

The Marketized State, Public Inquiries, and the Transformation of Justice

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Abstract

This paper is focused on the public inquiry process to assess circumstances in which they might create social change. It is located at the nexus of public inquiries, access to justice, and the transformation of justice practices. It examines if and how the public inquiry process fosters justice and questions if public inquiries alleviate or sustain inequalities. This paper argues that the State is not a neutral arbitrator simply managing the workings of government to benefit all. The paper reviews five Commissions of Inquiry (COI) conducted in Manitoba between 1991 and 2014 and examines the interests, focus, scope and process of each inquiry to assess for types social change. The paper also accounts for the role of COIs in different State formations comparing COIs under welfare and corporate/managerial regimes. This paper questions if the current State's corporate and managerial sensibilities limit the possibility for COIs to be an instrument of good government, democracy, and a mechanism to reduce inequality and transform justice.

Keywords: Crime control; neo-liberal State; public inquiries; social change.

Introduction

Public inquiries, also known as Commissions of Inquiry (COI), play an increasingly popular role in questioning injustices associated with high profile, problematic events, or what are often called failures of the system. They have been called for as a remedy to gender-based violence, Indigenous affairs, and governmental agency actions from police violence to tainted blood. Their popularity is exemplified in a high-profile Winnipeg case from a decade ago. In February 2014, a 15-year-old Indigenous girl was found dead, wrapped in a blanket, thrown into the Red River. The cause of her death was not determined, and the man charged with her killing, Raymond Cormier, was

acquitted. The victim, Tina Fontaine, had contact with the police, hospital staff, and the child welfare system during her short life. She was a ward of Child and Family Services (CFS) at the time of her death. The Manitoba official opposition New Democratic Party Justice critic Nahanni Fontaine, circulated a legislative petition calling on the Manitoba government to launch an inquiry into the death of Tina Fontaine. She said: “All of the circumstances leading up to the death of Tina Fontaine — meaning all of those systems that she came into contact with, the investigation into her death, and then, of course the court processes — warrants a public inquiry” (MacLean, 2018). The sitting provincial Progressive Conservative Party government declined the petition stating the inquiry was unnecessary as there were other mechanisms in place. Although the provincial government is required to conduct an inquest into the death of anyone under 18 and the Manitoba children’s advocate investigated this case (and wrote a report), Nahanni Fontaine argued the public inquiry would be more productive because it would allow Tina’s family and her First Nations community of Sagkeeng to have intervener status, meaning they could have their own lawyers present during the inquiry. Her argument also claimed an inquiry would compel witnesses to appear and would also allow for issues such as systemic racism and effects of colonization to be discussed. The inquiry was also important because the Manitoba Child Advocate does not have jurisdiction on federal Indigenous reserve land and hence, policy.

Based on this, we can ask what is the purpose and potential of public inquiries, the faith put into them, and the desire to call for them? This paper focuses on the relationship between public inquiries, access to justice, and the possibility to transform justice practices. It examines if and how the public inquiry process can challenge how justice is fostered and questions how public inquiries might alleviate or sustain inequalities.

This paper uses data collected as part of a two-year, Social Sciences and Humanities Research Council (SSHRC) funded study titled *Public Inquiries and the Role of the State in Canadian Criminal Justice* that examined twenty-seven Canadian inquiries ranging from pediatric care, to police violence; from intimate partner violence to treatment of young offenders. The study examined the public inquiry pro-

cess including calls for an inquiry, the appointment of commissioners, the groups granted standing (a formal status allowing individuals/groups to participate directly in questioning witnesses, reviewing documents and making submissions), the number of witnesses called, the scope of the inquiry, the themes it dealt with, its cost and time to completion, recommendations and follow up. The study also examined legislation governing the public inquiry process. The research is grounded in developing a deeper understanding the role of public inquiries in all systems of governing. The study also focused on the role of the State in COIs. This paper will examine five Manitoban inquiries in the context of the shift in State (re-)formation from a welfare state to a managerial, corporate form and what this could mean for the ability of public inquiries to transform justice practices.

In the past 20 years there have been numerous provincial and federal COIs about the criminal justice system. The majority question an incident/event and focus on how government failed principles of justice. Despite the substantive number of CJS recommendations we find ourselves in a current historical moment characterized by dissatisfaction with the justice system on all sides; from calls to defund and abolish police/prisons to calls to implement punitive policies. Given the numerous public inquiries into policing, court systems, and incarceration, it is not clear why these inquiries haven't produced outcomes that mitigate these calls for change. As such, this research asks: Are public inquiries an avenue for social change and the prevention of future harm? What do COIs produce? What is their purpose? Are they a path to justice? Schlemach and Hart (2025) suggest that criminal justice inquiries have a unique set of tensions that invite further research into the internal dynamics of the public inquiry process. This paper seeks to identify these tensions and dynamics.

The paper begins with a review of literature about types and processes of public inquiries. It then moves to a discussion of state formation to theorize its impacts on COIs and recommendation implementation. The paper then examines the scope, focus, and process of five public inquiries in Manitoba. The paper concludes by discussing the potential of COIs to transform justice.

Types and Processes of Inquiring in Canada

Commission of Inquires (COIs), have assumed an important role in the public landscape. They are a method to question injustices related to the operation of the State and its agencies at the provincial/territorial and federal level. There have been numerous COIs on a broad range of issues from the safety of drinking water, political sponsorship, tainted blood, breast cancer screening, the pediatric forensic pathology system, the construction industry and more. The criminal justice system has seen numerous public inquiries of its own and is implicated in others.

This section reviews literature on types of COI processes as well as research into their conceptual significance. This literature is inherently multi-disciplinary, using terminology from administrative studies, legal studies, political science, and public policy. Schlemach and Hart (2025) suggest there have been few systemic studies on public inquiries role in scrutinizing and reforming criminal justice policy and practice and that criminology has not yet grasped the full potential provided by public inquiries. This paper points itself in this direction and aims to give more scholarly attention to criminal justice public inquiry findings, processes, and interactions (Schlemach and Hart, 2025, p. 375).

Types of COIs

D’Ombrain (1997) identifies two types of inquiries in Canada – policy and investigative commissions. Policy commissions focus on sectorial policy questions and landmark national policies. These generally advise and address a broad issue of policy and gather information relevant to the issue. Investigative commissions collect facts and evidence with the aim of learning a lesson regarding a system failure or misconduct and seek action to avoid future failures. These types of inquiries most often address the facts of an alleged problem associated with the functioning of government. Inwood and Johns (2016) add hybrid models to D’Ombrain’s typology. Hybrid inquiries include those that, while based on an investigation of an event, often address broader policy questions as part of the remedy.

Success, Neutrality and COI Outcomes

Measures of what makes a successful public inquiry are debated in the literature. Although overwhelmingly aimed at policy changes, scholars claim public inquiries have a host of ancillary functions including allowing victims a say in the incident that occurred, promoting the healing of past wrongs, and restoring faith in government systems (Stutz 2008). Calling for an inquiry, such as Tina Fontaine discussed above, is appealing to politicians and advocates, albeit for different reasons. Additionally, there are informative, educational, and social functions associated with COIs. Given that public inquiries are intended to operate in a non-partisan, neutral way, they have the potential to impact public discourse about an issue (Stanton, 2022; Kennedy, 2018) by focusing on facts not emotion, ideology, or expected/desired outcomes. Ireton (2023) warns that expectations can lead to significant frustration and distress for participants/victims and undermine public confidence in the process. Stanton (2022) says, in reference to the MMIWG inquiry “it did not turn out to be what many had called for with such fervor and certainty... Instead it was a painful disappointment, in danger of causing further harm to those most affected by the process” (p. 4). Flinders (2025) asks if inquiries are meant to be neutral and what does neutrality especially if the State is a key element in the process.

Stanton (2022) takes aim at the terminology public “inquiry” and asks why we merely inquire as opposed to previous terminology which were commissions of truth. She claims that “despite the Truth and Reconciliation Commission (TRC) in Canada, governments are more open to holding commissions of inquiry than commissions of truth.... meaning the State is more likely to continue to inquire into whether there is a truth to be found than to declare that there is a truth to be addressed” (Stanton, 2022, p. 7). Des Rosier (2016) echoes these concerns in her analysis of the Missing and Murdered Indigenous Women and Girls Inquiry (MMIWG) asking what is truth finding and truth producing in the context of COIs and what are the outcomes when truth is found? A discussion of terminology and type leads us to ask questions about processes and what might constitute a successful COI.

The idea of neutrality, interests, and politics lead us to ask if public inquiries are a means to appease groups versus a neutral method to find truth, achieve change and transform justice. Elliott and McGuinness (2002) question if COIs are a panacea or a placebo. D’Ombrain (1997) argues that although public inquiries are used for political utility with the intention of a quick turnaround, this isn’t always the case and often inquiries are not advantageous to political purposes. They cite issues with evidence, impartiality, cost, and follow-up as important elements to highlight in assessing the political nature of inquiries. Public inquiries are onerous and costly; they are often repeated over the years and don’t always include procedures to act on recommendations, therefore not resulting in substantive policy, program, or institutional change.

Although recommendation implementation is often thought about as a measure of success, Elliott and McGuinness (2002) question the efficacy of public inquiries by questioning their process, underlying aims, and impartiality as well as the ability of systems to learn from and alter existing norms and practices. Burton and Carlen (1979) and Gillian (2002) claim that the aim of COIs is to represent any system failure as temporary and to re-establish the image of administrative and legal coherence and rationality. Greer and McLaughlin (2017) suggest that public inquiries about scandals are themselves a way to placate populations and act as a form of accountability. COIs are themselves a way to manage risk and make the state look good in the eyes of citizens. Razack (2015) importantly highlights that during the public inquiry processes, the state can be constructed as caring and civilized, often represented, for example, as saviors of Indigenous peoples, thereby neglecting the State’s role as perpetrators of violence. In this way, inquiries could be considered a form of obfuscation. Schlembach and Hart (2025) suggest inquiries be examined beyond their legal framework or final report recommendations and instead as a site of contestation where power is exercised.

Despite this, Stanton (2022) positively regards public inquiries as a means of social change because they have the potential to raise important issues in Canadian public discourse, even if the inquiry itself does not produce desired outcomes. Kennedy (2018) and Bessner (2024) emphasize the role public inquiries play in educating the pub-

lic. COIs have the potential to increase the propensity for good governance, meaning that healthy government structures can learn from mistakes and can coordinate between power, resources, and information (Des Rosier, 2016, p. 381). Inwood and Johns (2016) focus on the role of power and government suggesting leadership and positive relationships appear to result in a good framework for policy changes post inquiry but highlight “there is no single factor which will ensure the successful implementation of all recommendations of COIs” (398-99).

Success and COI Processes

This paper questions if some elements of the public inquiry process are better at achieving social change than other elements. Empirically speaking, there is scant research on how public inquiries actually work. Much of the literature about public inquiries focuses on if recommendations are implemented. Other research examines COI processes and suggests the success of an inquiry depends on the scale and scope set at the beginning of the process, the micro or macro focus of the details of the event, the inquisitorial versus accusational/adversarial tenor of the inquiry, and the legal requirement to act on recommendations (Elliott & McGinness, 2002). An inquisitorial tenor will focus more on ascertaining what happened during an event or situation with a focus on problem solving an issue whereas accusational/adversarial COIs are characterized by confrontation and are less focused on a truth than holding someone accountable (Elliott & McGinness, 2002). Kennedy (2018) examines eight factors to assess inquiries success: fairness, thoroughness, cost-effectiveness, quality of report, media coverage/education, apologies given, facilitation of healing, and implemented recommendations. He also found that successful COIs have specific investigative terms of reference but also place no or little restrictions on policy recommendations or procedural operational aspects. Scholars have also discussed the impartiality of the inquiry (who is appointed as commissioner), the process of the inquiry (directed at a specific policy or macro-situational; victim or institutionally centered) and the underlying purpose (to remedy a harm or to change policy) as important factors in understanding and situating outcomes (see Bessner & Lightstone, 2024).

There are few studies that attempt to connect recommendation implementation with the role of the State, community, and other groups involved in COI processes. Inwood and Johns (2016) undertook an analysis of 10 inquiries finding that crisis is not a prerequisite for change/recommendation implementation but consensus about recommendations paired with a narrow mandate increased the likelihood of policy changes; small inquiries were able to effect policy change. They based their findings on four pillars to successful policy implementation: ideas, interests, institutions, and relations (Inwood & Johns, 2016, pp. 385-387). First, ideas are the statements made by witnesses during a COI that acted to innovate or maintain policy decisions. Ideas can be thoughts about structural issues as well as identifying policy flaws. Second are interests: there are many different actors with different interests in any COI. The more focused the interests, the more likely that successful policy implementation occurs (Inwood & Johns, 2016). Strutz (2008) similarly asked what interests affect recommendation implementation. In his study of 11 inquiries, he found that recommendations are implemented under certain interests including political environment, feasibility, and affordability. Third is the institutional context. COI's can be seen as temporary institutional fix imbedded in a more permanent, durable set of organizations. It is thought that investigative COIs produce more institutional fixes than policy advisory ones. Fourth are relations. Good relations between all members/stakeholders of a COI alongside clear lines of reporting correlate strongly with success. Stanton (2022) advocates for inquiries "being in the right hands" and that it is pivotal to have the right people running it to ensure that questions are answered, and victims are not retraumatized (p. 8). In considering the leadership legacy of commission chairs, Wallis and Brodtkorb (2020) conclude that a commission chair has tremendous power to facilitate an inclusive or exclusive process and can be either entrepreneurs or consolidators suggesting that entrepreneurial leaders enable transformative policy results but do so by giving up neutrality. Kennedy (2018) found that the fewer the number of commissioners, the better the outcomes.

This literature review suggests that the State and its actors, relations, interests, and ideas play an important role in inquiry processes. This

paper now shifts away from measures of success toward thinking about the State as the key institution involved in the inquiry process, and encourages thinking about its role in successful outcomes and the transformation of justice.

Inquiries and the State

Ideally, public inquiries are meant to re-define state responsibility. Calling a public inquiry means the State has somehow failed and its responsibility is to initiate an investigation of its own actions. The call to do this can come from a variety of sources and the newsworthiness of the event increases the propensity for a public inquiry (Harris et al., 2024). As such, public inquiries usually take place because there is an event or situation where the government must temporarily disregard existing policy and business as usual, and act in the public interest by questioning its own actions and policies. In this way, public inquiries are a way to maintain public confidence that the government can do its job. The responsibility of the State is to react and come to an understanding of how and when the internal mechanisms of its actions failed. To do so, the State must distance itself from itself while somehow still maintaining its reputation.

There is no agreement in the literature on whether public inquiries benefit or detract from the State's reputation. Some suggest that there is a protective mechanism in being able to distance itself from a failure but this distance might also consolidate the State's power instead of questioning it (Inwood & Johns, 2016; Marier, 2013; Stanton, 2022). COI outcomes can allow the State to obscure or deflect its own responsibility onto other bodies such as administrative institutions or contracted agencies, or organizations that are arm's lengths from the State itself (Ashforth, 1990). In this way, one can claim that inquiries are part of a strategy to manage scandal whereby the State becomes part of the solution rather than the problem.

Wallis and Brodtkorb (2020) suggest that public inquiries are contradictory to the State in the sense they are politically calculated and uncertain at the same time (see also Berger, 2003). Sulitzeanu-Kenan (2010) argued there are varying political benefits to calling a COI. They call a COI a venue-alteration mechanism, because it replaces a volatile critical audience (public, interest group, victim, media) with a

slower moving and predicable audience – the legally focused members of the COI (Sulitzeanu-Kenan, 2010; Sulitzeanu-Kenan & Holzman-Gazit, 2016). Others, however, suggest in an age of new politics, the political benefits of COIs are increasingly uncertain. Snow (2015) claims that COIs are not very effective at changing public or interest groups thoughts, emotions, or feelings about an issue. Additionally, if a COI takes place in the context of political outrage and public pressure, they may quite likely maintain the status quo, with little intention of creating system change and act to merely placate populations (Elliot & McGinness, 2002). This paper argues that examining shifts in State formations (ie what are the interests of the State, and how does it work) can help us understand the effect of COIs on institutions and their policies.

Federal COIs were popular in the 1960s and covered topics related to social structures such as gender/patriarchy, race, and social class with recommendations often focused on civil rights, pay equity, and marital rights. Recommendations tended to result in significant policy creation which was broad, extending over numerous institutions and agencies. New policy was created to address an identified problem/situation because the COI interrogated new ideas. For example, the 1970 Royal Commission on the Status of Women created legislative changes, laid the groundwork for equality provisions in the Charter, established universal child care, promoted employment equity, as well as created a Minister responsible for the Status of Women in Canada. This and other commissions aligned with the consolidation and expansion of the welfare state, which operated roughly between 1950 and 1980 and well in the 1990s, and produced numerous progressive outcomes (Galbraith, 2017). I connect this to Flinders (2025) who identifies an old politics of public inquiries characterized by processes focused on internal issues, documentation, and law, and representing a rather elite process. Therefore, there was a stronger alignment with COIs and policy in the welfare state era. However, with the decline in the welfare state (old politics) toward the neo-liberal corporate state entrenching itself in the 2000s, COIs have assumed a different social and policy role, or what Flinders (2025) claims is a new politics of COIs. Neo-liberal states are characterized by federal devolution of policy, deregulation, and privatization. They

seek to limit state intervention and instead promote individual responsibility and redefine citizens as consumers of markets and focus on reduced public spending and decreasing government involvement in social sectors. In neo-liberal states, we see COIs focused on narrower individual events at the provincial level, and less on examining broader federal collective welfare concerns even though individual events could be connected to broader social issues. We can consider these to be characteristic of the new politics of public inquiries which Flinders (2025) identifies as external engagement, more interest group based and less elitist, and focuses on memorialization, accountability, and social changes. Schlembach and Hart (2025) understand contemporary COIs as sites of contestation where political priorities compete with interest groups over questions of procedure, scope, and participation. COIs in the new politics are less policy-focused and more adversarial between competing interests. In contrast to policy creation outcomes, recommendations of COIs under the new politics modify or extend regulatory regimes and do not redact or eliminate existing policy in favour of new policy regimes. Recommendations focus on those that manage the existing system, but try to appease interest groups by creating more efficiency or minimizing risk. These recommendations focus on regulatory modification often characterized by the expansion of rules (via modifying existing legislation or adding procedures), as well as managing existing rules and citing instances of violations of new and existing rules. A focus of the role of the State can help address tensions found in the COI process.

New politics of the State

This paper is located in the argument that the State is not a neutral arbitrator, simply managing the workings of government to benefit all. Brown (2015, 2018), Garland (2001, 2025) and Hannah-Moffat (2005) suggest that the state operates with its own interest in mind and its current configuration is described as strongly corporatized and marketized, and one that is predicated on maintaining the status quo. Neo-liberalism redirects power toward those who control markets – i.e. the State. To maintain efficiency, inequality is often ignored because the neo-liberal state acts to benefit the corporate state not the citizenry. Brown (2015) suggests that this current historical moment

has witnessed a decline in democracy and its elements such as constitutional rights, freedoms, and access to justice. It has been replaced by neo-liberal mechanisms seeking to economize political and social life in all spheres (Garland, 2001, Brown, 2015). Brown (2015) contends that “both persons and states are constructed on the model of the contemporary firm, where both person and states are expected to comport themselves in ways that maximize their capital value in the present and enhance their future value and this is done through practices such as entrepreneurialism, self-investment, and individuation” (p. 22). Social institutions take the same pathway. Albertson et al. (2020) argue that a marketized state has embossed its practice on social institutions from policing to corrections, which reproduce the market consciousness and behaviour in the creation and enactment of its policy. Marketization, defined as prioritizing market concerns over social concerns, impacts of the operation of government and reconfigures what constitutes good governance. Both corporate and managerial sensibilities pervade the work of the State in all areas from healthcare (Mehra, 2018) and universities (Shaker, 2018) to social services (Baines, 2018) and food charities (Riches, 2018). The marketized state doesn’t want to compromise its hold on power because it’s not in its interest to do so and neoliberalism empowers the State to act in this way. The work of the state becomes bound by marketized needs and liberal democratic justice concerns recede. As such, how can COIs act as a mechanism to transform justice and be an instrument of good governance and democracy? Located in a crime control climate described by Garland (2001, 2025) as populist and politicized, COI recommendations associated with increasing the civil liberties of offenders, defunding the police, or mass systemic change associated with structures of patriarchy, colonialism, and social class will likely be dismissed at the behest of the rights of the victim over offender, the protection of the public and the maintenance of market efficiencies of the State. As such, this paper asks if COIs act as a neo-liberal marketized mode of justice? The paper asks how might the managerial sensibility of the State affect the processes and outcomes of COIs?

In analyzing COIs, and to consider the idea of success, the position of the State must be accounted for. The paper now turns to a description

of five COIs in Manitoba and an examination of the purpose, impartiality, accountability, and process/scope of each as well as account for the position of the State at the time of the inquiry.

Research Data: Manitoba Commissions of Inquiry

This paper examines five public inquiries conducted in Manitoba between 1988 and 2014. Selecting one province as a case study allows for an in-depth examination of how COIs work over time and attends to changes in the temporal operation of the State. Although this does reduce generalizability, it offers detailed contextual insight of a consolidated region (Yin, 2018).

In Manitoba, public inquiries are governed by the *Manitoba Evidence Act*. Part V of the *Manitoba Evidence Act* allows the Lieutenant Governor in Council the authority to appoint commissioners to investigate matters of public importance, such as those related to the good government or administration of justice in the province. For inquiries related to justice, this paper examines the Aboriginal Justice Inquiry (1988-1991); the Lavoie Inquiry-Schulman Report (1995-1997); Commission of Inquiry of the Trial and Conviction of James Driskell (2005-2007); the Taman Inquiry (2007-2008); and the Commission of Inquiry into the Circumstances Surrounding the Death of Phoenix Sinclair (2011-2014). To assess how processes and outcomes might be affected by the sensibility of the State, the paper uses analytical categories identified by Inwood and Johns (2016), Elliott and McGinness (2002) and Wallis and Brodtkorb (2020). This paper uses three indicators: (i) the purpose, (ii) focus, and (iii) process/scope of each inquiry. Within each of these three indicators, Inwood and Johns's four pillars are employed: ideas, interests, institutions, and relations. The paper briefly expands on these three indicators below, before describing the five COIs.

(i) The purpose indicator examines the stated intention of the COI, the role of the State in terms of its own interest versus the interests of others, and the terms of reference and parameters of the COI. In examining the lengthy final reports, the analysis looks for primary purposes (i.e. was it focused on finding blame; was it victim centered, what statements did it use when assessing responsibility; was its purpose to examine individualized or systemic issues).

(ii) In examining the focus of the COI, the analysis looked for indicators of impartiality and accountability. It assessed how impartial the inquiry was by examining who called it, who was appointed commissioner, the parties involved (was it multi or single agency witnesses), was it focused on individuals or systems; who was granted standing, number of witnesses, its policy focus, was it agency driven, how narrow or broad were the facts and questions, how was responsibility dispersed (multiple agencies or just one); and examined where the recommendations flowed -ie policy creation and/or regulatory modification..

(iii) In examining the process and scope, the analysis identified if the process was accusatorial/adversarial or inquisitorial. To assist with process, the number of witnesses, and the tone were assessed – i.e. were they reframing an issue or focusing on facts of the case; did they focus on who or why questions); the analysis examined which groups were granted standing; and the scope of the recommendations made and if an implementation committee was established, or if there were any legally binding policy changes. In looking at the scope, the analysis asked if the inquiry reframed the issue; if recommendations were aimed at personnel, policy revision, new programming and/or deal with technical issues and policy and macro situational, external issues and overarching policy frameworks, political ideologies etc.

Each inquiry is briefly discussed and then the paper turns to an analysis of the themes found.

(1) Public Inquiry into the Administration of Justice and Aboriginal People (AJI) (1988-1991)

The AJI was called to inquire about two specific instances – the 1971 murder of Helen Betty Osborne and the death of J.J. Harper in 1988. These two instances were representative of the overarching concern that the Manitoba justice system was failing Indigenous peoples.

The commission's scope was to include "all components of the justice system, that is, policing, courts and correctional services" and the commission was to "consider whether and the extent to which aboriginal and non-aboriginal persons are treated differently by the justice system and whether there are specific adverse effects, including possible systemic discrimination against aboriginal people, in the justice

system. The commission is to consider the manner in which the justice system now operates and whether there are alternative methods of dealing with aboriginal persons involved with the law” (chapter 1, AJI, np). Although specific details of the two cases (Osborne and Harper) were examined, the inquiry was focused more generally on how the justice system dealt with Indigenous peoples.

In terms of representation, the commissioners held community hearings that were open to the public. There was no cross-examination of participants. The point of the commission was to learn about interactions with the criminal justice system. The work also included research papers, library materials, an Elder conference, visits to those incarcerated, and examinations of international Indigenous justice processes. The COI examined empirical demographic data, generated by census information and considered the socio-economic status of Indigenous peoples in Manitoba.

The report made 296 recommendations in twelve areas including treaty rights, court reform, juries, jails, alternatives to incarceration, parole, indigenous women, child welfare, young offenders, and policing. The recommendations were interconnected, suggested major policy reform and eradication, and included several mechanisms about Indigenous self-governance. For example, it discussed estimating the precise amount of land owed to each First Nation via the establishment of a Treaty Land Entitlement Commission; changing existing legislation in the Fisheries Act to clarify and account for Indigenous rights; significant modifications to the Indian Act; recognize and facilitate the establishment of Indigenous run justice systems with a focus on traditions, cultures, and wishes of those communities; significant changing of criminal justice policies to allow Indigenous self-governance in justice matters from bail to incarceration; and relinquishing all RCMP control to First Nations counsels. All of the recommendations were aimed at establishing self-governance mechanisms for Indigenous peoples and reducing the power of existing state agencies. The recommendations were grounded in the deaths of Osborne and Harper but did not debate the facts of those cases.

An implementation committee was established in 1999 and issued a report in 2001 with directives in three areas: Aboriginal Rights and Aboriginal Relations; Community and Restorative Justice; and Crime Prevention through Community Development.

(2) Manitoba's Lavoie Inquiry or Schulman Report (1995-1997)

Rhonda and Roy Lavoie were found dead in a murder suicide, after a lengthy period of abuse and contact with the criminal justice system. This contact included Roy being arrested and charged with assault, sexual assault, unlawful confinement, sex assault with a weapon, and uttering threats and being detained in custody several times. After Rhonda filed for divorce, Roy confined her and asphyxiated both himself and Rhonda in their family van.

It is a rare occurrence that a COI is called in cases of spousal homicides in Manitoba as these are normally dealt with by coroner's report or DVDRC (domestic violence death review committees). However, due to pressure from numerous feminist interest groups concerned about gender-based violence, the order in council set the scope beyond the deaths of Rhonda and Roy Lavoie. It set out that the commission of inquiry was to inquire into whether there presently exists appropriate processes within the CJS to deal with the issue of domestic violence. In the Commissioner's (Schulman) words "The commission of inquiry sought to find in the murder suicide of a young married couple the lessons that would save others from their fate" (Schulman Report, 1997, p. iii).

In terms of representation, seven applications for standing were made at the inquiry with only four groups granted full standing and limited standing to granted to two groups.

There were written and oral testimonies given by 67 witnesses. The witnesses included police, social workers, family violence researchers, and members of the family. The inquiry heard from family and government and non-government groups and heard testimony on intimate partner violence research. The issue of domestic violence was considered in terms of systemic issues including critical shortcomings in the way organizations interact, the knowledge among staff about cycles of violence, and the necessity of public awareness. The

COI resulted in major changes to the system including changing policy across numerous systems.

There were 91 recommendations made that focused on modifying existing CJS practices as well as establishing new policy and providing new funding for the development of a vulnerable person's unit and community based domestic abuse prevention teams as well as a public awareness campaign. An implementation committee was established consisting of 14 inter-departmental working groups comprised of 135 individuals and 92 community representatives to study the potential of a proposed Family Violence Court, women's advocacy, community corrections, legislative changes, gaps in service, counseling, offender, visitation, training, and public awareness.

(3) Commission of Inquiry of the trial and conviction of James Driskell (2005-2007)

James Driskell was wrongfully convicted in the murder of Perry Harder in 1991. He spent 12 years incarcerated for first degree murder and was released in 2005 by the Federal Minister of Justice when the conviction was quashed and the charges were stayed. Driskell worked closely with the Association in Defence of the Wrongfully Convicted (ADWC) that advocated for an inquiry. In 2006, a COI was commissioned with six parts to the order in council that included: 1) inquiry into the conduct of the Crown Counsel and ethical standards; 2) conduct of Winnipeg Police Service disclosure of material; 3) to refer crown and police to investigative reviews; 4) consider conduct of RCMP laboratory; 5) seek advice on systemic recommendations; and 6) consider wrongful convictions in similar cases.

In terms of representation, nine groups were granted standing and there were 15 witnesses in total. All of the groups granted standing were individual police officers and judges, Driskell himself, the RCMP, province of Manitoba, and the Winnipeg Police Service. The ADWC was not granted standing. All of the witnesses were those who worked on the case from police to court workers, and information was considered factual with 49 exhibits. The exhibits were all focused on the policies and procedures relevant to the Driskell case alone. The tone of the inquiry was one that was solely focused on police conduct including note taking, saving notes, how forensic evi-

dence was used etc. The questions asked were accusatorial. There was little discussion of broader systemic concerns about policing as an institution or problems with wrongful convictions even though the report discussed many other similar cases.

There were 21 recommendations focused on police training, police disclosure, jailhouse informants, crown policies on direct indictments, post-trial disclosure, case review processes, and forensic evidence. There was no implementation committee established.

(4) Taman Inquiry (2007-2008)

On February 25, 2005 Winnipeg Police Service Constable Derek Harvey-Zenk drove his truck into the rear of Crystal Taman's car as she waited for the traffic light to change. Her car was pushed into the car in front of her and Taman died instantly. Mr Zenk was an off-duty police officer, driving home from a long night of partying with police colleagues. He plead guilty to dangerous driving causing death and was sentenced to conditional release. Questions about the accident investigation, the plea process, and the victim's family experience were posed to the media and Manitoba's Department of Justice. Pressured by the community and family, the order in council set the scope of the inquiry to examine:

the conduct of police officers investigation surrounding the death of Crystal Taman; whether the prosecution of Harvey-Zenk was conducted in accordance with professional and ethical standards expected of lawyers; if the family of Taman received services in accordance with the victims bill of rights; and to give advice on whether findings gives rise to further study, review or investigation.

In terms of representation, nine bodies were granted standing including Taman's family, Zenk's lawyer, Zenk, Winnipeg and East St Paul Police Service, Chiefs of both police departments, Winnipeg Police Association, the Government of Manitoba and Manitoba Bar Association. There were 50 witnesses called. The questions asked were primarily accusatorial and argumentative, with a focus on the narrow investigative aspects of the event itself. The emphasis was on specific processes surrounding the details of the incident and the legal proceedings that followed it, without reframing or reconsidering the is-

sue beyond the event, trial process, or as the experience of the victim. There was no limited standing granted to outside groups, nor were there witnesses that could be characterized as an outside interest group or scholarly testimony about issues related to the events such as witnesses discussing policing subcultures or police solidarity and how that could have affected the police investigation.

There were 14 recommendations made that produced some important outcomes such as the RCMP taking over the East St Paul Police Department and a change to the Provincial Police Act to establish a special investigation unit to investigate any criminal matter involving police, and to enhance victim services by modifying the Victim Bill of Rights. Rules of investigation were expanded, existing bills were modified, and the existing Police Act was changed. In many ways, the inquiry expanded police investigation mechanisms and court processes. No implementation committee was established.

(5) Commission of Inquiry into the Circumstances Surrounding the Death of Phoenix Sinclair (2011-2014)

Phoenix Sinclair was a five-year-old child murdered by her mother and step-father in 2005. Her body was not found until 2006. She was in and out of Child and Family Services (CFS) care during her short life. An official inquiry was called in 2006 but due to delays which included legal proceedings of the offenders and challenges by the Manitoba Government Employees Union representing CFS social workers which included publication bans on the names of those involved, the inquiry did not begin until 2011. The scope of the inquiry was to examine: “the child welfare services provided or not provided to Phoenix Sinclair and her family under *The Child and Family Services Act*; any other circumstances, apart from the delivery of child welfare services, directly related to the death of Phoenix Sinclair; and why the death of Phoenix Sinclair remained undiscovered for several months” (Legacy of Phoenix Sinclair, 2013, p.3).

The inquiry was conducted over three phases with the first examining how a small child could become so invisible as to literally disappear (Legacy of Phoenix Sinclair, 2013, p. 54). The first phase had 82 witnesses. Phase two focused on changes made to the child welfare system between Sinclair’s death and the time of the inquiry. The third

phase examined the broad question of challenges facing Indigenous families in Winnipeg. Phases two and three examined six reports issued by various government bodies on the death of Phoenix since her death. The individuals conducting these reports acted as witnesses and these phases also outlined the government's commitment of 42 million dollars to develop programs aimed at preventing further tragedies. These phases included expert testimony on Indigenous children, poverty, homelessness, community supports, and empirical data on children in care in Manitoba.

There were 62 recommendations with 86% aimed at modifying existing child welfare practices. One recommendation focused on incorporating histories of colonization into school curriculums, and one on supportive housing. The rest were focused on education practices. There were no recommendations made about parenting or supporting parents who were struggling with mental health and addiction issues even though those were key factors in Sinclair's death.

An implementation report was released in 2015 reporting on 31 of the recommendations. The majority of the report focused on details of changing practices and ensuring that changes are recognized on all of the agendas for future CFS meetings.

Results and Analysis

A comparison of the five inquiries will be broken down by purpose, focus, and scope. As Table 1 shows, with respect to (i) purpose, the AJI and Lavoie inquiries adopted a systemic approach as evidenced by its terms of reference where the intent of both were to connect experiences of individuals to broader concepts and conditions. For instance, Lavoie was attempting to connect the experiences of Rhonda to patterns of gender based violence. The AJI connected experiences of individuals with police to historically grounded Indigenous concepts of justice. In terms of interests and process related to the purpose, the Taman, Driskell, and Sinclair inquiries were individualized and focused on the interests of specific state agencies (policing, courts, CFS) and their (in)actions. Inwood and John's (2016) model of successful implementation states that the more focused the interests associated with purpose of the inquiry, the more likely successful policy implementation occurs. Strutz (2008)

found if the political environment is positive, there is a better chance of policy implementation and Schlembach and Hart (2025) asserted that the inclusion of more groups outside of an incident or investigation – the better the possible outcome. This appears to be the case for the Lavoie and AJI inquiries as the interests were focused and included many different groups with similar interests/focus. In addition, the interests of the groups granted standing (and partial standing) were focused on finding solutions, not debating facts. It's important to note both these inquiries had implementation committees. The Taman and Driskell inquiries saw very diverse interests with the family at odds with police departments and defence counsel and crowns etc. Even though the Driskell inquiry focused squarely on the problems of investigation, and recognized that wrongful convictions were problems of policing, there were no witnesses discussing scholarly work related to policing in a more systemic fashion. Similarly, the purpose of the Taman inquiry was not to examine issues (such as police misconduct) beyond the event itself.

In terms of (ii) focus of inquiries, we compare impartiality versus the desire to hold people/groups accountable for events. It was evident that the Lavoie inquiry occurred in a community of ongoing concern and was impartial in its focus allowing for a discussion of innovative polices and constructing a new path for those experiencing domestic violence. Police were in agreement that they needed help dealing with these cases. The same can be said for the AJI, and even though the murders of Osborne and Harper were a part of the mandate of the inquiry, it didn't focus on those events. It was impartial in the sense there was agreement that Indigenous peoples relation to the CJS was flawed. Another measurement of focus is the type of facts discussed, and the number of agencies involved. With Lavoie, it was clear there was an expansion of facts and a dispersing of responsibility across agencies, who wanted to work together. Similarly, the AJI called for change and transformation dispersed across numerous areas of concern with a broad focus. The Taman, Driskell and Sinclair inquiries were narrow, and responsibility was focused on low level blame instead of robust, interconnective policy changes that linked several institutions with broader historical and systemic concerns. As

such the recommendations of the Taman, Driskell and Sinclair inquiries flowed to very narrow modifications to existing legislation/processes and not to the public. We can draw on Inwood and Johns's (2016) first pillar, ideas, where they claim statements and focus on innovation of systems will create more successful outcomes. Although the Taman Inquiry made three legislative modifications there was lack of discussion of causative aspects (ideas) of the events. Driskell mirrored a similar process where although there were significant concerns about police conduct in the case, the hows and whys of wrongful convictions were not discussed. Even the Sinclair inquiry was focused primarily on the actions of CFS social workers with little discussion about contexts of Indigenous parenting. Whereas with Lavoie, there was a shift in terminology of intimate partner violence and a desire to engage with the public thus translating policy into action.

A look at the final pillar, (iii) process and scope, we examine the type of evidence, and number and type of witnesses. Lavoie's scope was on truths of intimate partner violence which guided the process. Similarly, the AJI scope was on the truth of Indigenous experiences of injustice. But in the Taman inquiry, truth was not the scope of the inquiry. The same can be said for Driskell and Sinclair. The scope was the incident and actions of those who work in policing or CFS. As such Lavoie and the AJI were more inquisitorial and Taman, Driskell and Sinclair were fact-finding. Aspects of process and scope draw on Inwood and John's discussion of institutional context. The Lavoie Inquiry was inquisitorial with an aim to reframe the issue of IPV away from a singular event. This is evidenced by its granting of partial standing to community groups concerned with the systemic issue of IPV, as well as witnesses and exhibits which included coalitions and scholarly groups as well as individuals involved in the case. The AJI was also inquisitorial with the aim to prioritize the experiences of Indigenous people with the criminal justice system. Both Lavoie and AJI recommendations were wide ranging and included multiple organizations and a discussion about how new policies could connect groups. As such the scope was broad social change. The Taman, Driskell and even Sinclair inquiries were accusatorial/adversarial with an examination of specific processes without reframing the issue

of police misconduct, victim support or child welfare beyond the existing policies. For Driskell and Taman, the parties granted standing were those involved in the incident, with no witnesses or exhibits examining police misconduct, policing subcultures, or policing attitudes. The recommendations for Driskell, Taman, and Sinclair were concentrated on narrow issues of operation and modifying existing regulations. In terms of institutions discussed by Inwood and Johns (2016), Taman, Driskell and Sinclair focused on institutional fixes rather than greater institutional change.

Other aspects of process and scope ask if the inquiry reframed the issue, if they developed new programs, and if they dealt with macro-situational and external issues with overarching policy frameworks. We see in the Lavoie and AJI inquiries, many of these elements were a part of the scope and processes of the inquiry and recommendations, whereas they were not present in the Taman, Driskell, or Sinclair inquiry processes. Process is also concerned with Inwood and Johns (2016) fourth pillar, good relations. They suggest that good lines of reporting correlate strongly with success. The Lavoie inquiry was found to have far less contentious facts and more commonality with the goal of helping and preventing harm. The AJI was also specifically focused away from events of the murders of Osborne and Harper and used a community approach. In many ways, it was safe to say that neither inquiry was neutral as the scope and process was aimed at preventing domestic violence and increasing justice for Indigenous peoples. The commissioners in both inquiries set the intention as entrepreneurial with the scope of developing transformative policy. The Taman and Driskell inquiries were more focused on blame and there was less consolidation of facts that would enable transformative policy changes and preventing these events from occurring in the future. In fact, the Taman inquiry was neutral in its questioning to encourage accountability of individuals and isolated institutions. Even though the Taman inquiry resulted in legislative changes, they were micro situational. The Driskell inquiry was not aimed at transforming wrongful convictions and was instead aimed toward modifying micro-existing practices. One could even claim that the Sinclair inquiry was not aimed at caring for Indigenous children in the future nor transforming care of children in Manitoba or

addressing support for parents. Based on the large number of recommendations aimed at CFS specifically, it appears to be more focused on accountability.

Table 1 – Inquiries by purpose, focus, and process/scope

	AJI	LAVOIE	DRISKELL	TAMAN	SINCLAIR
1. Purpose					
Interests	Systemic and community approach	Systemic issue approach	Specific state agencies	Specific state agencies	More specific to CFS
Terms of reference	Broadly examining community experiences and two incidents	Connecting cycle of violence to CJS responses	Individualized conduct of CJS workers	Individualized Conduct of CJS workers	Event focused on conduct and circumstances of the incident
2. Focus					
Impartiality and accountability	Integrative	Integrative	Isolated and argumentative	Isolated and argumentative	Isolated
Temporal location of the inquiry	Expansion of facts Examination of broad and systemic issues	Expansion of facts Dispersing responsibility Democratizing responsibility	Narrowing of facts Low level blame	Narrowing of facts Low level blame	Narrowed facts specifically to the incident and CFS process
3. Process/Scope					
Relations	Inquisitorial and community based Reframed issues broadly	Inquisitorial & explanatory Reframed the issue broadly	Accusatorial Examined processes without reframing	Accusatorial Examine specific processes without reframing	Did not expand issue to broad relations
Institutions	Expanded number of institutions outside of CJS	Expanded number of institutions outside of CJS	Narrow number of institutions - policing, courts	Narrow number of institutions - policing, courts	Narrowly focused on CFS although read other reports written on the same incident
Recommendations and Scope	296 Expansive with implementation committee	91 Expansive and participatory including 14 working groups, 135 individuals	21 Exclusively aimed at policing	14 Narrow and aimed at modifying existing legislation	62 Majority aimed at CFS specifically

Discussion

The overarching puzzle for this paper was to unpack the role of COIs in transforming justice practices, if the public inquiry process can challenge how justice practices and if they might alleviate or sustain inequalities. It was further guided by questions about the role of the State in conducting COIs and if the configuration of the State matters in the transformation of justice.

It appears that the Lavoie and AJI were conducted during the end of the welfare state, and Taman, Driscoll, and Sinclair inquiries were conducted as the neo-liberal state solidified. We can see that there was a significant difference in terms of the purpose, focus, and process/scope (see Table 1).

The Lavoie inquiry and the AJI both had a systemic approach, and were expansive in its process and recommendations, creating numerous new policies and recommendations for social justice and transformation. The Taman, Driskell and Sinclair inquiries resulted in procedural changes in policing and child welfare, but didn't address systemic issues related to these procedures. It is worth mentioning that AJI and Lavoie had more recommendations (269 and 91) than Taman, Driskell and Sinclair (21, 14 and 62).

The Taman, Driskell and Sinclair inquiries obscured or deflected state responsibility onto weaknesses of existing system practices or agencies such as an individual police service. The changes to policy and procedure did not significantly hold the State responsible for wrongdoing and harm. With Driskell and Taman, the recommendations actually ended up consolidating policing power although police power itself was a central problem in these cases. These inquiries pushed away any discussion about problems with policing suggesting it was an issue of a bad apple and not with policing itself. Similarly, the Sinclair inquiry remained a discussion about the conduct of CFS, not about children's rights, or inequalities associated with Indigenous parenting. In these three inquiries, the recommendations did not fundamentally transform justice practices, and the recommendations that modified policy and regulations were simply focused on managing risk associated with its practices. In these cases, the actions of the State remain a managerial one – managing the risks of its own institutions. It is important to note that neither Lavoie or AJI fulfilled all of their recommendations, but the purpose, focus, and scope were pointed toward transforming justice.

This paper suggests that the managerial sensibility of the neo-liberal State quite specifically limits the possibility of COIs to transform justice. We see this in the Driskell, Taman and Sinclair inquiries more specifically where the role of the regulatory/managerial state is poten-

tially problematic due to its myopic focus on managing risk, individualizing social issues, and assigning responsibility to people not institutions. Within this current state configuration, COIs may themselves become the sole form of accountability, but, as this study shows, end up safeguarding the State and neutralizing problems of the CJS. Opposed to addressing truths of police misconduct, Indigenous peoples, and child protection COIs appear to offset or deny the operation of the States role in maintaining these institutions. While the COI is a form of accountability it essentially ends up safeguarding existing criminal justice institutions.

Conclusion

This paper argues that COIs do not reconfigure the State but instead become part of a strategy to manage scandal and reposition themselves as part of the solution rather than part of the problem. This appears to be especially true for the new politics of COIs in which the purpose, scope and focus as well as the majority of recommendations are focused on regulatory modification. As Garland (2001, 2025) and Albertson et al. (2020) argue, crime control policies are increasingly populist and politicized, and the idea mass systemic change is not possible because the marketized state doesn't want to compromise its hold on power as it is not in its interest to do so. As such, no matter what a COI might recommend, the implementation of recommendations are limited. Therefore, we can argue that COIs may themselves be a form of accountability, regarded as evidence the State acted, but appear to modify existing regulations that do not change or transform justice. The COI work of the state becomes bound by its marketized needs and structural justice concerns appear to recede. Although future studies of COIs should consider how the current configuration of the State and its corporate and managerial sensibilities, affect the processes and outcomes of COIs, this study claims that COIs can be considered a neoliberal mechanism seeking to economize political and social life (Garland, 2001, 2025; Brown, 2015).

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