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Peter Aucoin
Dalhousie University

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Contributions of Commissions of Inquiry to Policy Analysis: An Evaluation

Peter Aucoin*

1. INTRODUCTION

Commissions of inquiry appointed to analyze major matters of public policy constitute an important organizational instrument in governance for essentially three reasons. First, their establishment enables decision-makers in government to delay or postpone decisions without being criticized for doing nothing at all. Policy analysis in this circumstance may be an excuse for a “non-decision”, but at the least it ensures that the issue at hand stays on the policy agenda in a certain fashion. Second, such commissions provide for a process whereby the views of special interest groups and the interested public can be presented in a forum that is not subject to direct government control. This can include the capacity to actively solicit views from various quarters and direct support for the participation of particular interests. Third, and perhaps most relevant, commissions of inquiry of this sort represent the most effective option available to government for policy analysis undertaken by an independent and objective, and yet official, organization. Commissions are the most effective option in this regard because they have a greater capacity to

* Professor, Department of Political Science and School of Public Administration, Dalhousie University.

be, and to be seen to be, independent and objective than other governmental instruments of public policy analysis.¹

Each of these characteristics is important to policy analysis as an activity of governance. The first provides time for analysis as an intellectual exercise; the second provides the opportunity to examine and assess demands and support for various policy options; and the third provides for analysts who are able to evaluate policy options free from the constraints of partisan controls or institutional limitations extant in other governmental organizations which conduct policy analyses. These characteristics, individually or collectively, do not ensure "good" policy analysis. They are a necessary but not a sufficient condition for quality. Moreover, as conditions, they are not always met in the establishment and operation of particular commissions. Taken together, they constitute an ideal. As a general rule, nonetheless, these conditions are more likely to be met in commissions of inquiry than in other kinds of institutionalized policy analysis within the public sector. It is for this reason that they continue to be used with considerable frequency notwithstanding the fact that governments' capacities for policy analysis have been increased substantially in recent decades.

2. POLICY ANALYSIS AS APPLIED SOCIAL SCIENCE

As institutions for policy analysis, commissions of inquiry engage in applied social science. What they do in this respect is no different from what is done in other institutions where policy analysis is conducted. Problems (or possibilities) are defined, alternatives are developed and assessed in terms of costs and benefits, priorities are established, feasibility is considered in relation to demands and support, options are evaluated and recommendations are made. The recommendations of commissions are made public, in contrast to much, indeed most, of the policy advice offered within government; and the reports, as well as the studies, of commissions provide the policy analyses on which such recommendations are based. It is this feature of commissions, albeit one not entirely unique to such commissions, that naturally invites an evaluation of their contribution to policy analysis.

Students of public policy have not ignored the role of commissions in the policy process. Indeed, commissions often are deemed to be key factors in this process precisely because their policy analyses have clarified policy issues, drawn explicit reference to the specific interests involved in a policy sector, contributed to our understanding of the various public interests at stake in complex policy subjects, introduced or legitimized innovative ideas and

¹ See M.J. Treblicock, D.G. Hartle, R.S. Prickard and D.N. Dewees, *The Choice of Governing Instruments* (Ottawa: Economic Council of Canada, 1982).

pointed to novel ways by which to overcome what previously had been regarded as intractable policy dilemmas.² At least on the basis of the literature in political science and public administration, one could in fact come to the conclusion that the policy analyses of commissions are generally held in high regard.³ At the same time, however, it must be pointed out that there exists no systematic evaluation of the contributions of commissions' policy analyses to policy analysis. Although perhaps possible in principle, such as by way of the Delphi technique in which panels of specialists in the policy areas of commissions' analyses would evaluate the same, it is unlikely that an evaluation of this sort would ever be undertaken. Aside from the questions of costs and logistics, there are two reasons to doubt the value of any such undertaking. First, by its very nature policy analysis is an intellectual exercise. As an activity it does involve a standard set of activities that should be undertaken. In terms of process and techniques, there are objective norms that can be agreed upon. But insofar as policy analysis, even as an intellectual exercise, involves "judgment" in weighing costs and benefits in regard to the public interest, for example, it is ultimately a subjective exercise.⁴ Second, policy analysis, as applied social science, is an activity that also involves "creativity", in the development of policy options, for example. In this respect there are no objective standards to assess policy analysis after the fact. One cannot measure creativity. It is for both of these reasons that policy analysts who evaluate the work of other policy analysts must ultimately do so by reference to the degree to which the work of the latter conforms to their own schools of thought or applied social science "paradigms": paradigms which cannot pretend to be "objective" in the sense that all subjective values have been eliminated.⁵ One need go no further than an examination of the responses of academic and professional economists to the Macdonald Royal Commission's policy analysis concerning the role of the state in the Canadian economy to find evidence of this reality.⁶

2 See J.C. Courtney, "In Defence of Royal Commissions" (1969) XII-2 Canadian Public Administration at 198-212; and V.S. Wilson, "The Role of Royal Commissions and Task Forces" in G. Bruce Doern and Peter Aucoin, eds., *The Structures of Policy-Making in Canada* (Toronto: Macmillan, 1971) at 113-129.

3 See, for example, Alan C. Cairns, "The Macdonald and Other Royal Commissions: Their Role in Public Policy" (David Alexander Lecture, Memorial University, 3 November 1986).

4 Sir G. Vickers, *The Art of Judgement* (New York: Basic Books, 1965).

5 Thomas S. Kuhn, *The Structure of Scientific Revolutions* (Chicago: University of Chicago Press, 1962).

6 See, for example, Richard Simeon, "Inside the Macdonald Commission (1987)", 22 *Studies in Political Economy* 167, for an overview of the different reactions to the Macdonald Commission.

3. COMMISSIONS AS INSTITUTIONALIZED POLICY ANALYSIS

If it follows that an evaluation of the contributions of commissions to policy analysis is inherently limited by the above considerations, then what accounts for the perception that such commissions are an ideal institutional mechanism for independent and objective policy analysis? Or, put another way, why is there the assumption that such commissions have contributed and can contribute to policy analysis? The answers to these questions, I suggest, lie in the fact that policy analysis is not only an intellectual exercise of applied social science, it is also a social (or perhaps better said, a political) activity. As such, the institutional context and its organizing mechanisms are equally critical to its undertaking. In much the same way that science in general is organized in certain ways to ensure, or at least promote, independence and objectivity, the applied social science that is policy analysis must be so organized. Such organization does not in itself produce good policy analysis, to be certain, but all things being equal there are good and not so good ways to organize the policy analysis function in governance if independence and objectivity are desired.⁷

From this perspective there is the recognition, perhaps an increasing recognition, that commissions of inquiry are well suited as institutional mechanisms for policy analysis if the following conditions are met:

- multi-member commissions rather than single member commissions;
- multi-disciplinary staff;
- a mixture of experienced administrators and outside expertise;
- a public hearings process;
- a diffused and decentralized operational system for research, discussion and deliberation; and
- public dissemination of studies as well as report.

Each of these conditions is important. The first recognizes that policy analysis is a socio-political process wherein judgment is not simply the application of professional criteria to a given case but rather an interactive activity: simply put, two or more heads are better than one, even where this leads to dissenting opinions, an outcome that invariably enriches policy analysis *per se* notwithstanding the dilemma that then confronts policy-makers. Multi-member commissions also obviously enable governments to secure representation from a broader range of perspectives than is the case with single member commissions. Although this also allows for the representation of vested interests on commissions, it does not necessarily follow that this undermines their value.

7 See Kenneth Kernaghan and David Siegel, *Public Administration in Canada* (Toronto: Methuen, 1987) chapter 9 at 231-248.

The second condition constitutes, in a sense, a subsidiary of the first, namely the need to secure staff who are not confined to one disciplinary perspective. This requirement pertains even in areas where the subject matter, as substantive policy, has become the preserve of a single discipline (or profession such as law, accounting or engineering). This requirement, however, constitutes an increasing difficult challenge to fulfill, especially in terms of the actual interaction of staff even when staffing from more than one discipline occurs. The Macdonald Commission is again a good example of this difficulty: at least three disciplines (law, economics and political science) were engaged but interaction between specialists from them was at best minimal.⁸ This is not, of course, a problem unique to commissions but their *ad hoc* and temporary character exacerbates it for there is precious little time to develop an interdisciplinary approach to analysis.

The third condition — a mixture of experienced administrators and outside expertise — is required in order to have knowledge related to policy implementation brought to bear upon the consideration of policy options, on the one hand, and an independence from the prevailing policy orientation and approach, on the other. It is my impression, based upon information from persons involved in a number of commissions, that this condition is one increasingly acknowledged as important, in part, as a result of the lessons learned from the use of executive task forces (a close cousin of commissions).⁹ Secondment of government officials is the most obvious manner by which this condition is met, given that the use of outside experts has almost always been the norm for commissions in any event.

The fourth condition, public hearings, is one usually associated with commissions of inquiry given their public character. Indeed, such commissions have been at the forefront in the development of public participation methods, especially those designed to ensure the participation of interests which, for reasons of organization or resources, are often not well represented in the regular or on-going governmental processes of policy development and debate. Given the increasing use of regularized consultative processes, especially between the administrative apparatus of government and institutionalized pressure groups with the initiative for the same, coming as much from the former as the latter, the requirement that commissions actively seek out the broadest possible range of interested and affected parties constitutes an essential condition for commissions providing policy analyses that contain added value to those done within the regular structures of government.

A diffused and decentralized operational system for research, discussion and deliberation is a fifth condition because of the essentially intellectual activity that is policy analysis. At some point, perhaps with a deadline,

8 See Cairns, *supra*, note 3, and Simeon, *supra*, note 6.

9 See Wilson, *supra*, note 2.

commissioners must decide what they will recommend. At the same time, in the process leading to decisions, the organization and management of policy analysis (including research, discussion and deliberation) should not ignore the need for some autonomy and discretion in the work of analysts (including researchers) and as well a communications system that cuts across any hierarchical arrangements put in place for administrative requirements. In particular, commissioners and staff, especially the former, must recognize that informed analysis and logical argument need to take precedence over formal authority in the interaction among commissioners and staff. Knowledge may not be power but the commission form of policy analysis demands that power not be substituted for knowledge.

Finally, the very essence of a commission of inquiry as an exercise in policy analysis requires that there be a public dissemination of its studies as well as its report. This requirement does not emanate so much from the demand for access to government documents or freedom of information *per se*; the policy recommendations of a commission are not public policy. Rather, to the degree that such commissions are used for policy analysis purposes the logic of the mandate demands that any such contributions be considered "public knowledge" — an essential requirement of all science.¹⁰ Only in this way can the contributions of commissions to policy analysis be evaluated. This requirement is not made any less important by the argument presented previously to the effect that "objective" evaluation is not something that can be accomplished. Rather, the requirement for evaluation proceeds from the need to assess the premises, assumptions, models, data and techniques present and deployed in the intellectual exercise of a commission. The fact that evaluation of the same will themselves be based upon certain values as contained in particular schools of thought or paradigms does not diminish the significance of this requirement. The political system, and especially the specific policy audiences in question, can "learn" only insofar as policy analyses fulfill the conditions of "public knowledge".¹¹

4. INSTITUTIONAL OPTIONS FOR POLICY ANALYSIS

These characteristics describe an ideal type of commission. Not every commission measures up to this ideal, either in design or practice or both. As the characteristics of a particular institutional arrangement for policy analysis, commissions do have advantages over other institutional arrangements. Governments, as governing parties, have used commissions because of the

10 J.M. Ziman, *Public Knowledge: The Social Dimension of Science* (Cambridge: Cambridge University Press, 1968).

11 See Hugh Helco, *Modern Social Policies in Britain and Sweden* (New Haven: Yale University Press 1974); and Ronald Manzer, *Public Policies and Political Development in Canada* (Toronto: University of Toronto Press, 1985).

paucity of policy analyses undertaken by political parties in Canada, at least with respect to the two parties which have formed the governing party at the national level in Canada. But even more important, in the most recent past, that is after the development of a much greater capacity by governments themselves to conduct policy analyses in central agencies, departments, executives task forces, and public advisory bodies (the Economic Council of Canada, the Science Council of Canada, and the Law Reform Commission of Canada, to name three major examples), governments have continued to use commissions of inquiry for policy analysis purposes.¹² Not even the development of a strengthened and more proactive system of parliamentary committees has served to abate the use of commissions.¹³ The reasons for the continued use of commissions do not stem from a lack of technical capacities on the part of these alternate institutional arrangements for policy analysis. Rather, none of them is able to be, or at least to be seen to be, as independent and objective as a commission. This is not to dispute the usefulness of these other institutions but only to note their more limited utility to a government under certain conditions, that is, when a public perception of independence and objectivity is deemed to be of the highest priority.

Policy analysis conducted within government by central agencies, departments and internal task forces is almost by definition deficient by the standards of applied social science for the obvious reason that it is not the norm for such analyses to become, in their entirety, public knowledge (even under liberalized access to government document regimes). This very fact may be viewed as an advantage in terms of their capacity to meet the political or administrative criterion of "feasibility". What is considered to be feasible, however, may be nothing more than a rationalization or justification for predetermined policy decisions. In an attempt to offset this cynical interpretation, some policy analyses conducted within and by government central agencies, departments and especially task forces do conform to the criterion of public knowledge in the form of published "coloured papers" or reports. They may even involve consultative processes with affected interests and the participation of outsiders. In these ways, these exercises, albeit few in number, do emulate some characteristics of commissions. The retention of executive control over them, especially, but not only, discretion over the publication of their analyses, limits their claim to independence and objectivity, whatever their intrinsic merits.

The establishment of what have been described as public or "external" advisory councils, such as the Economic Council of Canada, the Science Council of Canada and the Law Reform Commission of Canada, challenged

12 See G. Bruce Doern and Peter Aucoin, eds., *Public Policy in Canada* (Toronto: Macmillan, 1979).

13 C.E.S. Franks, *The Parliament of Canada* (Toronto: University of Toronto Press, 1987).

the dominance of commissions of enquiry precisely because they were intended to be an alternative to the temporary, *ad hoc* commission of inquiry as an institution for policy analysis. They were viewed as a way to “de-commission”¹⁴ the external policy analysis function and to create “a permanent body of expertise related to recurring social and economic problems”.¹⁵ As Phidd noted in regard to the Economic Council:

[I]t was an attempt to institutionalize on a continuing basis the work of royal commissions, one of the main methods by which fundamental economic research was done previously in Canada. More specifically, it was an attempt to carry on the work of the Gordon Commission on Canada’s long-term economic prospects. . . . Dr. John Deutsch, the council’s first chairman, in several speeches described certain aspects of the council’s work as being consistent with the work of royal commissions. Furthermore, the council’s composition was similar to royal commissions in the sense that it drew expertise from outside of the regular bureaucratic structure.¹⁶

The continued use of commissions of the temporary, *ad hoc* variety, even in policy fields covered by these external advisory councils (the Macdonald Commission being only one example in the policy domain of the Economic Council), demonstrates the viability of such commissions. In the case of the Economic Council and the Law Reform Commission, single disciplines have dominated and in so doing have restricted their capacity for policy analysis. In the case of the Science Council, and perhaps the Economic Council as well, they have been regarded as institutions dominated by a prevailing paradigm or school of thought — another limitation from the perspective of objective policy analysis. Finally, the very fact that they are on-going institutions has raised doubts about their independence, not from government but from their own institutional perspective. Some or all of these implied limitations may not be accurate or fair but from the vantage point of a government seeking to promote the perception of an independent and objective exercise of policy analysis on a particular topic this is beside the point.

The use of parliamentary committees (or task forces) for the purposes of policy analysis as an alternative to commissions is even more problematic. On the one hand, they may be viewed as little more than exercises subject to the constraints of party discipline and thus partisan at the core. On the other hand, when there is a semblance of partisan “neutrality”, as is sometimes the case

14 J.E. Hodgetts, “Should Canada be De-Commissioned?” (1964) LXX Queen’s Quarterly 475.

15 G. Bruce Doern, “The Role of Royal Commissions in the General Policy Process and in Federal-Provincial Relations” (1967) X Canadian Public Administration 432.

16 R.W. Phidd, “The Role of Central Advisory Council: The Economic Council of Canada” in Doern and Aucoin, *supra*, note 2 at 210.

with House of Commons committees or perhaps even more so with Senate committees, the subjects of inquiry are, with few exceptions, not central to the current policy agenda of the government or political system. And in those instances which are exceptions, the record of such committees is that they have not given adequate attention to the interests or constituencies which are, as Cairns puts it in defence of commissions, "insufficiently attended to by the normal operations of government."¹⁷ Although there is a case to be made for greater reforms to our operation of parliamentary government, including the role of parliamentary committees in this system of government, committees of inquiry are a poor substitute for commissions of inquiry for the purposes of policy analysis. For the greater part, members of Parliament, including Senators, especially those who sit on such committees, lack the competence to lead policy analyses. More importantly, the dynamic of our system of parliamentary government *as* party government is that members of parliament are not elected as representatives to undertake policy analyses as this activity has been defined in this paper.

5. LIMITATIONS OF COMMISSIONS

The fact that commissions of inquiry, as temporary, *ad hoc* institutions, have advantages over the permanent institutional arrangements of our governmental system, including parliamentary committees, in terms of independence *and* objectivity does not mean that they necessarily always possess the capacity to achieve independent and objective policy analysis of high quality. There are at least four major factors that can serve to undermine the policy analysis function of such commissions. These relate to the executive appointment of commissioners; the commission's appointment of staff; the limitations of time for research; and, finally, the limitations which are inherent in temporary, *ad hoc* organizations.

The executive appointment of commissions by the Prime Minister and cabinet presents an opportunity for partisan considerations to undermine objective and independent policy analysis. At issue here is not so much the partisan affiliations of commissioners, although this factor should not be ignored, but rather the willingness of commissioners to undertake their assignment in a manner that sets them apart from the partisan interests of the governing party. A failure to do so makes such commissions little more than executive task forces, a result that constitutes an "abuse" of the commission form.

The commissioners' appointment of staff may introduce a second limitation in one of two ways. Such appointments may also be partisan, that is, with

17 Cairns, *supra*, note 3 at 7; and, on parliamentary committees in particular, see Franks, *supra*, note 13.

respect to the interests of the governing party, if commissioners themselves are appointed with such interests as the major consideration. Or, even if commissioners are non-partisan in this sense, staff may be appointed with a policy bias, such as would be the case if only one school of thought is represented.

A third factor that may militate against quality policy analysis is the limitation of time for research. Original research is not always required for policy analysis but when some such research is required, the time for the same is often found wanting. Increasingly, commissions are given deadlines and this means that their approach must be as "consumers, not producers, of intellectual capital".¹⁸ In this respect, governments can abuse the commission form by placing too tight a deadline on a commission. This is an especially serious abuse if it is known in advance that serious research is required in order to test or challenge the dominance of a prevailing school of thought in a policy area.

Finally, there is an institutional limitation that confronts commissions as temporary, *ad hoc* mechanisms. This limitation arises from the fact that each commission faces a set of conditions that is in some way unique. If some degree of "learning" is required, in order, for example, to ascertain the particular approach to take respecting public participation or research, commissions often find themselves scrambling to search out the experiences of other commissions. Few, if any, governments have an institutionalized "organizational memory" in place with respect to commissions, beyond legal advice on matters of powers and formal procedures. Effective policy analysis is easily undermined by the absence of this capacity; too often each exercise begins *de novo* with relative novices in charge. The abuse by governments here is one not of commission, but omission, that is, a failure to develop an institutional capacity to retain the experiences of commissions and to transmit what has been learned.

6. CONCLUSION

The above limitations account in some measure for the increased deployment of other kinds of policy analysis institutions by governments. They are not limitations that cannot be overcome, however. More importantly, as noted, all other arrangements have their own limitations, particularly with respect to independence and objectivity. The latter two factors are, I suggest, of increased importance to the governance, broadly defined, of contemporary political systems. The development of highly bureaucratized "policy communities", as Pross calls them, dominated by administrative officials and pressure groups' representatives, has fostered a diffusion of power in regard to access

¹⁸ Lars Osberg, "Inquiry without Fact-Finding" (April 1987) Policy Options 11.

to decision-makers of public policy in the several fields that now constitute the agenda of government.¹⁹ This, in turn, has served to give an even greater legitimacy to the prevailing paradigms or schools of thought in each of these fields. At times, as Pross notes, this requires that these officials and representations seek support from parliament to gain public or political endorsement for this legitimacy. But, parliaments (or their committees) are ill-suited to this function, as I have argued: they rarely can provide other than partisan endorsement. The current calls for parliamentary reform may be appropriate for certain purposes. They are, however, a poor substitute, and thus a misplaced one, for increased independence and objectivity in policy analysis. The continued use of commissions is thus not only likely but an approach to governance that should be encouraged.

19 A. Paul Pross, *Group Politics and Public Policy* (Toronto: Oxford University Press, 1985).

