

Plenary Session 2: Public Health Policy Development—The Role of Inquiries

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Jeremy Hill, from the PHAC, welcomed the audience to the plenary session on public inquiries and the role they play following major public health challenges.

Justice Horace Krever

Commission of Inquiry on the Blood System in Canada

Justice Horace Krever led the Royal Commission of Inquiry on the Blood System in Canada in 1993, which was prompted by the contamination of blood and blood products in the 1980s. As a result of the contamination, more than 1000 Canadians became directly infected with HIV, and 12,000 became infected with hepatitis C.

While the inquiry's focus was on HIV, it also should have included hepatitis C and AIDS within its scope. However, that would have made it a more complicated and extended process, Justice Krever said.

The commission was asked to review and report on the mandate, management, operations, financing, and regulations of the Canadian blood system including the events of the contamination of the 1980s. The inquiry resulted in a report containing recommendations to address the system's current shortcomings and a final report with recommendations for an official and effective national blood system.

When asked to address how this inquiry related to public health, Justice Krever stated that a dysfunctional system had implemented a widescale case of morbidity and fatality in Canada. He said the inquiry was effective in that the process and publicity surrounding it created awareness and changed behaviour within the system.

Justice Krever pointed out two results of the inquiry: first, the replacement of the Red Cross with Canadian Blood Services and, second, a greater recognition for precautionary action.

Justice Dennis O'Connor

Walkerton Commission Inquiry

Justice Dennis O'Connor shared his experience leading the Walkerton Commission of Inquiry in 2002. He stated that the case was very much concerned with public health, as it

involved the massive contamination of a publicly owned and municipally operated water system with E. coli.

The first part of the inquiry's mandate was to investigate and report on what happened in Walkerton. Justice O'Connor said this portion was much like a traditional legal process involving lawyers and witness testimony. The report identified failures on the part of the operators and managers and the provincial government with respect to licensing, ongoing regulation, and inspection.

The second part related to policies and recommendations that would ensure the safety of water in Ontario in the future and that involved a different process, which was research-based and consultative. The inquiry spoke to a wide range of experts from every discipline including public health. Justice O'Connor said more than 37 organizations representing every conceivable interest were granted standing and participated quite intensively. Town hall meetings were also conducted to involve the public.

"It was not adversarial or political. It was designed to be thorough," said Justice O'Connor about the second part of the inquiry. "It was more of a process found in a university than in a courtroom. When dealing with important public health issues, there is merit to that approach."

The inquiry included recommendations such as

- Selecting and protecting high-quality water sources with a strong management and planning process;
- Implementing effective standards and technology to monitor quality and distribution;
- Implementing a municipal quality management approach that would require accreditation by the province.

The government of the day committed to implementing the commission's recommendations. When the government changed, it too adopted the same approach, resulting in the *Safe Drinking Water Act* and the *Clean Water Act*, Justice O'Connor said.

Justice Roland Haines ***Ontario Meat Regulatory and Inspection Review***

Justice Roland Haines was authorized by the Ontario government to review meat and regulatory inspection regimes in the province in 2004. The purpose of this review was to strengthen public health and safety, build business confidence and examine the roles and responsibilities of ministries and local health units with respect to meat production. Justice Haines was also directed to review other jurisdictions, make recommendations to strengthen Ontario's system and create harmonization with the federal government.

At the time of the inquiry, the federal government regulated the large meat processors who traded nationally and internationally, while the provincial government regulated smaller processors, said Justice Haines. Thirty-three federally registered abattoirs

processed 85% of the livestock, and 191 provincially registered abattoirs processed the other 15%.

Justice Haines said the review was authorized at a time of elevated concerns around public health with Walkerton, SARS, mad cow disease, and allegations of illegal activities in some Ontario abattoirs. The allegations involved the uninspected processing of dead livestock, which resulted in a mandatory recall.

Justice Haines provided a brief history of the meat inspection system, which involved cost-cutting measures resulting in a less stringent system. He said that as their review progressed, the inquiry found that a lot of work already had been done to modernize the food safety system, but, for some reason, the changes had been stalled. For example, the *Food Safety and Quality Act* had been passed in 2001 but had never been proclaimed. In July 2004, the Minister of Agriculture, Food and Rural Affairs promised to implement all 113 recommendations made by the review.

“That hasn’t happened, but many have been implemented and there has been considerable progress to implement more,” Justice Haines said. “Very few recommendations represent any original thought on my part. They reflect the considered views of the panels of experts and the ideas and concerns of the stakeholders. The review provided a forum for the collection, distillation, and analysis of information and expertise. It has been useful.”

Justice Robert Laing ***North Battleford Water Inquiry***

Justice Robert Laing spoke about his involvement as the commissioner of the North Battleford Water Inquiry in 2001. This inquiry was prompted by an outbreak of gastrointestinal illness caused by the contamination of the city’s drinking water with a parasite called cryptosporidium.

Justice Laing said that North Battleford had two water treatment plants in operation at the time. One was a surface plant that used river water, and the other used groundwater from wells. About 3500 metres from the surface plant was the city’s sewage water treatment plant. The cryptosporidium parasite is excreted in the feces of the infective host, becomes immediately infectious and can cause widespread damage when processed through a sewage treatment plant.

The event took place between March and April 2001 and affected between 5800 and 7100 people, according to a study conducted by Health Canada.

As the commissioner of the inquiry, Justice Laing was asked to investigate the circumstances that led to contamination, the adequacy and effectiveness of actions taken, and the effect of policies and guidelines on that event. He stated that the city had a reasonably good system until 1985, but it progressively worsened due to cost-cutting measures.

The inquiry included 61 findings and 28 recommendations, which the governments of Saskatchewan and North Battleford implemented.

“This was a perfect case for public inquiry,” said Justice Laing. “The issues were applicable to all three levels of public health, municipal government, and provincial government.”

Questions and Discussion

“What amounted to public health, and did you deal with competing views as to what amounted to public health?” Mr. Hill asked.

Justice O’Connor responded that there wasn’t a great deal of discussion along the lines of public health but rather, a discussion about how one should regulate it and whether one should encourage cooperation or command and control. Justice O’Connor said he preferred to go with the latter approach, because the consequences of bad water are immediate and acute.

Justice Haines said that during his review of the meat production system, many groups argued that they had been doing things a certain way for hundreds of years with no fatal results.

“It was a real challenge to rationalize that argument with what is perceived to be a modern view of food safety,” Justice Haines said. “We wanted to make sure that nobody would die. We needed to put in place the necessary regulation that wasn’t restricted but accomplished the goal of producing safe products.”

Mr. Hill then asked, “Why is it that we end up with commissions that deal with responsibilities and quite specific policy recommendations? Why do we use these tools to develop policy?”

Justice Laing said an inquiry is a very reasonable vehicle for government to use to obtain the information required to assess a situation and receive outside opinion. There was an ongoing debate in Saskatchewan and North Battleford about who should or should not be regulating water, so the inquiry was useful in that respect.

Justice O’Connor said many inquiries are the result of some tragedy or event that has gone wrong and, therefore, start out with a great deal of public support. This was the case in Walkerton. Judges are ideal candidates to lead these inquiries, because they seem to be independent of political concerns, and, as a result, their recommendations have more credibility.

“People had been thinking about these things for 20 years. None of my recommendations were my ideas,” said Justice O’Connor. “I sifted through the ideas that were there ... and had been falling on deaf ears. Because of Walkerton, everyone is concerned about

drinking water. Inquiries can play an important role, and they have little to do with the commissioner and a lot to do with the events.”

Justice Krever pointed out that there are concerns about internal inquiries, and the public often assumes there will be a cover-up if a review is done internally. Independent inquiries get rid of that assumption.

“Would you say it helps to have a beginning, middle, and an end?” Mr. Hill asked.

Justice O’Connor said it is advantageous to have a clear mandate, an established team, and a time frame or deadline for recommendations that become fodder for public debate.

A participant asked, “When writing recommendations, do you think about key success indicators or factors that will lead to implementation? What are those, and would you have written your recommendations differently if you had given thought to those after having seen the political reaction to your reports?”

Justice Haines replied that when he wrote his recommendations, he always considered whether they had a chance of being implemented. He consulted with experts about what they would like to see changed and whether they thought those changes were feasible.

Justice Krever said he did make some recommendations that stood very little chance of implementation, but he still made them because he felt they were the right recommendations and he wanted to be honest with himself and with the public.

Another participant asked the panellists how they came to their understanding of what public health risk was, what they thought their role was in changing people’s understanding of public health risk, and whether they were successful in changing perceptions of public health risk.

Justice O’Connor replied that he was told it was impossible to remove all risk of contamination from drinking water, so he aimed to reduce the risk to a level so negligible that a reasonably informed person would feel confident about drinking the water. Tied to that goal was to have a system transparent enough that if people wanted to inform themselves about the processes and quality of the drinking water, they could do so.

“We had Justice O’Connor’s template, and we just substituted meat for water,” Justice Haines said. “I’m not sure I thanked him for it before, but the work he did was the template that we used It should work with any food safety issue.”

Another participant asked how the judges avoided biases on the part of a government commissioning the inquiry, especially when that particular government could receive a backlash for whatever event or tragedy prompted the inquiry.

Justice Krever said it is not always the case that the government appointing the inquiry is the one with apprehensions or biases.

“I’m not sure a judge would accept an inquiry if it looked biased,” Justice Haines said. He added that before he accepted the position, he was given the opportunity to provide input into the terms of reference for the inquiry.

“When an inquiry is called involving a public health issue, I encourage people to participate fully,” Justice O’Connor said. “The contributions from public health authorities were invaluable to me in Walkerton. I knew nothing about it. If it happens again, get behind [it] and support it fully.”