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BOOK REVIEW OF MICHAEL J TREBILCOCK, *PUBLIC INQUIRIES: A SCHOLAR'S ENGAGEMENTS WITH THE POLICY-MAKING PROCESS* (TORONTO: UNIVERSITY OF TORONTO PRESS, 2022), 136PP.

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INTRODUCTION

Over the past three decades, Canadian public policy development has become increasingly participative through stakeholder involvement in policy design. Starting with the 1986 Regulatory Reform Strategy,¹ which recommended public involvement at the federal level, to modern statutory regimes legislating meaningful consultation with interest groups,² federal policy outputs reflect institutional openness to diversifying ideas, research, and priorities. Accordingly, policy decisions are designed with a view to promote and uphold principles of inclusive governance. Whether this aspiration can be meaningfully achieved under current public law infrastructure

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¹ See Privy Council Office, *Regulatory Reform Strategy* (Ottawa: Government of Canada, 1986).

² See *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295, 46 ILM 1013, Preamble and art 5, online: <www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf> [perma.cc/5EKS-JQME] [UNDRIP] which requires the Government of Canada to work in consultation and cooperation with Indigenous peoples to take necessary measures to design and implement federal laws to be consistent with the Declaration, and to develop an action plan to achieve its objectives in consultation with Indigenous peoples and interest groups. See UNDRIP, *supra* note 2, that mandates public consultation between the Federal Government and Indigenous peoples to ensure federal laws are consistent with the Declaration, and to develop an action plan pursuant to its objectives.

remains to be seen. This uncertainty creates a policy window ripe for discourse evaluating how scholars, social norms, interests, funding, and civil society organizations can create consensus in institutional policy development forums.

Michael Trebilcock's *Public Inquiries: A Scholar's Engagement with the Policy-Making Process* ("Public Inquiries"), explores whether, and how, Canada's federal government and legislative policy-making processes ensure that policy choices reflect Canada's political and social patchwork. In doing so, the book shows how Canadian governance attempts to balance the priorities of its citizens ("the public") with those of its political parties and government institutions. Trebilcock derives his analysis from personal lessons learned through a half-century career as a legal scholar involved in leading federal and provincial public inquiry committees. While his mix of anecdotal findings and historical policy analysis provide workable insights in participative policy development, the book leaves the inevitable policy reform questions unanswered: what next, and how can we do better?

PART A AND B: CRITIQUING THE TERRAIN: PROMOTING PUBLIC INQUIRIES AS A CATCH-ALL SOLUTION TO EVIDENCE-BASED POLICY-MAKING

In Part A of *Public Inquiries*, Trebilcock outlines the *sui generis* structure of Canada's institutional arrangements that shape public policy formation across polities. Trebilcock maps federal policy "outputs"—legislation, regulations, guidelines, and executive decisions that reflect shifts in policy du jour—with corresponding policy "inputs." Namely, the confounding influences of certain forms of legislative activity on policy formation.³ Such influences can include public consultation and civil society interest capture—from opinion polls, investigative reporting, studies by independent think-tanks, to briefs by public interest groups, constitutional litigation, and administrative law challenges.

Trebilcock pays particular attention to the role of standing law reform commissions), policy advisory bodies,⁴ and Parliamentary committees. Policy advisory bodies, he identifies, are inhibited in their capacity for impact by competing interests.

³ These include, for example, electoral platforms, Cabinet discussions, Parliamentary debates, and deliberations of standing and select parliamentary committees.

⁴ E.g. the Economic Council of Canada and the Law Commission of Canada, both charged with providing policy advice to the federal government within their expansive mandates.

On one hand, standing law reform commissions cannot antagonize the government aiming to maintain control over its policy agenda. On the other, the commissions strive to reflect their independence, expertise, and legitimacy when it comes to a particular policy issue. Moreover, Trebilcock asserts that Parliamentary committees have a mixed policy impact due to thin staff support and a lack of a clearly defined focus. In response, public inquiries⁵ empowered under the *Inquiries Act* are presented as a more expedient and fulsome alternative.⁶ Their broad statutory mandate, per Trebilcock, enables inquiries to address specific issues and provide recommendations, while also conducting retrospective investigation into matters of controversy.

Under the well-established Kingdon “policy stream” model,⁷ Trebilcock’s analysis has merit, and can help those involved in both legislative advocacy and policy agenda setting. In Kingdon’s model, a window for effecting policy change opens when three “streams” come together: the policy, problem, and political stream. Trebilcock positions public inquiries at the intersection of the problem and political streams. Support for state action following focus events such as public tragedy or alleged state wrongdoing give rise to a commissioner appointment and inquiry. In some jurisdictions, commissioners are statutorily obligated to uphold a duty of honesty, impartiality, proportionality, and fiscal responsibility. This reinforces their ability to apply independent discretion to better understand matters connected to fulfilling civil, cultural, economic, political, and social objectives.⁸

Trebilcock’s critique can be used by readers as guidance for using public inquiries as a catalyst for policy change. Compared to the regular policy machinery of

⁵ A public inquiry is an official investigation into a specific policy issue or event (for example, missing and murdered Indigenous women) that is ordered by a governmental body. Public inquiries are typically ordered in response to matters of significant public concern and generate media attention.

⁶ Commissions of Inquiry are established by the Governor in Council (Cabinet) to fully and impartially investigate issues of national importance. Led by distinguished individuals, experts, or judges, Commissions of Inquiry have the power to subpoena witnesses, take evidence under oath, and request documents.

⁷ See John W Kingdon, *Agendas, Alternatives, and Public Policies* (Beijing: Peking University Press 1984), highlighting the policy stream theory that suggests policy change comes about when three streams—problems, politics, and policies—connect. This model shows that while the three streams may be operating independently of one another, all three need to come together for a policy to emerge. Each of the streams described by Kingdon has its own forces acting upon it and ultimately influencing it. The policy streams model focuses on the importance of the timing and flow of policy actions. The streams do not just meet up by chance but rather from consistent and sustained action by advocates.

⁸ *Inquiries Act*, RSC, 1985, c I-11, s 2.

government, Trebilcock argues that inquiries have the unique statutory mandate and authority to elicit system-wide research and public consultation. This allows them to undertake a comprehensive evaluation of evidence and policy alternatives, meaning well-founded policy review and recommendations for reform are produced.

Specifically, Trebilcock describes how public inquiries generate ideas from diverse actors through roundtables and town hall meetings, making them a vehicle for public participation in policy-making. Through their functions as a comprehensive consultation platform, funding lever, and fact-finding mechanism, Trebilcock demonstrates how inquiries' findings enable intersectoral integration of priorities and solutions across otherwise siloed policy arenas. For example, the Royal Commission on the Status of Women, in identifying women's issues as a cross-cutting policy priority, compelled the federal government to implement gender equity solutions across each of its departments and governing statutes. Today, we see the final results of this integration: the Federal Government's Policy on Gender-Based Analysis Plus that requires all federal government legislation, policies and programs to be consistently responsive and inclusive of diverse experiences.⁹

Not all inquiries achieve this success. In Trebilcock's critique, he identifies how the length and cost of inquiries, judicial review challenges, political manipulation, and shift in administrative agendas can impede the implementation of its recommendations. As with the Royal Commission on Aboriginal Peoples ("RCAP"), for example, where a new federal executive takes office, administrative agendas and political priorities can shift before the inquiry releases recommendations, which can erode the initial political will necessary for its implementation.

The second half of *Public Inquiries* gives teeth to his critique through personal reflections. Trebilcock recounts his experience in trade, competition, property rights and regulated professions' law reform. In so doing, he gives readers a necessary view of how inquiries can be a tool for policy and legislative change. This provides a helpful reality check to readers left wondering what facilitating inquiries, developing their reports, and implementing their recommendations looks like from the inside. He covers writing effective final reports, and bringing about new legislation in the face of significant interest group opposition.

⁹ Government of Canada, "Policy on Gender-Based Analysis Plus: Applying an Intersectional Approach to Foster Inclusion and Address Inequities" (6 May 2022) online: *Department of Justice* <<https://www.justice.gc.ca/eng/abt-apd/pgbap-pacsp.html>> [perma.cc/H4PG-VU2X].

Several of Trebilcock's inquiries achieved success. Notably, Trebilcock was responsible for coordinating law reform during the Economic Council of Canada's inquiry into competition laws and shaping the two-year long reform process that culminated in the enactment of the federal *Competition Act*. The reform process, he describes, was characterized by significant parliamentary committee hearings, acrimonious debates, and strenuous opposition from large business lobbyists. A solution to business opposition required innovation—splitting the reform process into two stages and postponing amendments on contentious matters until the first phase was through.

Trebilcock's personal reflections shed light on the discrete risks to reform where the lack of immediate political, media, and public interest inhibits recommendations from crossing the finish line. For example, he recounts how public voices that contribute to the inquiry can often be discounted by priority and budgetary shifting at the federal level. Internally, resolution can be stifled by lack of buy-in and change-management across implementing agencies. These issues, Trebilcock argues, demonstrate the need to create infrastructure for policy innovation through institutionalized periodic reviews, new operating procedures, and appointment processes. Trebilcock also highlights practical concerns rarely considered by lawyers and policy-makers—such as the imperative to ensure there is a media focal point following the release of public inquiry recommendations to keep the issue in the public eye, and to mandate research and consultation processes that make evidence-based policy evaluation an ongoing endeavor.

The missing ingredient to Part A and B is a timely answer to the question of failure to implement inquiries' recommendations: what happens when the political will is lost and policy agendas—and funding options—shift? From a practical standpoint, Trebilcock makes a strong case for public inquiries but fails to explain the necessary steps to be taken during shifting political tides. With a total of 450 federal inquiries having been commissioned under the *Inquiries Act*, the expense and clear public and political demand for investigation raises the question regarding the lack of follow-through. A second analysis from this lens would be helpful for future policy-makers and scholars so that inquiries culminate in strong policy returns for the public regardless of political volatility. Moreover, it is unclear why areas of policy influence more directly informed by social factors and public advocacy—such as public interest litigation—are not included in his critique.

PART C: LESSONS LEARNED FROM LEADING PUBLIC INQUIRIES

Two aspects of Trebilcock's analysis of federal public inquiries provide useful guidance for future policy innovation. First, the discussion of public inquiries illustrates the practical frustrations inherent to creating change through policy outputs. Second, his personal conclusions under Part C - Lessons Learned, make novel links between systemic problems, the value of independent public inquiries, and their capacity to invoke meaningful change in federal decisions.

Part C goes beyond speculative afterthought and produces positive theories of the public policy-making process that can serve as a practical "how-to" for readers. Trebilcock identifies deceptively simple lessons learned that provide nuanced advice for policy making.

CONCLUSION

Public Inquiries derives its strength from being able to connect focus events and key policy changes to interests, and constituency politics. By withholding political opinion, the high-level picture of federal policy-making in Canada gives reader's space for future policy innovation that builds where previous public inquiries leave off.

The lessons learned are at once both reflections and predictions for Canada, a country poised to take-on sweeping policy changes in response to systemic problems. Trebilcock's career makes his retrospective insights a timely guide for those working at the intersection of law and policy and who wish to find positive strategies that balance the interests inherent to federal level decision-making and policy implementation.