured to us due confidence when we solemnly exercised those high privileges. It must, however, have been the result of an unjust distrust of this House, and the people of this province, that his Majesty's Government has rejected our prayers to defer to the opinions of a few individuals, strangers to the country, the fate of which was thereby committed to men whose vague and subordinate mission could not be acknowledged by the constitution, the spirit of which his Majesty is particularly desirous to maintain.⁴¹

Despite the fears of the Assembly that its views would be rejected, the Commissioners reported in unequivocal terms of the necessity of

³⁹ *Id.*, 753.

⁴⁰ *Debates* (Third Series) Vol. 37, 560.

⁴¹ *Debates* (Third Series) Vol. 38, 1239.

some reform, especially in the arch-enemy of the Assembly, the Legislative Council, whose members were appointed by the Governor. Seemingly echoing the feelings of the Assembly the Commissioners stated, in part, that "in a new country, where there are no distinctions of title, and few of fortune, it is difficult for the mere nomination of the Crown to confer upon any person sufficient importance to maintain him with effect in the position of a legislature; in such a country the people will be little inclined to respect any legislative body which does not emanate from themselves".⁴² As a result of this Report and a subsequent debate in the House of Commons, the Legislative Council of Lower Canada was abolished by a vote of 269 to 46.

The rebellions in Upper and Lower Canada in 1837-38 had a profound effect in England and at last prompted the British Government to take the remedial action so long demanded. On February 10, 1838, Parliament suspended the constitution of Lower Canada until November 1, 1840, and provided for the nomination by the governor of a council with legislative powers. Lord Durham was appointed both Governor-General and a Royal Commissioner. He was to investigate Canadian grievances and to report on a remedy. On May 29 he took over from Sir John Colborne, who had become Administrator of the colony when the ill and disheartened Lord Gosford returned to England in February.

Durham "combined a regal arrogance and strong dictatorial tendencies with Liberal and almost Radical opinions".⁴³ He had helped to draft the Reform Bill of 1832 and was a constant espouser of liberal views and speculation is that he was sent to Canada chiefly to get him out of the way of the more moderate Whig government.

The Durham Report which has been called "one of the greatest studies of colonial government and the most epoch-making state paper in Canadian history"⁴⁴ led to the passage of the Union Act on July 23, 1840. This Act established the Province of Canada with a legislative council named for life and an elected assembly composed of forty-two members from Lower Canada and forty-two from Upper Canada. English was to be the only language of original record for the legislature. The first provision violated one of Durham's major recommendations, that of representation by population⁴⁵ and the second was the first step in Durham's proposed program of anglicization. Both provisions, but especially the second, were deeply resented by the French Canadians.

Texts of Debates in the British Parliament, and appointment of Royal Commissions to investigate affairs in Canada show a somewhat confused British approach. The House of Commons fervently wished to avoid another debacle like the one which resulted in the loss of the

⁴² *Debates* (Third Series) Vol. 39, 684.

⁴³ Mason Wade, *THE FRENCH CANADIANS 1760-1945*, 180.

⁴⁴ *Id.*, 184.

⁴⁵ In 1840 there were 650,000 people in Lower Canada and only 450,000 in Upper Canada.

Thirteen Colonies. However, many members were utterly uninformed about Canadian affairs and felt that the simple appointment of an occasional Royal Commission would serve as a panacea for all the grievances of the inhabitants of that rich far-off land. This approach was met with distrust and eventually contempt by both the upper and lower Canadians and led them to take matters into their own hands and attempt to cure the ills of society as much as possible by themselves. Thus the advent of the early Canadian Commissions.

(4) *Canadian Royal Commissions up to 1867*

As in England, the development of Royal Commissions in Canada involved questions of delineation of function and the specialization of organs to carry out these functions. Here the despotic colonial governor corresponded to the all-powerful King, and his powers declined along with the King's. Eventually his duties devolved on bodies increasingly responsible to the people and there was greater specialization in administrative, judicial and inquisitorial functions. Commissions before Confederation were at first issued by the King, then by the governor, acting in the King's name, and finally by the governor-in-council.⁴⁶

Between 1825 and 1840 there were only eight bodies which could be classified as Royal Commissions. There were, in addition, numerous appointments of officials who were called Royal Commissioners or, more properly, Commissioners. They performed a more administrative than investigative task and, when the Civil Service developed, this function was taken over by the appropriate Department. For instance, there was a Canals Commissioner, who was appointed by royal warrant, but who superintended the construction of canals rather than investigate possible new canal sites and/or the efficiency of already existing canals. As these Commissioners were not truly Royal Commissioners, as we know them today, they were not included in the following list:

1. Royal Commission on forfeited estates—1829.
2. Royal Commission to examine into the affairs of the Welland Canal Company—Mr. Randal as Commissioner—reported 1831.
3. Royal Commission to study Penitentiaries—1832.

⁴⁶ There is no complete set of Journals of the House of Assembly of Upper and Lower Canada prior to 1825 owing to the destruction of the House of Parliament and most of the Parliamentary Records by fire. On September 8, 1841, an Order was passed by the Legislative Assembly of the Parliament of Canada, directing "a General Index to be made of the Journals of the House of Assembly of the late Provinces of Upper and Lower Canada". Subsequent to 1825 the Records are more complete but the lack of Hansard reporting leaves only a list of Addresses setting up Commissions and an occasional copy of a completed Commission which managed to find its way into the Sessional Papers of the various Parliamentary bodies. Another source of information is the *Mirror of Parliament* which is, unfortunately, unindexed and very cursory in its treatment of Parliamentary affairs. The author would like to thank the staff of the Baldwin Room of the Toronto Public Library for their able assistance in this long, and often fruitless, search for information.

4. Royal Commission of Inquiry into the management of Lunatic Asylums—reported 1836.
5. Royal Commission into Currency and Banking—1836.
6. Royal Commission to investigate claims for losses consequent upon the 1838 Rebellion—reported 1839.
7. Royal Commission appointed to procure a Survey of the Ottawa River—reported 1839. (This is on the borderline between a properly constituted Royal Commission and a mere inquiry of a government department.)
8. On May 9, 1839, the legislative bodies of Upper Canada sent a joint Address to the Lieutenant-Governor, Sir George Arthur, asking that he appoint a Royal Commission to inquire into the state of the various Public Departments of the Province. This was done on October 21, 1839. It was a very large body, made up almost entirely of men in public office. Its Report⁴⁷ was almost certainly relied upon by Lord Sydenham when he arrived to look into the Canadian administrative set-up and to bring about the union of the two Canadas.

After the Act of Union in 1840, the Parliament of Canada was confronted with the formidable task of legislating for an enormous geographical area inhabited by persons of diverse races, customs, backgrounds and problems. To aid them in this undertaking they began to make frequent use of Royal Commissions. The topics investigated were diverse but the Reports when submitted laid the groundwork for the union of the various areas which were united to form Canada in 1867.

To show the wide range of matters considered and the methods employed to appoint the various Royal Commissions, some of the more prominent Commissions shall be discussed:

1. Royal Commissioners were designated under Letters of Instruction dated May 25, 1841, to investigate certain proceedings connected with an election at Toronto. The Report was submitted in June, 1841, and exonerated most of the officials involved, but did reflect upon the lack of integrity and tact of some of them.
2. A Royal Commission was chosen by the Governor-General to report upon the state of the settlers in the Township of McNab. It made its submissions on August 19, 1841.
3. On August 28, 1841, an Address was presented to the Governor-General requesting appointment of a Royal Commission for revising and consolidating the statutes and ordinances of the former province of Lower Canada. The Governor-General agreed to name this Commission on September 11, 1841.

⁴⁷ *Report of the Royal Commission Set Up to Investigate Business, Conduct and Organization of Various Public Departments of Upper Canada, Journals, Legislative Assembly, Upper Canada, 1839-40, Vol. II.*

4. On September 7, 1841, the Legislative Assembly sent an Address to the Governor-General requesting a Commission to inquire into the state of the law and other circumstances relative to the Seigniorial Tenure in the former province of Lower Canada, with a view to establishing an equitable system of commutation. The Governor-General replied favourably to this Address on September 11, 1842, and the Commission was appointed on March 29, 1842, by Letters Patent under the Great Seal of the Province of Canada by Sir Charles Bagot. The Commissioners completed their assignment and made their Report on October 4, 1843.
5. On September 14, 1841, a Select Committee, appointed to inquire into the way Customs were collected in Canada West, reported that the lack of supervision over the Collectors resulted in a great abuse of the system and a large loss of revenue to the Province. An Address was presented to the Governor-General requesting a Commissioner to investigate the matter more thoroughly and to suggest the necessary remedies for removing all existing abuses and introducing a sound and wholesome system. This Address was presented by the Executive Council.

On March 28, 1842, Malcolm Cameron was named Commissioner and he made his Report on October 27, 1843. In contrast to the one hundred dollars a day earned by Royal Commissioners today, Cameron was given a salary of £600 Sterling per annum and 20s. per diem "for travelling expenses during necessary absences from home on public business".⁴⁸ He was officially referred to as a "Commissioner of Inquiry".

6. On October 10, 1842, a Commission was constituted by Sir Charles Bagot to investigate the affairs of the Indians in Canada. It was given power to inquire into the application of the annual grant made by the British Parliament to the Indians as well as the exercise of the various powers which the Parliament of Canada had over these aborigines. By having the Commissioners report to the Governor-General the necessity of two Commissions was obfuscated. The Commission made its Report on March 20, 1845.
7. On July 9, 1843, the Governor-General appointed a Commission under the Great Seal of the Province to inquire into the "Administration of Justice in the Inferior District of Gaspé—it reported on October 4, 1843.
8. On July 20, 1843, a Commission was chosen by the Governor-General by Letters Patent under the Great Seal to consider and report on what alterations were to be made in the practice and proceedings of the Court of Chancery in Upper Canada. The Report of the Commission was tabled on January 25, 1845.

⁴⁸ *Report of a Committee of the Executive Council*, March 26, 1842, *Sessional Papers*, 1843, Appendix (BB).

9. In 1843, a Commission of Inquiry was constituted to look into the disturbances on the Beauharnois Canal or the Lachine Canal. It reported on August 10, 1843.⁴⁹
10. On December 4, 1843, the Assembly presented the Governor-General with an Address “for the appointment of Commissioners to obtain such information relative to the salmon fisheries in Gaspé, as may enable the Legislature to frame proper enactments for the protection of the same; and for the adoption of measures for procuring the appointment of Commissioners for a like purpose on the part of New Brunswick”. The following day the Governor-General reported that he would “take the same (i.e., the request) into this most serious consideration”—nothing more is heard of this matter.
11. On August 6, 1843, a Commission was appointed by Letters Patent to inquire into the state and organization of the Crown Land Department. It made its Report on April 16, 1846.
12. On September 25, 1845, a Commission of Inquiry was named under the Great Seal to make a study of the management of the Board of Works. The Commission’s Report was tabled March 28, 1846. These last two Commissions show that the Assembly is beginning to rely on non-political personnel to conduct inquiries into government departments. It was not until 1880 that Part II was added to the Inquiries Act to provide a statutory, rather than a prerogative, basis for this type of investigation.
13. On November 24, 1845, the Governor-General established a Commission to investigate the losses caused by the Rebellion in Lower Canada in 1837-38. This was the first of several Commissions on this topic, as another was appointed in 1849, which finally made its Report on August 8, 1850, showing all the claims made to the Commissioners and the amounts awarded. The interesting thing about this Commission’s Report was that most of the sums awarded were paltry and were for losses sustained about twelve years previously. Its investigative procedure must have been quite remarkable, for often a person would claim a couple of pounds for an incidental farm implement, but the Commission would conclude that they had actually lost an item of lesser value and reduce the award accordingly.
14. On July 1, 1847, what is apparently the first use of the recently enacted Inquiries Act was seen when Lord Elgin constituted a Commission of Inquiry to look into certain charges which had been made against André Benjamin Papineau.⁵⁰ Subsequent to this, the appointment of Commissions of Inquiry became a relatively common feature of the political life of the Canadas.
15. On July 20, 1848, King’s College (later University of Toronto) passed a statute naming Commissioners of Inquiry to look into

⁴⁹ Report found, *Sessional Papers*, 1943, Vol. 2, Appendix I.

⁵⁰ *Supra* note 3 for text of Commission setting up inquiry.

the affairs of King's College and Upper Canada College. The Commissioners were entrusted with powers very similar to those granted by virtue of the Inquiries Act. Whether the Commissioners could, in actuality, exercise the same wide discretionary powers is unlikely, but no one seemed to challenge their authority. This could perhaps be due to the lack of any political overtones to the proceedings of the Commission.

16. Also in 1848, Lord Elgin constituted a Commission of Inquiry "to inquire into and report upon the conduct, economy, discipline and management of The Provincial Penitentiary". The Letters Patent creating the Commission granted explicit power to the Commissioners. Of note: George Brown, later to play such an important role in the events leading up to Confederation, was named as Secretary to the Commission.
17. On June 9, 1851, the Honourable Mr. Badgley presented to the House and got first reading on two Bills:
 - (a) "a Bill to amend and consolidate the Criminal Laws of this Province."
 - (b) "a Bill to establish a Code of Criminal Procedure in this Province."

On June 30, 1851, both of these Bills received Second Reading, and then were referred to a Select Committee. This Committee, chaired by Mr. Badgley, reported on August 8, 1851, and stated that

the body of . . . law in this Province is composed of a vast collection of subsisting as well as obsolete but unrepealed statutory enactments, and of Judicial opinions frequently conflicting, requiring great and laborious research and study for their discovery and comprehension, even by its Professors and to the same degree difficult to be known by the large class of official persons who are called upon to carry out its requirements, whilst it is utterly unknown to the great mass of the people who are subject to its penalties.

The Bills reported have been compiled with the view to a removal of these difficulties, and to the condensation into one uniform Code for United Canada, of Laws useful and necessary, and at the same time essential to the peace of society, and the security of person and property, communicated in plain and perspicuous language, and comprehended under a regular and systematic arrangement. By the former Bill (i.e. to amend and consolidate the Criminal Laws) the various provisions of the Law in force in the Province have been collected, and by the latter (i.e. Code of Criminal Procedure) a simple and uniform practice has been established, comprising together a complete body of Canadian Criminal Jurisprudence.⁵¹

The Committee recommended the appointment of a Royal Commission to study the matter further. As a result, on August 29, 1851, an Address was presented to the Governor-General "praying His Excellency to be pleased to issue a Commission for the consolidation and assimilation of the Criminal Laws of this Province". The two Bills were to be referred to this Commission. It

⁵¹ *Journals of the Legislative Assembly*, 1851, Vol. 10, 249.

is interesting to note that the Address only mentioned a Commission for amending the Criminal Law and said nothing as to the Code of Criminal Procedure. No evidence is available as to whether this Commission was ever appointed, or if appointed, when it reported. However, in the session of 1854-55 a Bill to amend the Criminal Law bounced in and out of committees for most of the session, until it was finally enacted into law.⁵²

18. On June 11, 1851, Mr. Holmes made a Resolution that an Address be presented to the Governor-General requesting him to appoint a Commission for revising the Statutes and Ordinances of the former Upper Canada, Lower Canada and the present Province of Canada and for consolidating such of those Statutes and Ordinances as could be conveniently and advantageously consolidated and also to collect and arrange for publication with the Revised Edition of the Provincial Statutes, such Acts and parts of Acts of the Imperial Parliament as referred to the United Province of Canada, or either section thereof. An Address to this effect was presented to the Governor-General by the Executive Council and on July 30, the Governor-General reported his assent to the Address and agreed to appoint the Commission.

This brief summary of Royal Commissions issued between 1841 and 1851 will afford some idea of the topics investigated. These Commissions were rarely referred to as "Royal Commissions" although the majority of them were constituted by the King's representative, the Governor-General. Most of them were created by Letters Patent under the Great Seal of the Province of Canada. They show the Assembly making an honest, and usually successful, attempt to come to grips with the problems of the day.

From 1852-1866 the Commissions were mainly Commissions of Inquiry (see Table 3) appointed pursuant to Part I of the Inquiries Act. These Commissions dealt with specific incidents and only rarely attempted a comprehensive survey of an aspect of the political or social life of the Canadas. The majority of the economic studies were done by Parliamentary Committees whose members were politically aligned with one of the current parties and the results are far from satisfactory. Why this shift in emphasis occurred is uncertain. After 1867, the pendulum swung back again, and Royal Commissions, of the type familiar to most people today, were appointed more frequently.

The cost of Royal Commissions has skyrocketed in the last few years and many politicians wonder whether the end justifies the expense. From 1962-66 more than thirteen million dollars was spent on Royal Commissions in Canada,⁵³ compared with approximately three and one half million from 1957-61. Table 5 shows the cost of Commissions of Inquiry from the year 1841 to 1863. As is plainly evident,

⁵² 18 Victoria, c. 92.

⁵³ *Globe and Mail*, April 29, 1966.

the cost is in no way comparable. In the early British Royal Commissions, the Commissioners donated their services as it was considered a high honour to be selected as a Royal Commissioner. Today the honour, while perhaps not comparable, is certainly a matter to be considered by anyone so appointed. The reasons for the differences in cost are, of course, numerous—increasing complexity of matters to be studied, transportation, cost of clerical staff and so on virtually *ad infinitum*. However, it does give cause to some reflection when it is realized that one Royal Commission (Glassco Royal Commission on Government Organization) alone cost 2.8 million dollars, which is many times more than the total outlay on all Commissions between 1841 and 1863.

(5) *The Inquiries Act 1846-1912*

On June 9, 1846, the Assembly of the United Provinces of Canada passed An Act to Empower Commissioners Inquiring into Matters concerned with the Public Business, to take Evidence on Oath. The preamble to the Act stated:

Whereas it frequently becomes necessary for the Executive Government to institute inquiries on certain matters connected with the good government of this Province; and whereas the power of procuring evidence under oath in such cases would greatly tend to the public advantage as well as to afford protection to Her Majesty's subjects from false and malicious testimony or representations;⁵⁴

The Act, in accordance with the practice of the day, was enacted only as a temporary statute. It was originally to remain in force until May 1, 1848, but was subsequently periodically extended up to 1867 when it was enacted as a full law. The only alteration made in 1867 was the deletion of the words "the administration of justice" from the

⁵⁴ 9 Victoria, c. 38—the rest of the Act reads as follows: "Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland and intituled an 'Act to re-unite the Provinces of Upper and Lower Canada and for the Government of Canada', and it is hereby enacted by the authority of the same, that whenever the Governor, Lieutenant-Governor, or person administering the Government of this Province, acting by and with the advice of the Executive Council thereof, shall cause inquiry to be made into and concerning any matter connected with the good government of this Province, or the conduct of any part of the public business thereof, or the administration of justice therein, and such inquiry shall not be regulated by any special Act, it shall be lawful for the Governor, Lieutenant-Governor or person administering the government as aforesaid, by the Commission to confer upon the Commissioners or persons by whom such inquiry is to be conducted, the power of summoning before them any party or witnesses, and of requiring them to give evidence on oath, orally or in writing (or on solemn affirmation if they be parties entitled to affirm in civil matters), and to produce such documents and things as such Commissioners shall deem requisite to the full investigation of the matters into which they are appointed to examine, and the Commissioner shall then have the same power to enforce the attendance of such witnesses and to compel them to give evidence, as is vested in any Court of Law in civil cases; and any wilfully false statement made by any such witness on oath or solemn affirmation shall be a misdemeanour punishable in the same manner as wilful and corrupt perjury: Provided always that no such party or witness shall be compelled to answer any question by his answer to which he might render himself liable to a criminal prosecution."

subjects to which the statute was referable. This was necessary as the British North America Act, by s. 92, assigned this function to the provinces. Part I of the present Inquiries Act is almost identical to this 1846 statute.

In 1880 Sir John A. Macdonald added several sections to the Act dealing with departmental inquiries (Part II). To the argument that Part I of the Act already provided adequate machinery, the Prime Minister replied that when a formal Royal Commission was constituted under that Part, and the subject matter was one purely departmental in character, "it established a tribunal somewhat in the nature of a preliminary impeachment".⁵⁵ He denied any intention of usurping the functions of the courts: "if the evidence of crime or a felony be discovered there is only one thing to do—to send the offender to trial".⁵⁶

Part III was added in 1912. As introduced into the House of Commons, the Bill consisted of a single clause, out of which the present section 11 evolved. The Bill permitted commissioners to delegate their power to summon witnesses and to examine them under oath. This was attacked on the ground that it created an irresponsible commission within a commission. Sir Robert Borden met this objection by inserting "when authorized by Order in Council" in subsection 3, thereby limiting the power to send for persons to those who were specifically authorized to do so by the Governor in Council.

Next, the provision permitting a Royal Commission to engage counsel was attacked by the Honourable William Pugsley, who declared that "this Bill is a departure from the law in a very important essential".⁵⁷ In introducing the amendment, the Minister of Justice (Honourable C. J. Doherty) said that this seemed to be a desirable power to confer upon commissioners, especially "where the scope of their inquiry may cover a very wide field, and where it might be found convenient to carry on different branches of the inquiry simultaneously. Under the second part of the existing Act which deals with departmental inquiries, there is power to depute the right to investigate, but that is limited to a particular case and applies only to a commissioner appointed by a minister to conduct a departmental inquiry".⁵⁸

The Honourable William Pugsley replied that the commissioners which the Government had heretofore appointed had all been Conservatives and if they were given the right to employ counsel they (i.e., the counsel) would also be "somewhat tinged with partisan bias".⁵⁹ He further contended that "a one-sided investigation—an investigation in which there is only one lawyer—is bound to give great dissatisfaction. It would be the easiest thing in the world for a lawyer—and he will do it perhaps unconsciously—to give a bias in favour of

⁵⁵ *Debates, House of Commons (Canada)*, May 3, 1889, 1937.

⁵⁶ *Id.*, 1939.

⁵⁷ *Debates*, January 16, 1912, 1284.

⁵⁸ *Id.*, 1284.

⁵⁹ *Id.*, 1284.

the particular side of the question in which he is interested. When we propose to employ counsel it is only right that the official whose conduct is being inquired into should be given the right to be also represented by counsel. Only in this way will he get fair play".⁶⁰ He moved an amendment to this effect.

Doherty countered that the Commissioners already possessed the power to allow anyone desirous of doing so to be represented by counsel. "That would not be the case of their calling on anybody to render services to them, but would be merely an exercise of their own judgment as to whether the assistance of a counsel on behalf of the party accused would be advisable".⁶¹ However, Pugsley persisted and the present section 12 evolved. This gives the absolute right to anyone against whom any charge is made in the course of the investigation to be represented by counsel, and gives discretion to the Commissioners to authorize anyone, whose conduct is being investigated to employ counsel. Complementary section 13⁶² was added without discussion. Watson Sellar⁶³ says that the use of the word "misconduct" was unfortunate, but he never explains the reasons for his opinion. He does, moreover, concede that it is apt when applied to the situation of civil servants.

(6) *Post-Confederation Royal Commissions*

In 1867 Canada fell heir to the rich heritage of governmental institutions of which Royal Commissions were just a part. Since their utility had already been proven by British experience and frequent use in the Provinces prior to Confederation, they were adopted unquestioningly and adapted to the federal structure of Canada. As this area has been more than adequately covered elsewhere,⁶⁴ only a brief survey of the early post-Confederation years will be attempted here.

During the early post-Confederation period, the government faced many new difficulties, and to help formulate policies to remedy these situations, they employed Royal Commissions. Opening and settling of the North-West brought serious problems, one of the most vexing was the treatment of the half-breeds. When open revolt broke out in 1869 the government delegated authority to a commissioner, Donald Smith (later Lord Strathcona). His report did much to put the events which had occurred in that remote area in the proper perspective. In 1870 F. G. J. Johnson was appointed a Royal Commissioner to gather information on the basis of which the government formulated a series of laws for the North-West Territories. The

⁶⁰ *Id.*, 1284-5.

⁶¹ *Id.*, 1285.

⁶² S. 13—"No report shall be made against any person until reasonable notice has been given to him of the charge of misconduct alleged against him and he has been allowed full opportunity to be heard in person or by counsel."

⁶³ Watson Sellar, *A Century of Commissions of Inquiry*, 25 Can. Bar Rev. 1 at 6.

⁶⁴ (1) J. E. Hodgetts, *Royal Commissions of Inquiry in Canada: A Study in Investigative Technique* (M.A. Thesis, University of Toronto, 1940, unpublished).

(2) Keith B. Callard, *COMMISSIONS OF INQUIRY IN CANADA 1867-1949*, Ottawa, Privy Council Office, 1950.

second Riel Rebellion in 1885 resulted in the issuing of another Commission to attempt to untangle the confused situation.

Even after Canada achieved the status of a nation, there were still occasions when Imperial Commissions interfered with her affairs. These Royal Commissions were only issued after consultation with the countries affected or else after the Dominion itself had asked for Imperial action.⁶⁵ Another method frequently adopted in Canada was the "importation" of Royal Commissioners from England to act on commissions issued by the government of the Dominion and the provinces.⁶⁶ This phenomenon was witnessed very recently when Saskatchewan brought in medical experts from England to serve on a Royal Commission inquiring into the feasibility of a Medicare program in that province.

Investigations of the judiciary have been conducted by both Royal Commissions and select committees of the House of Commons and the Senate. Hodgetts reports that up to 1940 there were at least fourteen commissions dealing with complaints or charges against the judiciary. The recent investigations into the conduct of Mr. Justice Leo Landreville shows that this use of Royal Commissions still prevails. The commissioners have no power to impeach the judge whom they are questioning; that power belongs exclusively to the legislature. The Reports of the Commissioners are only to assist the government in making its decision.

Royal Commissions have been used much more since 1867 to examine cases of incompetence in the civil service. Royal Commissions concerned with investigating the activities of Members of Parliament have attracted more public interest than any other type of inquiry. These investigations have ranged from the 'Pacific Scandal' of 1873 where the Commission submitted the whole Macdonald Ministry to scrutiny, to the Commission looking into the charges of misconduct against Sir A. P. Caron in 1892. In all investigations of this "genre", only the facts were reported and the Commissioners refrained from expressing any opinions on the basis of those facts. The fate of the individuals involved was always decided by Parliament.

In Canada between 1867 and 1897 the Canadian federal government appointed on the average about two Royal Commissions per year; after 1897 the number has risen sharply. M. C. Urquhart says that from 1867 to 1947 there were three hundred and ninety-one Royal Commissions.⁶⁷ The *Globe and Mail* in April, 1966, reported that up to that date, one hundred and sixty-five commissions had been appointed under Part I of the Inquiries Act alone.⁶⁸ In the past decade

⁶⁵ For example, the Commission formed to investigate Trade with the West Indies (1909), and the Commission on the Natural Resources of the Dominions (1912).

⁶⁶ For example, the Royal Commission on Grain Futures (1931); Royal Commission on Transportation (1932) and the Royal Commission on Banking (1933).

⁶⁷ HISTORICAL STATISTICS OF CANADA, (1965), 626.

⁶⁸ *Globe and Mail*, April 29, 1966.

Ottawa's reliance on these investigative bodies has increased tremendously, with over fifty commissions operating in this ten-year span. In contrast to this, Britain's use of Royal Commissions has dropped sharply ever since 1900. Clokie suggests several factors contributing to this "contemporary decline" of Royal Commissions in England:⁶⁹ fewer unexplored problems than in the days of the reforming Whigs; a more efficient organization of the civil service and government departments, thus removing much of the necessity for inquiry; and, finally, modern techniques for conducting inquiries have, to a certain extent at least, replaced Royal Commissions.

(7) *In Praise and Criticism of Royal Commissions*

Many of the arguments that are being espoused today both for and against the usefulness and validity of Royal Commissions are simply a rehashing of opinions expressed more than one hundred years ago. For example, in 1849 J. Toulmin Smith wrote *Government by Commissions, Illegal and Pernicious*; the title by itself indicating that the remarks to follow would be anything but complimentary. The following remarks, largely in the form of quotations, are presented to show that strong opinions concerning Royal Commissions are anything but new.

The Balfour Report in 1910 expressed unanimity

in believing that the appointment of Royal Commissions is useful for the elucidation of difficult subjects which are attracting public attention, but in regard to which the information is not sufficiently accurate to form a preliminary to legislation.⁷⁰

There are many reasons for using Royal Commissions, one of the most important being that Parliament is

both too inexperienced and too preoccupied with transient political considerations to undertake the serious and lengthy analysis of many problems the wise solution of which demands trained minds, impartial judgment and disinterested study.⁷¹

Also,

membership in Parliament is more a test of expertness in electoral procedure than an indication of brilliance . . . [T]he members are partisan and the quality of impartiality essential in any investigation with political overtones is lacking.⁷²

Royal Commissions have been a practical device, not a panacea, and have been employed because they have been found effective methods of tapping new sources of information, of gaining access to political opinion of a non-partisan origin, and of imparting an expert quality to the amateurish game of government.⁷³

Novel problems are continually appearing which the established administration cannot handle—new attitudes and outlooks have to be brought to these investigations and the collaboration of laymen with expert has to be effected.

⁶⁹ Clokie, *supra*, note 2; chapter 6.

⁷⁰ *Report of the Departmental Committee on the Procedure of Royal Commissions*, 6.

⁷¹ Clokie, *supra*, note 2 at 3.

⁷² *Id.*, at 5.

⁷³ *Id.*, at 6.

In the past, the most satisfactory method of breaking through official self-complacency and of providing inquiries into novel or neglected problems has been the Royal Commission.⁷⁴

On the other hand the opinion has been expressed that

a government fears to face a question—a problem to be conveniently shelved—political friends in need of a job; and so your Royal Commission is set up, and with the usual benedictions, references—and expense money—goes on its costly way. What happens then is told chiefly in the auditor-general's report. Huge travelling expenses, private secretaries for commissioners, clerks, stenographers, prolonged hearings—and finally a report which nobody reads, much less acts upon, and which serves chiefly as additional printing contracts for others of the hungry faithful. I have sat in the parliamentary press gallery for twelve years—I cannot recall a single report of a royal commission being translated into law.⁷⁵

Now speaking seriously, this whole thing is a perfect farce and I believe that the great mass of information collected by this commission is a mass of rubbish.⁷⁶

A Royal Commission

is an infinitely more corrupt institution, more jobbing and more mischievous than any close corporation that ever existed".⁷⁷ "The Commissioners are nominated by the Crown. There is no power given of challenge either to the array or the polls. There is no presentment before adjudication. What evidence they please is taken and no more. All evidence is taken in secret; and so much published as, and when, they like; and with such an accompanying gloss as they please to give it. No liberty of cross-examination—that is, of extracting dissimilarities—is admitted. Judgment is pronounced in the absence of every party affected, or whose property or interests are brought in question. An unlimited authority to squander money is assumed. Finally, authority is pretended to be given to them to require the attendance of any person, documents, etc., and to administer an oath to any party whom they please.⁷⁸

The fundamental laws of England relating to the maintenance of the body politic require . . . that the government shall be but the instrument by which the free will of the nation shall be put into action. Commissions of Inquiry are appointed for the purpose and with the effect of cramping and dwarfing the minds of the people, and reducing them to that state of only-half-development that they shall be unable to know the difference between a sham and a reality, between a truth and a falsehood; and so can have no healthy will, but must follow as a 'herd of animals' any empiric who can get possession of a little brief authority.⁷⁹

Table 1

ROYAL COMMISSIONS OF INQUIRY PRIOR TO 1832

1. Public Records of Great Britain, 1800-1819*.
2. Naval Inquiry (frauds and abuses), 1803-1806.
3. Fees, Perquisites, etc., of Public Offices in Ireland, 1806-1814.
4. Dublin Paving, 1806.
5. Public Expenditure in Military Departments, 1806-1816.

⁷⁴ *Id.*, 11.

⁷⁵ *Ottawa Citizen*, 1924, quoted in the *Debates of the House of Commons*, 1924, 737.

⁷⁶ *Debates of the House of Commons* (1893), 2114.

⁷⁷ J. Toulmin Smith, *supra*, note 27, 20.

⁷⁸ *Id.*, 163-89.

⁷⁹ *Id.*, 182-83.

6. Princess of Wales, 1806.
7. Revision of Civil Affairs of the Navy, 1806-1809.
8. Irish Schools, 1807-1812.
9. Cold Bath Fields Prison, 1808.
10. Windsor Forest, 1809-1815.
11. New Forest, 1809-1810.
12. Bogs in Ireland, 1809-1814.
13. Scottish Courts of Justice, 1810, 1815-1818, 1821-1824.
14. Saleable Offices in the Law Courts, 1810.
15. Public Records in Ireland, 1811-1830.
16. Election of Jurats in Jersey, 1812.
17. State of Malta, 1812.
18. Office of Works, 1812.
19. Lincoln Gaol, 1812.
20. Lancaster Gaol, 1812.
21. Claims of Creditors of the Late Royal Canal Company in Ireland, 1813-1816.
22. Irish Courts of Justice, 1815-1831.
23. English Courts of Justice, 1815-1818, 1821-1824.
24. Laws of Guernsey, 1816.
25. Custom and Excise, 1817-1824.
26. English and Welsh Charities for Education, etc., of the Poor, 1818-1835.
27. State of the Fleet and Marshalsea Prisons, 1819.
28. Princess of Wales, 1819.
29. Prevention of Forgery of Banknotes, 1819-1820.
30. Uniform Weights and Measures, 1819-1821.
31. State of the New South Wales, 1819-1822.
32. Ilchester Gaol, 1821-1822.
33. Captured Negroes in West Indies and British North America, 1821-1824.
34. Irish Public Revenue Collection, 1821-1825.
35. Land Revenue in Ireland, 1821.
36. Irish Fisheries, 1821-1825.
37. New Churches in England, 1821-1824.
38. Criminal Law in the Leeward Islands, 1822-1824.
39. State of the Settlements at the Cape, Ceylon, and Mauritius, 1823-1831.
40. Accidents in Gaslight Establishments, 1823.
41. Holyhead Roads, 1824-1825.
42. Chancery, 1824.
43. Irish Schools, 1824.
44. Criminal Administration in the West Indies, 1824-1829.
45. New Churches in the Highlands, 1825.
46. Laws, etc., of Sierra Leone, 1825.
47. Jury Trial in Civil Causes in Scotland, 1827-1828.
48. Scottish Universities and Colleges, 1827-1828.
49. Real Property Law, 1828-1832.
50. Courts of Common Law, 1828-1832.
51. Mode of Keeping Public Accounts, 1829-1831.
52. Ecclesiastical Courts, England, 1830.
53. Ecclesiastical Courts, Ireland, 1830.
54. Colonial Accounts, 1830.
55. Public Accounts (Receipts and Expenditures), 1830.
56. Public Accounts in France, Belgium and Holland, 1830.
57. Lancaster Law Courts, 1830.
58. Public records, 1831.
59. Colonial Emigration Facilities, 1831.

* The dates of appointment are often hard to ascertain. These dates represent either first and last reports, or years during which expenses of the Commissions are reported.

Source: H. D. Clokie and J. W. Robinson, *ROYAL COMMISSIONS OF INQUIRY* (1937), Stanford University Press.

Table 2

ROYAL COMMISSIONS IN BRITAIN — 1832-1900

Year Created	Number of New Commissions	Most Important Subjects
1832	3	Poor laws, Ecclesiastical revenues (England and Ireland).
1833	11	Criminal law digest, Municipal corporations (England, Scotland, and Ireland), Children in factories, Irish poor, Excise department.
1834	4	Religious instruction (Ireland), Post Office, St. Helena.
1835	9	Church, Military punishment, Parliament plans, Religious instruction (Scotland), Lower Canada grievances, Irish fisheries.
1836	8	Registration of vital statistics, Aberdeen and Glasgow Universities, Malta.
1837	1	Handloom weavers.
1838	3	Military and naval promotion, Canadian rebellion.
1839	1	
1840	2	Children in mines.
1841	6	Fine arts, Revenue, Irish censur, Irish law courts.
1842	5	
1843	6	Scotch poor law, Irish lands.
1844	1	Frame-work knitters.
1845	7	Judicial circuits, Inclosures, Ulster college, Potato disease in Ireland.
1846	5	Welsh education.
1847	7	Bishoprics, Land titles, Marriage law, British Museum.
1848	6	Irish public records, Customs, Westminster Palace.
1849	7	Episcopal estates, Redistribution of parishes.
1850	5	Superior Court procedure, Chancery, Oxford and Cambridge Universities.
1851	4	Dublin University, Ancient laws of Ireland.
1852	3	
1853	18	Nine election commissions, Mercantile law digest, County courts, Bankruptcy.
1854	9	Land-title registration, Military promotion, Irish schools.
1855	8	Eastern army supplies, Decimal coinage.
1856	7	Army commission purchase.
1857	8	Irish colleges, Aberdeen University, Ordinance survey.
1858	13	Popular education, Naval recruitment, Militia.
1859	10	Licensing (Scotland), Recruiting for army, Chancery evidence, Law, equity, etc., Consolidation.
1860	5	Prince Edward Island.
1861	5	Endowed schools, Indian law, Irish superior courts.
1862	6	Volunteers, Patents, Child labour, Mines, Penal servitude.

1863	4	Royal Academy, Fisheries.
1864	9	Capital punishment, English education, Scottish schools.
1865	8	Marriage law, Railway rates, Jamaica out-break.
1866	8	Law digest, Recruiting, Coal supplies.
1867	7	Judicature, Neutrality laws, Weights and Measures, Trade unions, Women and children in agriculture, Church ritual, Irish church revenues.
1868	9	Scottish courts, Military punishment, Naturalization, Military education, International coinage, Irish education.
1869	10	Six elections, Scientific education, Historical manuscripts.
1870	5	Army purchase, Friendly societies.
1871	4	
1872	4	Oxford and Cambridge Universities, Endowed schools (Scotland).
1873	3	
1874	5	Army promotion, Labour laws.
1875	7	Copyright, Vivisection, Factory acts.
1876	3	Scottish universities, Municipal corporations.
1877	5	Extradition, London Stock Exchange.
1878	8	Criminal code, Penal servitude, Scottish public schools.
1879	6	Agricultural depression, Wellington College, Mining accidents.
1880	12	Eight elections, Colonial ports.
1881	5	Transvaal, Ecclesiastical courts, Foreign technical education.
1882	5	West Indian finances, Reformatories, Education (Scotland).
1883	5	Highland crofters.
1884	4	Mauritius, Housing.
1885	2	Depression in trade and industry.
1886	8	Gold and silver, Civil establishments, Irish land purchase, Elementary education.
1887	3	
1888	4	Highland crofter emigration, London University, Naval and military departments.
1889	4	Mining royalties, Vaccination.
1890	3	Tuberculosis.
1891	5	Tithe redemption, Labour.
1892	4	
1893	5	London Government, Agricultural depression, Aged poor.
1894	4	Secondary education, Irish financial relations.
1895	3	
1896	4	West Indian depression, Local taxation.
1897	3	Manual training in primary schools, Irish land acts.
1898	5	London University.
1899	3	
1900	3	Port of London, South African hospitals.

Source: *Debates, House of Commons* (United Kingdom) 1832-1900.

Table 3

CANADIAN ROYAL COMMISSIONS — 1852-66

	Date Appointed	Subject of Investigation
1.	1854-5	Riot at Chalmer's Church.
2.	1854-5	Imperial Guaranteed Loan.
3.	1856	Longueuil Steamboat Explosion.
4.	1856	Prisons.
5.	1857	Accounts of Returning Officers.
6.	1857	Collapse of Desjardins Canal Bridge.
7.	1857	Collapse of Montmorency Bridge.
8.	1858	Crown Lands Department.
9.	1858	Burning of the Steamer "Montreal".
10.	1861	Management of Reformatory Prisons.
11.	1863	Public Service.
12.	1863	Public Buildings in Ottawa.
13.	1863	Registry Office in Montreal.
14.	1863	Financial Condition of Universities.
15.	1864	Charges against Sheriff Fortune.
16.	1864	Shipping on the St. Lawrence River.
17.	1865	Office of Clerk of the Crown.
18.	1865	Saint Albans' Raid.

Source: Journals of Legislative Assembly 1852-66.

Table 4

CANADIAN ROYAL COMMISSIONS 1867-1900

	Date Appointed	Subject of Investigation
1.	1868	Civil Service.
2.	1869	Obstruction to Wm. McDougall.
3.	1870	Administration of Justice in Northwest Territories.
4.	1870	Inland Navigation.
5.	1873	Charges re C.P.R.
6.	1873	Floods in St. Lawrence.
7.	1873	Hay-cutting in Manitoba.
8.	1874	Management of Post-office at Montreal.
9.	1874	Prohibition.
10.	1874	Baie Verte Canal.
11.	1874	Land Grants.
12.	1876	Lands in Manitoba.
13.	1876	Northern Railway Co.
14.	1876	Indian Lands in B.C.
15.	1878	Lands in Manitoba.
16.	1880	Administration of Justice in N.W.T.
17.	1880	Canadian Pacific Railway.
18.	1880	Civil Service.
19.	1881	Lands in Manitoba.
20.	1881	Charges vs. W. R. Squior.
21.	1882	Lands in Manitoba.
22.	1882	Intercolonial Railway.
23.	1884	Lands in Manitoba.
24.	1884	Chinese Immigration.

25. 1885 Half-Breeds in N.W.T.
26. 1886 Losses to Half-Breeds.
27. 1886 Charges vs. J. Travis.
28. 1886 Lachine Canal.
29. 1886 Railways.
30. 1886 Labour Relations.
31. 1887 Charges vs. Judge Miller.
32. 1887 Half-Breeds in N.W.T.
33. 1888 Charges vs. Judge R. P. Jellett.
34. 1888 Charges vs. Judge M. C. Upper.
35. 1889 Welland Canal.
36. 1891 Charges vs. Herchmer N.W.M.P.
37. 1891 Civil Service.
38. 1892 Liquor Traffic.
39. 1892 Charges vs. Sir A. P. Caron.
40. 1892 Fisheries Regulations in West.
41. 1892 New Glasgow-Cape Breton Railway.
42. 1894 New Westminster Penitentiary.
43. 1895 Fisheries Act Violations.
44. 1895 Sweating Industry in Canada.
45. 1896 Pilotage at St. John.
46. 1896 Manitoba School Question.
47. 1896 Construction Company Claims.
48. 1897 Losses in Quebec Landslide.
49. 1897 St. Vincent de Paul Penitentiary.
50. 1897 Charges vs. Judge Wood.
51. 1897 Esquimault and Nanaimo Railway.
52. 1897 Charges vs. Judge Spinks.
53. 1897 Charges vs. Devlin.
54. 1897 Pilotage at Montreal.
55. 1897 Government Clothing Contracts.
56. 1898 Crows Nest Pass Railway.
57. 1898 Crows Nest Pass Construction Deaths.
58. 1898 Dorchester Penitentiary.
59. 1898 Lobster Fisheries.
60. 1898 Charges vs. Government Officials in Yukon.
61. 1899 Claims to Land in Yukon.
62. 1899 Half-Breeds in N.W.T.
63. 1899 Shipment of Grain.
64. 1899 Mining Disputes in B.C.
65. 1899 Wellington Street Bridge.
66. 1900 Claims to Land in Yukon.
67. 1900 Half-Breeds in N.W.T.
68. 1900 Half-Breeds in Sask.
69. 1900 Fraudulent Elections.
70. 1900 N.W. Rebellion, Sask.
71. 1900 Site for Regina.
72. 1900 School Lands in Manitoba.
73. 1900 Chinese and Japanese Immigration.

Source: (1) J. E. Hodgetts, *Royal Commissions of Inquiry in Canada: A Study in Investigative Technique*, M.A. Thesis (1940), University of Toronto, (unpublished.)

(2) *Debates, House of Commons, 1867-1900.*

Table 5
COMMISSIONS OF INQUIRY — EXPENSES

Year	Title	Amount		
		£	s.	d.
1841	Rebellion Losses, Upper Canada	500	0.	0.
1846	“ “ Lower Canada	950	0.	0.
1844-45	Seigniorial Tenure	1,500	0.	0.
1844-45	Charges against Mr. Badgley, as Commissioner of Bankrupts	34	5.	0.
1846	Board of Works Departments	550	0.	0.
1846	Crown Lands Department	250	0.	0.
1847	Matters connected with public business	200	0.	0.
1849	“ “ “ “ “	200	0.	0.
1850	“ “ “ “ “	200	0.	0.
1851	“ “ “ “ “	200	0.	0.
1851	Montreal Provident & Savings Bank	942	18.	7.
1852	Matters connected with Public Service	150	0.	0.
1853	“ “ “ “ “	500	0.	0.
1854	“ “ “ “ “	1,500	0.	0.
1855	“ “ “ “ “	1,500	0.	0.
1856	“ “ “ “ “	1,500	0.	0.
1857	“ “ “ “ “	1,500	0.	0.
1860	“ “ “ “ “	6,000	0.	0.
1861	“ “ “ “ “	6,000	0.	0.
1862	“ “ “ “ “	10,000	0.	0.
1863	“ “ “ “ “	20,000	0.	0.

Resolutions of Supply included in the Annual Supply Bills.

Source: General Index to the Journals of the Legislative Assembly of Canada, (1841-1851) and (1852-1866).

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PAGEANT OF PARLIAMENT

*(Suggestions for the Same)

I saw an old man in the Park;
 I asked the old man why
 He watched the couples after dark;
 He made this strange reply:—

"I am the Royal Commission on Kissing,
 Appointed by Gladstone in '74;
 The rest of my colleagues are buried or missing;
 Our Minutes were lost in the last Great War.
 But still I'm a Royal Commission
 Which never has made a Report,
 And acutely I feel my position,
 For it must be a crime (or a tort)

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Though I know, as an old politician,
Not a thing will be done if I do.

"I never can remember how exactly we began,
But I seem to recollect a case about a clergyman;
A mountain was delivered, rather strangely, by a mouse;
There were meetings, there were articles and questions in the House;
The necessity for action was clear to everyone,
But the view was very general that nothing could be done,
And the Government courageously decided that the Crown
Should appoint a score of gentlemen to track the trouble down—
Which always take a long, long time.

"We first explored the history of human osculation,
The views of the Mohammedans, the morals of the nation,
And the significance (if any) of existing legislation—
And that took a long, long time.

"Next a little doubt arose about the limits of our reference,
We accordingly approached the Government with deference,
Having ascertained that kisses were of every kind and sort—
Some kisses, for example, being long and others short—
Did the Government expect us to investigate the latter?
The Government replied that it didn't really matter—
But that took a long, long time.

"Disraeli was a member, but he very soon resigned;
Lord Arrow died in '98, old Rattle lost his mind;
Still, once a month, in winter, we assembled to discuss;
And then the Boer War broke out, which interrupted us—
And that took a long, long time.

"We then collected evidence, but carefully dismissed
The opinion of anyone who actually kissed;
We summoned social workers from the cities of the North,
Good magistrates from Monmouth, Nonconformists from the Forth;
We summoned all the bishops who were over sixty-one
And asked if they were kissed and, if they were, how it was done.
They answered in the negative and said there was abundant
Support for the opinion that the practice was redundant—
And that took a long, long time.

"We next examined doctors with extremely high degrees,
Who thought that osculation was the cause of Bright's Disease,
And one or two Societies existing to suppress
All frivolous activity, including the caress;
Industrial employers said that kissing always tends
To economic conduct and is bad for dividends.
Just then the Great War happened; our proceedings were adjourned;
Two members joined the constables and seven were interned.
And I think that it was during that unfortunate campaign
Our Minutes must have vanished—they were never seen again—
For the War took a long, long time.

"There were ten of us surviving at the finish of the War,
And some of us were not so energetic as before;
But the sense of civic duty still invigorated all

And we gathered once a quarter in a cellar in Whitehall.
 (These things take a long, long time.)

“One little question puzzled us for many a weary year:
 ‘What is the right procedure when the Minutes disappear?’
 The Secretary said he thought the precedents were small,
 The Chairman said he didn’t know a precedent at all.
 The Secretary thought we should remember where we were
 And continue our inquiry, without prejudice, from there.
 But a lot of time had passed since the inquiry was begun,
 And none of us remembered what exactly we had done.
 And it has to be conceded that you can’t go very far
 Towards a definite objective if you don’t know where you are.
 The Chairman took the view that we should just begin again,
 For the absence of the Minutes would be awkward to explain.
 We resolved it was a question we could not at once decide,
 And that was the position when the Secretary died—
 But it all took a long, long time,

“That left the members seven. I should hate to call to mind
 The melancholy steps by which our membership declined;
 I know that on the suicide of Prebendary Gunn
 I suddenly discovered that our membership was one.
 And that’s the reason why you may observe me in the spring
 Investigating park-seats and places where they cling.
 That kissing is proceeding there is very little doubt—
 I can’t imagine why it’s done or what it’s all about;
 But whenever it’s discovered that the plebs are having fun
 It’s generally granted that something should be done.
 Civic duty’s food and drink to me, and, though it may be short,
 I can promise you at least a unanimous Report—
 But it does take a long, long time.

“I am the Royal Commission on Kissing,
 Appointed by Gladstone in ’74;
 The rest of my colleagues are buried or missing;
 Our Minutes were lost in the last Great War.
 But still I’m a Royal Commission,
 My task I intend to see through,
 Though I know, as an old politician,
 Not much will be done if I do.’